



# DETERMINATION OF MERGER NOTIFICATION M/19/034 - CVC FUNDS/CELTIC RUGBY DAC

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## Section 21 of the Competition Act 2002

### Proposed acquisition by CVC Funds of a certain ownership interest in the businesses of Celtic Rugby DAC

Dated 15 January 2020

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#### Introduction

1. On 12 November 2019, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby a minority interest in and control of certain defined commercial activities of Celtic Rugby Designated Activity Company (“Celtic Rugby”) will be acquired by a newly incorporated company (“NewCo”) which is to be invested in by certain CVC Funds<sup>1</sup> and which will acquire a minority interest in a partnership structure comprising a Limited Partner and a General Partner which will acquire and operate the businesses of Celtic Rugby (the “Proposed Transaction”).

#### The Proposed Transaction

2. The Parties, Celtic Rugby and [Cobalto Jersey Limited] agreed a term sheet (“Term Sheet”) in respect of the Proposed Transaction on 9 August 2019<sup>2</sup>. The Commission considers that this Term Sheet demonstrates to it that the undertakings involved have good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii)

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<sup>1</sup> These are investment funds or vehicles managed or advised by a member of the CVC Network. The CVC Network consists of CVC Capital Partners SICAV-FIS S.A. (“CVC”) and each of its subsidiaries from time to time, and CVC Capital Partners Advisory Group Holding Foundation and each of its subsidiaries from time to time, which are privately owned entities whose activities include providing investment advice to and/or managing investments on behalf of the CVC Funds [...].

<sup>2</sup> [...] Cobalto Jersey Limited [is] a company wholly owned by the CVC Funds.



of the Act. The parties have informed the Commission that they are continuing to negotiate long-form transaction documents.

3. The Proposed Transaction concerns the acquisition of control over certain defined commercial activities of the LP Structure and PRO14 (such as the approval of broadcasting and sponsorship arrangements) rather than the acquisition of control over Celtic Rugby.<sup>3</sup> It is proposed that the CVC Funds will invest in a newly incorporated company (“Newco”) and acquire a minority interest [...] in the LP Structure, which will acquire and operate the business of Celtic Rugby. The CVC funds will also acquire, through Newco, a majority of the voting rights on a range of specifically defined commercial matters in respect of the LP Structure and PRO14.
4. The principal business of Celtic Rugby is the ownership, management and commercialisation of the broadcasting and sponsorship rights of the Guinness Pro 14 rugby union competition (“PRO14”). The Proposed Transaction would result in the restructuring of Celtic Rugby which will involve certain business of Celtic Rugby (including the commercial rights of PRO14) being contributed to the LP Structure.
5. The CVC Funds has a minority interest in Premier Rugby Limited (“PRL”). CVC already has a degree of influence over the commercial activities of European Professional Club Rugby (“EPCR”)<sup>4</sup> through PRL’s representation on the EPCR’s Board and the EPCR Executive Committee (“EPCR ExCo”). The EPCR’s Board takes decisions relating to the commercial activities of EPCR. PRO14 is also represented on the EPCR ExCo, [...]. The Parties state in the notification that, as a result of the Proposed Transaction, [...].
6. The Parties also stated in the notification that, as part of the Proposed Transaction, certain annual commercial revenues arising from competitions managed by EPCR to which the current shareholders of Celtic Rugby are entitled will be the subject of certain contractual arrangements, to ensure that the CVC Funds will have the direct or indirect benefit of an amount equal to [...] of such revenues.

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<sup>3</sup> The current shareholders of Celtic Rugby<sup>3</sup> will retain full control over decisions relating to sporting and regulatory matters (such as fixture scheduling, disciplinary matters, anti-doping rules and player welfare matters).

<sup>4</sup> EPCR is an Association under the Swiss Civil Code and the organiser of two European club rugby union competitions, the European Rugby Champions Cup (also known as the Heineken Champions Cup) and the European Rugby Challenge Cup.



## **The Undertakings Involved**

### **CVC**

7. [The] CVC [Network] comprises a global network of 24 local offices, 15 across Europe and the Americas and 9 in the Asia Pacific region. [The] CVC [Network] is [...] a private equity and investment [...] [advisory firm]. [The CVC Network consists of] CVC and each of its subsidiaries from time to time, and CVC Capital Partners Advisory Group Holding Foundation and its subsidiaries from time to time, which are privately owned entities whose activities include providing investment advice to and/or managing investments on behalf of the CVC Funds. The CVC Funds hold interests in a number of companies in various industries including chemicals, utilities, manufacturing, retailing and distribution, primarily in Europe, the United States and the Asia-Pacific region.
8. As noted above, CVC Funds has a minority interest in PRL with related rights giving control over certain commercial activities of PRL. PRL is the organising body of the 'Gallagher' Premiership Rugby league ("Premiership Rugby"), an English professional rugby union competition consisting of twelve English rugby clubs. PRL is also responsible for the sale of broadcast rights and other commercial rights (e.g., sponsorship) related to the Premiership Rugby competition.
9. CVC's control over PRL relates solely to PRL's broadcasting and other commercial rights primarily in the United Kingdom. CVC does not have any control over decisions relating to sporting and regulatory matters (such as fixture scheduling, disciplinary matters, anti-doping rules and player welfare matters) regarding Premiership Rugby. Through the CVC Funds' minority investment in PRL, CVC has a degree of influence, but not control, over the broadcasting rights and other commercial rights (e.g., sponsorship) related to the EPCR competitions.
10. For the financial year ended December 2018, CVC generated worldwide turnover of approximately €[...], of which approximately €[...] was generated in the State.

