



**DETERMINATION OF MERGER NOTIFICATION M/07/040 –
COMMUNICORP/SRH**

Section 22 of the Competition Act 2002

Proposed acquisition by Communicorp Group Ltd of Radio Ireland Ltd, Capital Radio Productions Ltd, Donegal Highland Radio Ltd, Babstova Ltd and Highland Media & Communications Investment Ltd.

Dated 7/12/2007



The Competition Authority
An tÚdarás Iomaíochta

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SECTION ONE: INTRODUCTION

The Notification

- 1.1 On 30 July 2007, the Competition Authority ("the Authority"), in accordance with section 18(1) of the Competition Act, 2002 ("the Act") was notified, on a mandatory basis, of the proposed acquisition by Communicorp Group Limited ("Communicorp") from Scottish Radio Holdings Limited ("SRH") of its Irish radio business through the acquisition of Capital Radio Productions Limited ("CRPL") (trading as "FM104"), Babstova Limited, Radio Ireland Limited (trading as "Today FM"), Highland Media and Communications Investments Limited and Donegal Highland Radio Limited ("DHRL") (trading as "Highland Radio").
- 1.2 The Authority advised the parties and the Minister that it considered the proposed acquisition to be a media merger within the meaning of section 23 of the Act.

The Transaction

- 1.3 The proposed transaction relates to all of the Vendor's¹ radio interests in the State and to maybefriends.com Internet dating agency. Under the proposed transaction, which is effected by way of a share purchase agreement entered into by the parties on 14 July 2007, Communicorp will acquire sole control of each of the target companies

The Undertakings Involved

The Acquirer: Communicorp

- 1.4 Communicorp is engaged in a range of media business including the operation of radio broadcasting in Ireland and various European countries including, the Czech Republic, Hungary, Bulgaria, Estonia, Finland and Ukraine. Whilst its interests are primarily in radio, it also operates some non-radio interests: in particular it controls 80% of a specialist internet advertising company, ICAN, which is based in Ireland.
- 1.5 In addition Communicorp's sole shareholder, Denis O'Brien, held a non-controlling 9% beneficial interest in Independent News and Media plc.²
- 1.6 In Ireland Communicorp controls three radio stations two of which broadcast in Dublin City and County and one that broadcasts as a quasi-national station. It also has shareholding interests in one regional and one local station. (See Table 1 below for details).

¹ The Vendor is defined in para 1.11 below.

² During the Authority's investigation of the merger the beneficial interest of Denis O'Brien in Independent News and Media was increased to between 12 and 13%.

Table 1**Communicorp Radio Stations Broadcasting in Ireland, 2007**

Station	Franchise Area	Target Audience	Programme Format/ Style
98FM	Local - Dublin City & County	25 - 44 year olds	Adult contemporary music mix, best of the 80's, 90's and now.
Spin1038	Local - Dublin City & County	15 - 34 year olds	Hot Urban Contemporary.
Newstalk 106FM	Quasi - National	Core Audience 25 - 44 year olds	Talk based programming with news, sport & traffic, every 20 minutes.
Spin SouthWest (45%)	Regional South West region of Ireland - counties of Kerry, Limerick, Clare, North Tipperary and South-West Laois.	15 - 34 year olds living and/or working in the South West of Ireland.	Mix of speech and music programming including a range of news and sports coverage.
East Coast FM (27 %)	Local - County Wicklow	15-55 year olds	Lively mix of music, news, sport, current affairs and local issues.

Source: BCI

Radio Two Thousand Limited

- 1.7 Radio Two Thousand Limited operates the radio station 98FM. 98FM is licensed by the Broadcasting Commission of Ireland ("BCI") to provide "adult contemporary music mix, best of the 80's, 90's and now" in Dublin City and County to a target audience of 25-44 year olds.

Maypril Limited

- 1.8 Maypril Limited is involved in the business of radio broadcasting to listeners in the area of Dublin City and County. Trading as Spin 103.8, Maypril Limited is authorised by the BCI to provide "hot urban contemporary" music services to a target audience of 15-34 year olds.

News 106 Limited

- 1.9 News 106 Limited trades as Newstalk and is authorised by the BCI to provide "talk based programming, with news, sport and traffic every 20 minutes" to a target audience of 25-44 year olds. Since September 2006 it operates on a quasi-national basis (not achieving or capable of achieving full population coverage). The parties estimate that Newstalk's coverage is limited to around 93% of the State.

- 1.10 Communicorp also owns 27% of East Coast Radio and 45% of Spin South West Limited. Spin South West is one of two regional commercial radio licensees. It began broadcasting on 23 July 2007. Its coverage includes the counties of Kerry, Clare, Limerick and Tipperary North and South West Laois.

The Target Companies

- 1.11 The target radio stations comprise the Irish radio business of SRH: one Dublin City and County station, one national station and one station broadcasting in Donegal. (See Table 2 for details). SRH is in turn owned by Emap plc ("the Vendor"), a multi-platform media group based in the UK.

**Table 2
SRH Radio Stations Broadcasting in Ireland, 2007**

Station	Franchise Area	Target Audience	Programme Format/ Style
FM104	Local - Dublin City & County	15 - 24 year olds	Hot adult contemporary
Highland Radio	Local - County Donegal (North)	20+ year olds	Middle-of-the-road and country (Irish and American) with specialised pop programmes for 20s. Strong emphasis on news, current affairs and sports coverage.
100-102 Today FM	National	18 - Adults, nationally	Broad contemporary music format with strong current affairs, sport and comedy sequences.

Source: BCI

Capital Radio Productions Limited

- 1.12 CRPL trades as FM104 and is involved in the business of radio broadcasting to listeners in the area of Dublin City and County and is authorised by the BCI to provide "hot adult contemporary music" services to a target audience of 15-34 year olds. Its subsidiary Flycatcher Media Limited is an Internet media company that operates an Internet dating agency at www.maybefriends.com

Radio Ireland Limited

- 1.13 Radio Ireland Limited trades as Today FM and is authorised by the BCI to provide a "broad contemporary music format with strong current affairs, sport and comedy sequences" in the State to a target audience of 18 year olds and over.

Donegal Highland Radio Limited

- 1.14 DHRL trades as Highland Radio and is authorised by the BCI to provide "middle-of-the-road and country (Irish and American) with specialised pop programmes for 20s and strong emphasis on news,

current affairs and sports coverage” services to a target audience of 20+ year olds. It is a local radio station concentrating on Donegal.

- 1.15 Communicorp is also proposing to acquire Babstova Limited and Highland Media and Communications Limited, which are non-trading holding companies.

Independent Network News Limited

- 1.16 Radio Two Thousand Limited has a 15.2% interest in Independent Network News Limited (“INN”). INN provides national news services to Ireland’s regional and local radio stations. INN supplies a copy and audio service from its Dublin studios via satellite, in addition to hourly news and sport bulletins.

- 1.17 CRPL also has a 15.2% interest in INN. Highland Radio has 2.7% interest. As a result of the proposed transaction, Communicorp would have 33.1% interest in INN.

Rationale for the Notified Transaction

- 1.18 Communicorp submitted that the proposed acquisition would allow it to:

- become a full national player with a mixed format radio station (Today FM);
- in Dublin, compete more effectively with existing and new media; and,
- extend its local radio operations into County Donegal.

The Procedure

Phase 1: Preliminary Investigation

- 1.19 During the course of its Phase 1 investigation, the Authority did the following:

- Distributed questionnaires to the leading twenty two advertising agencies³ and 63 direct advertisers⁴ of the radio stations of the undertakings involved. Twenty out of the twenty two (over 90%) advertising agencies completed the questionnaire while only fifteen (24%) direct advertisers completed the questionnaire.⁵ The agencies who responded to the Authority’s questionnaire accounts

³ The undertakings involved provided a list of the 20 leading advertising agencies that advertised on their radio stations. Two additional agencies were added from the membership list of the Institute of Advertising Practitioners in Ireland (“IAPI”).

⁴ The undertakings involved provided a list of the top 20 direct advertisers for each radio station involved in the transaction except Highland Radio. However, there was some duplication in the identity of direct advertisers across these radio stations plus in some instances the Authority was unable to contact the direct advertiser. Hence the total number of direct advertisers was 63 rather than 100.

⁵ The low response rate from direct advertisers is unsurprising given the low level of advertising spend by direct advertisers. On average, circa 30% of total radio advertising revenue generated by the radio stations involved in the proposed acquisition comes from direct advertising while the remaining 70% is from indirect advertisers (i.e., agencies).

for over 70% of radio advertising spend in 2007.⁶ The advertising spend profile of these agencies is discussed in Section 2 below;

- Issued formal request for information to the undertakings involved;
- Received submissions from third parties and met with them;
- Obtained the views of competitor radio stations and of Independent Radio Sales (“IRS”);
- Considered the parties economics report and the results of the questionnaire survey undertaken by them;
- Obtained waivers from confidentiality from the undertakings involved to discuss issues related to the proposed transaction with the Broadcasting Commission of Ireland;
- Met with the parties on several occasions; and,
- Retained the services of an economics expert, Robert Rubinovitz, Vice President of National Economic Research Associates and a legal expert assessing merger remedies, Ted Henneberry of Heller Ehrman LLP.

Formal request for information

1.20 On 28 August 2007, the Authority, in accordance with section 20(2) of the Act, required further information from the acquirer Communicorp and three of the target companies: CRPL; Radio Ireland Limited; and, Donegal Highland Radio Limited. The requirement specified that the merging parties respond by 1 p.m. on 25 September.

Change of appropriate date

1.21 On 14 September 2007, the Authority received responses from two of the target companies Today FM and FM104, along with certificates of compliance. On the following Monday, 17 September, the Authority received a response from the third target company. On the morning of 25 September, solicitors for Communicorp partially responded to the section 20(2) requirement for information and requested an extension of the time period until 1 p.m. on Thursday 27 September 2007. This was granted prior to the expiry of the original time period. On the morning of 27 September the Authority received the remainder of Communicorp’s response and received a Certificate of Compliance later in the day. The new appropriate date was thus 27 September 2007.

Proposals and the Period within which Phase 1 Determination to be made

1.22 On 4 October 2007, the Authority informed the parties of its preliminary views of the impact of the proposed acquisition on markets in the State. In particular, the Authority informed the parties that the proposed acquisition raised concerns in the Dublin City and

⁶ This is based on the total sum of radio advertising spend by each agency divided by the estimated total radio advertising spend (€130 million) in 2007 based on Institute of Advertising Practitioners in Ireland figures.

County radio advertising market due to: (i) the resulting concentration post-merger in that market: and, (ii) the closeness of competition between 98FM and 104FM.

- 1.23 On 19 October 2007, the Authority received a letter from Communicorp whereby the following proposals were made (“the proposal”):

In order to allay any conceivable concerns of the Authority, Communicorp proposes the following commitments in order to facilitate Phase 1 Clearance within the meaning of Section 21(2)(a) of the Competition Act 2002.

(i) subject to the Authority’s approval, following the closing of the entire transaction, as notified to the Authority, the divestiture of Capital Radio Productions Limited, t/a FM104, within a period to be agreed with the Authority, in order to address any possible concerns about Communicorp’s control of capacity in the Dublin radio sector;

(ii) a commitment not to obtain or exercise a controlling interest in or any substantial interest in or over the affairs of Independent Radio Sales and to continue to offer airtime to IRS on usual commercial terms.

- 1.24 As a proposal was submitted, the period within which a Phase 1 determination must be reached was extended to “within 45 days after the appropriate date”. The date by which the Authority must reach its Phase 1 determination is within 45 days after 27 September, which was Saturday, November 10th. However, the Authority envisaged that a Phase 1 determination would be reached by Friday, 9 November.

- 1.25 On 25 October 2007, the Authority sought clarification and details of the proposal. On 26 October 2007, staff of the Authority met with representatives of the parties to discuss, amongst other things, details of the proposals made on the 19 October 2007.

- 1.26 On 31 October 2007, more detailed proposals were received. Under these proposals Communicorp agreed to sell FM104 within nine months of the Authority’s determination. The Mergers Division considered that not only was this too long a period but also that a preferable solution would be an upfront buyer. The Mergers Division sent a letter to the parties dated 2 November which set out its concerns.

- 1.27 On 7 November 2007, the Authority received revised proposals from the parties. These proposals include a commitment to

the suspension of the implementation of the Proposed Transaction in so far as it relates to the Business until it has entered into a binding sale and purchase agreement in relation to the Business with a purchaser approved by the Authority in accordance with these Proposals.

- 1.28 In addition, Communicorp agreed to reduce the initial divestiture period from nine to three months and to reduce the Trustees divestiture period to three months. On 8 November 2007, the

Authority informed the parties it regarded the proposal of 7 November 2007 as unworkable in its then form and that the amendments required were so numerous and detailed that even if a revised proposal were provided on the 8 November 2007, the Authority would not be able to scrutinise to its satisfaction, and to market-test it before the end of the Phase 1 deadline of 10 November 2007.

Phase 2: Full Investigation

- 1.29 On 9 November 2007, the Authority, being unable to conclude that the proposed transaction would not lead to a substantial lessening of competition ("SLC") determined, in accordance with section 21(2) of the Act, determined to carry out a full investigation under section 22 of the Competition Act, 2002.
- 1.30 During the Phase 2 investigation the Authority: (a) called for the additional submission of third party views by 30 November; (b) engaged with the parties in discussions on a set of proposals which would help to assuage the competition concerns identified; and, (c) market tested the proposals offered by the parties in order to establish whether the proposals are appropriate, proportionate and effective in addressing the competition concerns raised by the proposed transaction.

Third Party Submissions

Phase 1

- 1.31 As part of the Phase 1 investigation, the Authority received two submissions. Both submissions have claimed confidentiality in terms of identity.

[CKWS]

- 1.32 [[CKWS] is a [...] company with [...]. It made a submission on 15 August 2007 through its solicitors [CFZZ]. In Ireland [...].
- 1.33 [CKWS's] submission argues that the proposed acquisition would have a significant effect in the markets of radio advertising and listenership in the greater Dublin area, radio advertising and listenership in the State and finally in a broader market of "advertising in the greater Dublin area/the State". It argues that it is unlikely that future sustainable market entry will occur in the short to medium term so as to constrain the behaviour of the merged entity, due to a licensing regime and limited analogue radio spectrum for Dublin. The submission also expresses concerns about the cross-ownership issues arising from Communicorp's interests in Independent News and Media ("INM") and radio stations. Whilst the submission focuses on the concentration in the radio sector, it argues that the Authority should also consider the effects on the wider advertising market so as to include print advertising in the [greater] Dublin area and nationally. It points out that advertisers use a variety of media formats for maximum coverage and impact. Post transaction, Mr O'Brien will, through a combination of his direct holdings in the merged entity and his cross shareholding in INM, have interests in radio and newspaper advertising platforms. INM, the submission states, has over [...] of the national print advertising segment.

1.34 On 12 October, [CFZZ] submitted additional comments to their original submission, in light of the BCI's decision of 9 October.⁷ The additional comments state that an amended merger (i.e. one that does not involve FM104) still poses competition concerns in the greater Dublin area. It is argued that the amended merger is still a Zone C merger, according to the Authority's own guidance. It also makes some observations on the overlap between Today FM, Newstalk and 98FM. It argues that the overlaps between Today FM and Newstalk relate not only to their both being national stations, but also that they have a similar demographic audience and competing shows between 4.30 and 7 p.m. (The Last Word with Matt Cooper on Today FM and The Right Hook on Newstalk). Nationally there "would be a three to two merger with no likely or foreseeable entry". On the purported wider advertising market, there are further arguments: it is argued that Today FM, Newstalk and other national radio stations serve a similar audience profile to national print. Reasonably significant quantities of data, but not including the views of advertisers, are provided in relation the argument that radio and print advertising compete.

[CFRB]

1.35 [CFRB] was [...]. Its submission of 14 August, through solicitors [CJSEM], [CFRB] draws attention to the impact of the concentration that will arise in the Dublin radio sector in terms of the "head to head" competition between FM104 and 98FM. It also refers to the fact that the RTE radio stations are seriously capacity constrained, given their advertising restrictions of approximately four minutes per hour. This would leave the national part of the combined merged entity (Today FM and Newstalk) with 60% of the available advertising time. Like the [CKWS] submission, it argues that Today FM and Newstalk are direct competitors and close substitutes from an advertisers' perspective, with both deliberately and systematically targeting the key 20-44 age category. It also points out that the removal of Newstalk will damage emerging competition and adversely effect prices.

Phase 2

1.36 As part of the Phase 2 investigation, the Authority received one submission. The submission claimed confidentiality in terms of identity.

[CKWS]

1.37 On 30 November 2007 [CKWS] through its solicitors [CFZZ] submitted additional comments to their two submissions in Phase 1. The substance of this submission reiterated the points made by [CKWS] in its Phase 1 submissions.

1.38 [CKWS] argue that SLC concerns arise in a number of markets in the case of either the proposed transaction or the proposed transaction with the divestiture of FM104. Specifically, [CKWS] posit that under either scenario SLC concerns arise in the markets for:

⁷ The press release issued by the BCI provides "With regard to the proposed acquisition of FM104, the Commission...was not satisfied that Communicorp would not hold an undue amount of communications media in Dublin City and County franchise area following completion of the transaction. Accordingly, the BCI did not grant approval to the proposed acquisition". For details see the BCI's website: www.bci.ie.

- radio listenership in the greater Dublin area;
- radio advertising in the greater Dublin area;
- radio listenership in the State; and,
- radio advertising in the State.

1.39 In addition [CKWS] argue that there is a wider market than radio advertising which includes both print and radio advertising in both the greater Dublin area and in the State. In relation to this proposed 'wider print and radio advertising market' [CKWS] also highlight that the sole shareholder of Communicorp is the second largest shareholder in INM and thus argue that there are significant incentives for a reduction in competition between Communicorp radio stations and INM to attract advertising to the detriment of other print and radio operators, consumers and listeners.

1.40 The [CKWS] submission also contains their concerns regarding the impact of the transaction (under either scenario) on the relevant criteria, which the Minister can have regard to in assessing a media merger and which are outlined in section 23(4) of the Act. Specifically [CKWS] consider that the proposed transaction will lead to a significant lessening of the level of diversity and plurality in Irish media.

1.41 [CKWS] maintain that the Authority should undertake a "detailed three month investigation ... to ensure that all the markets relevant to the transaction are fully and properly examined". However, they do not suggest that the proposed transaction should be blocked by the Authority.

1.42 The Authority's delineation of and competition analysis of the markets relevant to the proposed transaction are set out in this determination.

SECTION TWO: BACKGROUND – RADIO BROADCASTING AND RADIO ADVERTISING

Introduction

2.1 This section describes some of the salient facts about radio broadcasting and the regulatory regime.

Radio Broadcasting – the Regulatory Regime in Ireland⁸

2.2 There are 58 independent sound broadcasting services currently licensed by the Broadcasting Commission of Ireland ("BCI"). RTÉ, the Public Service Broadcaster, is created by statute and does not require a license to operate. Thus RTE does not come within the remit of the BCI.

2.3 Radio broadcasting in Ireland comprises:⁹

- 4 RTE national radio stations;
- 1 national independent commercial radio station - Today FM;
- 1 quasi national commercial radio station – Newstalk;
- 2 regional commercial stations – Spin South West and Beat FM;
- 26 local independent commercial radio stations;
- 1 special interest station (Dublin);
- 21 community / community of interest radio stations;
- 5 institutional stations (2 Dublin, 1 Clonmel, 1 Limerick, 1 Cork); and,
- temporary services.

