



## DETERMINATION OF MERGER NOTIFICATION M/19/002 – KERRY FM / CLARE RADIO, DREAMGLADE

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### Section 21 of the Competition Act 2002

### Proposed acquisition by Kerry Acquisitions Limited of Clare Community Radio Holdings PLC and Dreamglade Limited.

Dated 05 March 2019

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#### Introduction

1. On 25 January 2019, in accordance with section 18(1)(b) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed acquisition whereby Kerry Acquisitions Limited (“Kerry Acquisitions”) would acquire a controlling shareholding interest of Clare Community Radio Holdings PLC (“Clare FM”) and Dreamglade Limited (“Dreamglade”) (the “Proposed Transaction”).
2. Given that Kerry Acquisitions, Clare FM and Dreamglade carry on a “media business” within the State (as defined in section 28A(1) of the Act), the Commission considers that the Proposed Transaction constitutes a “media merger” for the purposes of Part 3A of the Act.

#### The Proposed Transaction

3. The Proposed Transaction is to be structured as an acquisition of shares and is to be implemented pursuant to two share purchase agreements each dated 7 January 2019. One agreement entered into is between Kerry Acquisitions and certain shareholders of Clare FM and the other is between Kerry Acquisitions and Liam O’Shea, Atticlogh Nominees Limited and Susan Murphy. Share offer letters have also been furnished to the smaller shareholders of Clare FM.
4. On completion of the Proposed Transaction, Kerry Acquisitions will acquire:
  - (i) at least a majority (and up to 100%) of the issued share capital of Clare FM;



- (ii) a direct majority stake in Dreamglade by the direct acquisition of the 52% of Dreamglade not already owned by Clare FM; and
- (iii) an indirect majority stake in County Tipperary Radio Limited, trading as Tipp FM, (“Tipp FM”) through its acquisition of Dreamglade, which currently owns 70.59% of the issued share capital of Tipp FM.

## **The Undertakings Involved**

### *Acquirer- Kerry Acquisitions*

5. Kerry Acquisitions is a private company limited by shares and is a wholly owned subsidiary of Radio Kerry Holdings Limited (“Radio Kerry Holdings”). Radio Kerry Holdings directly owns Radio Kerry Teoranta t/a as Radio Kerry (“Radio Kerry”) and through Kerry Acquisitions owns the entire issued share capital of Midland Radio Group Limited t/a i) Shannonside 104FM and ii) Northern Sound Radio (“Midland Radio”).
6. Radio Kerry Holdings and its subsidiaries are defined collectively as the Radio Kerry Group (“Radio Kerry Group”).
7. Radio Kerry is a local commercial radio station, licensed by the Broadcasting Authority of Ireland (“BAI”) and broadcasts pursuant to this licence in and throughout the County of Kerry. Radio Kerry’s programme style is focused on current affairs, local news, sports, music, specialist speech programming and weather with a strong local identity targeting an audience of adults between 25-65 years.
8. Shannonside 104FM broadcasts pursuant to its licence in the South Leitrim, County Longford, and County Roscommon regions. Northern Sound Radio broadcasts in the Cavan and Monaghan regions pursuant to its licence. Both radio stations’ programming styles focus on local and national news, agricultural news and sports with a strong impetus towards talk and music targeting an audience of adults of 25+ years in their respective regions.
9. Radio Kerry and Midland Radio sell radio advertising airtime directly to advertisers who wish to target listeners located in their respective regions. Radio Kerry and Midland Radio also sell radio advertising airtime to advertising agencies via Independent Radio



Sales Ireland Limited (“IRS”)<sup>1</sup> and each of the three stations hold 11% each (33% combined) of the issued share capital of IRS and can each nominate one member to the board of directors of IRS<sup>2</sup>.

10. For the financial year ending 30 April 2018, the companies within the Radio Kerry Group had the following approximate turnover figures, all of which were generated in the State: Radio Kerry Holdings - €[...]; Radio Kerry - €[...]; Midland Radio - €[...]; and Kerry Acquisitions - [...].

#### *Clare FM*

11. Clare FM is a public limited company incorporated in the State and operates as a local commercial radio station licensed by the BAI and broadcasts pursuant to this licence in and throughout the County of Clare. Clare FM’s programme selection focuses on local and national news, sport and music with a strong emphasis toward online listenership targeting an audience of adults of 25+ years.
12. Voxcommedia Limited is a wholly-owned subsidiary of Clare FM. It is currently non-trading and the parties have indicated that it is anticipated that an application for voluntary strike-off will be made to the Companies Registration Office in respect of Voxcommedia Limited prior to completion of the Proposed Transaction. Clare FM also holds 11% of the issued share capital of IRS and also has authority to nominate one member to the board of directors of IRS.
13. For the financial year ending 31 December 2017, Clare FM’s worldwide turnover was approximately €1.6 million, all of which was generated in the State.

#### *Dreamglade*

14. Dreamglade is a private limited company incorporated in the State, and is a non-trading company with its only asset being its 70.59% shareholding in its subsidiary County Tipperary Radio Limited, trading as Tipp FM (“Tipp FM”). Clare FM currently holds

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<sup>1</sup> IRS is one of two established sales organisations in the State, the other being Broadcast Media Sales, which act on behalf of local and regional stations selling advertising time to advertisers and advertising agencies.