### ***Celtic Rugby***

11. Celtic Rugby is an Irish registered company. The principal activity of Celtic Rugby is the ownership, management and commercialisation of the broadcasting and sponsorship



rights of the PRO14. The PRO14 is an international professional rugby union competition involving fourteen rugby clubs; two from Scotland, two from South Africa, two from Italy, four from Wales and four from Ireland.

12. Celtic Rugby is currently owned by the Irish Rugby Football Union (“IRFU”), the Scottish Rugby Union Limited (“SRU”), and the Welsh Rugby Union Limited (“WRU”) on an equal basis and each is entitled to appoint two directors to the board of Celtic Rugby. While not shareholders, in practice the Italian Rugby Federation (*Federazione Italiana Rugby* (“FIR”) and the South Africa Rugby Union (“SARU”) are each entitled to appoint a director to the board of Celtic Rugby<sup>5</sup>. [...].
13. Following completion of the Proposed Transaction, the remaining non-controlling ownership interests in the LP Structure not held (directly or indirectly) by the CVC Funds will be held by Celtic Rugby. It is also expected that[...].
14. Celtic Rugby has a degree of influence over EPCR (PRO14 is also an EPCR 'feeder league'). This is largely through its representative on the EPCR ExCo (one of three voting members) and also through its shareholder rugby unions, who are also parties to EPCR.
15. For the financial year ended 30 June 2019, Celtic Rugby’s turnover was approximately €[...], of which €[...] was generated in the State.

#### **EPCR**

16. EPCR is an Association under the Swiss Civil Code and the organiser of two European club rugby union competitions, namely (i) The European Rugby Champions Cup (also known as the Heineken Champions Cup) and (ii) The European Rugby Challenge Cup.
17. Decisions related to the commercial activities of EPCR are taken by the EPCR Board. The EPCR Board is made up of 12 directors comprising representatives from each participating union / federation, as well as the organisers of two of the EPCR feeder leagues: Ligue Nationale de Rugby (**LNR**)<sup>6</sup> and PRL.
18. [...].

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<sup>5</sup> [...]

<sup>6</sup> LNR organises, manages and regulates two French rugby club competitions (Top 14 and Rugby Pro D2).



19. PRL is entitled to appoint a voting representative onto the EPCR Board and EPCR ExCo.<sup>7</sup> The Parties state in the Notification that, through its investment in PRL, CVC indirectly controls the appointment and voting of PRL's representative on the EPCR Board and EPCR ExCo, with respect to decisions made related to the commercial activities of EPCR.
20. The Parties state in the Notification that, as a result of the Proposed Transaction, CVC will acquire de facto control at the EPCR ExCo level over the commercial activities of EPCR, [...]<sup>8</sup>.

### **Rationale for the Proposed Acquisition**

21. The parties state the following in the notification:

*“PRO14 is an attractive investment opportunity for the CVC Funds and offers a complementary addition to the CVC Funds’ existing investment in Premiership Rugby. While PRO14 covers different core geographies to Premiership Rugby ....., and EPCR fulfils a different role to Premiership Rugby in the context of a broadcaster’s schedule ....., they operate similar business models with equivalent revenue streams, operations and activities, leading to the potential for efficiencies and synergies across a number of commercial, operational and sporting opportunities.*

*..... envisage that the Proposed Transaction will result in an improved offering to rugby union fans in Ireland and abroad, .....*”

### **Third Party Submissions**

22. No submission was received.

### **Industry Background**

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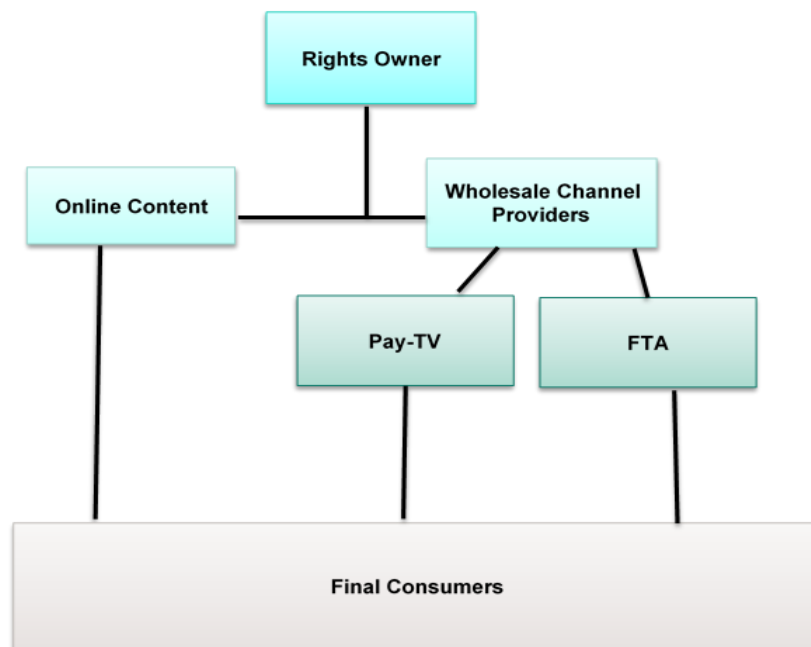
<sup>7</sup> [...]

