MEDIA MERGER NOTIFICATION FORM

Competition and Consumer Protection Act 2014

Form for the notification of mergers and acquisitions pursuant to Part 4 of the Competition and Consumer Protection Act 2014

Draft for Public Consultation – 8th December 2014
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## NOTIFICATION FORM

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INTRODUCTION

The purpose of the Media Merger Notification Form

The Merger Notification Form (“Notification Form”) provides a framework for supplying the Department of Communications Energy and Natural Resources (“the Department”) with the information required to review proposed mergers, acquisitions or joint ventures (“proposed transaction(s)”) as notified under Part 4 of the Competition and Consumer Act, 2014 (“the Act”) by the undertakings which have agreed to or are involved in the proposed transaction.

The Department encourages all notifying parties to a proposed transaction to make a joint notification, though they are not legally obliged to do so. Where separate notifications are made, the date of commencement of the review period of the proposed transaction (the “appropriate date” as defined in section 28D (9)(a) of the Act) shall be the date of receipt of the latest notification,

In addition to Part 4 of the Act, the attention of notifying parties is drawn to the Departments “Guidelines on Media Mergers” and “Media Mergers and Acquisitions Procedures”

The need for a correct and complete notification

The Department requires a hard copy of the Notification Form with signatures of the notifying parties. Where it is not possible to submit original signatures on the Notification Form, a faxed copy of the signatures is acceptable when followed up in the next five days with the original signature page. All information supplied must be accurate and complete. By virtue of sections 28B(3) of the Act, “full details” of the proposed merger or acquisition must be provided. The Department understands “full details”, as requiring that the Notification Form be completed fully.

By virtue of section 28B(7)(a) of the Act, a notification shall not be valid where any information provided is false or misleading in a material respect, and any determination made by the Minister on foot of such a notification is void. Where any documents which the notifying parties are required to submit with their notification are in a language other than English or Irish, the notifying parties must make available translations to the Department.
Notifications should be submitted by 5.30 p.m., Irish time, at the latest on or before the relevant date to the following address:

Media Mergers Applications

Department of Communications, Energy and Natural Resources,

29-31 Adelaide Road

Dublin 2

The relevant date is set out in Section 28A of the Act.

In addition to the hard copy, the Notification Form and as many of the other notification documents as are capable of being supplied electronically should be so supplied. The appropriate address for such e-documents is mediamergers@dcenr.gov.ie

Who should notify?

Section 28B(1) of the Act requires that a written notification be made by each of the undertakings involved in the merger or acquisition on or before the relevant date.

Notifying parties

Section 1 of the Notification Form seeks information in respect of the notifying parties whereas the remainder of the Notification Form refers to the “undertakings involved”. The notifying party is usually the undertaking which is most directly involved with the transaction. For example in an acquisition, the notifying party on the buyer’s side is the purchasing company and the notifying party on the target’s side is the target company. The exception to this is the instance of a section 16(1)(c) type acquisition, in which case there is no notifying party on the target’s side by virtue of section 18(2)(c)(ii). Contact details for the target business, including name of authorised representative, should nevertheless be provided in the cover letter or elsewhere.

Where the actual purchaser is purely an acquisition vehicle specifically established for the purpose of acquiring the target, then the notifying parties on the buyer’s side are the parent
companies of the acquisition vehicle, since these are the undertakings involved, not the acquisition vehicle.

Requests for further information

At all times in the review of the proposed transaction, the Department retains its power to require any undertaking involved to supply to it, within a specified period, specified information, in accordance with section 28D(3) of the Act.

Confidentiality

Where an undertaking involved believes that information furnished on foot of a notification is commercially sensitive and should remain confidential, such information should be clearly marked, and clear reasons given as to why the information should be classed as confidential. The Department will decide whether to accede to the request and that decision will be final. In the case of a joint notification, such confidential information may be furnished under separate cover by the respective undertakings involved.

Completion of the Notification Form

It may be the case that an undertaking involved is a potential competitor to one or more of the other undertakings involved, or that it holds important intellectual property rights relating to a market in which another undertaking involved operates, or that it provides goods or services which are closely related to the goods or services of another undertaking involved. In such situations, the undertakings involved should bring this to the Departments attention.
1. **General Information**

1.1 Provide an executive summary of the proposed transaction, specifying the undertakings involved in the proposed transaction, their areas of activity and the nature of transaction (e.g., merger, acquisition or joint venture).

1.2 Provide the legal name, business address, telephone number, fax number and web site of each notifying party and state the jurisdiction in which it is incorporated.

1.3 Provide the name, position, telephone number, fax number and e-mail address of a contact person for each notifying party.

1.4 Provide the name and contact details of the authorised legal representative, for each notifying party and an address for service of correspondence.

1.5 Indicate whether the notifying parties are making a joint notification.

2. **Description of the Proposed Transaction**

2.1 Describe whether the transaction is a merger, an acquisition of sole or joint control, an acquisition of assets or a joint venture within the meaning of section 16(4) of the 2002 Act.

2.2 Describe whether the whole or parts of the undertakings involved are subject to the proposed transaction.

2.4 State the media industry sector or sectors involved.

2.5 Provide the date on which an agreement within the meaning of the Act was concluded or the date of making of the public bid.
3. **Details on the Undertakings Involved**

3.1 With respect to each undertaking involved, list the undertakings in the group and the person or persons who directly or indirectly have a significant interest as defined in the Guidelines. Please also list any other relevant media assets. This information may be illustrated by the use of organisation charts or diagrams to show the structure of ownership and control of the undertakings. Where possible provide an assessment of any anticipated changes to the shareholding composition post-merger. It is important to indicate who ultimately holds a significant interest in the merging parties and who will ultimately hold a significant interest the merged entity.

