



## **DETERMINATION OF MERGER NOTIFICATION M/07/022 – Thomas Crosbie Holdings/South East Broadcasting**

### **Section 21 of the Competition Act 2002**

### **Proposed acquisition by Thomas Crosbie Holdings Limited of 75% of the issued shares of South East Broadcasting Company Limited trading as WLR FM**

**Dated 05/09/07**

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#### **Introduction**

1. On 11 May 2007, the Competition Authority (“the Authority”), in accordance with section 18(1)(b) of the Competition Act, 2002 (“the Act”), received the following two mandatory notifications:
  - a. M/07/021 – a proposal whereby Thomas Crosbie Holdings Limited (“TCH”) together with Des Whelan would acquire 68.7% of the issued share capital of WKW FM Limited (“Beat FM”).<sup>1</sup> Post acquisition, South East Radio Broadcasting Company (trading as “WLR FM”) would continue to own the remaining 31.3% of the issued share capital of Beat FM; and,
  - b. M/07/022 - a proposal whereby TCH would acquire 75% of the issued share capital of WLR FM. Des Whelan would continue to own the remaining 25%. As a result of the proposed transaction, TCH will have sole control over WLR FM.
2. The Authority forwarded a copy of each notification to the Minister for Enterprise, Trade and Employment and notified the undertakings involved that it considers each proposed acquisition to be a media merger, in accordance with section 23(1) of the Act.
3. On 17 August 2007, the Authority cleared M/07/021-TCH/Beat FM, as it determined that in its opinion that proposal would not result in a substantial lessening of competition in markets for goods and services in the State. The Minister informed the Authority by letter dated 24 August 2007 that he did not propose to make a direction under section 23(2) of the Act in relation to this merger.

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<sup>1</sup> Following the completion of the transaction, TCH will own 51.56% and Des Whelan will own 17.18%.

## **The Undertakings Involved**

### ***Thomas Crosbie Holdings***

4. TCH, the acquirer, is a private limited company incorporated under Irish law. It is a holding company whose subsidiaries publish the following national and regional, daily and weekly newspapers: The Irish Examiner, The Evening Echo, The Western People, The Sligo Weekender, The Waterford News and Star, The Kingdom, The Newry Democrat, The Down Democrat, The Nationalist & Leinster Times, The Kildare Nationalist, The Laois Nationalist, The Roscommon Herald, The Irish Post, The Sunday Business Post, and The Wexford Echo. For the financial year ended 2005, TCH generated turnover of c. €94 million.
5. Pursuant to the Authority's clearance of M/07/021-TCH/Beat FM and the implementation of that acquisition, TCH will own 51.56% of Beat FM. TCH also owns minority interests in County Mayo Radio Limited, NWR FM Limited and Red FM.

### ***WLR FM***

6. WLR FM, the target, is a private limited company incorporated under Irish law. WLR FM provides a local radio service aimed at 25-55 year olds in Waterford City and County. This service is provided pursuant to a sound broadcasting contract between the Broadcasting Commission Ireland ("BCI")<sup>2</sup> and South East Broadcasting Company Limited in 1989. The current contract or licence expires in 2013. The total population in WLR FM's franchise area is approximately 107,000 people. The content of WLR FM's programming schedule is a "lively mix of news, sport, current affairs, and local issues and music" reflecting the interests of its target audience.<sup>3</sup> For the financial year 2007, WLR generated a turnover of c. €2.8 million.

## **The Transaction**

7. The parties submitted that the proposed transaction presents an opportunity to combine the expertise of TCH and Des Whelan to develop and further build on the success of Beat FM.
8. Des Whelan established both WLR FM and Beat FM and has always been a shareholder in both radio stations. On 13 April 2007, the shareholders of WLR FM entered into a share purchase agreement whereby TCH will acquire 75% of the issued shares of WLR FM and Des Whelan will reduce his shareholding in WLR FM from 34.7% to 25%. The shareholdings in WLR FM pre and post-merger are presented in Table 1.