<sup>8</sup> [...]



23. The proposed transaction concerns the licencing of TV broadcasting sports rights and other commercial rights, including sponsorship. The typical distribution system for the sale of TV broadcasting rights for sports events is illustrated by diagram 1 below;

**Diagram 1: Distribution system for the sale of TV broadcasting rights for sports events**



Source: Based on information provided by the Parties

24. The typical distribution system starts with the entity which owns the rights to the relevant sports event or competition. This can be the owner of the relevant competition (i.e. Celtic Rugby, EPCR and PRL) but can also be a separate commercial entity, who has acquired the rights for resale.
25. Sports rights are typically licensed by rights owners on a territorial basis in “packages” (i.e. for a fixed number of years/seasons/events matches etc.) directly to wholesale channel providers (i.e. TV broadcasters) or to online content providers.



*TV broadcasters in Ireland*

26. The main TV broadcasters active in the acquisition of Irish (or Ireland and UK) sports rights are listed in Table 1 below:

**Table 1: Main broadcasters (Irish and UK) active in the acquisition of Irish Sports rights**

	<b>Broadcaster</b>	<b>Description</b>
1	Raidió Teilifís Éireann ("RTE")	<p>RTE is the national public service broadcaster in Ireland. It is financed through a combination of TV licence fees and private advertising.</p> <p>RTE operates four Free To Air ("FTA") channels, two of which have sports offerings (RTÉ One and RTÉ2)</p>
2	Teilifís na Gaeilge ("TG4")	<p>TG4 is the National Irish language Public Service Broadcaster, focused on providing Irish language programming.</p> <p>TG4 currently has a sports offering including certain PRO14 matches.</p>
3	Virgin Media Television ("Virgin Media")  (previously TV3)	<p>Virgin Media is an Irish broadcaster owned by Virgin Media Ireland.</p> <p>Virgin Media operates three FTA channels (Virgin Media One, Virgin Media Two and Virgin Media Three) which do include a sports offering including the Rugby World Cup, Six Nations and UEFA Champions League.</p> <p>Virgin Media also offers a pay-TV channel Virgin Media Sport.</p>
4	Eircom Sport Limited ("Eircom Sport")	<p>Eircom Sport limited is a subsidiary of Eircom Limited ("Eir").</p> <p>The Eir Sport channels are sport focused pay-TV channels only available to customers via a subscription service.</p>



5	Sky Limited ("SKY")	Sky sports are a group of pay-TV sports channels, which broadcast in the UK and Ireland, operated by SKY. Sky Sports operate a number of dedicated channels such as Sky Sports Premier League, Sky Sports F1 and Sky Sports Golf, in addition to channels with mixed sporting content. Since August 2019, Sky are the official distributors in Ireland of BT Sport and Premier Sport <sup>9</sup> .
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Source: Based on information provided by the parties

27. The Irish TV sector also features a number of UK channel brands available either via FTA, satellite or encrypted on Sky and Virgin Media. These include the BBC channels and the Channel 4 portfolio. Households taking a pay TV service can also have a range of additional channels, including those of Discovery Communications, NBC, Universal, as well as premium movies and sports from Sky, BT and Eir.
28. According to a recent report by the Broadcasting Authority of Ireland (BAI) entitled "*A report on market structure, dynamics and developments in Irish Media*" the ("*BAI Report*"),<sup>10</sup> the Irish TV sector is characterised by a relatively small population and a language shared with countries that have a much larger population of viewers, making it a target for foreign English-language channels.
29. The BAI report notes that there is a very high penetration of pay-TV in Ireland, with around two-thirds of Irish TV households paying a monthly subscription for TV.

### *Regulation*

30. The Irish TV broadcasting industry is regulated. The Broadcasting Act 2009, as amended (the "**Broadcasting Act**") designates certain sports events as being of 'major' importance meaning they must be available to Irish FTA broadcasters. The Broadcasting Act prohibits pay-tv broadcasters who obtain exclusive rights to a designated event from broadcasting unless they make the event available to a relevant FTA broadcaster

<sup>9</sup> For further information please see <https://www.irishtimes.com/sport/rugby/eir-confirm-that-customers-will-no-longer-receive-bt-sport-free-of-charge-1.3942893>

<sup>10</sup> The BAI Report is available here [https://www.bai.ie/en/media/sites/2/dlm\\_uploads/2018/04/180410-Mediatique-Report.pdf](https://www.bai.ie/en/media/sites/2/dlm_uploads/2018/04/180410-Mediatique-Report.pdf)