2.4 Radio broadcasting in Ireland is regulated by the BCI, an independent statutory organisation responsible for a number of key areas of activity with regard to television and radio services in Ireland, further to the provisions of the Radio and Television Act, 1988; the Broadcasting Act, 2001; and, the Broadcasting (Funding) Act, 2003. These activities include;

- Licensing - the BCI licenses independent broadcasting services in television (including digital, cable MMD and satellite platforms), and radio (including analogue and digital platforms);
- Monitoring - the BCI monitors all of its licensed services to ensure that license holders comply with their statutory obligations as well as the terms of their contracts;
- Codes & Rules - the BCI is responsible for the development, implementation and monitoring of Codes and Rules in relation to programming and advertising standards which apply to all broadcasters, both public and private;

⁸ Based on information obtained from the BCI website and information requested from the parties.

⁹ The complete list of licensed radio stations can be found on the website of the BCI; www.bci.ie

- Development - the BCI provides support for training and development initiatives, in an effort to promote a culture of excellence in the independent broadcasting sector;
 - Research - including the commissioning and management of strategic research to assist the development of broadcast policy in Ireland;
 - Information - the BCI disseminates information on its work and developments in the sector on a regular basis; and,
 - The Broadcasting Funding Scheme - Sound & Vision funding scheme supports new television and radio programmes in the areas of Irish culture, heritage and experience, adult literacy and such programmes in the Irish language.
- 2.5 BCI policy in relation to the above activities is set out in its *Ownership and Control Policy 2005* document.
- 2.6 Specifically with regard to radio broadcasting an independent commercial radio station cannot legally commence broadcasting in the State without a licence issued by the BCI. Entry into the Irish radio industry is subject to the award by the BCI of broadcasting licence which set out the nature of the service to be provided and the geographic area within which that service will be provided ("franchise area").¹⁰ The decision to award new licences in addition to those that already exist is dependent upon, *inter alia*: (1) the demand for the new service proposed in the particular franchise area identified; and, (2) whether a frequency is available for the broadcasting of the proposed new service.
- 2.7 Radio stations operating pursuant to a licence from the BCI are prevented from altering their broadcasting services to services other than those set out in their broadcasting licence. For example, where a radio station has been licensed to provide services to, for example, 15-34 year olds in a particular franchise area, the BCI will not allow any deviation from programming which seeks to provide a broadcasting service aimed at a demographic other than 15-34 year olds. To this end, as noted above the BCI carefully monitors the programming of radio stations. Similarly, if a radio station has been licensed to provide specialist broadcasting services, for example, a particular genre of music, changes in programming to move away from the specialist services set out in the licence will not be permitted. Radio stations endeavour to adhere to these rules. The BCI has stated that deviation from the terms of the licence, particularly as regards format and programming will only be permitted in very exceptional circumstances.
- 2.8 In relation to advertising airtime, all radio stations are subject to restrictions on the amount of time they may allocate per hour to advertising and are therefore capacity restricted. For radio stations licensed by the BCI, a limit of approximately ten minutes per hour is imposed. RTE is also subject to restrictions on the amount of airtime it may devote to advertising. All of RTE's stations (with the exception of Radio na Gaeltachta, which does not accept advertising) are restricted to approximately four and a half minutes per hour. Compliance with

¹⁰ See further Radio and Television Act 1988 and Broadcasting Acts 2001.

advertising restrictions by all radio stations other than RTE stations is monitored by the BCI.

- 2.9 Capacity utilisation of airtime by a radio station depends, amongst other things, on the level of listenership (as reported by the Joint National Listenership Research ("JNLR")¹¹) and seasonal factors. For example, information in the Authority's possession indicates that capacity utilisation tends to be lower in the summer months due to lower listenership.
- 2.10 Capacity utilisation of airtime by FM104 and 98FM is estimated at [...]% and [...]%, respectively, for 2007. Information provided by RTE indicates that RTE Radio 1 sells on average [...]% of its available airtime. The equivalent figure for 2FM is on average [...]%.¹² Similar figures are reported by Today FM. For example, average air time sold by Today FM over the period October 2006 to May 2007 was in excess of [...]%. In contrast, over the same period, Newstalk sold on average [...]% of its available airtime. This may reflect in part the fact that Newstalk has a lower listenership compared to Today FM and RTE.

Radio Advertising in Ireland

Background

- 2.11 The parties argue that Irish radio enjoys the highest level of radio listenership in Europe. JNLR figures for 2006 shows that, on average, 84% of the adult population listens to radio in Ireland. Therefore radio provides a strong platform for advertisers in Ireland.
- 2.12 RTE, the state radio operator, has accepted advertising since its inception 76 years ago. This has helped develop a progressive radio advertising environment.¹³ Most advertising strategies in Ireland include a strong presence on radio due to its relative inexpensiveness and the fact that it is complementary in nature to television, press and outdoor advertising.
- 2.13 Radio is readily available at breakfast time and during daytime listening period. Heavy commuter traffic during the morning rush hour means it has a captive audience during these important parts of the day. Therefore, radio is regarded as a must have in the advertising mix of advertisers. This is confirmed by the internal documents requested by the Authority from the parties:

... the popularity of radio in Ireland and the historical high listenership levels, has resulted in a higher advertising market spend per capita in Ireland than in the UK. The total radio advertising market in Ireland accounts for a higher proportion of total advertising spend than in the UK and commands much greater attention from the advertising community. All the national

¹¹ The JNLR Committee is the organisation responsible for the commissioning and control of radio audience research in Ireland. It comprises representatives of RTE, Today FM, the BCI, IAPI and Association of Advertisers in Ireland ("AAI") - i.e. all Broadcasting Organisations; the Advertising Agencies; and the major Advertisers.

¹² The average level of airtime sold by RTE is lower in June, July, August and the last week of December.

¹³ Merrion Corporate Finance, *Information Memorandum*, May 2007, p. 20. Hereinafter referred to as "Information Memorandum".

advertisers in Ireland use radio and, based on historical trends, will continue to do so.¹⁴

2.14 Additionally, there are two established sales agencies in the State which act on behalf of local and regional radio stations selling advertising time to advertisers and advertising agencies: Independent Radio Sales ("IRS") and Broadcast Media Sales ("BMS").

Independent Radio Sales

2.15 IRS is a central sales and marketing office for 16 local commercial radio stations located across the State.¹⁵ IRS offers several products to purchasers wishing to buy airtime:

- Any combination of individual IRS member stations to meet specific marketing goals. This is a complementary product to national radio stations and represents a situation where an advertiser is seeking to upweight its audience reach in a specific geographic area; and,
- The IRS "umbrella package" covering the 16 IRS member stations. Although the sixteen stations participating in IRS are generally located throughout the State, several stations located in more populated areas such as Dublin, Galway, Cork and Limerick do not participate in IRS. Thus, the coverage area of the sixteen IRS stations excludes a large percentage of the population. Thus, the IRS umbrella package is not considered a substitute to advertising on a national radio station.

2.16 The IRS offers two further packages: "The Bull's Eye" and "The Driver". Unlike the IRS umbrella package, both the Bulls Eye and The Driver include all 16 IRS member stations plus the remaining independent commercial local and regional stations in the State. The Bulls Eye advertising airtime on all participating stations runs concurrently during the news bulletins. This amounts to a total of 2.5 minutes per day across the week. It is based on an average thirty-second spot in five news programmes each day between 09.00 and 13.00. The Driver is offered during drive time. As with the IRS 'umbrella package', the Bulls Eye and the Driver packages provide an upweight to advertising on the national radio stations and as such offer limited competition to national radio stations since: (i) both are only offered at specific times; (ii) the supply of advertising airtime is limited;¹⁶ and (iii) IRS informed the Authority that it would like to sell more Bull's Eye and Driver packages but this is not possible as the non-IRS commercial stations will not provide more advertising slots to IRS.

¹⁴ Information Memorandum, p. 20.

¹⁵ The 16 radio stations are as follows: Clare FM; East Coast FM; Highland Radio; KFM; KCLR; Midlands 103; Mid West Radio; Ocean FM; Northern Sound; Radio Kerry; Shannonside; South East Radio; Tipp FM; WLR FM; Red FM; and, Phantom 105.2. It appears that a 17th station is also included on occasion, Spin South West. For further details see: www.medialive.ie/Radio/Local_commerical/irs.html.

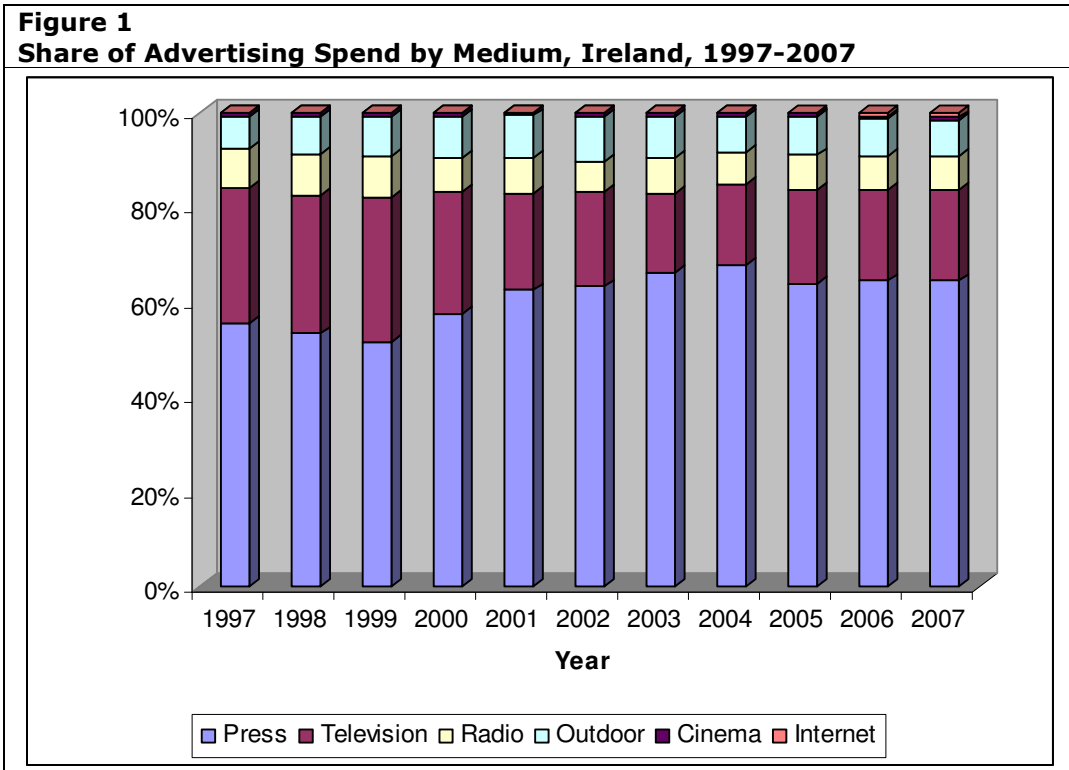
¹⁶ The amount of airtime that IRS offers in the Bull's Eye and the Driver is limited across the year. IRS has a maximum of 260 Bull's Eye packages and 88 Driver packages across the year which equates to 910 minutes of Bull's Eye time and 440 minutes of Driver airtime. There is no Bull's Eye package in December as the non-IRS commercial stations prefer to sell all of their own advertising during this busy period.

Broadcast Media Sales

2.17 BMS sells advertising on behalf of seven urban radio stations in the State and Northern Ireland.¹⁷ BMS is owned by the UTV company. Unlike IRS, BMS does not sell an umbrella package covering all seven BMS stations. However, advertisers can purchase slots from a combination of individual BMS stations to meet specific marketing goals. Like the IRS offerings, the packages offered by BMS provide limited competition to national radio stations and represent an upweight for national advertisers.

Analysis of Share of Advertising Spend by Medium

2.18 Ireland has seen large growth in radio advertising. This is largely due to the overall growth in national advertising. Advertising revenue in Ireland increased by 7.9% in 2006, significantly ahead of the Western European average of 3.6%. Radio accounts for over 7% of total advertising revenue in Ireland compared to UK's circa 4%. Between 2005 and 2006, radio advertising spend in Ireland increased by circa 18%.¹⁸



Source: Competition Authority based on IAPI data

2.19 Figure 1 above depicts share of advertising spend accounted by different media since 1997. Figure 1 illustrates the following:

¹⁷ The seven radio stations are as follows: Cork 96/103 FM; Dublin's Q102; Limerick's Live 95 FM; Louth Meath's LMFm; Galway Bay FM; Beat 102-103FM; and, Northern Ireland's U105. For details see: http://www.medialive.ie/Radio/Local_commercial/bms.html.

¹⁸ Based on IAPI figures, radio advertising spend was €105.5 million in 2005 compared to €124.1 in 2006. All figures cited refer to advertising in nominal terms.

- Press advertising, with an average share of 61%, accounts for the largest share of advertising spend, followed by television with an average share of 22%. Outdoor is placed third with an average share of 8%, followed by radio with an average share of 7.4%. Cinema is the smallest player with a yearly share of 1%. Internet is a new medium for which data is only available for the most recent three years. Internet has a share of less than about 1% of media spend;
- The advertising share of radio has remained stable over the eleven year period since 1997. This indicates that radio as a medium of advertising has not lost share of advertising spend to any other medium;
- Television appears to have lost share of its advertising spend to press during the period 2000 to 2004; and,
- The share of advertising spend accounted for by press, radio, television, outdoor, cinema and internet appear to have remained unchanged between 2005 and 2006.

Agencies' Advertising Spend Profile

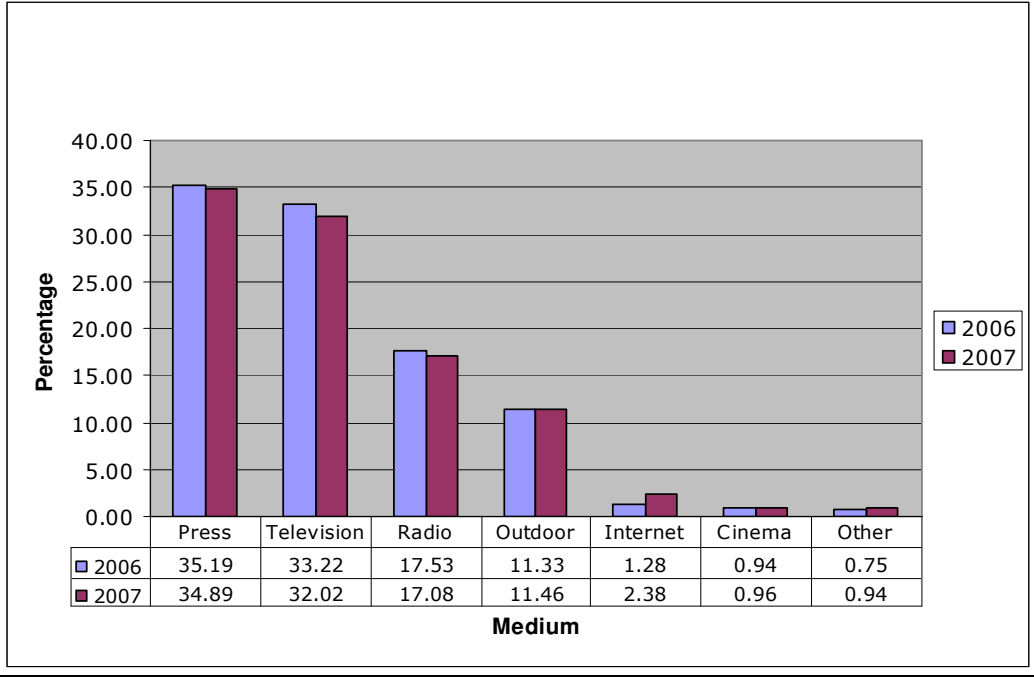
2.20 The Authority obtained proportions of advertising expenditure by medium from 17 out of the 20 advertising agencies who responded to the Authority's survey questionnaire referred to in para 1.19 above. These agencies purchase advertising on behalf of their clients, as one part marketing the product for the client. Figure 2 below presents these proportions for 2006 and 2007.¹⁹ Survey participants we asked to estimate their advertising expenditure by medium for 2007.

2.21 Several inferences can be drawn from Figure 2:

- On average, the respondents advertise on all media, with press accounting for the largest proportion followed by television and radio;
- The respondents are key players in the radio advertising market. On average, over 17% of their advertising spend is on radio which represents over 70% of radio advertising spend in the State; and,
- The advertising spend pattern of the respondents is stable over 2006 and 2007. However, advertising spend on each of press, television and radio is expected to be slightly lower in 2007 compared to 2006, while spend on each of Internet, outdoor and cinema is expected to increase.

¹⁹ The proportions are the unweighted averages across the 17 advertising agencies.

Figure 2
Share of Advertising Spend, by Medium, 17 Agencies, Ireland, 2006-2007



Note: "Other" refers to sponsorship and promotions

Source: Competition Authority based on responses to the Authority's survey of advertising agencies.

SECTION THREE: RELEVANT PRODUCT AND GEOGRAPHIC MARKET

Introduction

- 3.1 In this section, the relevant market is defined in terms of its product and geographic dimensions. The views of the undertakings involved are summarised, the Authority's investigation explained and its analysis and conclusions set out.

Relevant Product Market

Submissions of the Undertakings Involved

- 3.2 The parties submit that the relevant product market is "advertising on media, including but not limited to newsprint, television, radio, outdoor, Internet and cinemas." The basis for this opinion relies heavily on the report prepared for the parties by DotEcon²⁰ which, in turn, partly relies on the research carried out by the UK's Office of Communications ("Ofcom").²¹

- 3.3 The DotEcon Report starts by asking the right question:

advertisers have the ability, on the margin, to shift their advertising budgets between media in response to relative price changes but are these potential shifts likely to be large enough to conclude that different media serve to constrain each others' prices?²²

- 3.4 The Report goes on to state that it is difficult to address this issue with a detailed econometric study given the available data.²³ Instead, the DotEcon Report puts forward the following empirical evidence which it believes supports the view that the relevant market is broader than radio advertising:

- (a) Research carried out by Ofcom in 2006 ("the Ofcom Study")²⁴ suggesting that the advertising market in the UK is broader than radio. Given that conditions in Ireland are broadly similar to those in the UK, the conclusions of this Study may therefore be applicable to the situation in the State;
- (b) the vast majority of advertisers in Ireland do not use radio and, of those advertisers that use radio, many use another media in conjunction with radio;

²⁰ DotEcon, *Proposed Acquisition by Communicorp Group Limited of the Irish Radio Business of Scottish Radio Holdings Limited*, 30 July 2007. (Hereinafter referred to the DotEcon Report).

²¹ Ofcom, Radio Advertising Market Research. *Assessment of the Constraints on the Price of Direct and Indirect Radio Advertising & Harris Interactive Radio Advertising Market Research Report*. Both reports were published on 19 October 2006 and are available on Ofcom's website: www.ofcom.org.uk.

²² DotEcon Report, p. 4.

²³ Although there is some merit in this position, there have been econometric studies in the U.S. relating to the question of whether or not radio advertising occupies a separate product market. See, for example, Robert B. Ekelund Jr, George S. Ford and John D. Jackson 1999, "Is Radio Advertising a Distinct Local Market? An Empirical Analysis," *Review of Industrial Organisation*, Vol. 14, No. 3, pp. 239-256. which finds that radio advertising is a separate antitrust market using the framework established under the US Merger Guidelines.

²⁴ See footnote 21 above for details.

- (c) the relative shares of advertising spend on media by advertisers have varied over time; and,
- (d) a regression analysis where an increase in the growth of expenditure on television advertising and cinema advertising lead to a statistically significant decrease in the growth of radio expenditure.

