



DETERMINATION OF MERGER NOTIFICATION M/17/034 – GAAGO MEDIA (JV)/RTE & GAA

Section 21 of the Competition Act 2002

Proposed establishment of GAAGO Media, a full-function joint venture between RTÉ Commercial Enterprises DAC and the Gaelic Athletic Association

Dated 18 July 2017

Introduction

1. On 9 June 2017, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed establishment of a full-function joint venture (“the Joint Venture”) between RTÉ Commercial Enterprises Designated Activity Company (“RTÉ CEL”) and the Gaelic Athletic Association (“the GAA”) to be known as GAAGO Media¹ (“the Proposed Transaction”). The Joint Venture will hold certain international digital media rights to GAA events and will show these events via an online subscription service. This service will be known as GAAGO.

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of three agreements (collectively “the Agreements”): (i) a shareholders agreement dated 8 June 2017 between RTÉ CEL, the GAA, and the Joint Venture²; (ii) a proposed rights licence agreement between the GAA and the Joint Venture; and (iii) a proposed services agreement between RTÉ CEL and the Joint Venture. The parties have agreed to execute

¹ It is proposed that the Joint Venture will be incorporated in the State as a limited company to be known as GAAGO Media Limited.

² The shareholders agreement was signed, for and on behalf of the Joint Venture, as a pre-incorporation contract for the purposes of Section 45 of the Companies Act 2014.



the rights license agreement and the services agreement following the incorporation of the Joint Venture.

3. Pursuant to the Agreements, the Joint Venture between RTÉ CEL and the GAA will be created and the Joint Venture will have all the functions of an autonomous economic entity. RTÉ CEL and the GAA will have joint control of the Joint Venture. On both a shareholder and management level,[...]
4. GAAGO is a multi-platform, multi-device channel that allows subscribers outside the island of Ireland to watch GAA games live or on demand, as well as providing a range of ancillary content to the games, such as highlights and match analysis. A similar service was launched in 2014 and has been operated to date by RTÉ Digital pursuant to media rights licensed by the GAA. The GAA took the decision to develop GAAGO in conjunction with RTÉ to improve the quality of the service previously available to international viewers. The parties now propose to enter into a full-function joint venture in relation to the provision of the GAAGO service.
5. Under the terms of the Agreements, the GAA will grant the Joint Venture the international rights to matches organised by the GAA on a long-term basis³. RTÉ CEL will provide the technical, operational, and marketing capabilities required to develop the high-quality subscription service offered by GAAGO.

The Undertakings Involved

RTÉ CEL

6. RTÉ CEL is the commercial arm of Raidió Teilifís Éireann (“RTÉ”). RTÉ CEL is a designated activity company limited by shares and a wholly-owned subsidiary of RTÉ. RTÉ is Ireland's public service media organisation, active in the development and production of programming broadcast via TV, radio and online platforms. RTÉ is a statutory body, controlled by a board appointed by the Minister for Communications, Climate Action and Environment (“the Minister”) pursuant to the Broadcasting Act 2009. The

³ The proposed rights agreement provides that the worldwide international media rights are licensed to the Joint Venture for the Licence Period, which is defined as running from the date of the agreement to the end of the National League [...]



Minister's consent is required for major commercial decisions, including the formation of the proposed Joint Venture.

7. RTÉ generated turnover of approximately €334.3 million in the financial year ending 31 December 2015, of which [...] of such turnover was derived from domestic activity in the State. Turnover from the television licence fee accounted for €178.9 million (54% of total turnover), while commercial turnover accounted for €155.4 million (46% of total turnover).

GAA

8. The GAA is Ireland's largest sporting organisation, focused on promoting Gaelic games, which include hurling, camogie, Gaelic football and handball, and is headquartered at Croke Park Stadium, Jones Road, Dublin 3. The GAA is an unincorporated association of members, with no one member having a controlling interest. The GAA's ultimate decision making body is its Annual Congress. Between Congresses, operations are overseen by the President of the GAA (elected on a three year term), the Director General (a full-time official) and the *Árd Comhairle* (Central Council). The GAA has over 2,200 clubs across the island of Ireland and around 400 affiliated clubs internationally.
9. The GAA licenses the rights to GAA matches across its Gaelic games competitions to various broadcasters within and outside Ireland. The licensing of the rights to show GAA matches is both an important source of income for the GAA and considered an essential means by which to fulfil its mandate of promoting Gaelic games in Ireland and abroad.
[...]
10. The current rights packages cover the five-year period from the start of the GAA Senior Championships in 2017 to the start of the GAA Senior Championships in May 2022. For this period from 2017 to 2022, the GAA split the rights into [...] packages ("the Packages"). The Packages were designed to enable the relevant content (including live matches, deferred content, and highlights) to be awarded to the broadcaster that was best placed to present and promote the games⁴.

⁴ [...].



11. The proposed Joint Venture will hold the international digital media rights to GAA events[...]. [...]
12. [...]
13. For the year ending 31 October 2016, the GAA generated turnover of approximately €101 million, which [...] attributable to domestic activity in Ireland. The GAA's revenue is primarily earned through a combination of gate receipts and commercial revenues (sponsorship and media rights).

The Joint Venture

14. The Joint Venture will be jointly owned and controlled by RTÉ CEL and the GAA. On both a shareholder and management level, the parties will have equal interest and representation, with neither party able to exercise sole control over the Joint Venture's strategic activities. The Joint Venture will be governed by a Board of Directors ("the Board") made up of [...] representatives from the GAA and [...] representatives from RTÉ CEL and [...]. [...].The Board will determine policy, have responsibility for the annual business plan, and will direct the Management Committee.
15. The Management Committee will report to the Board and will consist of [...] representatives from each of the GAA and RTÉ CEL. The Management Committee will operate in accordance with authority delegated to it by the Board. The Management Committee will essentially have the authority to conduct the Joint Venture business in compliance with the business plan approved by the Board.

Rationale for the Proposed Transaction

16. The parties state in the notification that:

"[...]."

"[...]"

Third Party Submissions

17. No submission was received.

Competitive Analysis



18. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise markets because doing so will not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State. However, the Commission considers that the Proposed Transaction concerns the following potential market segments: (i) the upstream acquisition/licensing of sports media rights, specifically for GAA events, and (ii) the downstream distribution of sports media content to final consumers via different media platforms. From a geographic perspective, as the rights granted to the Joint Venture are worldwide in scope (excluding the island of Ireland and, in some instances excluding certain rights in Great Britain), the relevant geographic basis by which to assess the transaction would be global.

Horizontal Overlap

19. There is no horizontal overlap between the activities of the parties in the State as RTÉ broadcasts a number of different sports across various media platforms in its role as a national media organisation but it is not active in the licensing of sports media rights. The GAA, in contrast, is active in the licensing of sports media rights but it is not currently active in the distribution of sports media content.

Vertical Overlap

20. The proposed Joint Venture will result in the GAA having a direct interest, for the first time, in the downstream distribution of its own content. However, the Joint Venture only concerns the licensing of *international* digital media rights and, therefore, customers in the State (and indeed on the island of Ireland) are entirely unaffected by the Proposed Transaction. Accordingly, the Commission is of the view that the Proposed Transaction does not raise any substantial vertical competition concerns.
21. 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

22. No ancillary restraints were notified.



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 establishment of a full-function joint venture between RTÉ Commercial Enterprises Designated Activity Company and the Gaelic Athletic Association, to be known as GAAGO Media, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the joint venture may be put into effect.

For the Competition and Consumer Protection Commission

Patrick Kenny
Member
Competition and Consumer Protection Commission