(referred to in the Broadcasting Act as a ‘qualifying broadcaster’) on request and on payment of a reasonable market rate.<sup>11</sup>

31. PRL, EPCR and PRO 14 are not designated events for the purposes of the Broadcasting Act 2009.<sup>12</sup>
32. The Broadcasting Act also requires that deferred coverage of certain sport events is provided on FTA. Currently the only event on this list is Ireland’s games in the Six Nations Rugby Football Championship.
33. In addition to traditional TV broadcasters, over-the-top (OTT) subscription platforms are increasingly active in the acquisition of sports rights. For example, Prime Video recently began acquiring sports rights including the rights to the Association of Tennis Professionals (ATP) World Tour and the United States Open Tennis Championships (“US Open”). Another example is GAAGO, the joint venture between RTE and the Gaelic Athletic Association (“GAA”) which allows GAA matches to be streamed worldwide online.

#### **Nature of Competition**

34. The Parties state in the Notification that when assessing what content to acquire, the key considerations for broadcasters are:
  - a. Attracting a large number of viewers;
  - b. Attracting a good mix of viewers and;
  - c. Ensuring the mix of content will attract viewers throughout the year (i.e. in the context of the broadcaster’s yearly schedule).
35. As they are primarily interested in attracting a high number of viewers, the parties state that all TV content, for example movies and TV series, exert a strong competitive constraint on sports content. The parties refer in this regard to the BAI Report, which

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<sup>11</sup> Section 164 of the Broadcasting Act

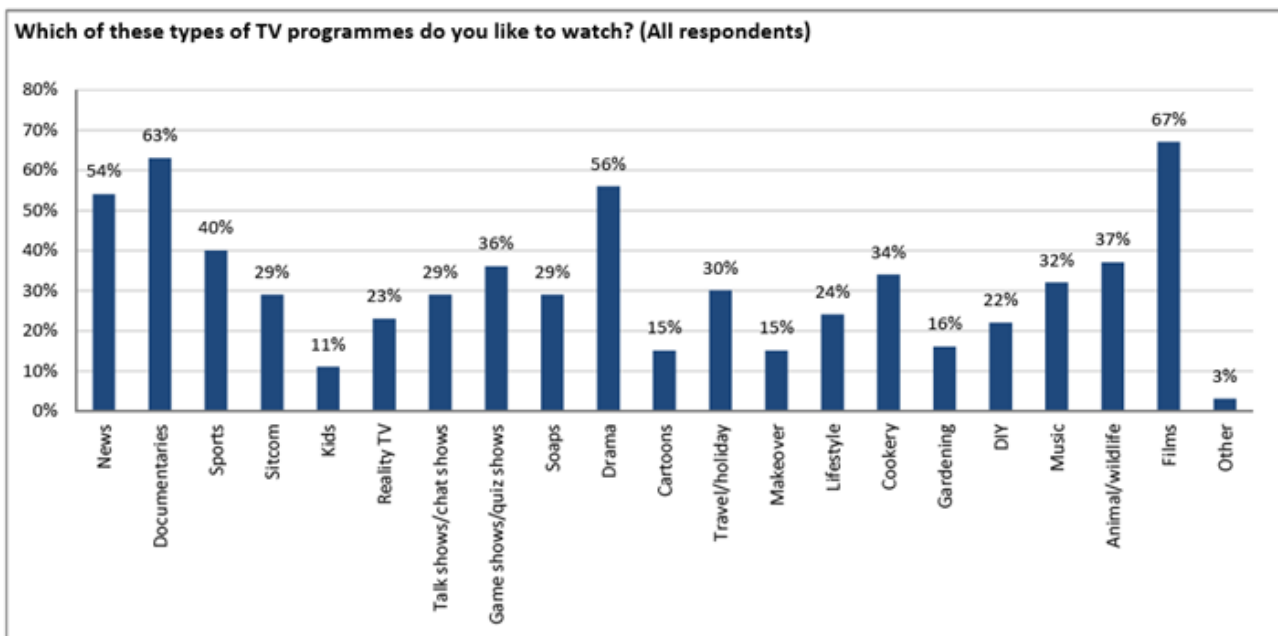
<sup>12</sup> The list is reviewed every three years, for the current list published 25 October 2017 see here <https://www.dcae.gov.ie/en-ie/communications/topics/broadcasting-media/regulation/Pages/Designation-of-Major-Events.aspx>



states “Broadcasters and platform operators alike invest in a range of content, both in production and aggregation, in order to secure competitive advantage”.<sup>13</sup>

- 36. The BAI Report includes a Kantar Media survey of Irish TV viewers about specific behaviours and opinions on Irish TV. As shown in Table 2 below the responses reveal a wide range of tastes among TV viewers generally, across multiple genres.

Table 2: Kantar Media Survey Irish TV viewer’s behaviours and opinions



Source: BAI Report, page 47

- 37. For broadcasters who allocate a proportion of their spend on sports content, decision making on how to allocate their budget spend is again driven by a number of variables including:
  - a. **Amount of budget dedicated to sport.** Broadcasters will typically have a budget to spend on the acquisition of content including sports.