3.5 Each of these points is addressed in turn below.

The Ofcom Study

- 3.6 For the purposes of this discussion, it will be assumed that the results of the Ofcom Study are reliable. The DotEcon Report also makes this assumption before comparing the characteristics of the advertising landscapes in the UK and in the State to see if they are “materially different.” The DotEcon Report concludes that “there are no reasons to believe that the analysis undertaken by Ofcom for the UK would not be applicable to the situation in Ireland.”²⁵
- 3.7 There are several reasons why it is inappropriate to apply the conclusions of the Ofcom Study to the advertising market in the State. First, for the Study to be applicable, many factors would need to be similar starting with the prices of the various media. This factor is not addressed in the DotEcon Report.
- 3.8 Second, the factors that are addressed do not indicate a similarity in conditions between the UK and the State. For example, Figure 2²⁶ in the DotEcon Report presents the patterns of media purchases, by medium, for the two countries. Although the Study argues that the patterns between the two countries are “broadly similar,” it also goes on to list numerous differences between the two, including a much higher use of press advertising in Ireland and internet advertising in the UK.²⁷ One difference that is not mentioned but which seems particularly relevant is that only 3.5% of the total advertising spending in the UK is on radio, while the equivalent figure in the State is over twice that at 8%.
- 3.9 Third, the DotEcon Report indicates that direct advertising on radio in the UK accounts for 37% of total radio advertising. The DotEcon Report argues that the pattern in the State is similar. However, Table 3²⁸ in the DotEcon Report, which is meant to support this point, indicates direct advertising on eight Irish radio stations ranging from 10 percent to 43 percent with seven radio stations below 37%. It therefore seems difficult to conclude that the results of the Ofcom Study can be readily applied to the situation in the State.

The DotEcon Report

The Use of Radio Combined with other Media

- 3.10 Table 4 of the DotEcon Report presents the breakdown of advertisers in the State that use only radio, use no radio, or use radio in

²⁵ DotEcon Report, p. 8.

²⁶ DotEcon Report, P.11

²⁷ DotEcon Report, p.10.

²⁸ DotEcon Report, p.17.

combination with other media. This table is meant to be an indicator of cross-substitution between the various media.²⁹ Of course, only shifts between media in response to changes in relative prices would clearly indicate the degree of cross-substitution. Leaving that aside, the point being made by DotEcon is not clear. Presumably, the inference to be drawn from the table is that, given the small part radio plays in overall budgets, advertisers could easily shift away from radio if the price increased. However, it is not clear that the importance of radio can necessarily be only measured by the proportion of advertising budgets spent on it.

- 3.11 Respondents to the Authority's survey questionnaire indicated that radio advertising is relatively inexpensive, i.e., it may account for a small proportion of an advertiser's overall budget, but it still delivers a service that cannot easily be replicated by other media. Therefore, it is not clear that much weight can be attached to this argument.

The Relative Share of Media Spending Over Time

- 3.12 The next indicator of the degree of substitution between radio and other media used by DotEcon is illustrated in Figure 4 of their Report, which indicates the shares of aggregate advertising expenditures spent on various media from 1997 to 2006. The conclusion drawn by DotEcon from this graph is that "the distribution of advertising expenditure over different media has been changing year on year, with no clear trends."³⁰ Once again, the relevance of this finding is unexplained by DotEcon, but presumably the inference is that shares have been quite variable over this period indicating a willingness by advertisers to shift between different media. However, the graph appears to contradict DotEcon's conclusion that there is no clear trend. During the period 1999 to 2004, the advertising share spent on press increased, the share spent on television declined while the other shares including radio remained relatively flat.³¹ It is therefore difficult to see how this provides evidence of cross substitution, with the possible exception of substitution between press and television.

Year to Year Changes in Advertising Expenditures on Various Media

- 3.13 Finally, Figure 5³² of the DotEcon Report illustrates year-to-year changes in the percentage of total advertising spent on various media. Table 5 presents the results of a regression analysis of the change in the level of radio advertising from one year to the next on the change in the level of TV advertising, press advertising, outdoor advertising and cinema advertising. DotEcon concludes from Table 5 that:

... the gains and losses (in shares) can be quite substantial...While these shifts do not in themselves provide evidence of substitution between media in response to changes in relative prices, they indicate that advertisers seem to be very capable of moving their budgets between different media *to an extent that can substantially affect individual media* (emphasis supplied).³³

²⁹ DotEcon Report, pp. 16-17.

³⁰ DotEcon Report, p. 17.

³¹ See Figure 1 above for such data for 1997 to 2007.

³² DotEcon Report, P. 19.

³³ DotEcon Report, p. 18.

- 3.14 The primary example cited by DotEcon is that the share of cinema advertising grew by 30% between 2001 and 2002 but fell by 14% the following year. However, these large percentage changes are the result of the relatively small advertising spend on cinema. The 30% increase in cinema's share is the result of an increase in its overall share of total advertising spend to 0.89% from 0.69%. The 14% decline the following year is a result of its share dropping back to 0.76%. During this two year period, the percentage of total advertising spend on cinema was always less than 1%. It is therefore difficult to see how one can conclude that there is meaningful substitution between cinema and other media.
- 3.15 The regression analysis undertaken also exhibits several problems. First, as noted by DotEcon, a regression with only nine observations may not be very reliable. Despite this warning, DotEcon states that "the results suggest that substitution between media takes place in Ireland" and that "both television and cinema are significant substitutes for radio. A ten percent increase in spend on television would result in a fall of radio advertising of 6.7%."³⁴ This seems to be an overstatement of what can be inferred from these results. In particular, a statement of causation is made by DotEcon (i.e. an increase in television spending will lead to a decrease in radio spending) that is not supported by the regression analysis. At best, one can conclude that advertising spend on television and radio tend to move in opposite directions, but one cannot conclude that changes in advertising spend on television directly caused changes in advertising spend on radio.
- 3.16 In addition, although there are no details of the methodology employed by DotEcon in the regression analysis, it is possible that this result would not hold up to further scrutiny. The underlying data series used in the regression analysis and illustrated in Figures 4 and 5 has a change in the data collection methodology midway through the time period. Furthermore, the data is denominated in Irish pounds from 1997 to 2000, in both Irish pounds and Euros in 2001 and in Euros from 2002 to 2006. This is not an issue when shares of advertising spend are being examined, as in Figures 4 and 5, but the regression analysis uses changes in the *levels* of advertising spend and it is not clear how this change in currency denomination is treated by DotEcon.
- 3.17 The Authority did not replicate the regression analysis carried out by DotEcon. However, the Authority found that when it used the data denominated in pounds through 2001, then switched to Euros, the changes in spending from year to year for radio and television were negatively correlated, as was found in the DotEcon regression. However, if one changes to Euros in 2001 instead of 2002, the changes in radio and television spending are now positively correlated. Again, without more detail as to how DotEcon treated this change in currency, it is not possible to verify the robustness of their regression analysis.
- 3.18 In sum the DotEcon Report does not provide the basis for concluding that the relevant market for advertising in Ireland is broader than radio.

³⁴ DotEcon Report, p. 19.

Agency Assessments International Survey

3.19 To supplement the DotEcon Report, the parties commissioned a survey ("parties' survey") in July 2007 by Agency Assessments International of Dublin's seven top ranking advertising agencies³⁵ to further examine the issue of relevant market definition.³⁶ The following question was posed to agencies as part of the parties' survey:

Thinking about your agencies' expenditure on advertising space over the previous year, how do you think this would have been different if you had been faced with a slightly higher price for radio advertising (say 5% higher) while all other attributes (such as demographics, listenership etc) as well as price for advertising space in other media has been the same?

3.20 The Agency Assessments International Report states that

[N]one of the agencies expressed any major concern with a price increase of this magnitude and a majority did not believe that they would reduce their radio spend. The initial reaction of most respondents was that they would negotiate with each station in the hope of reducing the effect of the price increase and/or pass the increased costs on to clients. All agencies were of the opinion that radio is still undervalued as a medium and that it remains a very cost effective and efficient advertising outlet.³⁷

The following are some quotations from advertisers who responded to the survey.

- "5% or 10% is not huge difference. Market forces like supply and demand are much more important." - Mindshare Media Ireland;
- "TV inflation is ... now 13% inflation so 5% actually seems reasonable." - Universal McCann;
- "We would buy a fewer slots and/or increase spending to keep the same level of radio advertising." - OMD;
- "You would try and negotiate the price down. After that you would then buy the same weight of media with other stations." - Vizeum

3.21 In the parties' survey, the question outlined in paragraph 3.19 above was repeated for a price increase of 10%. The Agency Assessments International Report states that "[M]ost agencies still felt that they would not substitute radio per se by another media. It would still be good value relative to other media. Two agencies stated that they

³⁵ The following agencies were interviewed as part of that survey: Universal McCann, Starcom Mediavest, Mindshare, OMD, Initiative Media, Vizeum and Carat. The combined estimated spend of these agencies is €589m – almost 35% of an estimated total advertising spend on all media in the State of €1.7 billion.

³⁶ The results were presented in Agency Assessments International, *Market Research Among Top Media Agencies in the Republic of Ireland*. It is dated 1 August 2007. Hereinafter referred to as the Agency Assessments International Report.

³⁷ Agency Assessments International Report p. 31. The Report also notes that despite the wording of the question, several agencies focussed on overall media inflation, and appeared to treat the questions as if the price rise was specific to only one radio station.

would be forced to buy less spots and one agency thought 10% could be the tipping point for effectiveness and reducing the level of money in radio.³⁸

- 3.22 It is clear from the above that the parties' survey does not support or corroborate the conclusions of the DotEcon Report regarding the relevant product market. Though not definitive, the parties' survey indicates that the relevant product market affected by the proposed acquisition is the market for radio advertising.

Information from Third Parties

- 3.23 The third parties who made a submission to the Authority were divided on their views on the relevant market. One submission followed the Authority's approach in previous merger determinations for defining the relevant market and provided an assessment of the impact of the proposed acquisition in the context of two distinct geographic radio advertising markets: national and Dublin. The other submission argued that the impact of the merger should be assessed in the context of both a radio advertising only market and a wider media advertising marketing including advertising on newsprint. In that submission it was argued that under either definition the proposed transaction raised serious competition concerns.

Review of Internal Documents

- 3.24 An examination of the parties' internal documentation requested by the Authority indicates that their radio stations compete in two distinct geographic radio advertising markets: national and Dublin.
- 3.25 The parties themselves view alternative radio stations as their competitors. For example, internal documentation provided by 98FM indicates that it mainly compares its performance both in terms of advertising and audience figures with other radio stations. In particular, 98FM views FM104 as its closest competitor. Likewise, internal documentation provided by Today FM indicates that it views 2FM as its closest competitor.
- 3.26 There is no evidence in the internal documentation provided by the parties to indicate that the parties view alternative media platforms as competing with radio advertising.³⁹ On the contrary, the parties' internal documents indicate that radio is a unique advertising medium that is complementary to other media such as outdoor and press:

Most advertising strategies in the Republic of Ireland include a strong presence on radio. Part of this is because of its

³⁸ Agency Assessments International Report, p. 17.

³⁹ Highland Radio says that it does not compete directly with any other radio station but it does compete with print media such as newspapers. This is not a surprising result. Given that Highland Radio is the only local radio in its franchise area it is likely to set a price that reflects this position. Indeed the price is likely under these conditions to be set such that at the margin advertisers are likely to switch to other media. However, to conclude that these other media are in the same market from this evidence is incorrect and results in too wide a market definition. This is known as the cellophane fallacy. For further discussion see Paul Geroski and Rachel Griffith, 2003, *Identifying Antitrust Markets*, London: Institute for Fiscal Studies, Working Paper WP03/01, pp.7-8.

relative inexpensiveness and the fact that it is complementary in nature to television, press and outdoor.⁴⁰

Authority's Investigation

- 3.27 In considering whether a separate product or geographic market exists, the Authority applies the Small but Significant Non-transitory Increase in Price (SSNIP) Test (also known as the hypothetical monopolist test) where the price increase is between 5- 10%.⁴¹ The SSNIP test in merger analysis applies a price increase "above the prevailing level."⁴² In some instances, the prevailing price will be the competitive price, in others a price in excess of the competitive level.
- 3.28 The Authority sent a detailed questionnaire to twenty-two leading advertising agencies and sixty-three direct advertisers in the State ("the Authority's survey"). The Authority received completed questionnaires from twenty out of the twenty-two advertisers (over 90%) while only 15 out of the sixty-three direct advertisers completed the questionnaire. The combined estimated spend of these twenty agencies accounted for over 70% of the estimated total advertising spend on all media in the State in 2006.
- 3.29 One of the questions⁴³ posed in the Authority's survey related to the SSNIP test:

Assume that **all** the radio stations in the State were owned by one undertaking and if this undertaking were to permanently raise the price of radio advertising on all these radio stations by between 5% and 10% from its current level. Assume also that at the same time all other conditions (such as demographics, listenership, etc) as well as the price of advertising space in other media remained unchanged. In these circumstances, would you:

- (i) Maintain your spend on radio advertising (and buy fewer slots)?
- (ii) Maintain the same number of radio advertising slots and pay more?
- (iii) Switch some of your spend away from radio advertising. If so, which medium/media and what proportion of spend?

⁴⁰ Information Memorandum, p. 23.

⁴¹ The SSNIP Test asks whether a hypothetical monopolist of product A would be able to permanently increase its price by 5-10%. If a sufficient number of consumers respond to the price increase by purchasing another product, say product B, then it is appropriate to include product B in the same relevant market as product A. The test is then reapplied to a hypothetical monopolist of both product A and B and asks if a hypothetical monopolist of both products could profitably increase the price of both products by 5-10%. If a sufficient number of consumers switch to another product, say product C, the test is then reapplied by including product C with products A and B. The test is iteratively applied until a hypothetical monopolist of some group of products could profitably increase the price of all products in the group by 5-10%. This group of products is defined as the relevant product market. Full details of the test are explained in the Competition Authority, 2004, *Notice in Respect of Guidelines for Merger Analysis*, Decision No. N/02/004, hereinafter referred to as Competition Authority, *Merger Guidelines*, which are available on the website, www.tca.ie.

⁴² Competition Authority, *Merger Guidelines*, paragraph 2.5.

⁴³ The emphasis was in the original question.

- 3.30 Ten out of the twenty advertising agencies that responded to this question indicated that they would opt for either option (i) or option (ii). Three out of twenty stated that they would switch some their advertising spend away from radio advertising (i.e. option (iii)).⁴⁴ None of these indicated that they would switch all of their advertising spend away from radio advertising.
- 3.31 Five out of twenty advertising agencies stated that their response would depend on the client's requirement and as such they were unable to give a specific response. Finally, two out of twenty agencies did not respond to this question.
- 3.32 Thus out of the 13 agencies that selected one of the three options 10 out of the 13 either indicated that they would maintain the same expenditure on radio advertising or maintain the same volume of advertising. These results thus suggest that a hypothetical monopoly supplier of radio advertising can profitably raise the price of radio advertising by 5-10% since only a few customers are likely to switch some of their advertising spend away from radio.
- 3.33 In addition to the SSNIP test, the Authority asked whether advertisers consider radio to be an important advertising medium. Specifically, the Authority posed the following questions:
- How important is radio advertising in the media mix?
 - Under what conditions would you: (a) reduce the role of radio or (b) not include radio in the mix?
- 3.34 All (18 out of twenty) advertising agencies that responded to this question stated that radio is a very important medium of advertising in the Irish market. This is consistent with the view that radio is a unique medium of advertising. The following are some quotations from advertisers:
- "Radio has different strengths and weakness to other media. It is very cost efficient and extremely effective for a number of our clients." - [...];
 - "Radio is typically an important part of the media mix as radio is one of the most 'consumed' media in Ireland with the typical adult listening for circa 4 hours every day." - [...];
 - "Radio is very important in this market as we have always had a strong listenership to radio." - [...]; and,
 - "Radio is a very important medium in the Irish marketplace, especially for local advertisers who may not have a large production budget required to produce TV commercials." - [...].
- 3.35 On average, circa 30% of total radio advertising revenue generated⁴⁵ by the radio stations involved in the proposed acquisition comes from

⁴⁴ Only two of these three advertisers reported advertising revenues. For 2007 they collectively accounted for 15% of total advertising spend on radio.

⁴⁵ Radio advertising revenue excludes revenue generated from sponsorships and promotions.

direct advertising while the remaining 70% comes from indirect advertisers (i.e., agencies).⁴⁶ The response rate from direct advertisers was low - only 15 out of sixty-three advertisers responded to the Authority's questionnaire.⁴⁷ Five out of the 15 respondents (33%) stated that they would maintain their advertising spend on radio as a result of a SSNIP while eight stated that they would switch some of their advertising spend away from radio advertising. Although this sample may not be representative of direct advertisers, these results indicate that a reasonably high proportion of direct advertisers will not switch away from radio in response to a 5-10% permanent price increase.

- 3.36 Given the proportion of total radio advertising accounted for by indirect advertisers, the Authority did not consider it necessary or proportionate to issue witness summonses to the direct advertisers who did not complete the questionnaire. The Authority is satisfied that the relevant market is not wider than radio advertising as only three out of twenty indirect advertisers stated that they would switch some of their advertising spend away from radio in response to 5-10% permanent price rise.

Conclusion on the Relevant Product Market

- 3.37 The Authority has in previous decisions considered radio advertising to be in a different market to other media advertising.⁴⁸ The Authority's market enquiries and analysis in the instant case are consistent with this view. Taking all the evidence into consideration, the Authority has concluded that relevant product market affected by the proposed transaction is the market for radio advertising.

Relevant Geographic Market

Submissions of the Undertakings Involved

- 3.38 The parties submit that the relevant geographic market is national. The parties note that in the past, the identification of a distinct market for radio advertising led to the conclusion that the relevant geographic market comprised the coverage area for which the broadcast operations were authorised. The parties submit that based on the evidence of a wider market for advertising that includes all forms of media, such geographic limitations can no longer be assumed, since several of the media types (including internet) are not geographically limited.

Authority's Investigation

- 3.39 As stated in Section 2 above, independent commercial radio stations operating pursuant to a licence from the BCI are prevented from altering their broadcasting service from that set out in their

⁴⁶ The following is the percentage split between indirect and direct advertising for each radio station: Newstalk (68/32), 98 FM (72/28), FM 104 ([...]), Spin (57/43) and Today ([...]).

⁴⁷ The majority of direct advertisers informed the Authority that given their low level of advertising spend on radio and the relatively small size of their business, they did not believe it was reasonable for them to be required to complete the Authority's questionnaire.

⁴⁸ See, for example, Determination No. M/03/033, *Scottish Radio Holdings/FM 104*, 5 February 2004; Determination No. M/04/003, *Radio 2000/News 106 Limited*, 5 March 2004; Determination No. M/04/078, *Ulster Television plc/Coderidge Limited*, 21 January 2004; and Determination No. M/07/022, *Thomas Crosbie Holdings/South East Broadcasting*, 5 September 2007.

broadcasting licence. Where a radio station has been licensed to provide services to, for example, 15-34 year olds in a particular franchise area, the BCI will not allow any deviation from programming which seeks to provide a broadcasting service aimed at a different demographic or franchise area.