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<sup>2</sup> The BCI is responsible for licensing independent stations pursuant to the Radio and Television Act 1988 and Broadcasting Act 2001 ("the Radio Act"). The BCI sets out the nature of the service to be provided and the geographic area within which that service will be provided.

<sup>3</sup> See BCI website, [www.bci.ie](http://www.bci.ie).

**Table 1: Pre and post-transaction shareholdings in WLR FM**

Shareholder	Pre-merger (%)	Post Merger (%)
<b>Des Whelan</b>	<b>34.7</b>	<b>25</b>
<b>TCH</b>	<b>-</b>	<b>75</b>
Egidio Giani	25.52	-
Jonathan Torrie	5.1	-
Donal Ormond	5.1	-
Thomas Murphy	5.1	-
Gerard Sheridan	5.1	-
Peter Queally	5.1	-
Sean Power	5.1	-
Dan Damon	5.1	-
Elizabeth Reddy	2.4	-
William McCarthy	2.4	-

Source: The Parties' submission

### Authority's Investigation

9. During its phase 1 investigation, the Authority issued a formal request for information under section 20(2) of the Act to each of the undertakings involved. In addition, detailed questionnaires were issued to 12 advertising agencies and 14 direct advertisers.<sup>4</sup> The 12 advertising agencies chosen represent the largest advertising agencies in the State. The vast majority of the 14 direct advertisers are local businesses based in Waterford City.
10. The Authority also received three written third-party submissions. These were from [a newspaper] and two individuals writing in a private capacity.

### Third-Party Submissions

11. [ ]. [The newspaper] has two concerns regarding the proposed acquisition:
- a. [ ]. It is concerned that as a result of the proposed transaction it will not be allowed to advertise on WLR FM which would place it at a significant disadvantage; and,
  - b. [The newspaper] is also concerned that post-acquisition, TCH may offer some type of bundled advertising package to advertisers of both Waterford News and Star and the two radio stations (i.e., WLR FM and Beat FM).
12. Both of the private individuals express concern that the proposed acquisition will lead to the creation of a 'duopoly' in commercial sound broadcasting in Waterford City and County. They are concerned that post-acquisition, radio advertisers will have no alternative to WLR FM and Beat FM. Both stations would be owned by the same company with the potential for price fixing.
13. The Authority has carefully considered the concerns expressed by these third parties. With respect to [the newspapers'] first concern outlined in

<sup>4</sup> Direct advertiser refer to local advertisers who purchase advertising slots directly from WLR FM and Beat FM. Indirect advertising refers to advertising slots purchased on WLR FM and Beat FM by national advertisers via advertising agencies. The Authority received responses from 50% of the advertising agencies and 36% of the direct advertisers. The respondents to the questionnaire were selected from the lists of customers provided by the parties.

paragraph 11 above, any refusal by either WLR FM or Beat FM to sell advertising slots to [the newspaper] would raise concerns under section 5 of the Act. If this were to take place post-acquisition, then the issue could be investigated by the Authority.

14. With respect to [the newspapers'] second concern outlined in paragraph 11 above, evidence from the advertising agencies surveyed by the Authority suggests that the bundling of advertising sales across different advertising platforms (including radio and newsprint advertising) has never been observed in practice. Some advertising agencies when asked about this possibility noted that although TCH currently owns the Irish Examiner newspaper and owns interests in RED FM, both of which target a similar geographic area, most notably Cork City and County, it has never sold advertising packages combining both advertising platforms. Evidence from the advertising agencies also suggests that it would not be practical for the merged entity to bundle newsprint and radio advertising in Waterford City and County, not least because of resistance to such a move by the agencies themselves. It should also be noted that offering bundled advertising packages across complementary advertising platforms (as is the case with radio and newsprint advertising) can be pro-competitive when it leads to a lower price for customers.
15. The third party concern expressed about the possible creation of a duopoly in commercial radio broadcasting post acquisition is addressed in detail below.