<sup>13</sup> BAI Report, paragraph 2.61



- b. **Attractiveness of sports property/ commercial value of sport.** The commercial value of sport has two main elements: the advertising and sponsorship value which is driven by audience numbers and demographic and the subscription value (i.e. the size of the consumer segments who would take up, drop or switch subscription if the rights moved).

Advertising and sponsorship opportunities will increase the value of an event or good. A broadcaster may have the opportunity to benefit from additional advertising revenue due to interest from companies linked to the sport by sponsorship agreements. Furthermore, significant sporting events (particularly home country events) draw viewers and allow broadcasters to charge high premiums for advertising slots around such events.

- c. **Timing of sports events.** Timing is a factor for broadcasters as they seek content to fill their schedules. Broadcasters will try to avoid overlapping schedules as they would not receive the full commercial benefit of being able to exploit them
- d. **Other factors** include the reputational value of showing certain events, the manner in which the undertakings involved price and sell their goods and or/services e.g. the degree of exclusivity.

## Market Definition

### *Horizontal Overlap*

38. There are a number of horizontal overlapping activities between the Parties which are: (i) Supply of TV broadcasting rights; (ii) Audio/other broadcasting rights; and, (iii) Sponsorship/advertising.
39. In relation to (ii) audio/other broadcasting rights and (iii) sponsorship/advertising, revenue generated from these activities represent a minimal share of the market, therefore the Commission did not conduct further assessment in relation to these two activities as it considered that it was not likely to raise any competitive concerns.
40. Therefore when examining the likely effects of the Proposed Transaction, the rest of the determination will focus on the potential market for the supply of TV broadcasting rights including rugby union rights.



### *Supply of TV broadcasting rights*

#### *Views of the Parties*

41. The Parties state the following in the notification

*“There is nothing about rugby union competitions (including Premiership Rugby, the EPCR competitions and PRO14) that make them important let alone “must –have” content for broadcasters”.*

42. As stated previously above, when assessing what content to acquire, a key consideration for broadcasters is the viewership figures. The Parties’ state in the Notification that the overall sports rights audience share and broadcaster spend share of the PRO 14, PRL and EPCR competitions is low in Ireland. The Parties argue in the Notification that there is a very broad range of sports properties available that offer comparable viewership figures, and comparable (or better) value to Irish broadcasters. These include football (i.e. soccer), GAA football, GAA hurling, motorsports, golf, tennis and athletics. The Parties argue in the Notification that, in the event the Parties sought to increase their license fees for their rugby competitions, broadcasters could and would switch their spends to these alternatives.

43. In the notification the parties also state that broadcasters would not be willing to pay higher licensing fees for Premiership Rugby, the EPCR Competitions and PRO14 (without the Parties offering any additional value) as they would be unable to recoup the additional costs by charging higher prices to their subscribers. As well as the fact that the downstream market is competitive (with competition between broadcasters and OTT subscription platforms), only a small niche of viewers are interested in rugby alone. The parties state in the Notification that the vast majority of subscribers would not be willing to pay higher subscription fees and would switch to a competing broadcaster in the event of that broadcasters tried to recoup an increase in licence fees by charging higher prices to their subscribers. The parties also state that there are some pure sports channels in Ireland that do not broadcast any rugby union content (e.g., Eurosport), which they say supports their argument, that rugby does not constitute “must-have” content.

44. For these reasons the parties state in the notification;



*“ the **narrowest** plausible frame of reference for the CCPC's assessment of the Proposed Transaction is the sale of TV broadcasting rights to broadcasters for all sports events available to viewers in the Republic of Ireland”*

45. The Parties also state in the Notification that even “all sports content” would be a narrow frame of reference as other content (e.g. movies, TV series) acts as a competitive constraint on sports content-rights owners who are typically competing in a competitive bidding market with powerful customers for broadcaster spend across all content. The Parties further state that linear TV broadcasting is only one form of media which competes for consumers’ time and engagement in a broad entertainment space.

#### *Views of the Commission*

46. The Commission’s predecessor, the Competition Authority previously assessed the competitive impact of transactions concerning sports rights by reference to the upstream acquisition (i.e., the purchase by broadcasters) of TV broadcast rights for sports events. In its determination, M/13/003 - BT/ESPN Global<sup>14</sup> the Competition Authority did not define the precise relevant product market but assessed the competitive effects of the transaction by reference to the upstream purchasing of sports rights.
47. In ME/6651/16 Liberty Media/Formula 1<sup>15</sup>, the Competition and Markets Authority in the UK (“CMA”) considered, but ultimately left open, whether the broadcasting of sports events should be segmented by type of content.
48. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant product markets. The Commission’s conclusion concerning the competitive effects of the Proposed Transaction would be unaffected whether the relevant product market in the present case is defined broadly (i.e., defined as the sale

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<sup>14</sup> Please see M/13/003 - BT / ESPN Global, which can be accessed at

<https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m13003-bt-espn-global/>

<sup>15</sup> Please see ME/6651/16 Liberty Media/Formula 1, which can be accessed at <https://www.gov.uk/cma-cases/liberty-media-formula-one-merger-inquiry>



of TV broadcasting rights to broadcasters for all major sports events<sup>16</sup>) or narrowly (i.e., sale of TV broadcasting rights to broadcasters for rugby union sports events).