- 3.40 Radio advertising may be conducted on a national, regional or local basis depending on the type of broadcasting license held by the radio station. Advertisers use radio stations with national/regional coverage to target a national/regional audience while a local radio station is used to target an audience located in that specific geographic area. This is confirmed by the parties' internal documents. For example:

Dublin is the key advertising market in Ireland and as FM104 is a 'must have' station for that market, advertising revenues have grown strongly as a result.... Advertisers demand in the Dublin market has driven the growth in the rate card charges for FM104.⁴⁹

Conclusion on the Relevant Geographic Market

- 3.41 Given (a) the Authority's view that the relevant product market is the market for radio advertising; and, (b) the distinct coverage areas of the radio stations involved in the proposed acquisition, the Authority considers that there are three relevant geographic markets for the purposes of assessing the proposed transaction:

- The market for radio advertising nationally;
- The market for radio advertising in Dublin City and, County; and,
- The market for radio advertising in County Donegal.

⁴⁹ Information Memorandum, p. 39.

SECTION FOUR: MARKET STRUCTURE

Introduction

- 4.1 Market structure can be characterised as the number and size distribution of firms. The initial impact of any merger is felt on market structure as two firms pre-merger become one firm post merger. In this section, the pre- and post-acquisition market shares in each of the three relevant markets identified in Section 3 are considered.

Measuring Concentration

- 4.2 Market concentration refers to the degree to which production in a particular market or industry is concentrated in the hands of a few large firms. It refers in particular to the number and size distribution of firms in the relevant market: the fewer the number of firms and/or the more disparate the firms are in terms of their sizes, the more concentrated the market. The significance of concentration in competition analysis is that in highly concentrated markets in which barriers to entry are also high, effective competition is likely to be weak.
- 4.3 The most commonly used measure of concentration is the Herfindahl-Hirschman index (HHI), which is defined as the sum of the squares of the market shares of all firms participating in the market. According to the Authority's *Merger Guidelines*, a HHI in excess of 1800 combined with a change in pre compared to the post merger HHI of greater than 100 indicates a situation where "mergers occur in already highly concentrated industries and more usually be those that raise competitive concerns" (paragraph 3.10). Therefore, if the HHI is above 1800, this indicates that firms in that market may be able to exercise market power.
- 4.4 As the Authority's *Merger Guidelines* make clear, in order to accurately characterise the competitive conditions in a market, attention has also to be paid to factors such as barriers to entry and exit, buyer power, switching costs, and so on. Thus, while market shares and the HHI index are used as screening mechanisms, reference to other market characteristics is necessary in order to determine the presence of market power post acquisition.
- 4.5 Radio stations satisfy the needs of both listeners and advertisers. As such, an assessment of the nature of competition in radio markets requires a consideration of the interaction between advertisers and listeners. This type of assessment is carried out typically in the context of a two-sided market analysis.
- 4.6 In a two-sided market, two groups of players interact through a particular medium (e.g., a radio station) that enables them to achieve their inter-related objectives.⁵⁰ In this instance, radio broadcasters wish to attract advertisers on one side and listeners on the other side to form an audience for advertisers. An advertiser's demand for advertising airtime on a particular radio station depends on, amongst other things, the size of the radio station's listenership, its target audience and coverage area.

⁵⁰ For a discussion of two sided markets see the symposium of papers in *Competition Policy International*, Vol. 3, No. 1, Spring 2007, pp. 147- 298.

- 4.7 In the context of a two-sided market, the Authority considers data obtained from various sources describing the market structure of radio listenership and advertising. Listenership is measured as minutes listened to radio stations based on a survey of the population conducted by the Joint National Listenership Research survey (“JNLR”). Advertising is measured using two metrics: radio advertising revenue, based on a variety of sources such as the parties internal documents, RTE, third party submissions and the Notification; and, the number of minutes of advertising on radio stations based on Adscan data

Market Structure for the National Radio Advertising Market

- 4.8 As explained in Section 3 above, one of the relevant markets affected by the proposed transaction is the market for national radio advertising. There are six national radio broadcasting stations in the State, four of which are part of RTE. Having regard to information provided by RTE, information contained on the BCI website concerning Today FM and Newstalk, market enquiries conducted by the Authority and having reviewed internal documentation provided by the parties, the profile of the six national radio broadcasting stations may be characterised as follows:

- (a) **RTE Radio 1:** provides a “mixture of speech and music, news and information as well as a host of drama, entertainment, sport and features programming” on a national basis to all adults. It attracts advertising customers who wish to reach a national audience. Through its predominantly talk-based programming format, RTE Radio 1 attracts an older audience than 2 FM, Today FM and Newstalk.
- (b) **RTE 2FM:** provides a “talk and popular music” programming format on a national basis to 20-44 year olds. Like RTE Radio 1, the vast majority of its advertising revenue is generated from customers who wish to reach a national audience. 2FM’s programming format attracts a much younger audience than Radio 1 and is comparable to the demographic audience of Today FM and, to a lesser extent, Newstalk.
- (c) **RTE Lyric FM:** provides a “classical music and arts” programming format on a national basis to all adults aged over 35 years. It targets advertisers who wish to reach a national audience. Lyric FM attracts an older demographic audience than either 2FM or Today FM.
- (d) **RTE Radio na Gaeltachta:** provides a specialist Irish language broadcasting service on a national basis. It does not accept advertising. Given the nature of the broadcasting service provided by Radio na Gaeltachta and the fact that it does not accept advertising, the Authority does not consider its listenership to be relevant to the proposed acquisition.⁵¹

⁵¹ Determination No M/03/033, *Scottish Radio Holdings plc/Capital Radio Productions Limited*, 23 February 2004, p. 3

- (e) **100-102 Today FM:** provides a “broad contemporary music format with strong current affairs, sport and comedy sequences” on a national basis to 20-44 year olds. Today FM’s music/talk programming format and demographic audience profile is comparable to that of 2FM.
- (f) **Newstalk 106:** provides broadcasting services to a demographic audience of 20-44 year olds. It became the first quasi-national radio station on 29 September 2006.⁵² Unlike Today FM, Newstalk 106 is solely talk-based with news, sport and traffic every 20 minutes.
- (g) As discussed, in paragraphs 2.14 to 2.17, the IRS and BMS sell advertising airtime on behalf of local and regional radio stations to national advertisers. These offerings are mainly complementary products for national advertisers. However, for a limited product offering, both the BMS and IRS provide products that may be considered, to a limited extent, substitutable for national radio stations.

4.9 In considering the national radio advertising, market shares are presented for all the radio stations described above except for (d) and (g) for reasons set out above. Nevertheless in testing the sensitivity of the results recorded below reference is made to (g).

Listenership: Minutes Listened

4.10 The JNLR survey, conducted by the Market Research Bureau of Ireland, is the most widely used research on radio listenership in Ireland.⁵³ In Ireland, advertisers rely on the JNLR data in deciding which station or combination of radio stations to advertise on. Similarly, each radio station relies on the JNLR survey data to promote their service to advertisers.

4.11 Assuming the narrowest national market comprising only radio stations with a national coverage license, the Authority used national JNLR survey data covering the period October 2006 to June 2007 to calculate the market shares based on listenership in the national radio advertising market. The market shares are based on the percentage of minutes listened to a particular radio station in establishing the level of overlap in listenership between Newstalk and Today FM.⁵⁴

⁵² Newstalk is a quasi-national radio station covering approximately 93% of the population in the State. Coverage black spots include parts of counties Wicklow, Donegal, Cavan, Monaghan, Cork, Kerry and Galway. Prior to the commencement of its quasi-national service in September 2006, Newstalk’s licence only allowed it to broadcast in Dublin City and County.

⁵³ The JNLR report provides statistical information from surveys conducted through questionnaires responded to by a representative sample of the population. The objective of the survey is to provide reliable estimates of audiences to both national and local radio, as a basis for the planning of advertising schedules and as a guide to programme planning in each radio station. The data is analysed by standard demographic groupings and also by local radio franchise areas.

⁵⁴ “Minute listened” is calculated on the basis of the number of minutes a listener tuned into a particular radio station.

Table 3
Market Shares, National Radio Stations, Measured in Minutes Listened, 7am -7pm, October 2006 – June 2007, the State

Radio Station	Ownership	Market Share Pre-Merger (%)	Market Share Post Merger (%)
RTE 1	RTE	70	70
2FM			
Lyric FM			
Today FM	SRH	24	30 (Communicorp)
Newstalk	Communicorp	6	
Total		100	100
HHI		5512	5800
Delta			288

Note: RTE comprises: RTE Radio 1 (41%), 2FM (25%) and Lyric FM (4%).

Source: Competition Authority based on JNLR national radio listenership figures.

4.12 Table 3 presents market shares for national radio stations. Market share is measured for a radio station as the percentage it accounts for of all minutes listened to between 7 am and 7 pm covering the period October 2006 to June 2007 on all national radio stations. Several inferences can be drawn from Table 3:

- RTE is the market leader with the combined share of its radio stations accounting for 70% of listenership;
- The merger will considerably increase Communicorp’s market share, from 6% to 30% as it acquires a much larger national radio station;
- The proposed acquisition changes the ownership structure of the national advertising market from three owners to two; and,
- The merger occurs in an already highly concentrated market with an HHI of 5512. Post acquisition, there will be a delta of 288. Therefore the proposed acquisition in the national radio advertising market falls in Zone C of the *Merger Guidelines*.

Advertising Revenue

4.13 The Authority calculated market shares based on the advertising revenue generated by each national radio station.⁵⁵

4.14 Table 4 provides market share figures based on national radio advertising revenue generated by each national radio station for 2006 using data provided by the parties and RTE.

⁵⁵ The Authority’s questionnaire survey showed the most common form of national advertising campaigns require “upweighting” in one or more of the main local franchise areas, e.g., Dublin, Cork, Limerick and Galway. The JNLR survey data shows that, in local franchise areas, local independent radio stations attract a significantly higher level of listenership than national radio stations. A national advertising campaign that is placed only with a national radio station will therefore not attract a sufficient level of listenership in local franchise areas unless local independent radio stations are also used to upweight the national campaign. Thus, local radio stations can be considered a complementary offering for national radio advertising campaigns.

**Table 4
Market Shares, National Stations, Measured in Advertising Revenue, the State, 2006**

Radio Station	Owner	Market Share (%)	Pre-merger Market Share	Post merger Market Share (%)
RTE 1	RTE	[...]		
2FM		[...]		
Lyric FM		[...]	67	67
Today FM	SRH	25.5	25.5	33
Newstalk	Communicorp	7.5	7.5	
Total		100	100	100
HHI			5195	5578
Delta				383

Source: Competition Authority based on advertising revenue figures provided by the parties and RTE.

4.15 Like Table 3, Table 4 shows that the merger will fall in Zone C of the *Merger Guidelines*:

- RTE is the market leader with the combined share of its radio stations accounting for 67% of advertising revenue;
- The proposed acquisition will increase the market share of Communicorp from 7.5% to 33%
- The merger occurs in an already highly concentrated market with an HHI of 5195. Post acquisition, there will be a delta of 383.

Advertising Volume: Measured in Minutes

4.16 Adscan data monitors the radio advertising activities of advertisers in a particular week. The Authority requested the parties to provide Adscan data for the most recent year. The parties provided weekly Adscan data for the period week ending 11 June 2006 to week ending 15 July 2007.⁵⁶ In particular, the Adscan data provided by the parties contains information which matches the advertisers name and brand (e.g. GlaxoSmithKline and Lucozade Sports Drink), the duration (e.g., 30 seconds) and the frequency (e.g., 15 slots) of advertising on each of the following national radio stations: Today FM; Newstalk; and RTE, but excluding one of RTE’s stations, Lyric FM.

4.17 The Authority used the Adscan data to compute market shares based on the total minutes advertised on a particular radio station. This indicator is obtained by calculating the length of time spent by each of the brands that is advertised on a particular radio station divided by the total length of time spent by all of the brands on all national radio stations.

⁵⁶ The Adscan data provided by the parties has a number of limitations. For example, there were four weeks for which only preliminary data was available. The Authority therefore excluded these weeks from its analysis.

- 4.18 Using this methodology the market shares are as follows: RTE, 48%; Today FM, 36%; and, Newstalk, 16%. It should be noted that in terms of market shares using the advertising minutes results in RTE is having a lower market share than when measured when using either listenership or advertising revenue, while Newstalk has a markedly higher market share. This appears a number of factors including fact that RTE is able to charge a much higher price for its advertising than either Newstalk or Today FM, both of which have much lower listenership.
- 4.19 Nevertheless, if advertising minutes were the preferred measure of market size the proposed merger will result in a Zone C merger with a post merger HHI of 5007 and a delta of 1148.

Conclusion

- 4.20 Market share measured by listenership, advertising revenue and advertising minutes all indicate that the proposed acquisition will lead to a Zone C merger in the national radio advertising market. However, it could be argued that the approach taken overestimates the level of HHI by not taking into account that some of the advertising IRS and BMS advertising is likely to be national in scope. Unfortunately it is not possible to estimate the relevant portion. However, even if an extreme assumption were made – that all local radio advertising could be considered in national in scope – then the merger would still fall in Zone C of the *Merger Guidelines*.⁵⁷
- 4.21 The fact that a merger falls into Zone C does not necessarily mean that it will lead to a substantial lessening in competition. As the Authority's *Merger Guidelines* point out, factors that affect whether a merger in Zone C will raise competition concerns include the degree of competition that is likely to exist between the remaining participants in the market post-acquisition. The competitive effects of the proposed acquisition in the market for national radio advertising are assessed in Section 5 below.

Market Structure for the Radio Advertising Market in Dublin City and County

- 4.22 Twenty-six independent commercial radio stations are licensed by the BCI to provide radio broadcasting services in designated franchise areas to a demographic audience specified by the BCI. In the majority of franchise areas, only one radio station is licensed by the BCI to provide broadcasting services. In Dublin City and County, seven independent commercial radio stations provide broadcasting services aimed at different demographic audiences:
- (a) **FM104:** provides broadcasting services in Dublin City and County to a demographic audience of 15-34 year olds. FM104 provides a music (adult contemporary)/talk programming format. FM104 attracts a younger female audience.
 - (b) **98FM:** provides broadcasting services in Dublin City and County to a demographic audience of 20-44 year olds. While its audience is marginally older than that of

⁵⁷ For details see Table A.1, Annex A, below.

FM 104, its music content (adult contemporary) and programming format is comparable to that of FM104. Both 98FM and FM104 are long-established in Dublin City and County.

- (c) **Spin 103.8 FM:** provides broadcasting services in Dublin City and County to the demographic audience of 15-34 year olds. Spin 103.8 FM's core audience is 15-24 year olds. Spin 103.8 FM was launched less than three years ago. Although FM104 and Spin 103.8 FM share similar demographic audience profiles and programming formats, Spin 103.8 FM is less-established and still developing its audience.
- (d) **Q102:** provides broadcasting services to a demographic audience of 35 years plus. Despite being a music-driven station similar to FM 104, 98FM and Spin 103.8 FM, Q102 attracts an older demographic audience.
- (e) **Dublin's Country Mix 106.8 FM:** provides specialist country & Irish music broadcasting services in Dublin City and County to a demographic audience of 25 years plus. Given the specialist nature of its programming format and its older demographic audience, Dublin's Country Mix 106.8 FM offers a very distinct broadcasting service in comparison to the services provided by the aforementioned radio stations.
- (f) **Phantom 105.2 FM:** provides "alternative rock" music in Dublin City and County targeting 18 - 34 year olds. Phantom 105.2 FM was launched on 31 October 2006. As with Dublin's Country Mix 106.8 FM, Phantom 105.2 FM provides a specialist broadcasting service.

Listenership: Minutes Listened

4.23 Assuming that the Dublin City and County market comprises only radio stations that are licensed to cover this franchise area, the Authority used national JNLR "minutes listened" data for Dublin City and County covering the period June 2006 to July 2007 to calculate the market shares based on listenership in the Dublin City and County radio advertising market. The market shares are based on the percentage of minutes listened to a particular radio station. Table 5 is used in establishing the level of overlap in listenership between the radio stations involved in the proposed transaction with respect to Dublin City and County.

4.24 The following conclusions can be drawn from Table 5:

- The merger will see the two leading Dublin City and County radio stations, FM104 and 98 FM coming under common ownership. Taken together with Communicorp's current ownership of Spin 103.8, the merged entity will account for 76.8% of listenership compared with Communicorp current market share of 44.3%;

- The merger occurs in an already concentrated market, with a current HHI of 3297, combined with a very large delta, 2879.
- The merger will fall in Zone C of the *Merger Guidelines*.

Table 5
Market Shares, Dublin City and County Radio Stations, Measured in Minute Listened, 7am to Midnight, April 2006-March 2007

Radio Station	Ownership	Pre-merger Market Share (%)	Post Merger Market Share (%)
FM 104	SRH	32.5	76.8
98 FM	Communicorp	44.3	
Spin 103.8	Communicorp		
Q102	UTV	15.4	15.4
Country Mix		6.2	6.2
Phantom**		1.6	1.6
Total		100	100
HHI		3297	6176
Delta			2879

Source: Competition Authority based on JNLR.

Advertising Revenue

4.25 The Authority calculated market shares based on the advertising revenue generated by each Dublin City and County radio station. Table 6 provides market share figures based on advertising revenue generated by each Dublin City and County radio station for 2006.

Table 6
Market Shares, Dublin City and County Radio Stations, Measured in Advertising Revenue, 2006

Radio Station	Ownership	Market Share by Radio Station (%)	Pre-merger Market Share by Ownership (%)	Post-merger Market Share by Ownership (%)
FM104	SRH	31.3	31.3	76.9
98FM	Communicorp	37.5	45.6	
Spin1038	Communicorp	8.1		
Q102		16.6	16.6	16.6
Phantom		2.7	2.7	2.7
CountryMix		3.9	3.9	3.9
Total		100	100	100
HHI			3357	6212
Delta				2855

Source: The Competition Authority based on advertising revenue figures provided by the parties and third parties' submission

4.26 Table 6 shows that the proposed acquisition is occurring in an already concentrated market. The HHI for the Dublin City and County advertising market will increase from 3357 to 6212, with an increase in HHI or delta of 2855. The merged entity, post-acquisition, will account for 77%% of the advertising revenue generated by Dublin City and County radio stations

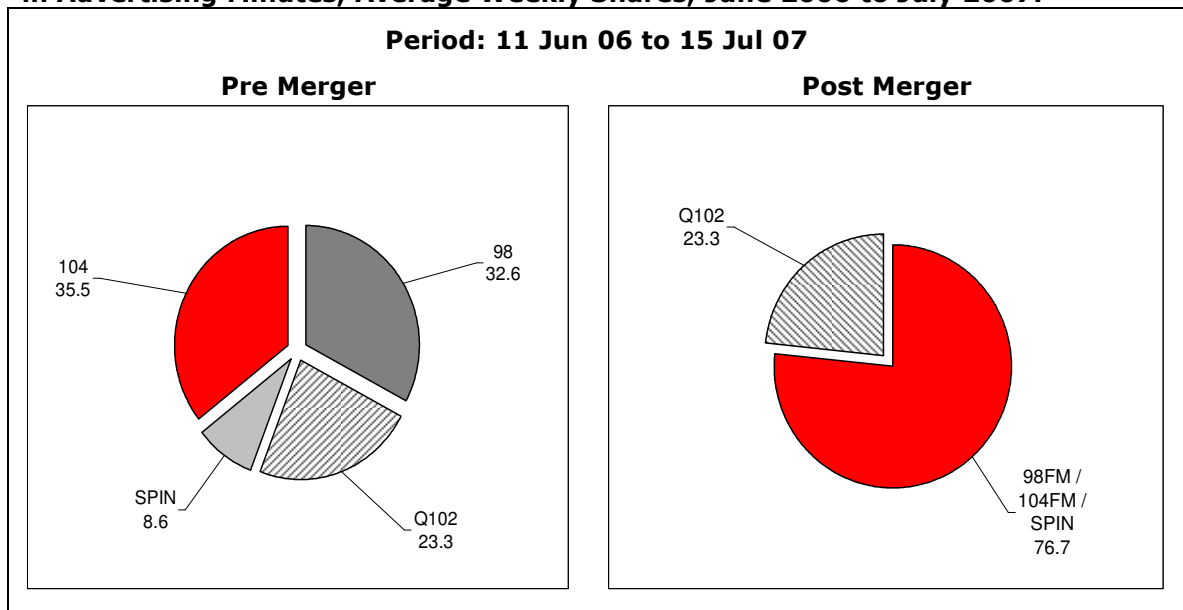
4.27 The increase in the HHI between the pre- and post-acquisition environments (i.e., a delta of 2855) combined with a post-acquisition HHI of 6212 indicates that the proposed acquisition would give rise to a Zone C merger situation.