### **Competition Analysis**

#### ***Press versus Radio Advertising in Waterford***

16. Both WLR FM and the TCH titles – “Waterford News & Star” and “The Irish Examiner” - are involved in the sale of advertising in Waterford City and County, albeit on different media platforms and to a large extent to different customers.
17. The Parties submitted that:
  - a. WLR FM and the Waterford News & Star rarely compete for local advertising. The nature of local press, being in print format, offers advertising that is highly detailed, e.g., planning notices, financial advertising, detailed advertising for new homes, death notices, etc. WLR FM, on the other hand, offers advertising that, because of the nature of radio advertising, is by necessity considerably less detailed, e.g., advertising for car showrooms, concerts, etc;
  - b. Local advertisers decide on the media mix that gives them the best outcome. They will either advertise on radio or local press or advertise on both; and,
  - c. Advertisers rarely compare local radio against local press.
18. The Authority has in previous decisions considered radio advertising to be in a different market to press advertising.<sup>5</sup> The Authority’s market enquiries and analysis in the instant case are consistent with this view. Direct and indirect advertisers have indicated that they do not consider radio and press to be substitutable advertising platforms. More specifically,

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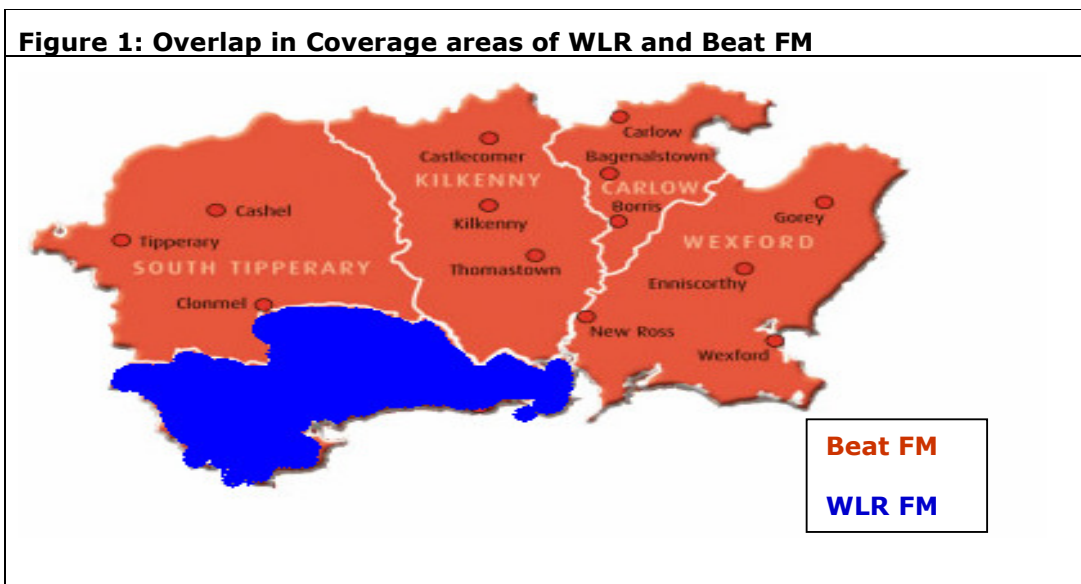
<sup>5</sup> See for example, Determination No. M/03/033 – Scottish Radio Holdings/FM 104 of 5<sup>th</sup> February 2004; Determination No. M/04/003 – Radio 2000/News 106 Limited of 5<sup>th</sup> March 2004; Determination No. M/04/078 of 21<sup>st</sup> January 2004.

advertisers who responded to the Authority's questionnaire confirmed that a 5-10% permanent rise in the price of advertising on WLR FM would not cause them to switch their advertising purchase to other media.