49. The Commission considers that there are no reasons to depart from its previous approach in relation to the relevant product market in this instance. Therefore, for the purposes of the review of the Proposed Transaction, the Commission has analysed the likely effects of the Proposed Transaction with reference to: (i) the market for the sale of TV broadcasting rights to broadcasters for all major sports events; and, for completeness, (ii) the narrower market for the sale of TV broadcasting rights to broadcasters for rugby union events.

#### *Relevant Geographic Market*

50. In terms of the relevant geographic market, the Commission (and its predecessor the Competition Authority) did not come to a definitive view on the precise relevant geographic market in its previous decisions. In M/06/089 Doughty Hanson/Setanta, the Competition Authority considered the relevant geographic market to be the State. The Commission notes that for many sports the Irish and UK TV broadcasting rights are currently sold together, including for both PRL and EPCR, and therefore the market could be wider than the state. However for the purposes of the review of the Proposed Transaction the Commission has analysed the effects of the Proposed Transaction at the narrowest relevant geographic market, i.e., the State.

#### **Competitive Assessment**

51. The Commission has assessed the likely impact of the Proposed Transaction on the market for the sale of TV broadcasting rights to broadcasters for all major sports events in the State and for the sale of TV broadcasting rights to broadcasters for rugby union sporting events in the State.

#### *The sale of TV broadcasting rights to broadcasters for all major sports events in the State*

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<sup>16</sup> Major sporting events include FIFA World Cup, Rugby World Cup, Olympic Games, Woman's FIFA World Cup and the European Athletic Championships



52. In their notification the parties submitted an analysis of viewership data for all major sporting events available to viewers in the State.<sup>17</sup> The Commission assessed the market share of the parties as a proportion of viewership hours.
53. The data provided showed that CVC, through its interests in the commercial rights of Premiership Rugby, and Celtic Rugby had a share of viewer hours of [0-5%] and [5-10%] respectively of all major sporting events available to viewers in the State.<sup>18</sup>
54. As set out above, CVC and Celtic Rugby both have an interest in the EPCR which is the organiser of the European Rugby Champions Cup and the European Rugby Challenge Cup. The European Rugby Champions Cup and Challenge Cup together accounted for [0-5%] of all major sporting events watched by viewers in the State.
55. The Proposed Transaction would result in CVC having a controlling interest in the commercial activities of undertakings with a share of viewer hours of approximately [10-20%] of all major sports events available to viewers in the State.
56. There are a number of other entities which apply a competitive constraint in the market for the sale of TV broadcasting rights to broadcasters for all sports events in the State. The UEFA Champions League, GAA Football and GAA Hurling with [5-10%], [5-10%], and [5-10%], respectively, each had a higher share of viewer hours than Celtic Rugby, European Rugby Champions Cup/Challenge Cup and PRL in 2018/2019. These competitions would continue to provide a competitive constraint on CVC post-transaction.

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<sup>17</sup> The parties also submitted data on broadcaster spend. This broadcaster spend data mostly covered both UK and Ireland rights. The Parties were unable to source 'ROI only' broadcaster spend data. According to the parties such data is not readily available because the ROI TV market is relatively small compared to other countries and also because UK and Ireland rights are often sold together as a package.

<sup>18</sup> Data on ROI viewership levels for sports events in 2018/2019 was provided by the parties. The figures included major sporting events such as FIFA World Cup 2018, Rugby World Cup (based on 2015 viewership figures), Olympic Games (2016), Woman's FIFA World Cup 2019 and the European Athletic Championships. In order to draw reliable conclusions, events that take place on a quadrennial and biannual basis were averaged to yearly viewership levels.



57. The Commission also notes that the broadcasters are highly informed and sophisticated buyers of broadcasting rights which will also provide a competitive constraint on CVC post-transaction.
58. In the light of the above, the Commission considers that the Proposed Transaction is not likely to lead to any negative horizontal competitive effects in respect of the sale of TV broadcasting rights to broadcasters for all major sports events in the State.

*The sale of TV broadcasting rights to broadcasters for rugby union sports events in the State*

59. Table 3 below shows the ROI viewership levels for rugby events in 2018/2019 season.

**Table 3 ROI viewership levels for rugby union events in 2018/2019.**

Event	Channel	Viewer hours	Segment Share
Six Nations	3E / BBC1 / Virgin Media One	[...]	[30-40%]
Pro14	EIR Sport 1 / TG4	[...]	[10-20%]
Rugby World Cup (2015) (averaged over 4 years)	3E / UTV / Virgin Media One	[...]	[10-20%]
European Rugby Champions Cup / Challenge Cup	BT Sport / TV3	[...]	[10-20%]
Autumn Rugby Union Internationals ("Autumn Internationals")	Channel 4 Ireland / Sky / RTE / BBC	[...]	[10-20%]
Premiership Rugby	BT Sport	[...]	[0-5%]





Rugby Championship (SANZAAR)	Sky Sports Main Event	[...]	[0-5%]
Super Rugby (SANZAAR)	Sky Sports Arena / Sky Sports Main Event	[...]	[0-5%]
<b>Total Rugby Union Viewership hours</b>		[...]	