Advertising Volume: Measured in Minutes

4.28 Adscan data is collected for all of the Dublin City and County radio stations referred to in para 4.22 except two: Phantom FM; and, Dublin’s Country Mix. It is clear from the broadcasting mandate set out in para 4.22 above that each of these two stations provide a niche service and as such they have likely to have small market shares. As a result the fact that they are not included in the Adscan analysis should not unduly biased the results or the conclusions.

4.29 Figure 3 shows the market shares for the Dublin City and County radio stations pre- and post-acquisition based the advertising volume measured in minutes of advertising.

**Figure 3
Market Shares, Leading Dublin City and County Radio Stations, Measured in Advertising Minutes, Average Weekly Shares, June 2006 to July 2007.**



Source: Competition Authority

4.30 Figure 3 indicates that post-merger, Communicorp will account for 77% of advertising measured in terms of minutes in Dublin City and County. The merged entity will own the two leading radio stations in Dublin City and County.

4.31 The HHI, post-acquisition, would be 6426 with a delta of 3486. In other words, the proposed acquisition will give rise to a merger that is a Zone C.

Conclusion

4.32 All sources of data indicate that the proposed transaction will lead to a Zone C merger in the radio advertising market for Dublin City and County. It could however, be argued that the approach taken

overestimates the level of HHI by not taking into account that Dublin City and County listeners also tune into national radio stations and that in the case of RTE at least the rate card includes a lower rate for Dublin City and County for some of its packages. However, this should not be overstated. First, while RTE does indeed have a separate lower rate for Dublin City and County this accounts for a very small percentage of its overall advertising revenue: for RTE Radio 1, [...]%; 2fm, [...]%; and Lyric, [...]%. Second, even if market shares for listenership were re-estimated on the basis of all stations listened to by residents of Dublin City and County the merger will still fall into Zone C of the *Merger Guidelines*.⁵⁸

- 4.33 The fact that a merger falls into Zone C does not necessarily mean that it will lead to a substantial lessening in competition. As the Authority's *Merger Guidelines* point out, factors that affect whether a merger in Zone C will raise competition concerns include the degree of competition that is likely to exist between the remaining participants in the market post-acquisition. The competitive effects of the proposed acquisition on the market for national radio advertising are assessed in Section 6 below.

Market Structure for the Radio Advertising Market in County Donegal

- 4.34 There will be no change in market structure in the radio advertising market in County Donegal as there was no overlap prior to the proposed acquisition. Hence, the delta is zero and no market structure issues arise. Highland Radio is the only local radio station operating in that region. The Authority therefore considers that the proposed transaction does not raise any competition concerns in this market. Thus, no further discussion of this market is necessary in this determination.

Next Steps

- 4.35 In the next two sections the Authority pays careful attention to the market conditions in the national and Dublin City and County radio advertising markets to determine whether or not the competitive concerns signalled by the merger falling in Zone C in each of these markets presages serious competition concerns.

⁵⁸ For details see Annex A, Table A.2 for listenership and Table A.3 for advertising revenue.

SECTION FIVE: COMPETITIVE ANALYSIS - NATIONAL RADIO ADVERTISING MARKET

Introduction

- 5.1. Having established that the proposed acquisition falls in Zone C for the market for radio advertising nationally, the Authority analyses below the competitive characteristics of this market to establish whether the proposed transaction raises competition concerns.
- 5.2. Post merger two entities will control all the radio stations in the national market: RTE (Radio 1, 2FM and Lyric FM) and Communicorp (Newstalk and Today FM). Communicorp will own the only two commercial national radio stations in the State. In effect, the proposed acquisition will result in a 3 to 2 merger in the national market. Nevertheless, for the reasons set out below, the Authority considers that competition in the national market will not be affected adversely by this new ownership structure. Indeed, in some respects the merger may be pro-competitive.
- 5.3. The characteristics discussed below are those identified by the undertakings involved, by third parties, and by the Authority during the course of its investigation and include, where appropriate:
 - closeness of competition;
 - entry; and,
 - expansion and capacity constraints.

Since the latter two are connected they will be considered together.

- 5.4. The analysis of these market characteristics set out below includes in each case the analysis undertaken by the Authority of: (a) the JNLR data; (b) the Adscan data; (c) the Authority's survey; (d) the internal documentation supplied by and the survey undertaken by the parties; and, (e) the views and submissions of third parties.

Closeness of Competition⁵⁹

- 5.5. In the competitive analysis of a differentiated product such as advertising on a radio station, it is important to be able to measure the degree to which two (or more) radio stations are close substitutes. It may be, for example, that although two radio stations both sell advertising, the audience characteristics of the two radio stations is so dissimilar that they are not regarded as close substitutes from the viewpoint of an advertiser.

Listenership: Reach

- 5.6. Radio stations that offer a similar programme format tend to attract a similar audience. As such, stations with a similar listenership profile

⁵⁹ Where it is found that the merging parties are not close competitors then it is likely that the merger will not lead to anticompetitive effects. However where the merging parties are found to be close competitors then it is necessary to consider all the competitive conditions in the market before coming to a final conclusion.

are seen by advertisers as close competitors or inter-changeable for one another.

- 5.7. As stated earlier, advertisers rely greatly on the JNLR listenership data in deciding which radio station to use. The JNLR reports on the percentage of listeners who tuned into a particular radio station, for any length of time, on the previous day. This is referred to as "listened yesterday" or "reach". Unlike, minutes listened,⁶⁰ figures for reach or listened yesterday exceed 100% when added together, since many radio listeners tune into more than one station on any given day.
- 5.8. The Authority used national JNLR "listened yesterday" data for national radio stations (excluding Newstalk) covering the period June 2006 to July 2007 to establish which national radio stations can be considered close substitutes or inter-changeable. Newstalk is excluded because it was only launched as a quasi national station on 29 September 2006. The result of the Authority's analysis is presented in Table 7 below.
- 5.9. The figures depicted in red show that Today FM's closest competitor is 2FM. These two stations have a more similar listenership profile than any other combination of national radio stations. In particular, these two stations have a similar audience share for the following age groups and occupational/social class groups: 15-34; 20-44; and, ABC1. This implies that, other things being equal, an advertiser wishing to reach a national audience in either the 15-34 or 20-44 age groups can choose between Today FM and 2FM as either station will deliver the same level of listenership for these age groups.

**Table 7
National Radio Stations, All Adults, "Listened Yesterday," June 2006 to July 2007**

Audience Profile (Total Sample= 10681)	RTE 1	2FM	Lyric FM	Today FM
Male (%)	24	17	3	19
Female (%)	22	19	13	13
15-34 (%)	7	24	1	25
20-44 (%)	13	24	2	24
ABC1 (%)	29	20	6	20
C2DE (%)	18	16	2	13

Note: Newstalk was launched as a quasi-national radio station on 29 September 2006. Any listening from 30 September contributed to "any national" figure.

Source: Competition Authority based on JNLR national radio listenership figures.

Common Brands

- 5.10. The Adscan data permits two measures of the closeness of radio stations: (i) based on the number of brands that are common to the two radio stations ("Indicator 1"); and, (ii) the importance of common brands based on the duration that those brands were advertised on the radio station ("Indicator 2"). If advertisers use two radio stations to advertise particular brands, then it might be reasonable to infer that the two radio stations are close substitutes for each other and hence competitors.

⁶⁰ In Section 4 above minutes listened was used to measure market share.

5.11. The Authority computed Indicator 1 by obtaining the proportion of common brands advertised on a pair of radio stations for each of 50 weeks and then taking the average of these 50 values. This is calculated by counting the number of common brands on any two radio stations divided by the total number of brands advertised on the benchmark radio station. Indicator 2 is calculated by summing up the duration of advertising of common brands (between the two radio stations) on the benchmark radio station divided by the total duration of time spent by all the brands advertised on the benchmark radio station. The two indicators of closeness of competition are presented in Table 8.

5.12. Table 8 shows that Today FM's (referred to as TDF in Table 8) closest competitor is the collective RTE radio stations⁶¹ with an overlap in common brands of 51.7%.⁶² There is only 18% overlap between Newstalk (referred to as NT in Table 8) and Today FM. Newstalk's closest competitor is also the collective RTE radio stations, with an overlap in common brands of 39%. The overlap with Today FM is 35.8%

Table 8

Common Brands, Number and Duration, National Radio Stations, February 2006 – July 2007, Average Weekly Values

	Pair 1		Pair 2		Pair 3	
Benchmark Radio Station	TDF	NT	TDF	RTE	RTE	NT
Versus	v	v	v	v	v	v
Other Radio Station	NT	TDF	RTE	TDF	NT	RTE
No of Common Brands	20	20	57	57	22	22
Average Number of Brands	111	55	111	151	151	55
Indicator 1: Number of Common Brands (%)	18.0	35.8	51.6	37.7	14.2	39.0
Indicator 2: Duration of Common brands (%)	18.7	35.9	51.7	41.9	15.9	38.2

Note: See text for definition of abbreviations.

Source: Competition Authority based on Adscan.

Authority Survey of Advertising Agencies

5.13. In September 2006 Newstalk was launched as a quasi-national radio station. To determine the degree of possible substitutability between Newstalk and Today FM one of the questions posed to direct and

⁶¹ This is one key limitation of the Adscan data. The information for RTE is not disaggregated by each RTE radio station. As the data group together all three RTE stations, the number of common brands between RTE and any other radio stations will, other things equal, be biased upwards if all the advertising is purchased from one RTE station. Information obtained from RTE shows that over [...]% of its radio advertising revenue is generated from two of its radio stations- Radio 1 and 2FM- in almost equal proportions. Given advertisers buy mainly from two of three RTE stations, the bias is less pronounced, since the combined advertising airtime (9 minutes) on the two combined RTE stations is closer to that allowed for the commercial stations (10 minutes).

⁶² Since Indicator 1 and Indicator 2 are very similar the text refers only to Indicator 1.

indirect advertisers in the Authority's survey was whether Newstalk becoming a quasi-national radio station had any impact on advertisers' spend on RTE Radio 1, 2FM, Lyric FM, Today FM, or any of the radio stations broadcasting in Dublin City and County. All twenty advertising agencies that responded to the survey indicated that Newstalk's switch to a quasi-national radio station had no impact on their advertising spend on Today FM. Specifically; respondents stated that Newstalk targets a different audience to Today FM. Newstalk is considered by agencies to be a slightly younger version of RTE Radio 1. Furthermore, only four out of twenty agencies indicated that Newstalk had a slight downward impact on their advertising spend on RTE Radio 1. These survey findings indicate that Newstalk is not currently a close competitor of any of the national radio stations.

- 5.14. The Authority also investigated the responsiveness of direct and indirect advertisers to changes in the price of advertising on each of Today FM and Newstalk. The Authority's survey posed two separate questions relating to how direct and indirect advertisers would have reacted if the price of radio advertising on each of Today FM and Newstalk had increased permanently by 5-10% (while all other factors remained unchanged).⁶³
- 5.15. With respect to a hypothetical change in the price of advertising on Today FM, only three out of twenty agencies indicated that they would switch some of their advertising spend to Newstalk.⁶⁴ Eight out of twenty agencies indicated that their reaction would depend on their clients' requirements. Six out twenty agencies indicated that they would "maintain your spend with Today FM but buy fewer slots" and/or "maintain the same number of slots and pay more". This provides further support that agencies do not consider Today FM to be a close substitute for Newstalk.
- 5.16. Alternatively with respect to a hypothetical change in the price of advertising on Newstalk, only three out of twenty agencies indicated that they would switch some of their advertising spend to Today FM while another three agencies indicated that they would switch some of their advertising spend to RTE Radio 1.⁶⁵ Eight out of twenty agencies indicated that their reaction would depend on their clients' requirements. Five agencies indicated that they would "maintain your spend with Today FM but buy fewer slots" and/or "maintain the same number of slots and pay more". These findings again indicate that agencies do not consider Newstalk to be a close substitute for Today FM.
- 5.17. Fifteen out of 20 advertising agencies did not raise concerns about the Communicorp/SRH merger as it affects the national market. Indeed, one commented, "No concerns in relation to Today FM b/c Newstalk is a niche player." However five agencies did express concerns that the merger might lead to price rises on the national radio advertising market.

⁶³ The survey contained ten options from which to choose in response to this question.

⁶⁴ Three agencies did not provide a response to this particular question.

⁶⁵ One agency did not provide a response to this particular question.

Review of Parties Internal Documents

Monitoring and Benchmarking of Radio Stations

- 5.18. A review of the internal documentation requested by the Authority clearly indicates that Today FM perceives 2FM as its closest competitor whilst Newstalk sees RTE Radio 1 as its closest competitor.
- 5.19. Internal documentation provided by Today FM indicates that the latter views 2FM as its closest competitor in the market for national radio advertising. For example, in the Chief Executive's report dated April 2007, it is noted that Today FM "... has continued to increase the gap between [itself] and RTE's 2FM in the 20-44 age category". The report goes on to state "With 2FM making significant changes to their schedule and Newstalk new to the national market, pressures on Today FM will be at an all time high".⁶⁶
- 5.20. Similarly, it is noted in the Chief Executive's report dated September 2006 that Today FM's "... market share grew to 11.5% in the recent JNLR, closing in on 2FM". The report goes on to state that "A discussion ensued on 2FM compared to Today FM". Willie O'Reilly, Chief Executive of Today FM, noted that the latter's "...speech content has increased, differentiating us even further from 2FM" while Eamon Fitzpatrick, Commercial Director of Today FM, noted that "he based [Today FM's] new rate card on the package that 2FM are currently offering".⁶⁷

Comparison of Advertising Rate Cards and Discounts

- 5.21. There is a wide disparity in the respective advertising rate cards and discounts offered by RTE Radio, Today FM and Newstalk. The Authority believes that this is an indication of the limited degree of competition currently exerted on RTE Radio by Today FM and Newstalk.
- 5.22. With respect to discounting, RTE, with one exception, does not offer (and has never offered in the past) discounts off its published rate card on any of its three national radio stations.⁶⁸ One explanation for this is the fact is that each of RTE's three radio stations is restricted to approximately four and a half minutes of advertising per hour. RTE informed the Authority that on average [...]% of RTE Radio 1's weekly allocation of advertising slots is sold while the equivalent figure for 2FM is [...]%.⁶⁹

⁶⁶ RTE also stated that it considers all regional and local radio stations to be competitors to Radio 1.

⁶⁷ The reaction of Today FM to Newstalk as a quasi-national station has been minimal. For example, Today FM decided at its Board Meeting in December 2006, two months after the entry of Newstalk, to increase its rate card effective from 1 February 2007. At the April 2007 Board Meeting Today FM's Commercial Director refers to the increase in the rate card noting that, "This rate card should see average spot rates increase between [...]%, with the majority of Agencies accepting the full rate increase (average of between [...]%)." Further evidence can be seen in the continually rising market share of Today FM's drivetime flagship programme, 'The Last Word', over the period despite the increased geographical coverage of Newstalk's drivetime programme, 'The Right Hook'.

⁶⁸ RTE Radio applies a 33% discount to advertisements addressed solely to the Dublin region or advertisements reaching two or less counties in the State. To avail of this discount, RTE stipulates that such products and services must not be available on a national level. RTE informed the Authority that [...]% of advertising revenue generated by Radio 1 came from advertising purchased at this discounted rate. The equivalent figure for 2FM was [...]% and [...]% in the case of Lyric FM.

⁶⁹ RTE also informed the Authority that capacity utilisation of its four and a half minutes per hour advertising generally dips below 90% on all three of its radio stations during the months of June, July and August.

- 5.23. However, a more important reason for the absence of any discounting by RTE Radio is the fact that it is the station of choice for an advertiser seeking to target a national radio audience in the State. RTE Radio 1 and 2FM are long-established national radio stations that have built up a strong reputation for delivering a large national audience. In its 2007 rate card, RTE Radio states that it reaches 1.4 million or 41% of adults every weekday thereby "...maintaining its position as market leader". RTE informed the Authority that RTE 2FM is "the national leader in talk and popular music". Prior to Newstalk becoming a quasi-national station in September 2006, the only other option for an advertiser seeking to target a national audience was Today FM. As a result of the limited number of alternatives, it is unsurprising that RTE Radio does not have to offer discounts off its rate card to attract advertisers.
- 5.24. It is also significant that the entry of Newstalk on the national radio advertising market in September 2006 has not altered RTE Radio's pricing behaviour with respect to advertising. RTE informed the Authority that Newstalk's switch to a quasi-national service has had no impact on its published rate card for each of its three radio stations. Furthermore, as explained in paragraph 5.13 above, sixteen out of twenty advertising agencies that responded to the Authority's survey stated that Newstalk's switch to quasi-national coverage in September 2006 had no impact on their advertising spend with RTE Radio 1.⁷⁰
- 5.25. In contrast Newstalk offers large discounts off its published rate cards. This is unsurprising given the fact that Newstalk only started broadcasting as a quasi-national station in September 2006 and has needed to offer lower rates in order to attract customers while it seeks to establish its reputation as a viable national radio advertising platform for national advertisers. Today FM informed the Authority that its discounts vary between 5% and 35% depending on the volume of advertising spend by the customer.
- 5.26. Unlike RTE Radio, Today FM and Newstalk can sell up to ten minutes of advertising per hour. Thus both stations have a strong incentive to offer discounts off their respective rate cards.

Conclusion

- 5.27. The evidence described above indicates that Newstalk has had a minimal impact on the national radio advertising market since it commenced broadcasting on a quasi-national basis in September 2006. However, as Newstalk establishes its reputation as a credible radio advertising platform for national advertisers, the Authority anticipates that, given the strong overlap in content between the two stations, Newstalk will become a significant competitor to RTE Radio 1. The evidence also shows that currently, 2FM and Today FM are each others closest competitors in the national radio advertising market.
- 5.28. In contrast, Today FM and Newstalk are not currently considered close competitors by listeners⁷¹ and advertisers and are unlikely to become close competitors in the future given the mandates of their respective licenses. Programme content on Today FM and Newstalk is very

⁷⁰ All twenty agencies indicated that Newstalk's switch had no impact on their advertising spend with 2FM or Lyric FM.

⁷¹ There is, of course overlap during the drive time slot between the "Right Hook" and the Matt Cooper show. But RTE1 also offers a drivetime talk show which competes against these two.

different and aimed at different target audiences, notwithstanding the similarity in content during the drive time part of the day.

- 5.29. Furthermore it is likely, given the current limited competition in the national market for radio advertising that post-merger a bundled package of advertising on Today FM and Newstalk will be an attractive alternative to national advertisers seeking to target a wide audience. National advertisers are likely to view such a package as a substitute to advertising on RTE Radio 1 and/or 2FM.⁷² The Authority therefore considers that the level of competition between 2FM and Today FM will increase post-acquisition, if Communicorp is able to offer national advertisers a bundled radio advertising package comprising Today FM and Newstalk.