3.2 Undertakings should submit the following information for all the holdings identified in section 3.1 that exceed 10%.

1. Potential voting rights.

2. Representation on the board of directors or equivalent governing body of the investee

3. Participation in the policy-making process

4. Material transactions between the investor and the investee

5. Interchange of managerial personnel

6. Provision of essential technical information

3.3 Provide a breakdown of market share for the relevant outlets of each media businesses and relevant media assets. This would include readership, listenership, viewership, page impressions hits and an indication of the likely corresponding information post-merger. The figures should also include relevant information in relation to sub-groups within the various media sectors, such as geographical areas, age profile and socio-economic groups as gender, specific interest groups.

3.3 Undertakings should submit full information on the composition of the boards of directors, boards of management, management systems, and all other relevant
information related to the governance and management of the media business and relevant media assets.

3.4 Evidence of corporate governance standards are also relevant, thus undertakings must submit evidence of the following where applicable;

- Compliance with codes and practices within the particular sector and any policy documents in relation to ethical codes within the organisation along with compliance with all relevant regulatory bodies and applicable legislation. This may include the number of complaints made to any regulatory bodies or any court appearances and the outcomes.

- Grievance procedures for employees, appearances at the Employment Appeals Tribunal (EAT) and/or the Equality Tribunal, their findings and employment policy in relation to equality, along with a profile of the employees. The undertaking’s record in respect of industrial relations and Labour Court rulings may also be examined.

3.5 Provide information on the editorial ethos of each of the media businesses, this would include but is not limited to data on

3.6.1 Editorial Control – The levels of control and influence exercised by the management structure of the media business on the editorial function. How the editor(s) are selected. The nature and level of editorial accountability to corporate management and particularly shareholders. Evidence of editorial independence and measures to secure same should be submitted.

3.6.2 Editorial Structure - Consideration may be given to the personnel involved in the editorial control of the applicable media organisations. The level of editorial independence may be a positive determining factor; that is non-interference by financiers, investors or shareholders.

3.6.3 Editorial Positions – Previous political endorsements, positions on issues of debate or controversy.
3.7 Provide details of the sources of information on news current affairs or cultural interests for each of the media businesses This information should include but is not necessarily limited to;

3.7.1 whether the sources are indigenous or foreign;
3.7.2 free-lance or contract;
3.7.3 whether developed in house or by agency;
3.7.4 whether the sources are original or repeats or whether they are independently produced.

3.8 A breakdown of content in terms of news, current affairs, opinion and cultural interests for each of the businesses must be provided. Recent copies or schedule should be provided. This should include but is not necessarily limited to;

3.8.1 Advertising;
3.8.2 regional stories;
3.8.3 local stories;
3.8.4 national stories;
3.8.5 international stories;
3.8.6 news;
3.8.7 current affairs;
3.8.8 sport;
3.8.9 music;
3.8.10 drama;
3.8.11 entertainment;
3.8.12 audience participation;
3.8.13 Irish language;
3.8.14 minority interests;

3.8.15 cross media content;

3.9 Information on user generated content is also relevant, this can include but is not necessarily limited to;

3.9.1 letters to editors;

3.9.2 opportunities provided for members of the public to contribute to radio or television debates;

3.9.3 online user generated blogs, comments etc.

3.10 Undertakings must also provide similar information on any alternative content provided by other media undertakings in an area and across all media sector which may, in their opinion, protect against any adverse impact the proposed merger could have on media plurality in the State.

3.11 Provide details of the financial structure of the Organisations pre and post-merger. Please set out how the merger will be financed. Undertakings must submit relevant financial information this may include but is not necessarily limited to;

3.11.1 the source of finance and the financial standing of the undertakings;

3.11.2 the proposed structure of debt following the proposed merger.

3.12 Future plans – what will happen if the transfer is allowed to proceed

3.12.1 Whether it is intended that the enterprises to be acquired should continue as separate enterprises e.g. Newspaper or Radio Station

3.12.2 Whether the transfer will lead to a concentration of management/control in the local area or region
3.12.3 Details of any proposed changes to existing staffing in particular editorial and key content producing staff

3.12.4 Other relevant information including proposed changes to policies post-merger, including changes to staff remuneration system, and proposed changes to frequency and size of publication. Also plans to share information gathering methods most merger between the merging enterprises

4. **Views of the Undertakings Involved**

4.1 Provide your views as to why you consider that the proposed transaction will contribute to and or protect the plurality of media in the State.

5. **Proposed Commitments**

5.1 Submit any proposals with regard to the manner in which the media merger may be put into effect which would ameliorate any effects of the media merger on the plurality of media in the State. These commitments may become binding if the Minister incorporates them as specified conditions to be complied with in his Determination.

6. **Further Information and Supporting Documentation**

6.2 Provide a copy or copies of the agreement, or, where a public bid has been made, a copy of the offer document relating to the proposed transaction. List all other agreements relating to the transaction.

6.2 Provide a copy of the most recent annual report for each undertaking involved.

6.3 Provide any other information which you consider relevant.
7. Declaration, Signature and Power of Attorney

7.1 Provide the following signed declaration in respect of each notifying party:

*The undersigned declare that the information given herein and in the appendices and attachments hereto is, to the best of their knowledge and belief, accurate and complete, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.*

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<th>First notifying party</th>
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Any other notifying parties

| Signed: …………………… | ………………………… |
| Name: ……………………… | ………………………… |
| (Print) |                        |
| Position: …………………… | ………………………… |
| Date: …………………… | ………………………… |

8.2 In circumstances where an authorised representative has been appointed by the notifying party to sign the Notification Form on its behalf, provide a Power of Attorney identifying the authorised representative and confirming the authorisation of same to sign the above.