Source: EURODATA TV, provided by the parties

60. PRL and Celtic Rugby had a share of viewer hours of [0-5%] and [10-20%] respectively of all major rugby union events available to viewers in the State in 2018/2019. EPCR accounted for [10-20%] of viewer hours of all major rugby union events available to viewers in the State in 2018/2019.
61. The Proposed Transaction would result in CVC having a controlling interest in the commercial activities of undertakings with a share of viewer hours of approximately [30-40%] in the State.
62. The Rugby Six Nations accounted for [30-40%] of viewer hours of all major rugby union events available to viewers in the State in 2018/2019. Currently the Rugby Six Nations and the Autumn Internationals would continue to provide a competitive constraint in the market for the sale of broadcasting rights for rugby union sporting events in the State following completion of the Proposed Transaction.<sup>19</sup>
63. The Commission is aware [from media reports] that CVC is in an exclusive period of negotiation with the Rugby Six Nations in relation to a potential minority investment by CVC Funds in the competition.
64. The Commission may have concerns regarding the likely competitive impact of the Proposed Transaction in the absence of the Six Nations as a continuing competitive constraint post transaction. If CVC, directly or indirectly, enters a legally binding

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<sup>19</sup> As noted above the Commission also considers that the broadcasters are highly sophisticated buyers of broadcasting rights. None of them contacted the CCPC to raise any competition concerns in relation to the Proposed Transaction



agreement to acquire control over the commercial activities of the Six Nations competition (the “**Possible Transaction**”); and if the Possible Transaction does not meet the mandatory thresholds for a merger filing to the Commission, the likely competitive effects of the Possible Transaction on competition in this market would not be reviewed by the Commission. This may result in CVC gaining significant market power to the detriment of customers/consumers in the potential market for the sale of broadcasting rights for rugby union sporting events in the State.

65. To address this competition concern, at the request of the Commission, CVC have submitted a proposal in accordance with section 20(3) of the Act. The Proposal submitted by CVC includes a commitment by CVC that if it, directly or indirectly, enters a legally binding agreement to acquire control over the commercial activities of the Six Nations competition it will voluntarily notify the Possible Transaction to the Commission before it is put into effect, pursuant to Section 18(3) of the Act in the event the transaction does not meet the mandatory thresholds under section 18(a) of the Act.
66. The Commission is of the view that the Proposal is appropriate and effective to address the competition concerns identified by the Commission and therefore, having taken the Proposal into account, the Commission considers that the Proposed Transaction is not likely to lead to any negative horizontal competitive effects in respect of the sale of TV broadcasting rights to broadcasters for rugby union sports events in the State.

#### *Vertical Relationship*

67. The Parties state in the notification that, with respect to the island of Ireland, there is no vertical overlap between any of the CVC Funds portfolio companies and the activities of Celtic Rugby. The Commission has not identified any vertical relationship between the Parties in the State. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

#### **Conclusion**

68. In light of the above, and having taken the proposal into account, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.



### **Ancillary Restraints**

69. No ancillary restraints were notified.



## **Determination**

Pursuant to section 20(3) of the Act, CVC Capital Partners SICAV-FIS S.A. has submitted to the Commission the proposal set out below relating to the Proposed Transaction for the purpose of ameliorating any effects on competition in markets for goods or services, with a view to the proposal becoming binding on CVC Capital Partners SICAV-FIS S.A.

The Commission has taken the proposal into account and in light of the said proposal (which form part of the basis of its determination) has determined, in accordance with section 21(2) (a) of the Act, that the result of the proposed transaction, whereby a minority interest in and control of certain defined commercial activities of Celtic Rugby Designated Activity Company (“Celtic Rugby”) will be acquired by a newly incorporated company (“NewCo”) which is to be invested in by certain CVC Funds<sup>20</sup> and which will acquire a minority interest in a partnership structure comprising a Limited Partner and a General Partner which will acquire and operate the businesses of Celtic Rugby Designated Activity Company, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Brian McHugh**

**Member**

**Competition and Consumer Protection Commission**

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<sup>20</sup> These are investment funds or vehicles managed or advised by a member of the CVC Network. The CVC Network consists of CVC Capital Partners SICAV-FIS S.A. and each of its subsidiaries from time to time, and CVC Capital Partners Advisory Group Holding Foundation and each of its subsidiaries from time to time, which are privately owned entities whose activities include providing investment advice to and/or managing investments on behalf of the CVC Funds.