Entry, Expansion and Capacity

- 5.30. The Authority's *Merger Guidelines* require three conditions to be met for entry to be able to constraint the merged entity from raising prices post-merger:

- Entry must be timely – entry is considered timely only if it occurs within two years;
- Entry must be likely – in other words, entry must be profitable at existing or lower prices; and,
- Entry must be sufficient – entry must return prices to their pre-merger level. For this to happen, entry must occur on a sufficient scale.

These conditions are cumulative; they all have to be satisfied before entry acts a competitive constraint on the merged entity.

- 5.31. Expansion of non-merging firms in a market may also constrain the ability of the merged entity to raise prices post-merger. Expansion in turn is linked to the issue of whether the non-merging firms can expand capacity. In each instance the same timely, likely and sufficient criteria outline above for entry are applied.

- 5.32. The parties contend that the advent of digital radio is likely to transform RTE's capacity position. It is anticipated that once the provisions of the Communications (Amendments) Act 2007 are commenced RTE will secure the right to operate several national digital multiplexes. The parties claim that RTE has concrete plans for up to six new RTE generated digital radio stations. However, at the moment RTE only has a trial license which expires in October 2008. Only then will decisions be taken about new radio stations which are unlikely to be on air until late 2008/early 2009 at the earliest. Thus it is not clear that the plans for the six stations can be described as 'concrete.'

- 5.33. At the same time the BCI is in the process of awarding a multi-city sound broadcasting service on the FM band covering Dublin City and County and commuter belt, Cork City and County, Limerick City and County, Co. Clare and Galway City and County. The parties argue that the awarding of such a license "may well see the emergence of another

⁷² RTE's current rate card offers a limited number of bundled packages across its three radio stations.

'quasi-national' player considering the population coverage that will be achieved though covering of most of the major metropolitan area."

- 5.34. However, it appears that the multi-city service is unlikely to be awarded before January 2008 and is not likely to be on air until late 2008 or early 2009. It will then of course have to build up listenership and a brand image in order to be able to challenge existing radio stations. It seems unlikely that, by the end of 2009, it will be in a position to credibly constrain the merged entity or for that matter RTE.
- 5.35. These developments may at some point in the future lead to an increase in capacity through RTE developing new stations and perhaps as the parties contend the emergence of a new quasi-national radio station. However, these developments will not be realised within the two year time horizon that the *Merger Guidelines* specify and are considered too speculative to constitute effective credible constraints on the merged entity.

Other Issues

Cross-Media Ownership

- 5.36. One of the third party submissions referred to in Section 1 above raised competition concerns because of Denis O'Brien's cross media ownership. On the one hand, Mr O'Brien owns radio stations through Communicorp and, on the other hand, a partial share ownership in newspapers due to a non-controlling beneficial interest currently of between 12 and 13% of Independent News and Media ("INM"). Reference is made in the third party submission to the Authority concerns expressed in the past as to how partial ownership of a competitor might lead to incentives to compete being reduced.⁷³ The third party submission also made reference to the finding by the UK Competition Commission in its examination of the 17.9% share holding by BSkyB plc in ITV plc, that such a shareholding would lead to SLC.⁷⁴
- 5.37. There are a number of reasons why the Authority does not think that partial shareholding by Denis O'Brien in INM raises competition concerns in the context of the current merger. First, the issue of partial ownership in the above instances occurred between competitors. Section 3 above establishes that radio and press advertising are in separate markets. Hence Denis O'Brien's radio stations and INM's newspapers are not competitors in a relevant market. Second, the cross ownership issue in the instant case is not merger specific. Mr O'Brien already has extensive radio interests irrespective of the outcome of the merger, although admittedly these interests will become more extensive when Communicorp acquires Highland Radio and To-day FM. Third, despite the fact the proposed transaction received extensive media coverage, [only one submission] raised concerns, competitive or otherwise, with respect to the partial ownership of INM by Denis O'Brien. In particular [company A], [which] was contacted as part of the market testing, did not raise the issue of partial ownership of INM. Indeed, [Company A], in answer to question 6 of the questionnaire, which is reproduced in Annex B below,

⁷³ See, for example, in M/05/024, *UGC(Chorus)/Ntl*, para 123

⁷⁴ Competition Commission, 2007, *Acquisition by British Sky Broadcasting PLC of 17.9 per cent of the Shares in ITV plc*, Provisional Findings Report, 4 October, London: the Commission.

stated “[Company A] does not compete in a significant way with radio.”

IRS and BMS

5.38. The parties argued that IRS and BMS “are significant rivals in the national segment since they effectively allow a purchaser to replicate the purchase of airtime on national station by combining slots across a very large number of regional and local stations.”⁷⁵ However, for reasons set out in paras 2.16 and 2.17 above the Authority considers IRS and BMS to offer limited competition with national radio stations.

Conclusion

5.39. In sum, although in the national market the merger is a three to two merger and there is little prospect of entry or expansion of current rivals, the proposed merger of Today FM and Newstalk does not raise, in the Authority’s opinion, competition concerns because:

- The programming format of Today FM and Newstalk are different. Today FM provides a “broad contemporary music format with strong current affairs, sport and comedy sequences”, while Newstalk provides solely talk based programming with news, sport and traffic every 20 minutes;
- Evidence from a variety of sources, demonstrates that Today FM’s closest competitor is 2FM, while Newstalk’s closest competitor is RTE Radio 1;
- The overwhelming majority – 75% - of advertising agencies expressed no concerns about the merger at the national level; and,
- By bundling the advertising of Today FM and Newstalk the merged entity may be in a better position to compete with the offerings of RTE across its three radio stations.

⁷⁵ As set out in the Notification, p.30.

SECTION SIX: COMPETITIVE ANALYSIS - DUBLIN CITY AND COUNTY ADVERTISING MARKET

Introduction

- 6.1. Having established that the proposed acquisition falls in Zone C for the market for radio advertising in Dublin City and County, the Authority analyses below the competitive characteristics of this market to establish whether the proposed transaction raises competition concerns.
- 6.2. The characteristics discussed below are those identified by the undertakings involved, by third parties, and by the Authority during the course of its investigation and include, where appropriate:
 - closeness of competition;
 - entry; and,
 - expansion and capacity constraints.

At the level of Dublin City and County the discussion will centre on closeness of competition and entry.

- 6.3. The analysis of these market characteristics set out below includes in each case the analysis undertaken by the Authority of (a) the JNLR data; (b) the Adscan data; (c) the Authority's survey; (d) the internal documentation supplied by and the survey undertaken by the parties; and, (b) the views and submissions of third parties.

Closeness of Competition

- 6.4. Currently, Communicorp owns two of the six commercial radio stations active in the market for radio advertising in Dublin City and County, namely 98FM and Spin 103.8. Post-acquisition, with the addition of FM104 it will own three of the six Dublin commercial radio stations.
- 6.5. The Authority used a number of different types of evidence and sources to determine which combination or pair of radio stations in Dublin City and County advertisers, advertising agencies and listeners consider close substitutes. The results of the Authority's analysis indicate that 98FM and FM104 are each others closest competitors in Dublin City and County. This view is supported by the evidence provided in the investigation undertaken by the Authority. This is set out below.

Listenership: Reach

- 6.6. As discussed in paragraphs 5.6 to 5.8 above, advertisers rely on JNLR listenership figures in deciding which radio stations to choose. Radio stations that offer a similar programme format tend to attract a similar audience. As such, stations with a similar listenership profile are seen by advertisers as close competitors or interchangeable for one another.

- 6.7. The Authority used JNLR “listened yesterday” data for Dublin City and County (excluding Phantom FM which only began broadcasting in October 2006) covering the period June 2006 to July 2007 to establish which Dublin stations can be considered close substitutes or inter-changeable. The result of the Authority’s JNLR analysis of this data is presented in Table 9. The figures depicted in red show that 98FM and FM104 is each other’s closest competitor. These two stations have a more similar listenership profile than any other combination of Dublin stations. In particular, with the exception of the 15-19 year olds, these two stations have the highest listenership for all demographics.
- 6.8. The figures depicted in blue show that FM104 and Spin103.8 is each other’s closest competitor for two the younger demographics, i.e., 15-19 year olds and 15-34 year olds.

Table 9
Dublin City and County, All Adults, “Listened Yesterday” June 2006 to July 2007

Audience	Radio Station					
	FM104	98FM	Spin 103.8	Q102	CountryMix	Other Regional/Local
Male (%)	20	15	13	8	3	1
Female (%)	23	18	11	11	2	0
15-19 (%)	36	17	56	10	2	-
15-34 (%)	35	22	25	10	1	0
20-44 (%)	27	23	9	14	2	1
35+	10	12	2	10	4	1
ABC1 (%)	19	13	12	8	3	0
C2DE (%)	23	20	12	12	3	1

Note: Phantom 105.2 FM began broadcasting in Dublin on 31st October 2006.
Source: Competition Authority based JNLR.

Common Brands

- 6.9. As described in paras 5.10 and 5.11 above, the Authority used the Adscan data to compute two measures of closeness of radio stations: (i) based on the number of brands that are common to the two radio stations and (ii) the importance of the number of brands that are common based on the duration that those brands were advertised. The two indicators of closeness of competition, with respect to the Dublin City and County radio advertising market, are presented in Table 10.
- 6.10. The Adscan analysis in Table 10 shows that 98FM and 104FM are the closest competitors in the Dublin radio advertising market. Depicted in red, 98FM’s closet competitor is 104FM with a 45.3% overlap in common brands, followed by Q102 with a 29.4% overlap. There is only a 9.5% overlap between 98FM and Spin 103.8 FM. Therefore, 98FM is closer to 104FM than it is to Spin 103.8 FM.

- 6.11. The 98FM/Q102 (29.3%) and the FM104/Q102 (29.6%) measures are very similar suggesting that 98FM and FM104 do compete with Q102. In fact, this suggests that 98FM and FM104 face similar competition from Q102.
- 6.12. The figures depicted in blue, show that 104FM's closet competitor is 98FM with a 41.7% overlap in common brands, followed by Q102 with a 29.6% overlap. There is only a 12.3% overlap between 104FM and Spin 1038 FM.⁷⁶ Figures change very little when looking at Indicator 2 of common brands.⁷⁷

Table 10
Common Brands, Number and Duration, Dublin City and County Radio Stations, February 2006 – July 2007, Average Weekly Values.

	Pair 1		Pair 2		Pair 3		Pair 4		Pair 5	
Benchmark Radio Station	98	104	98	Spin	98	Q102	104	Q102	104	Spin
Versus	v	v	v	v	v	v	v	v	v	v
Other Radio Station	104	98	Spin	98	Q102	98	Q102	104	Spin	104
No of Common Brands	46	46	10	10	30	30	33	33	14	14
Average Number of Brands	102	111	102	29	102	85	111	85	111	29
Indicator 1: Number of Common Brands (%)	45.3	41.7	9.5	33.9	29.3	35.2	29.6	38.8	12.3	47.9
Indicator 2: Duration of Common brands (%)	44.3	39.9	10	32.4	28.6	35.2	28.5	40.7	12.4	46.5

Source: Competition Authority based on Adscan data.

Authority Survey of Advertising Agencies

6.13. In its survey of advertising agencies, the Authority sought views on the extent to which advertising on each of the following Dublin radio stations is interchangeable: FM104, 98FM, Spin 103.8, Q102, Phantom FM, and CountryMix 106.8:

- Six agencies state that 98FM and FM104 are interchangeable;

⁷⁶ However, from Spin 1038FM's perspective, FM104 is its closest competitor with an overlap of 48%.

⁷⁷ Given that disaggregated data for RTE are not available, it is not possible to compare each RTE radio station with either 98FM or 104FM. In terms of the number of common brands with all RTE stations, 98FM has a 35% overlap, FM104 a 39% overlap and Spin a 30% overlap. These figures indicate a situation of complementarity rather than substitutability.

- Six agencies expressed the view that it depends on each client's requirements; and,
 - One advertising agency expressed the view that 98FM, FM104 and Q102 are interchangeable.
- 6.14. The majority of advertisers (75%) indicated that the proposed transaction will raise competition concerns in the Dublin market due to 98FM and FM104 coming under common control. Advertisers stated that the two radio stations have a similar audience profile and are interchangeable for purposes of advertising. Advertisers also stated that they play one station against the other to secure a better deal.

Review of Parties Internal Documents

Monitoring and Benchmarking of Radio Stations

- 6.15. Internal documentation requested by the Authority indicates that both 98FM and FM104 view each other as their closest competitor in the market for radio advertising in Dublin City and County. For example in a report to Communicorp dated 13 September 2006, 98FM states that its key target is to "beat FM 104". Similarly in a report to Communicorp dated 16 January 2007, 98FM states that one of its achievements has been to reduce the "...gap in Listened Yesterday v FM 104".
- 6.16. In a report prepared by Merrion Finance on behalf of SRH dated June 2007, the former note that "FM 104 and 98 FM are closest competitors for 25-44 year olds, whereas FM104 and Spin FM are the closest competitors for 15-24 year olds". Merrion Finance goes on to state in its report that "FM104 has developed a clear lead over its principal rival 98FM in the Dublin market over the past 2 years".

Cost Per Thousand Analysis

- 6.17. The Authority has used Cost Per Thousand ("CPT") as an indicator of closeness to competition. CPT is a measure of media efficiency based on the cost of reaching a thousand people.⁷⁸ It measures how much it costs to reach a thousand listeners of a particular radio station. CPT is a comparative tool used by advertisers and radio stations to assess the value for money of placing an advertisement with a particular radio station. It shows efficiency across radio stations and thus allows advertisers to choose the radio station which offers the best value for money. It also gives an indication of the closeness of competition between radio stations, i.e., radio stations in the same franchise area with similar target audiences and who have similar CPTs are likely to be close competitors.

⁷⁸ It is calculated by dividing the rate card by the number of listeners in a particular demographic multiplied by a thousand.

Table 11
Prime Time Comparison of Cost per Thousand, Selected National and Dublin City and County Radio Stations. April 2006 –March 2007

Audience and CPT	Radio Station and Rate Card				
	98FM (€162)	FM104 (€160)	Q102(€124)	Today FM Dublin (€405)	Today FM National (€405)
Adults	35,000	35,000	17,000	17,000	108,000
	€4.62	€4.57	€7.29	€23.82	€3.75
25-44	21,000	21,000	11,000	12,000	69,000
	€7.71	€7.61	€11.27	€33.75	€5.86
House wives	21,000	19,000	9,000	10,000	54,000
	€7.71	€8.42	€13.77	€40.50	€7.5
Prime Time Comparison of CPT, October 2005 –September 2006					
Audience and CPT	Radio Station and Rate Card				
	98FM (€162)	FM104 (€160)	Q102(€124)	Today FM Dublin (€405)	Today FM National (€405)
Adults	33,000	33,000	17,000	17,000	99,000
	€4.91	€4.84	€7.29	€23.82	€4.09
25-44	21,000	19,000	10,000	12,000	63,000
	€7.71	€8.42	€12.40	€33.75	€6.42
House wives	20,000	17,000	10,000	9,000	51,000
	€8.10	€9.41	€12.40	€45	€7.94

Source: Parties internal documents based on the JNLR & radio station rate cards

6.18. Table 11 above provides the CPT figures for a number radio stations using JNLR figures for two periods "April 2006 to March 2007" and "October 2005 to September 2006". The following inferences can be drawn from Table 11:

- The CPTs for 98FM and FM104 very similar across each demographic and are much lower than those of Q102. For example, consider the 2006/2007 CPT figures for "Adult". This shows that the FM104's CPT is only 1% higher than that of 98FM. When compared to Q102's CPT, FM104's CPT is 37% lower. Therefore, from the perspective of an advertiser, this indicates that both 98FM and FM104 offer better value for money than Q102 and that both stations can be seen as offering substitutable radio advertising products in Dublin City and County; and,
- For illustrative purposes, the Authority has included Today FM, a national radio station, in order to compare CPT figures for a national station versus Dublin stations. Table 11 illustrates that Today FM will not be an efficient advertising product from the perspective of an advertiser who wishes to reach an audience in Dublin City and County. For example, for all "Adults", the table shows that Today FM's CPT is more than twice that of either 98FM or FM104 while its Dublin reach is less than half that of either 98FM or 104FM. Conversely, from the perspective of an advertiser who wishes to reach a national audience, the Dublin radio stations do not represent an efficient alternative to Today FM.

Entry

- 6.19. The Authority's *Merger Guidelines* require, as set out in Section 5 above, that for entry to be a constraint on the ability of the merged entity to raise price post-merger, entry must be timely, likely and sufficient.
- 6.20. The parties submitted that entry is likely and timely. In particular, the parties submitted that there will be new entrants in Dublin City and County under the new multi-city and classic rock licences.
- 6.21. On the multi-city license as noted in Section 5 above this is unlikely to start before late 2008/early 2009 and is unlikely to be in a position to constrain the pricing of the merged entity in the Dublin City and County market, especially since it has a wider geographic coverage.
- 6.22. In terms of the classic rock license, the BCI announced in July 2007 that the awarding of this license has been deferred, with an advertisement for the station license due in March 2008. The successful applicant can be expected to be on air in the summer of 2009. It would thus seem given these time lines that reliance should not be placed on a future classic rock station as a constraint on the merged entity in the Dublin City and County market within the next two years.

Conclusion

- 6.23. Unilateral effects refer to a situation where the anti-competitive effect of a merger results from non-coordinated action by market players and arises where the merged entity has the ability post-acquisition to unilaterally exercise market power by, for example, raising price or reducing output. The exercise of unilateral effects usually involves a merger of sellers of differentiated products competing on the basis of price and depends largely on the closeness of the merging firms' products. In other words, if the two products are each other's closest substitute, a pre-merger price increase of Product A would result in customers switching their purchases to Product B (and other rivals). Post-merger, the merged entity would internalise consumer substitution away from Product A, thereby avoiding at least some of the penalty otherwise associated with raising price.
- 6.24. The Authority is concerned that the proposed merger of 98 FM and FM 104 will give rise to unilateral effects and thus harm competition because:
- The programming format of 98 FM and FM104 is quite similar. 98FM provides "adult contemporary music mix, best of the 80's, 90's and now", while FM104 is "hot adult contemporary";
 - Evidence from a variety of sources indicates that 98FM and FM104 are each others closest competitors; and,
 - The overwhelming majority – 75% - of advertising agencies expressed concerns over the merger of 98FM and FM104.

SECTION SEVEN: PROPOSALS AND REMEDIES

Introduction

- 7.1. Under the Act parties to a proposed transaction can make proposals to the Authority which if accepted becoming binding commitments. In the instant case proposals were made by Communicorp and Emap to meet the competition concerns expressed by the Authority in the Dublin City and County radio advertising market. In this section the major elements of these proposals are outlined, details of the market testing are provided, together with an evaluation of the proposals in terms of composition, purchaser and asset risks. The full wording of the proposals is presented at the end of the discussion.

Major Elements of the Proposals

- 7.2. On 26 November 2007, Communicorp and Emap submitted the following proposals to address the competition concerns raised by the investigation of the proposed transaction. These can be characterised in the following elements:

From Communicorp:

"Element 1": subject to the Authority's approval and before the closing of the entire transaction, as notified to the Authority, the divestiture of Capital Radio Productions Limited, t/a FM104;

and,

"Element 2": a commitment not to obtain or exercise a controlling interest in or any substantial interest in or over the affairs of Independent Radio Sales and to continue to offer airtime to IRS on usual commercial terms.