19. Since radio advertising competes in a different market to press advertising, there is no competitive overlap between the TCH titles and WLR FM in the sale of advertising in Waterford City and County. The Authority therefore considers that the combination of the TCH titles and WLR FM on its own does not raise any competition concerns.<sup>6</sup>

### **Overlap in Radio Listenership and Advertising**

20. As stated in paragraph 5 above, TCH will own 51.56% of Beat FM and also has minority interests in other radio stations. While there is no overlap between WLR FM and any of the stations in which TCH has a minority interest, there is a direct overlap in the coverage areas of Beat FM and WLR FM in Waterford City and County as shown in Figure 1 below. The coverage area of Beat FM represents a population of approximately 460,000, of which 107,000 (i.e., 23%) live in WLR FM's coverage area, i.e., Waterford City and County.



Source: The Competition Authority based on the Parties' submission

21. Beat FM is a private limited company incorporated under Irish law. For the financial year ending 31 December 2006, Beat FM generated a turnover of c. €[ ] million. It began broadcasting in 2003 after it received a ten-year license from the BCI. It was the first regional station to start broadcasting in the State. Beat FM provides sound broadcasting services targeting 15-34 year olds in each of Wexford, Waterford, Kilkenny, Carlow and South Tipperary. The content of Beat FM's programming schedule is "upbeat new and recent music with broad appeal to young adults combined with news and talk programming aimed at the target audience".<sup>7</sup>
22. The Authority's market survey shows that advertising agencies and direct advertising use a radio station that will best deliver their advertising needs in terms of demographics and listenership. Although both Beat FM and

<sup>6</sup> The issue of bundling press and radio advertising was addressed in paragraphs 14 and 15 above.

<sup>7</sup> See BCI website, [www.bci.ie](http://www.bci.ie).

WLR FM conduct their own independent research to establish, amongst other things, their level of listenership and listeners' perception of their programmes, each station relies on the Joint National Listenership Research survey ("JNLR data") to promote their service to advertisers.<sup>8</sup> The JNLR uses various methods including, "listened to yesterday" and "shares of minutes listened between 7am to 0000" to measure radio audiences in Ireland.

23. In order to establish whether WLR FM and Beat FM are each other's closest competitor, the Authority used: (i) the JNLR data to establish the profile and level of overlap in the listenership of each station in their core target audiences in Waterford County and City, and (ii) the level of overlap in advertising revenue in their core target audiences.<sup>9</sup>

### **Overlap in Radio Listenership in Waterford City and County**

24. The Authority used JNLR data for Waterford City and County for the period January-December 2007 which shows: (i) the percentage of respondents who listened to a particular radio station yesterday (see Table 2) and (ii) the percentage of minutes listened to a particular radio station (see Table 3) in establishing the level of overlap in listenership between WLR FM and Beat FM.

<b>Table 2: Average weekday "listened yesterday", Waterford local area, Jan to Dec 2006</b>								
<b>Audience</b>	<b>RTE R1</b>	<b>RTE 2FM</b>	<b>RTE LFM</b>	<b>Today FM</b>	<b>Beat FM</b>	<b>WLR FM</b>	<b>Other Region/Local</b>	<b>Total</b>
15-34 (%)	4	10	1	<b>28</b>	<b>37</b>	24	2	106
% of %s	3.77	9.43	0.94	26.42	34.91	22.64	1.89	100.00
35+ (%)	<b>22</b>	8	2	9	6	<b>64</b>	7	118
% of %s	18.64	6.78	1.69	7.63	5.08	54.24	5.93	100.00
20-44 (%)	8	9	1	<b>28</b>	24	<b>37</b>	3	110
% of %s	7.27	8.18	0.91	<b>25.45</b>	21.82	<b>33.64</b>	2.73	100.00
ABC1/F1 (%)	<b>23</b>	9	3	21	17	<b>46</b>	7	126
% of %s	<b>18.25</b>	7.14	2.38	16.67	13.49	<b>36.51</b>	5.56	100.00
C2DE/F2 (%)	9	8	0	12	<b>19</b>	<b>51</b>	3	102
% of %s	8.82	7.84	0.00	11.76	18.63	50.00	2.94	100.00

Source: The Competition Authority based on JNLR data

25. Tables 2 and 3 show the following:

- (a) There is an overlap both in terms of listenership and minutes listened to between Beat FM and WLR FM;
- (b) Post-acquisition, TCH will account for over 50% of listenership and minutes listened to in each of the 15-34 and 20-44 age groups; and,
- (c) Notwithstanding this overlap, Today FM appears to be Beat FM's main competitor in the latter's target audience (15-34

<sup>8</sup> The JNLR is the most-widely used research on radio listenership in Ireland.