## MERGER NOTIFICATION M/19/034 - CVC FUNDS/CELTIC RUGBY DAC

### PROPOSAL BY CVC TO THE COMPETITION AND CONSUMER PROTECTION COMMISSION RELATING TO THE PROPOSED ACQUISITION BY CVC FUNDS OF A MINORITY INTEREST IN THE BUSINESS OF CELTIC RUGBY AND CONTROL OF CERTAIN DEFINED COMMERCIAL ACTIVITIES OF CELTIC RUGBY AS NOTIFIED TO THE COMMISSION PURSUANT TO SECTION 18(1)(A) OF THE COMPETITION ACT 2002, AS AMENDED, ON 12 NOVEMBER 2019 (“Proposal”)

#### RECITALS

- a) On 12 November 2019, the Commission received notification under Part 3 of the Act of a proposed transaction whereby a minority interest in and control of certain defined commercial activities of Celtic Rugby will be acquired by a newly incorporated company (“NewCo”) which is to be invested in by certain CVC Funds and which will acquire a minority interest in a partnership structure comprising a Limited Partner and a General Partner which will acquire and operate the businesses of Celtic Rugby (the “**Proposed Transaction**”).
- b) Pursuant to section 20(3) of the Act, CVC has submitted to the Commission this Proposal relating to the Proposed Transaction for the purpose of ameliorating any possible effect of the Proposed Transaction on competition in markets for goods or services, with a view to this Proposal becoming binding on CVC.
- c) The Proposal submitted by CVC is intended to ensure that, should (a) any entity invested in by the CVC Funds acquire, directly or indirectly, control over the commercial activities of the Six Nations Competition and (b) that acquisition does not meet the mandatory thresholds for a merger filing to the Commission, CVC will voluntarily notify that transaction, before it is put into effect, to the Commission pursuant to Section 18(3) of the Act.

#### A. Definitions

1. For the purpose of this Proposal, the following terms shall have the following meaning:

“**Act**” means the Competition Act 2002, as amended;

“**Celtic Rugby**” means Celtic Rugby Designated Activity Company an Irish registered company;

“**Commencement Date**” means the date of the Commission's Determination;

“**Commission**” means the Competition and Consumer Protection Commission and its successors;

“**Completion**” means completion of the Proposed Transaction;



“**CVC**” means CVC Capital Partners SICAV-FIS S.A.;

“**CVC Network**” is a private equity and investment advisory firm. The CVC Network consists of CVC and each of its subsidiaries from time to time, and CVC Capital Partners Advisory Group Holding Foundation and its subsidiaries from time to time, which are privately owned entities whose activities include providing investment advice to and/or managing investments on behalf of certain funds and investment vehicles (the “**CVC Funds**”).

“**Determination**” means the Determination of the Commission pursuant to section 21(2)(a) of the Act that the Proposed Transaction may be put into effect;

“**Merger Notification Commitment**” means the commitment outlined at paragraph 1 of this Proposal;

“**Newco**” has the meaning set out at Recital a) above;

“**Possible Transaction**” has the meaning set out at paragraph 1 below;

“**Proposed Transaction**” has the meaning set out at Recital a) above;

“**Six Nations Competition**” means the Six Nations Rugby Football Championship;

“**Term**” means the period beginning on the Commencement Date and ending on the Termination Date;

“**Termination Date**” means the date on which the Commission considers that the Proposal is no longer required and confirms in writing to the Undertakings that the Proposal shall cease to apply, or the date on which the Possible Transaction is notified to the Commission pursuant to section 18(3) of the Act.

## B. Undertakings by CVC

### ***Merger Notification Commitment***

1. In the event that:

(a) an entity invested in by the CVC Funds enters a legally binding agreement to, directly or indirectly, acquire control (for the purposes of section 16(1) of the Act) over the commercial activities of the Six Nations Competition (the “**Possible Transaction**”);

(b) the Possible Transaction is not required to be notified to the Commission under section 18(1) of the Act,

CVC agrees that it will voluntarily notify the Possible Transaction to the Commission before it is put into effect, pursuant to Section 18(3) of the Act.

## C. Compliance



2. The Commission reserves the right to require CVC to provide to the Commission, at any time and on reasonable notice, such additional information as the Commission reasonably requires which is necessary in order for the Commission to verify CVC's compliance with its obligations set out in this Proposal. CVC shall promptly provide to the Commission all such information in its possession.
3. The Commission may provide with reasonable notice and on reasonable terms such written directions to CVC from time to time as needed to require compliance with this Proposal. CVC shall comply promptly with any written direction issued by the Commission pursuant to this Proposal.
4. CVC shall nominate a duly authorized representative (the "**CVC Representative**") who will have responsibility for monitoring compliance by CVC with this Proposal and for responding to any request for information received from the Commission in connection with this Proposal. CVC shall provide the name and contact details of such CVC Representative to the Commission and shall promptly inform the Commission of any change of CVC Representative nominated pursuant to this paragraph of this Proposal and shall promptly provide to the Commission the name and contact details of any CVC Representative who is to replace the prior nominated CVC Representative.
5. This Proposal will come into effect on the Commencement Date and will remain in force during the Term.
6. For the avoidance of doubt, in the event that either (a) CVC can demonstrate to the satisfaction of the Commission that the Proposed Transaction has been abandoned, for any reason, or (b) following Completion of the Proposed Transaction, CVC no longer exercises control over certain defined commercial activities of Celtic Rugby (for the purposes of section 16(2) of the Act), the Proposal shall no longer apply.