From Emap:

"Element 3": a commitment to take all reasonable steps to facilitate compliance by Communicorp with its obligations to effect the divestiture of FM104;

and,

"Element 4": a commitment to continue to operate FM104 as a going concern as carried on prior to instant transaction.

- 7.3. Element 1 is designed to address the competition issues identified by the Authority in relation to the market for radio advertising in Dublin City and County by providing for an upfront buyer⁷⁹ of FM104. As the Commission *Draft Notice* highlights the upfront buyer solution is particularly appropriate in circumstances:

⁷⁹ For the sake of clarity an 'upfront buyer' according to the European Commission *Draft Notice on Remedies Acceptable under Council Regulation (EEC) No 139/2004 and under Commission Regulation (EC) No 802/2004* ("the Draft Notice") is a situation whereby "the parties may not complete the notified operation before having entered into a binding agreement with a purchaser for the business, approved by the" Authority (paragraph 50). This is different from a so-called 'fix-it-first' solution whereby "the parties identify a purchaser for the business and enter into a binding agreement already during the [Authority's] procedure," although the actual transfer may be implemented after the Authority's Determination (para 50).

- i. "where there are considerable obstacles for divestiture such as third party rights, or uncertainties as to finding a suitable purchaser" (paragraph 54); and,
 - ii. "where there are considerable risks in preserving competitiveness and saleability of divestment business in the interim period" (paragraph 55).
- 7.4. In the instant case the combination of (i) and (ii) could have the effect of significantly degrading the business of FM104. For example among the most important and valuable assets of a radio station are contracts with the individual personalities. The upfront buyer solution provides "increased incentives for the parties to close the divestiture in order to be able to complete their own"⁸⁰ merger and thus helps to preserve the key assets and the operational integrity of FM104 as a viable business. Furthermore in the instant case there are plenty of well informed buyers who would be able and willing to purchase FM104, so procuring an up front buyer should not only be feasible but also not impose a disproportionate burden on the undertakings involved.
- 7.5. Element 2 is offered given the Authority's concerns, raised in previous mergers, about the continued viability of IRS and in order to deal, upfront, with any potential concerns raised by third parties in relation to the continued viability of IRS.
- 7.6. Element 3 ensures that the current owners of FM104 do not hinder the compliance of Communicorp with the proposals it has offered and which become binding commitments on foot of the Determination by the Authority in the instant case. Element 4 ensures that in the interim period, before FM104 transfers to Communicorp, that FM104's commercial operation is preserved by Emap.

Market Testing the Proposals

- 7.7. Over the period 26 November to 30 November 2007, the Authority market tested Element 1 in order to establish whether it is appropriate, proportionate and effective in addressing the competition concerns raised by the proposed transaction.
- 7.8. The Authority distributed: (a) a non confidential detailed version of Element 1; and, (b) a short questionnaire (attached as Annex B) to six prospective purchasers of the business to be divested. The prospective buyers contacted included five of the unsuccessful bidders for the Emap stations which Communicorp is acquiring and one other potential buyer identified to the Authority.
- 7.9. The Authority received five responses the results of which are summarised in Table 12 below. All five respondents agreed that FM104 is a viable and competitive business that can be operated on a stand alone basis and that it would be of interest for a company willing to enter into or expand with the market. This is supported by four of the five respondents expressing an interest in purchasing FM104.

⁸⁰ Commission, *Draft Notice* , para 55.

7.10. Four of the five respondents agreed that the prospective purchaser would be able to compete effectively. However, two respondents, Company D and Company E, highlighted that the merged entity, even without FM104 could exert “considerable competitive pressure on the divestment business” while Company D also noted potential difficulties if FM104 was purchased by another large radio operator.

Table 12
Market Testing, Proposal for Divestment of FM104, Responses, Five Firms

Company	Is FM104 an existing viable and competitive business that can be operated by a purchaser on a stand-alone basis?			Would a purchaser of FM104 be able to compete effectively in the relevant market?			Is FM104 of interest for a company willing to enter into or expand in the relevant market?			Would your company be interested in purchasing FM104?			Do you consider that the proposals offered are sufficient to eliminate the competition?		
	Yes	No	Don't know	Yes	No	Don't know	Yes	No	Don't know	Yes	No	Don't know	Yes	No	Don't know
A[...]	√			√			√				√				√
B [...]	√			√			√			√			√		
C [...]	√			√			√			√			√		
D [...]	√			√			√			√				√	
E [...]	√					√	√			√					√

Source: Competition Authority

7.11. Two of the five prospective buyers who responded agreed that Element 1 is appropriate in addressing the competition concerns in the market for radio advertising in Dublin City and County while a further two declined to answer on the basis of insufficient expertise in the area.

7.12. Only one of the five respondents, namely company D, held the opinion that Element 1 was insufficient. Company D made a number of points in support of this position (despite having previously answered that they believed FM104 to viable on a stand alone basis, that it would be able to compete effectively and that they would be interested in purchasing it):

- a. That the majority of radio inventory (i.e., advertising capacity on radio) will post acquisition, even with the divestment of FM104, be held by Communicorp;
- b. That there is an inherent inconsistency in this proposal and the determination of the Authority in M/03/033, *SRH/FM104*, in which a condition of the merger was the divestiture of a small stake in Newstalk by FM104;
- c. To date Today FM has underperformed in the Dublin City and County market and that post acquisition its share of the Dublin market will grow giving the merged entity some market power in the future when combined with its existing Dublin City and County radio stations;

- d. At the national level Newstalk will grow significantly thereby giving the merged entity increased market power in this market; and,
- e. That the proposals would be appropriate if they also include the divestiture by Communicorp of either Spin FM or Newstalk;

7.13. In relation to (a) the Authority's investigation has shown that capacity without listenership affords the radio operator limited competitive advantage and that a more appropriate measure is the CPT charged by radio operators. Regarding (b) the investigation of this prior merger took place in a different competitive environment, most notably with Newstalk being a Dublin City and County station in contrast to its current status as a quasi-national station. Points (c) and (d) are addressed in Sections 5 and 6 above. Finally the Authority's analysis of the competitive conditions in the market for radio advertising in Dublin City and County suggests that additional divestiture of either Spin FM or Newstalk is not required.

Evaluation of the Proposals

Element 1 - Divest FM104

7.14. In its *Application of divestiture remedies in merger inquiries*⁸¹ the UK Competition Commission notes that "to be effective, a divestiture should involve the sale of an appropriate divestiture package to a suitable purchaser through an effective divestiture process. (para 2.2)" Furthermore the practice suggested by the Competition Commission guidelines suggest that any divestiture package is assessed for the following:

- Composition risks—these are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate effectively and viably in the market;
- Purchaser risks—these are risks that a suitable purchaser is not available or that the merger parties will dispose to a weak or otherwise inappropriate purchaser; and,
- Asset risks—these are risks that the competitive capability of a divestiture package will deteriorate prior to completion of divestiture, for example through loss of customers or key members of staff. (para 2.4)

Composition Risks

7.15. To test for composition risks the market testing of Element 1 undertaken by the Authority was designed to assess whether FM104 is an appropriate divestiture package through a discussion of (i) its continued operational viability on a stand alone basis; (ii) its ability to compete effectively in the changed market conditions post merger; and, (iii) whether the divestiture of FM104 is sufficient to address the competition concerns identified. The discussion of the

⁸¹ Competition Commission, *Application of divestiture remedies in merger inquiries: Competition Commission Guidelines*, December 2004. This may be accessed at: http://www.competition-commission.org.uk/rep_pub/rules_and_guide/pdf/divestiture_remedies_guidance.pdf

responses above indicates that each of these three criteria is met by Element 1. It should also be noted that although under the control of Emap, FM104 has operated very successfully on a stand alone basis (i.e. with ring fenced management, sales and marketing teams and independent content development) in the last three years.

- 7.16. To examine whether the divestiture process in its entirety was appropriate the Authority also provided the potential purchasers with a non confidential version of the conditions under which FM104 would be sold and would continue to operate either under Emap or in "hold separate" status. This included details of the appointment of and duties and obligations of a monitoring and divestiture trustee, the obligations of Communicorp and Emap, proposals for the preservation of the viability, marketability and competitiveness of FM104 and ring fencing of FM104. None of the respondents identified any difficulties with or shortcomings of the detailed proposals in this regard.

Purchaser Risks

- 7.17. In assessing purchaser risks it should be noted that that five of the six potential purchasers contacted during the market testing process were unsuccessful underbidders for the Emap stations. All six currently operate businesses in the media sector generally with three of the five active in radio broadcasting in particular. Furthermore the responses to the market testing indicate that with the exception of one company all respondents consider themselves not only suitable but strong potential competitors in the market post transaction.

Asset Risks

- 7.18. A comprehensive list of assets to be sold as part of the divestiture was set out in the non confidential version of the proposals distributed to the participants in the market testing to test for asset risks. This list of assets contained all the key assets to be sold as part of FM104 including licenses, trademarks and if so requested by the purchaser, "all other staff, promotional materials, customer lists, price lists, facilities and other fixed assets necessary to provide the relevant services." In addition Communicorp undertakes not to solicit key personnel transferred with the divestiture of FM104. Again none of the respondents identified any difficulties with or shortcomings of the detailed proposals in this regard.
- 7.19. Thus the Authority considers that Element 1 represents an 'effective' divestiture. The proposed divestment of FM104 removes the overlap created by the proposed transaction in this market and will have the effect of maintaining the merged entity's share of the market for radio advertising in Dublin City and County at the level that prevailed pre merger. This removes the competition concerns raised by the proposed transaction.

Element 2 - IRS

- 7.20. Element 2 is acceptable since it will preserve the independence and viability of IRS as a major alternative to the merged entity in the market for national radio advertising slots.

Element 3 and Element 4 - Emap proposals

7.21. The Authority considers that Element 3 and Element 4 offered by Emap will ensure the successful implementation of Element 1 by Communicorp.

Conclusion

7.22. In light of the above, the Authority considers that a divestment of FM104 and the commitment not to obtain or exercise a controlling interest in IRS would be appropriate and effective in assuaging the competition concerns raised in the markets identified. Accordingly, Communicorp and Emap offered the following proposals under section 20(3) of the Act, which are proposals for the purpose of section 20(4) and form the basis of the Authority's Determination. Consequently, in accordance with section 20(3) the Proposals have become commitments within the meaning of the section 26(1), binding upon Communicorp and Emap, respectively, as appropriate.

Relevant International Obligations of the State

7.23. Before making a determination in this matter, the Authority, in accordance with section 22(8) of the Act, considered whether any relevant international obligations of the State existed and is satisfied that there are none.

Detailed Proposals Submitted by Communicorp and Emap to Meet Competition Concerns of the Authority

- 1.1 Communicorp undertakes, subject to the provisions set out below, to effect the sale of the Business within 3 months of the Determination to a Purchaser approved by the Authority (the approval of which shall not be unreasonably withheld or delayed). Communicorp also commits to not close the Proposed Transaction until it or the Trustee referred to in section 4 (hereinafter, "the Trustee") has entered into a binding sale and purchase agreement in relation to the Business with a purchaser approved by the Authority in accordance with 1.5 or 5.8 below. Communicorp further commits not to close the Proposed Transaction if such sale is not approved by the Authority.
- 1.2 The Purchaser must be unconnected to and independent of Communicorp, in addition to having the financial resources, proven business expertise and incentive, to be able to maintain and develop the Business as an active competitive force. Additionally, the Purchaser must be deemed reasonably likely to obtain all authorisations and consents required to effect a transfer of the Business.
- 1.3 Communicorp shall be deemed to have complied with paragraph 1.1 above in either of the following two circumstances:
 - (1) Within a 3 month period from the date of the Determination (or such longer period as may be allowed by the Authority or as may result from the delays referred to in paragraph 1.6 below), Communicorp has entered into a binding sale and purchase agreement in relation to the Business (subject to due diligence, regulatory consents and any other conditions not within the control of Communicorp or the

purchaser) with a Purchaser approved by the Authority in accordance with 1.5 below, provided that such sale is closed within a 6 month period from the date of the sale and purchase agreement (or such longer period as may be allowed by the Authority) or;

- (2) Within the 3 month period immediately following the 3 month period referred to in 1.3(1) (or such longer period as may be allowed by the Authority or as may result from the delays referred to in paragraph 5.9 below), the Trustee has entered into a binding sale and purchase agreement in relation to the Business (subject to due diligence, regulatory consents and any other conditions not within the control of Communicorp or the purchaser) with a Purchaser approved by the Authority in accordance with 5.8 below provided that such sale is closed within a 3 month period from the date of the sale and purchase agreement (or such longer period as may be allowed by the Authority).

1.4 For the avoidance of doubt, the Authority shall extend the relevant period that Communicorp is required to observe under paragraphs 1.1 and 1.3 to allow for the passage or expiry of statutory waiting periods, including those arising under sectoral legislation, provided that Communicorp has in all events discharged its filing requirements.

1.5 Communicorp shall:

- (i) promptly inform the Authority in writing, with a fully documented and reasoned report, of any prospective Purchaser who indicates a serious desire to purchase the Business and to whom Communicorp is seriously considering the sale of the said Business, enabling the Authority to verify the suitability of the prospective Purchaser; and
- (ii) when Communicorp and the prospective Purchaser have entered into a binding sale and purchase agreement for the sale of the Business, submit a fully documented and reasoned report, in addition to a copy of the sale and purchase agreement, enabling the Authority to verify that the conditions laid down in these commitments are fulfilled, and that there has been no material change in the status of the prospective Purchaser.

1.6 The Authority shall communicate to Communicorp in writing its approval or non-approval of the prospective Purchaser within ten days of receipt of the report referred to in paragraph 1.5(i). Following the Authority's initial verification of the suitability of any prospective Purchaser, and receipt of the sale and purchase agreement and the fully documented and reasoned report in accordance with 1.5(ii), in the event of the ineligibility of a prospective Purchaser having regard to the terms of 1.2 above, the Authority shall within 10 days of its receipt of the said documentation, communicate in writing to Communicorp any decision to revoke its approval of the prospective Purchaser. In each case, failure of the Authority to communicate its approval or non-approval within ten days shall stop the running of the 3 month period established in paragraph 1.1 until the Authority communicates its approval or non-approval. However, if the Authority does not communicate its approval or non-approval within 30 days of receipt as aforesaid, such approval shall be deemed to have been given unconditionally. In the case of a plurality of offers from

prospective purchasers to whom the Authority does not object, Communicorp shall be free to accept any offer or to select the offer it considers best, subject to the Authority's approval in accordance with 1.5 and 1.6.

- 1.7 Communicorp also undertakes not to obtain or exercise a controlling interest in or any substantial influence over the affairs of Independent Radio Sales Limited ("IRS"), and to continue to offer airtime to IRS on usual commercial terms.
- 1.8 Each condition of these Proposals shall be adhered to by Communicorp or the Trustee where appropriate, unless specifically released in advance, in writing by the Authority acting on its own motion, or upon the application of Communicorp or the Trustee.

2. THE BUSINESS TO BE DIVESTED

FM104

- 2.1 Communicorp undertakes to dispose of its entire share capital in Capital Radio Productions Limited, and, for the avoidance of doubt, operation and control of the Business conducted by it under the FM104 brand in the Republic of Ireland (as more particularly described in the Schedule hereto).
- 2.2 For avoidance of doubt, Communicorp confirms that it will not impose, as a condition of sale of the Business, an obligation on the Purchaser to acquire associated production facilities or staff from Communicorp, and that the Business shall be offered for sale without the current interest in Flycatcher Media Limited (the sole subsidiary of the Business), which will be transferred to another Communicorp group entity or third party no later than one month from Closing of the Proposed Transaction.

3. COMMON PROVISIONS

Definitions

"Authority"	means the Competition Authority;
"Business"	means the Business identified in Part B above and in the Schedule;
"Communicorp"	means the company known as Communicorp Group Limited and, where the context admits and requires, the subsidiaries, divisions, groups and affiliates which are directly or indirectly controlled by Communicorp;
"Competition Act"	means the Competition Act 2002;
"Closing of the Proposed Transaction"	means the date on which the Proposed Transaction is closed in accordance with the terms of the Share Purchase Agreement between Scottish Radio Holdings Limited and Communicorp Group Limited dated 14 July

2007;

"Closing of the sale and purchase of the Business"	means the transfer of the legal title of the Business to the Purchaser;
"Determination"	means the Determination of the Competition Authority pursuant to section 22 of the Competition Act that the Proposed Transaction may be put into effect or may be put into effect subject to conditions specified by it being complied with;
"Effective Date"	the date of closing of the Proposed Transaction.
"Hold Separate Manager"	means the person appointed by Communicorp to undertake the day-to-day management of the Business, under the supervision of the Trustee, pending the disposal of the Business;
"Key Personnel"	means the following personnel necessary to maintain the viability and competitiveness of the Business namely, a) [...]; b) [...]; c) [...]; d) [...]; e) [...]; f) [...]; h) [...]; i) [...]; j) [...]; k) [...]; and l) [...].
"Purchaser"	means the entity, described in paragraph 1.2 and approved by the Authority as acquirer of the Business in accordance with the criteria set out herein.
"Proposed Transaction"	means the proposed acquisition by Communicorp Group Limited of sole control of Radio Ireland Limited, Capital Radio Productions Limited, Donegal Highland Radio Limited, Babstova Limited and Highland Media and Communications Investments

Limited from Emap plc as notified to the Competition Authority on 30 July 2007 pursuant to the Competition Act.

“Staff” means all persons who are employed in the Business and engaged under contracts of employment by Capital Radio Productions Limited as of the Effective Date, and which for the avoidance of doubt shall include the person currently providing services to both Flycatcher Media Limited and FM104.

4. Appointment of a Trustee

- 4.1 Within ten days after the Determination, Communicorp will propose to the Authority a trustee who is independent of Communicorp and Emap plc (“Proposed Trustee”). The appointment of the Proposed Trustee is subject to approval of the Authority. If the Authority does not reject the Proposed Trustee by notice in writing within ten days of the proposal (or such reasonable longer period as may be necessary to enable the Authority to interview the Proposed Trustee), the Proposed Trustee shall be deemed to have been approved.
- 4.2 If the Proposed Trustee is rejected by the Authority within the ten day period referred to in paragraph 4.1, Communicorp will propose the name of a new trustee (“New Trustee”) within ten days of being informed of the rejection. If the Authority does not reject the New Trustee by notice in writing to Communicorp within ten days of the new proposal (or such reasonable longer period as may be necessary to enable the Authority to interview the Proposed Trustee), the New Trustee shall be deemed to have been approved.
- 4.3 If the New Trustee is rejected by the Authority within the ten day period referred to in paragraph 4.1, the Authority shall nominate a suitable Trustee (“the Authority Trustee”) which Communicorp will appoint or cause to be appointed.