<sup>9</sup> "Listened to yesterday" refers to the number of listeners who tuned into a particular radio station, for any length of time, yesterday. Figures listened yesterday exceed 100% when added together, since many radio listeners tune into more than one station on a given day. "Minute listened" is calculated on the basis of the number of minutes a listener tuned into a particular radio station.

year olds) while RTE Radio 1 is WLR FM's main competitor in the 35+ year olds.

**Table 3: Weekday "minutes listened " Waterford local area, Jan to Dec 2006**

Audience	RTE R1	RTE 2FM	RTE LFM	Today FM	Beat FM	WLR FM	Other Region/Local	Total
15-34 (%)	2.70	5.10	0.40	<b>36.20</b>	<b>32.90</b>	20.30	2.30	99.90
35+ (%)	<b>19.40</b>	4.10	1.30	5.60	3.40	<b>61.30</b>	5.00	100.0
20-44 (%)	7.00	5.30	0.30	<b>28.30</b>	19.40	<b>37.70</b>	1.90	99.90
ABC1/F1 (%)	<b>21.20</b>	5.20	1.80	16.30	8.70	<b>41.80</b>	4.90	99.90
C2DE/F2 (%)	8.00	3.60	0.20	14.00	<b>16.00</b>	<b>54.60</b>	3.50	99.90

Source: The Competition Authority based on JNLR data

26. Therefore, direct advertisers targeting 15-34 year olds in Waterford City and County may advertise exclusively on Beat FM while those seeking to reach the 35+ year olds may advertise on WLR FM. Direct advertisers may use both stations if they wish to reach a wider target audience.

### ***Overlap in Radio Advertising***

27. In addition to overlap in listenership, the Authority examined the level of overlap in radio advertising to establish the level of competition between WLR FM and Beat FM on a national and local basis.<sup>10</sup>

28. Table 4, below, shows the level of national and local overlap in advertising revenue between WLR and Beat FM for 2006.

**Table 4: Advertising Revenue Generated, by Type, WLR FM and Beat FM, 2006**

Advertising Type	WLR FM (%)	Beat FM (%)
National <sup>1</sup>	[ ]	39
Waterford City and County (35+)	40	0
Waterford City and County (15-34)	15	21
Other Counties in Beat FM coverage area <sup>2</sup>	0	40
<b>Total</b>	<b>100</b>	<b>100</b>

Source: The Competition Authority based on the Parties' submission

### Notes:

1. WLR FM is a member of the Independent Radio Sales ("IRS") agency while Beat FM is a member of the Broadcast Media Sales ("BMS") agency. 93% of Beat FM's national advertising revenue is earned from sales via the BMS agency with the remainder coming from sales through the IRS agency. Over 95% of WLR FM's national advertising revenue is earned from sales via the IRS agency.
2. Beat FM's coverage area also includes: South Tipperary, Kilkenny, Carlow and Wexford.

### ***National Radio Advertising***

29. As shown in the Table 4 above, both WLR FM and Beat FM are involved in the provision of national advertising and local radio advertising in Waterford City and County. Each of WLR FM and Beat FM sells the

<sup>10</sup> Under the Radio Act, commercial radio stations are only allowed to allocate 10 minutes per hour to advertising. Therefore, radio advertising capacity is statutorily restricted. Both stations operate at full capacity during peak hours, i.e., 0700am to 0700pm.

majority of its national advertising via the IRS and BMS agencies, respectively.