<sup>2</sup> The parties have informed the Commission that “currently there are 15 radio stations that participate through IRS and each such radio station is represented on the board of directors of IRS. Following the Proposed Transaction, the combined Radio Kerry/Clare/Tipp group will be represented by only five of a total board of 15 directors, meaning it will not have majority voting rights at Board level.”



47.66% of the issued share capital of Dreamglade, the other shareholders are Atticlogh Nominees Limited (27%), Liam O'Shea (22%) and Susan Murphy (3.34%)

15. Tipp FM is a private limited company incorporated in the State and operates as a local commercial radio station licensed by the BAI and broadcasts pursuant to this licence in and throughout the County of Tipperary. Tipp FM's programme style focuses on local and national news, sport and music targeting an audience of adults of 25+ years. Tipp FM holds 11% of the issued share capital of IRS and also has authority to nominate one member of the board of directors of IRS.
16. For the financial year ending 31 December 2017, Tipp FM's worldwide turnover was approximately €1.5 million, all of which was generated in the State.

#### **Rationale for the Proposed Transaction**

17. The parties state in the notification that:

*".....Each of Clare FM, Tipp FM and the Radio Kerry Group are significant operators in their franchise areas specifically because of their local emphasis and together will be in a stronger position to meet the competitive challenges which lie ahead..."*

*.....As a result of the Proposed Transaction, Clare FM and Tipp FM will be able to attain the necessary investment required to continue to compete for market share. The financial capability that the Radio Kerry Group brings to Clare FM and Tipp FM ensures the long-term development of its business plan, the necessary resources to develop local content as well as expanding brand values....."*

#### **Third Party Submissions**

18. No submission was received.

#### **Competitive Analysis**

##### *Horizontal Overlap*



19. As outlined above, the parties are active in radio broadcasting and the sale of radio advertising in the State. However, as explained below, there is no geographic overlap between the activities of the parties.
20. As noted previously by both the Commission and its predecessor, the Competition Authority<sup>3</sup>, an independent commercial radio station cannot legally broadcast in the State without a licence issued by the BAI. The licence sets out the nature of the radio service to be provided (e.g., the target age demographic, content, etc.) and the precise geographic area within which that service can be broadcast in the State (referred to as the “franchise area”). The Commission notes that there are a number of local commercial radio stations in the state which are licensed by the BAI and each broadcasts pursuant to their licence. The BAI monitors compliance to ensure that a radio station does not deviate from the terms set out in its licence.
21. Under the licences granted by the BAI, Clare FM and Tipp FM are only allowed to broadcast to their respective franchise areas, namely, County Clare and County Tipperary, respectively. Neither radio station targets (nor is allowed to target) any geographic area outside of their respective counties. None of the radio stations in the Radio Kerry Group broadcast into the franchise areas of Clare FM or Tipp FM. Therefore, there is no geographic overlap between the activities of Radio Kerry Group and Clare FM or Tipp FM in the radio broadcasting market.
22. Similarly there is no geographic overlap between the activities of Radio Kerry Group and Clare FM or Tipp FM in respect of the sale of radio advertising. Radio Kerry sells radio advertising to advertisers who wish to target listeners located in County Kerry. Midland Radio’s stations Shannonside 104FM and Northern Sound Radio sell radio advertising to advertisers who wish to target listeners located in South Leitrim, County Longford, County Roscommon, County Cavan, and County Monaghan. Similarly, Clare FM sells radio advertising to advertisers who wish to target listeners located in County Clare and Tipp FM sells radio advertising to advertisers who wish to target listeners located in County Tipperary. The parties state in the notification that advertisers wishing to

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<sup>3</sup> See the previous Commission’s merger determination M/17/056 - Bay/Radio Nova which can be accessed at <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m17056-bayradio-nova/> and the Competition Authority’s merger determination M/13/006 - Clare FM / Terence and Gay Mangan / Tipp FM which can be accessed at <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m13006-clare-fm-terence-gay-mangan-tipp-fm/>



advertise in or around a specific franchise area would not place advertising with a radio station licenced in respect of a different franchise area.

23. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in relation to radio broadcasting or radio advertising markets.

#### *Vertical Relationship*

24. The parties have stated in the notification that there is no vertical relationship between them. The Commission has not identified any vertical relationship between the parties. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

#### *Conclusion*

25. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

#### **Ancillary Restraints**

26. The share purchase agreements contain restrictive covenants, in particular non-compete and non-solicitation obligations. The duration of these restrictive covenants does not exceed the maximum duration acceptable to the Commission.<sup>4</sup> The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction.

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<sup>4</sup> In this respect, the CCPC follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see

[http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



## **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby Kerry Acquisitions Limited would acquire a controlling shareholding interest of Clare Community Radio Holdings PLC and Dreamglade Limited, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect subject to the provisions of section 28C(1)<sup>5</sup> of the Competition Act 2002, as amended.

For the Competition and Consumer Protection Commission

**Brian McHugh**

**Member**

**Competition and Consumer Protection Commission**

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<sup>5</sup> Section 28C(1) of the Competition Act 2002, as inserted by section 74 of the Competition and Consumer Protection Act 2014.