5. Trustee’s Mandate

- 5.1 Within ten days of the date on which the Authority has approved or is deemed to have approved either the Proposed Trustee, the New Trustee or the Authority Trustee, Communicorp shall enter into a mandate agreement (the “Mandate”) with the approved Trustee (“the Trustee”), the terms of which shall have previously been agreed with the Authority which confers on the Trustee all the rights and powers necessary to permit the Trustee to monitor Communicorp’s compliance with the terms of these Proposals and in a manner consistent with the purpose of these Proposals.
- 5.2 The Trustee shall be independent of Communicorp and Emap plc, possess the necessary qualifications and experience to carry out its mandate, and shall neither have nor become exposed to a conflict of interest.
- 5.3 Throughout the duration of the Trustee’s appointment the Trustee shall:
 - (i) provide written reports (the “Trustee Reports”) to the Authority on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Trustee has been unable to

discharge such duties. The Trustee Reports shall be provided at monthly intervals, commencing one month after the date of the appointment of the Trustee, or at such other times or time periods as the Authority may specify and are notified in writing to Communicorp. Communicorp shall receive a non-confidential copy of such Trustee Reports;

- (ii) monitor and advise the Authority as to the development of the procedure for selecting a purchaser and as to the conduct of the negotiations;
 - (iii) monitor and advise the Authority as to whether prospective purchaser(s) with whom Communicorp intends to negotiate are likely to satisfy the Authority's requirements as to suitability;
 - (iv) from the Effective Date until Closing of the sale and purchase of the Business, monitor the maintenance of the viability and marketability of the Business and the products and services to which they relate and ensure that they are managed in the ordinary course of business, pursuant to good business practice.
- 5.4 The Trustee's duties and functions as set out above shall not be extended or varied in any way by Communicorp, save with the express consent of the Authority. Any instruction or request to the Trustee from Communicorp which conflicts with the terms of the Mandate and duties and functions as set out above will be considered null and void.
- 5.5 The Authority may, on its own initiative or at the request of the Trustee, give any orders or instructions to the Trustee that are required in order to ensure compliance with the conditions and obligations attached to the Determination.
- 5.6 In the event that 3 months (or such longer period as may be agreed by the Authority or as may result from the delays referred to in paragraph 1.6 of the Proposals above) shall have elapsed from the Determination without Communicorp having entered into a binding agreement for the disposal of the Business, the Trustee shall be given an irrevocable mandate to negotiate and conclude arrangements for the sale of the Business in relation to which a binding sale and purchase agreement remains to be concluded within 3 months (subject to approval by the Authority of the prospective Purchaser), at and upon such terms and conditions as it considers commercially reasonable and appropriate, in line with its fiduciary obligations as Trustee, provided always that the Trustee shall sell the Business during that period with no minimum price required or imposed.
- 5.7 If, however, the Trustee is unable to conclude a binding sale and purchase agreement with the Purchaser at the end of the 3 month period within which the Trustee is required to conclude arrangements, the Trustee shall, subject to the consent of the Authority, where negotiations with the prospective Purchaser are approaching agreement, be entitled to negotiate and conclude a binding sale and purchase agreement with the Purchaser for a further period as agreed by the Authority.
- 5.8 In the event that the Trustee is given an irrevocable mandate to negotiate and conclude arrangements for the sale of the Business as described in paragraph 5.6, the Trustee shall, to the extent not already done by Communicorp under paragraph 1.5:

- (i) promptly inform the Authority in writing, with a fully documented and reasoned report, of any prospective purchaser who indicates a serious desire to purchase the Business and to whom the Trustee is seriously considering the sale of the said Business, enabling the Authority to verify the suitability of the prospective purchaser; and
 - (ii) when the Trustee and the prospective Purchaser have entered into a binding sale and purchase agreement for the sale of the Business, submit a fully documented and reasoned report, in addition to a copy of the sale and purchase agreement, enabling the Authority to verify that the conditions laid down in these commitments are fulfilled, and that there has been no material change in the status of the prospective Purchaser.
- 5.9 The Authority shall communicate to the Trustee in writing its approval or non-approval of a prospective Purchaser within ten days of receipt of the report referred to paragraph 5.8(i). Following the Authority's initial verification of the suitability of any prospective Purchaser, and receipt of the sale and purchase agreement and the fully documented and reasoned report in accordance with 5.8(ii), in the event of the ineligibility of a prospective Purchaser having regard to the terms of 1.2 above, the Authority shall within 10 days of its receipt of the said documentation, communicate in writing to the Trustee and Communicorp any decision to revoke its approval of the prospective Purchaser. In each case, failure of the Authority to communicate its approval or non-approval within ten days shall stop the running of the 3 month period established in paragraph 5.6 until the Authority communicates its approval or non-approval. However, if the Authority does not communicate its approval or non-approval within 30 days of receipt as aforesaid, such approval shall be deemed to have been given unconditionally. In the case of a plurality of offers from prospective purchasers to whom the Authority does not object, the Trustee shall be free to accept any offer or to select the offer it considers best, subject to the Authority's approval in accordance with the terms of 5.8 and 5.9.
- 5.10 For the avoidance of doubt the Authority shall also extend any relevant time period which the Trustee is required to observe under paragraphs 5.6 and 5.7, to allow for the passage or expiry of statutory waiting periods, including those arising under sector legislation, provided that Communicorp or the Trustee on its behalf has in all events discharged its filing requirements.

6. Duties and obligations of the Trustee and Communicorp

- 6.1 Communicorp will provide the Trustee with all reasonable assistance and will procure (so far as it is able) that all relevant third parties provide such assistance required to ensure compliance with these Proposals. Communicorp agrees to pay to the Trustee reasonable remuneration for its services. The Trustee shall have full and complete access to the Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Proposals and Communicorp and the Business shall provide the Trustee upon request with copies of any document. Nothing in this paragraph shall operate to require Communicorp to waive legal or other privilege.
- 6.2 The Trustee shall have full and complete access to the Hold Separate Manager of the Business and any other employees of the Business in order

to ensure compliance by Communicorp with its obligation to maintain the financial and competitive viability of the Business.

- 6.3 Notwithstanding the Trustee's overall responsibility to discharge its functions and in particular notwithstanding the Trustee's position as an independent unrelated third party, the Trustee (who shall undertake in the Mandate to do so) shall have to the extent possible given the nature of its tasks due regard to the commercial interests of Communicorp.
- 6.4 The Mandate and these Proposals shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated if Communicorp announces that the Proposed Transaction has been irrevocably abandoned.
- 6.5 The Trustee's and all other relevant third parties' powers of attorney and appointment shall be irrevocable.

7. Preservation of Viability, Marketability and Competitiveness

- 7.1 From the Effective Date until Closing of the sale and purchase of the Business, Communicorp shall preserve the economic viability, marketability and competitiveness of the Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Business. In particular Communicorp undertakes:
 - (i) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Business;
 - (ii) to make available sufficient resources for the development of the Business, on the basis and continuation of the existing business plans; and
 - (iii) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Business.
- 7.2 For the avoidance of doubt, nothing in this section shall prevent or tend to restrict Communicorp continuing to compete independently and effectively with FM104, or its other radio competitors.

8. Hold-separate obligations of Communicorp

- 8.1 Communicorp commits, from the Effective Date until Closing of the sale and purchase of the Business, to keep the Business separate from the businesses it is retaining and to ensure that Key Personnel of the Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. Communicorp shall also take all reasonable steps to ensure that the Staff does not report to any individual outside the Business.
- 8.2 Until Closing of the sale and purchase of the Business, Communicorp shall assist the Monitoring Trustee in ensuring that the Business is managed as

a distinct and saleable entity separate from the businesses retained by Communicorp. Communicorp shall appoint a Hold Separate Manager who shall be responsible for the management of the Business, under the supervision of the Trustee. The Hold Separate Manager shall manage the Business independently and in the best interest of the Business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Communicorp.

9. Ring-fencing

- 9.1 Communicorp shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Business. Communicorp may obtain information relating to the Business which is reasonably necessary for the divestiture of the Business or whose disclosure to Communicorp is required by law.

10. Non-solicitation clause

- 10.1 Communicorp undertakes, subject to customary limitations, not to solicit and to procure that its group companies do not solicit, the Key Personnel transferred with the Business for a period of two years after the disposal of the Business.
- 10.2 Replacement, discharge and reappointment of the Trustee
- 10.3 If the Trustee ceases to perform its functions or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (i) the Authority may, after hearing the Trustee, require Communicorp to replace the Trustee; or,
 - (ii) Communicorp, with the prior approval of the Authority, may replace the Trustee.
- 10.4 If the Trustee is removed according to paragraph 11.1, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 4.1. to 4.3.
- 10.5 Beside the removal according to paragraph 11.1, the Trustee shall cease to act as Trustee only after the Authority has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Authority may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

SCHEDULE

The Business to be divested consists of the entire share capital of Capital Radio Productions Limited, including the entire FM104 business, premises and management and any of the rights to the FM104 trademark in the Republic of Ireland, which has the benefit of, without limitation, the following assets:

(1) The Amended and Restated Sound Broadcasting Contract for Dublin City and County with The Broadcasting Commission of Ireland dated 18 April 2005 together with all other necessary regulatory licences as existing and required by the purchaser;

(2) The premises lease between Ballsbridge Property Investments Limited dated 16 January 1997 together with all other leasehold or freehold premises as existing and required by the purchaser (subject to Communicorp obtaining any necessary third party consents);

(3) As requested by the purchaser, all business names, brand names, domain names, associated trademarks and trademark applications in respect of FM 104, including but not limited to:

- FM 104 (Business Number 131313, Registered 30/03/1994)
- FM 104's Help a Dublin Child (Business Number 300271, Registered 21/04/2006)
- Rock 104 (Business Number 117661, Registered 27/08/1991)
- Capital Radio (Business Number 104421, Registered 24/02/1989)
- Capital Radio Sales (Business Number 105331, Registered 21/04/1989)
- Capital Radio Services (Business Number 105332, Registered 21/04/1989)
- Rocktober (Business Number 117163, Registered 19/07/1991)
- - STRAWBERRY ALARM CLOCK (Registration Number 205657, Registered 04/06/1997);
- JIM JIM'S BITS (Registration Number 235642, Registered 19/01/2007)
- KIDZ IN THE CAR (Registration Number 235641, Registered 19/01/2007)
- MATT MOLLOY (Registration Number 235645, Registered 19/01/2007)
- PAUDGIE (Registration Number 235646, Registered 19/01/2007)
- THE ALARM CLOCK (Registration Number 235627, Registered 17/01/2007)
- TROLLEY DOLLIES (Registration Number 207679, Registered 05/11/1997)
- GAVIN (Application Number 2007/00143, Date of Application 19/01/2007)
- THE WORD (Application Number 2007/00141, Date of Application 19/01/2007);

and

(4) as requested by the Purchaser, all other staff, promotional materials, customer lists, price lists, facilities and other fixed assets necessary to provide the relevant services (subject to Communicorp obtaining any necessary third party consents to the transfer of relevant licences).

(5) The Business shall not include Flycatcher Media Limited.

Proposals Offered by Emap plc to Meet Competition Concerns of the Authority

1.1 Emap plc ("Emap") confirms to the Competition Authority that, from the date of the Determination until the earlier of the Long Stop Date and the Effective Date, subject and without prejudice to the rights and obligations of Scottish Radio Holdings Limited ("SRH") under the Share Purchase Agreement for the sale of the Target Companies entered into between SRH and Communicorp Group Limited ("Communicorp") and dated 14 July 2007 ("SPA"), Emap will take reasonable steps (provided that in doing so neither it nor its subsidiaries are obliged to incur any liability or expense) to facilitate compliance by Communicorp with its obligations to effect the sale of the Business under and in accordance with the Determination; and

1.2 Emap further confirms to the Competition Authority that, from the date of the Determination until the earlier of the Long Stop Date and the Effective Date, subject and without prejudice to the rights and obligations of SRH under the SPA, Emap will carry on the Business as a going concern in the ordinary and usual course as carried on prior to the date of the SPA.

SECTION EIGHT: THE DETERMINATION

The Competition Authority, in accordance with section 22(3)(a) of the Act, and having taken into account the proposals made by Communicorp Group Limited and by Emap plc in accordance with section 20(3) and section 20(4) of the Act has determined that, in its opinion, the result of the proposed acquisition by Communicorp Group Limited of Capital Radio Productions Limited (trading as FM104), Babstova Limited, Radio Ireland Limited (trading as Today FM), Highland Media and Communications Investments Limited and Donegal Highland Radio Limited (trading as Highland Radio) will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect, subject to the provisions of section 23(9)(b) of the Act.

For the Competition Authority

William Prasifka
Chairman of the Competition Authority
Member of the Competition Authority

Declan Purcell
Member of the Competition Authority

Dr. Paul K. Gorecki
Member of the Competition Authority

Dr. Stanley Wong
Member of the Competition Authority

Carolyn Galbreath
Member of the Competition Authority

ANNEX A: SUPPLEMENTARY TABLES

Table A.1
Market Shares, Local and National Radio Stations, Advertising Revenue, ending December 2006

Radio Station	Pre-merger Market Share	Post-merger Market Share	Pre-merger HHI	Post-merger HHI
RTE 1				
2 FM	34.1		1162.8	1162.8
98FM				
Spin 1038				
Newstalk	14.1		198.8	
FM104				
Today FM				
Donegal Highland Radio	23.4	37.5	547.6	1406.2
Q102	3.6	3.6	13.0	13.0
Limerick's 95FM	3.4	3.4	11.6	11.6
Red FM	2.6	2.6	6.8	6.8
LMFM	2	2	4	4
Beat FM	1.5	1.5	2.2	2.2
Midwest	1.9	1.9	3.6	3.6
WLR	1.9	1.9	3.6	3.6
96 FM	9.2	9.2	84.6	84.6
Others	2.3	2.3	5.3	5.3
Total	100	100	-	-
HHI			2043.9	2703.7
Delta				659.8

Note: Other include local radio stations such as Phantom FM.

Source: Competition Authority based on the parties' submission

Table A.2
Market Shares, Local and National Radio Stations, Dublin City and County, "Minute Listened" 7am to Midnight, JNLR April 2006-March 2006

Radio Station	Market Share %
FM 104	
Today FM	21
98 FM	
Newstalk	
Spin 103.8	26.6
RTE Radio 1	
RTE 2 FM	
RTE Lyric FM	42.4
Q102	6.7
Country Mix	2.7
Phantom	0.7
Merged Entity's Combined Market Share	47.6
Post-merger HHI	4116.3
Delta	1117.2

Notes: Figure for Newstalk covers only six months from October 2006 to March 2007; for Phantom covers the period November 2006 to March 2007.
Source: Competition Authority based on JNLR data.

Table A.3
Market Shares, Local and National Radio Stations, Dublin City and County, Advertising Revenue, ending December 2006

Radio Station	Pre-merger Market Share	Post-merger Market Share	Pre-merger HHI	Post-merger HHI
RTE 1				
2 FM	11.8	11.8	139.2	139.2
98FM				
Spin 1038				
Newstalk	30.7		942.5	
FM104				
Today FM	42.8	73.5	1831.8	5402.2
Phantom FM	4	4	16	16
Q102	6.4	6.4	41.0	41.0
Country Mix	4	4	16	16
Total	100	100	-	-
HHI			2986.5	5614.4
Delta				2627.9

Note: Market share figures may not sum up to 100% due to rounding up.
Source: Competition Authority based on the parties' submission

ANNEX B: QUESTIONNAIRE USED TO MARKET TEST PROPOSALS OFFERED BY COMMUNICORP

MARKET TESTING OF PROPOSALS OFFERED IN M/07/040 COMMUNICORP/EMAP

Deadline for reply: Noon 29 November 2007

**Please send your response by fax to: 01 8045401
or, alternatively, by email to Cormac Keating (cwk@tca.ie)**

INTRODUCTION

On 30th July 2007, the Competition Authority was notified of the proposed acquisition by Communicorp Group Limited ("Communicorp") of Capital Radio Productions Limited ("CRPL") (trading as "FM104"), Babstova Limited, Radio Ireland Limited (trading as "Today FM"), Highland Media and Communications Investments Limited and Donegal Highland Radio Limited (trading as "Highland Radio").

Preliminary Result of the Competition Authority's investigation

The Authority's investigation found that the relevant product market is the market for radio advertising and that the relevant geographic markets relate directly to the coverage areas of the radio stations involved. It was found that the activities of the undertakings involved overlap in the provision of radio broadcasting services and the sale of radio advertising. Specifically, the Authority found that: (1) the parties' activities overlap in nationally and in Dublin City and County; (2) that the proposed transaction would lead to Communicorp controlling the two leading radio stations in Dublin City and County; and, (3) that the proposed transaction raises competition concerns in the market for the sale of radio advertising in Dublin City and County.

In order to address these concerns, the parties submitted proposals to the Competition Authority to divest FM104. According to the information in possession of the Competition Authority, the divestiture of the assets outlined below will remove the overlap identified in the for the sale of radio advertising in Dublin City and County.

The Competition Authority is assessing whether the proposals submitted will remedy the possible adverse impacts on competition that the proposed transaction might bring about. If the Competition Authority concludes that these proposals are sufficient to eliminate the identified concerns, the proposed transaction will be approved by the Competition Authority.

Important information

You are being contacted in confidence to help the Competition Authority to assess whether the proposed divestiture of FM104 would remove the identified competition concerns. Your reply to this questionnaire is of great importance to the Competition Authority for the proper assessment of the remedies proposed. You are

therefore asked to submit your views and comment on the proposals offered within the deadline indicated above.

Please note that the package of commitments cannot be disclosed to any third party and cannot be used for any purposes other than the above referenced proceedings.

Should you consider that a given question is based on incorrect assumptions or an incomplete understanding of the situation we would be grateful if you could indicate the errors and correct them. You are also invited to inform the Competition Authority about any additional issues which should be taken into account and which are not covered.

SUMMARY⁸² OF THE PROPOSED REMEDIES

The parties have submitted proposals to divest FM104. For a detailed description of the conditions of the divestiture and the tangible and intangible assets, personnel and ongoing agreements to be divested please see the full text of the proposals attached to this document as Annex 1.

QUESTIONS

I. GENERAL BACKGROUND INFORMATION:

Please provide the name, address, telephone number and email of the person responding to this questionnaire and who can be contacted in the event that the Competition Authority wishes to discuss or ask questions regarding your response.

COMPANY	
Name person	
Function	
Address	
Telephone	
Fax	
E-mail	

II. DETAILED QUESTIONS ON THE PROPOSED REMEDIES

- 1) In your opinion, does the divestment business described in the Schedule of Annex 1 constitute an existing viable and competitive business that can be operated by a purchaser on a stand-alone basis?
- Yes No

If your answer to the previous question is no, what are in your opinion the assets that the business lacks in order to be viable as a stand alone business?

- 2) In your opinion, would a purchaser of the divestment business be able to compete effectively in the market for the sale of radio advertising in Dublin City and County?
- Yes No

If your answer to the previous question is no, please explain why you think that the divested business will not be an effective competitor.

⁸² Please note that this is a summary. The full text of the proposals is attached as Annex 1.

III. POTENTIAL BUYERS

- 3) Do you think that the divested business can be of interest for a company willing to enter into or expand in the market for the sale of radio advertising in Dublin City and County?

Yes

No

- 4) Would your company be interested in purchasing the divested business?

Yes

No

If yes, please indicate your business reasons. If no, please explain the main reasons for your position. In particular, please explain whether purchasing the divestment business would not be consistent with your business plan, irrespective of the proposals submitted by the parties or, conversely, whether you believe that these proposals would not allow a new entrant to operate on a reasonable economic basis.

- 5) Which companies (competitors, large customers) do you view as being the most suitable buyers for the divestment business? Could you provide an indication of the necessary characteristics a suitable buyer for the Divestment business should have?

IV. GENERAL APPRECIATION OF THE PROPOSALS OFFERED

- 6) Do you consider that the proposals offered are sufficient to eliminate the competition concerns set out in the introduction? Please consider whether the type, scale and scope of the proposals are sufficient to maintain effective competition.

Yes

No

If you consider the proposals insufficient, please explain your reasons.

- 7) If you consider the proposals insufficient to deal with the identified competition concerns, what would in your view remove those concerns? Please provide reasons for your answer.

- 8) Do you have other comments in relation to the proposed transaction and the related proposals submitted by the parties?

THANK YOU VERY MUCH FOR YOUR COOPERATION!



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