30. Approximately 60% of Beat FM's total advertising revenue is generated from direct advertisers while the remainder comes from indirect advertisers.<sup>11</sup> WLR FM on the other hand generates approximately [ ]% of its advertising revenue from national advertisers. On a national basis, both radio stations face competition from RTE Radio 1, RTE 2FM, RTE Lyric FM and Today FM. This is highlighted in Tables 2 and 3 above. Significantly, Beat FM's press releases issued in recent years in response to the publication of JNLR surveys consistently compare and contrast Beat FM's performance with that of 2FM and Today FM.
31. Information in the Authority's possession indicates that WLR FM and Beat FM, combined, account for less than 4% of the national radio advertising market. Given the level of overlap and the competition that will remain in the market post-acquisition, the Authority considers that the proposed transaction does not raise competition concerns in the market for national radio advertising.

#### Local Radio Advertising

32. Beat FM and WLR FM are the only two radio stations that specifically target local advertisers in Waterford City and County.<sup>12</sup> WLR FM has its own local sales team in Waterford City and County. Beat FM also has a sales team dedicated to generating direct advertising from local and regional customers in each of the five counties in its coverage area.
33. As shown in Table 4 above, in 2006, Beat FM estimates that only 21% of its total advertising revenue was generated from advertisers targeting 15-34 year olds in Waterford City and County. In contrast, WLR FM estimates that only 15% of its advertising revenue was generated from advertisers targeting the 15-34 year olds in Waterford City and County. As there are no realistic estimates of what proportion of revenue can be allocated to a particular demographic for WLR FM, the parties estimated shares of advertising revenue generated from a specific age group suggests that the overlap in advertising of Beat FM and WLR FM is at most in the region of 15%. This represents the overlap in WLR FM's total advertising revenue targeting 15-34 year olds Waterford City and County.
34. An examination of the impact of Beat FM's entry in 2003 highlights the competition that currently exists at the margin between the two stations. Internal documentation provided by the parties indicates that WLR FM lost some customers to Beat FM when the latter launched in 2003.<sup>13</sup> While all of these customers have since returned to WLR FM, some are now spending less with WLR FM. The parties informed the Authority that since Beat FM's entry, many local clients targeting young audiences in Waterford City and County now spend more of their advertising budget with Beat FM, but would still have a small presence on WLR FM.
35. Despite this overlap, information in the Authority's possession indicates that both direct and indirect advertisers view WLR FM and Beat FM as

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<sup>11</sup> Advertising agencies can purchase advertising slots on behalf of their clients via the BMS and IRS agencies, both of which sell slots across a large number of local and regional radio stations. Beat FM is a part of BMS while WLR is part of IRS.

<sup>12</sup> WLR FM does not have a "regional" classification as WLR FM's advertisers either have a national or a local profile.

<sup>13</sup> WLR FM estimated that it lost 5-6% of its core target audience to Beat FM, with most of the loss coming in the 25-34 age group.



broadly distinct radio advertising platforms. The majority of respondents to the Authority's questionnaire stated that they would not switch their advertising spend if the price of radio advertising on WLR FM increased permanently by 5-10%. Many advertising agencies stated that they consider radio advertising to represent "good value for money" and that WLR FM represents the best option for reaching a 'wide' audience in Waterford City and County.

36. Each of WLR FM and Beat FM currently has its own management team, sales advertising team and editorial board. Each station's pricing strategy is currently decided independently by each management team.<sup>14</sup> Each station publishes annual advertising rate cards which are submitted to the BCI. The rate cards represents the maximum price the station will charge for a given advertising slot or package.
37. Each station has a discounting policy in the form of a price reduction or bonus airtime/spots. In general, discounting occurs less frequently during peak advertising periods such as the period preceding Christmas. Both stations offer discounts to clients who buy larger advertising packages and to regular advertisers. In addition to these structured discount schemes, advertisers can get additional discounts through negotiation. For instance, some of the larger advertising agencies negotiate further discounts for clients based on the agency's total advertising spend with the station.
38. Advertisers (both direct and indirect) who responded to the Authority's questionnaire perceive both stations as broadly complementing each other for the purpose of upweighting their target audience. This is unsurprising given the fact that: (a) Beat FM is a regional station broadcasting to a much wider geographic area than WLR FM (the only area of geographic overlap in coverage area between both stations is Waterford City and County), and (b) the target audience of Beat FM (15-34 year olds) is much younger to that of WLR FM (25-55 year olds).
39. The difference between the two radio stations is also reflected in their respective advertising rate cards – [ ]. This disparity in advertising rates is unsurprising given the fact that Beat FM only started broadcasting in 2003 and has needed to offer lower rates in order to attract customers while it seeks to establish its reputation as a viable radio advertising platform for advertisers.<sup>15</sup>
40. Despite the complementary nature of both radio stations, a competition concern arises from the fact that, post-acquisition, the only two radio stations that target local advertising in Waterford City and County will come under common control. For an advertiser seeking to target an audience in Waterford City and County under the age of 35, WLR FM represents, to a limited extent due to the difference in geographic coverage and demographics, an alternative option to Beat FM. Although such an advertiser may divide its radio advertising spend between both stations, it can alter the proportion spent on each station depending on the extent of the discounts off the advertising rate card it can negotiate with each station. Thus, both stations currently compete at the margin for advertisers targeting an audience under 35 in Waterford City and County.

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<sup>14</sup> Beat FM submitted that each local station is its main competitor in their respective counties.

<sup>15</sup> Beat FM was the first regional radio station when it launched in 2003 and it has informed the Authority that some advertisers were initially skeptical about advertising on Beat FM due to concerns about the viability of regional radio stations in the State.

41. Pre-merger, the limited competition that exists between Beat FM and WLR FM is preserved by ensuring each station is operated and managed separately. Except for Des Whelan, who is the founder of both stations, no person who is in the management of one station sits on the board of the other.
42. Many third parties highlighted the importance of the existence of a separation between the sales teams of the two stations (which is the result of a voluntary undertaking given to the BCI) with respect to competition between the stations and commented that they did not have any concerns with the proposed merger if the existing degree of competition between the stations were to be maintained. Given the limited but not insignificant level of competition between the two stations, the Authority agreed to accept the proposals pursuant to sections 20(3) and (4), as described below, from the merging parties to formalize and strengthen the existing separation between the sales activities of the two stations.
43. Therefore, the Authority considers that in order to preserve the competition that currently exists at the margin between the two stations going forward, the management of the two radio stations should be kept separate and there should be a limit to the exchange of certain information.
44. On 14 August 2007 the Authority informed the parties of its concerns.
45. On 17 and 20 August 2007, TCH made proposals to the Authority of the kind referred to in sections 20(3) and (4) of the Competition Act 2002 with a view to them becoming binding on it if the Authority took them into account in making its determination.
46. On 24 August 2007, the Authority sought further details of these proposals from the undertakings involved. On 31 August 2007, more detailed proposals were received.
47. On 4 September 2007 further clarifications on the revised proposals were sought by the Authority. On 5 September 2007, the parties submitted final proposals.
48. The Authority is of the view that the proposals offered by TCH will ensure that the competition at the margin that currently exists between Beat FM and WLR FM will be maintained post acquisition.

## **Determination**

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002 ("the Act"), and having taken into account the proposals made by Thomas Crosbie Holdings Limited 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 Thomas Crosbie Holdings Limited of 75% of the issued shares of South East Broadcasting Company Limited, will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the proposed transaction may be put into effect, subject to section 23(9)(a) of the Act and subject to the following:

## **Proposal**

Thomas Crosbie Holdings Limited ("TCH") undertakes that it will procure the following in relation to itself, South East Broadcasting Company Limited

("WLR FM") and WKW FM Limited ("Beat FM"), each of their successors and assigns, and the officers and employees of these companies:

1. the operation of sales of radio advertising by each of WLR FM and Beat FM will be entrusted to separate sales advertising teams and these teams will not be amalgamated or consolidated;
2. the "head of sales" for each of WLR FM and Beat FM (reporting to his/her respective chief executive officer) shall be responsible for the day to day operation of sales of radio advertising, negotiations with customers and discounts on the standard rate card in relation to his or her respective company, in each case within the parameters and in accordance with the guidelines set down by the board of directors of that company from time to time;
3. no information concerning the sales of advertising or pricing policy of WLR FM will be disclosed to the management or sales teams of Beat FM, and no information concerning the sales of advertising or pricing policy of Beat FM will be disclosed to the management or sales teams of WLR FM (without prejudice to any disclosure made to Des Whelan in his capacity as director of Beat FM in accordance with the provisions of paragraph 6 below);
4. with the exception of Des Whelan, no person who is or becomes a member of the management team (as described in the Appendix) of WLR FM shall sit on the board of directors of Beat FM and no person who is or becomes a member of the management team of Beat FM shall sit on the board of directors of WLR FM;
5. the composition of management teams and the board of directors of WLR FM and Beat FM initially upon implementation of these undertakings will be as set out in the attached Appendix;
6. any detailed non-public information on the day-to-day activities of the sales teams of any of WLR FM or Beat FM disclosed to the directors of that company and/or to the directors of TCH may be used only by those directors for the purposes of fulfilling their statutory and common law duties to that company and making strategic and business decisions in relation to that company;
7. for the purpose of monitoring compliance by TCH, WLR FM and Beat FM with these undertakings, Mr. Frank O'Flynn, principal of O'Flynn Exhams, 58 South Mall, Cork (or if he is unwilling to act or steps down from this position in the future, such other partner of that firm or another firm as may be appointed by TCH (subject to the prior approval of the Authority, such approval not to be unreasonably withheld or delayed)) will act as an independent observer (the "Independent Observer") in relation to Beat FM and WLR FM;
8. the Independent Observer will
  - (a) have access upon request (subject to prior reasonable notice and during the normal hours of business) to the management teams, directors and any documentation of WLR FM and Beat FM reasonably required by him for the purpose of assessing compliance with the foregoing undertakings; and

- (b) have the right to receive notice of and attend meetings of the board of directors of each of WLR FM and Beat FM and receive copies of board minutes and any documentation provided to the directors at such meetings;

provided, in each case, that any information which the Independent Observer receives or becomes aware of may only be used by the Independent Observer for the purpose of reporting to the Authority on compliance with the undertakings listed herein and not for any other purpose (and the Independent Observer shall enter into a separate confidentiality agreement with each of WLR FM and Beat FM for this purpose);

- 9. the Independent Observer will report generally to the Authority on compliance with the undertakings listed herein and will provide an initial report to the Authority within six months of the proposed acquisition being put into effect and thereafter on an annual basis from 30th January, 2009 (with a copy of each such report to be provided to TCH and Des Whelan).

These undertakings will come into effect and shall be implemented on the Completion Date as defined in the agreement dated 13 April 2007 for the purchase of WLR FM.

These undertakings will be reviewed by the Authority:

- (a) on an annual basis after the submission of the Independent Observer's report;
- (b) when the licence for WLR FM issued by the Broadcasting Commission of Ireland falls due for renewal;
- (c) on or about 1 September 2013 (if these undertakings are still in force at that date); and
- (d) at any time upon the request of TCH or Des Whelan where TCH or Des Whelan considers that changes to the undertakings are required owing to a change in market or other conditions.

These undertakings will continue to apply as long as either of TCH or Mr. Des Whelan continues to own more than a 5% shareholding in both WLR FM and Beat FM or until such time as the Authority determines that the undertakings are no longer required (whichever is the earlier). TCH will provide the Authority with 30 days' written notice of any change in these shareholdings, which TCH believes will result in a termination of these undertakings.

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

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Declan Purcell  
Member of the Competition Authority

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Dr. Paul K. Gorecki  
Member of the Competition Authority

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Carolyn Galbreath  
Member of the Competition Authority

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Dr. Stanley Wong  
Member of the Competition Authority

5<sup>th</sup> September 2007