



DETERMINATION OF MERGER NOTIFICATION M/09/014 – NOONAN SERVICES / FEDERAL SECURITY GROUP

Section 21 of the Competition Act 2002

Acquisition of the business and assets of Federal Security Group by Noonan Services Group Limited

14 August 2009

Introduction

1. On 17 July 2009, in accordance with section 18(1) of the Competition Act 2002 (“the Act”), the Competition Authority (“the Authority”) received a notification of the acquisition by Noonan Services Group Limited (“NSGL”) of sole control over the business and assets of the following subsidiaries (the “Target Companies”) of NewCourt Group PLC (“NewCourt”):
 - Companies incorporated in the State: Federal Security Solutions Limited, Federal Security Services Limited, Federal Electronic Security Limited, Federal Investigations Limited, Central Monitoring Services (Ireland) Limited, Security Technology Ireland Limited (together the “RoI Target Companies”); and,
 - Companies incorporated in Northern Ireland: Federal Electronic Security Limited, Federal Security Services Limited, Central Monitoring Services (Ireland) Limited (together the “NI Target Companies”).
2. Both NSGL and the Target Companies are engaged in the provision of security services in the State¹.

The Undertakings Involved

Noonan Services Group Limited

3. NSGL is a provider of support services to clients in Ireland and the UK, including the provision of contract cleaning services, janitorial supplies, security services and pest control.
4. NSGL is controlled by Alchemy Partners (Guernsey) Limited (“Alchemy”) which holds an 80 per cent interest in NSGL through various funds managed by Alchemy. The remaining 20 per cent interest in NSGL is held by certain members of NSGL’s management. Alchemy is the manager of the Alchemy Investment Plan comprising a collection of Guernsey limited partnerships².

¹ The term “Federal Security Group” has been used by NSGL as a general description of the Target Companies, but it is not a legal entity.

² See the Authority’s determination in relation to the acquisition of NSGL by Alchemy (M/08/025 – Alchemy/NSGL), 12 September 2008, available at the following web-link: http://www.tca.ie/MergersAcquisitions/MergerNotifications.aspx?selected_item=420

5. In the State, NSGL provides the following services:
- Cleaning services³ in sectors such as pharmaceutical, biopharma, specialist manufacturing, healthcare and food hygiene;
 - Industrial services (e.g., window cleaning, road cleaning and carpet cleaning and maintenance);
 - Manned guarding services: NSGL commenced the provision of manned guarding services in the State in 2002 and does not provide security services in Northern Ireland;
 - Janitorial supplies;
 - Waste management services and grounds maintenance services;
 - Pest control; and,
 - Outsourced services to clients in both private and public sectors (e.g., help desk; mailroom staff; porters and food court assistants).

The Target Companies

6. The Target Companies are subsidiaries of NewCourt, a public limited company, incorporated in Ireland and listed on the Irish Stock Exchange and the Alternative Investment Market (AIM) of the London Stock Exchange.
7. The transaction concerns the acquisition of the assets of the operating businesses of the Target Companies. The key assets being transferred comprise contracts, employees, 'know-how' related to the business (e.g., customer requirements and billing details) and the 'Federal' names. Other assets being transferred include goodwill, IP, IT, domain names, moveable assets (including fixtures, fittings, vehicles, uniforms, etc.), operation and maintenance manuals, third party claims and confidential and proprietary information.
8. In the State, the RoI Target Companies are active in the provision of the security services only, including:
- Manned guarding services;
 - Emergency response and key-holding services;
 - Electronic security services;
 - Risk management and consultancy services; and,
 - Fire and environmental health and safety consultancy and training.
9. Central Monitoring Services (Ireland) Limited, registered in Northern Ireland provides certain monitoring services to certain customers that are based in the State. However, NSGL submitted that the Central Monitoring Services (Ireland) Limited business in the State can be

³ [...].

considered negligible for the purpose of this determination since the overall business of the company represents a relatively small part of the combined turnover of the Target Companies ([...] in 2007, €[...]m out of the total of €73.9m). The NI Target Companies have no other activities in the State, and the RoI Target Companies have no activities in Northern Ireland.

The Proposed Transaction

10. NewCourt, the parent company of the Target Companies, is in severe financial difficulties and is currently in receivership. Receivers have been appointed in each of the Republic of Ireland and Northern Ireland (respectively the "RoI Receiver" and the "NI Receiver") to sell, *inter alia*, the assets of the Target Companies⁴.
11. [...]. In the absence of a purchaser other than NSGL being identified as a matter of urgency, NSGL submitted that it was likely that the business of the Target Companies would have been closed.
12. NSGL submitted that given the imminent risk of severe damage to the business, including the loss of significant customers⁵, two newly-created subsidiaries of NSGL entered into agreements with the Receivers on 17 July 2009 for the purchase of the assets of the Target Companies. The two newly incorporated and wholly-owned subsidiaries of NSGL are:
 - NSG Security Limited, which is in the process of changing its name to "Federal Security Newco Limited"; and,
 - NSG Security NI Limited, which is in the process of changing its name to "Federal Security Newco NI Limited".
13. NSG Security Limited entered into a purchase agreement with the RoI Receiver for the assets of the RoI Target Companies (the "RoI Asset Agreement"). Simultaneously, NSG Security NI Limited entered into a purchase agreement with the NI Receiver for the assets of the NI Target Companies (the "NI Asset Agreement").
14. NSGL submitted that the proposed acquisition gives it an opportunity to build on its existing business and supplement its range of support services by increasing its security services, where it currently has limited presence.

Implementation of the Acquisition in Breach of Section 19(1)(a) of the Act

15. NSGL advised that the proposed transaction which is the subject of this determination has been put into effect. It further advised that, pursuant to a hold-separate arrangement on 17 July 2009 between NSGL and NSG Security Limited, NSG Security Limited is conducting the business of the Target Companies as a separate concern from the business of NSGL at least *until* the date the Authority issues its determination.

⁴ It is understood by NSGL that a number of other businesses, formerly part of the NewCourt Group, are also in the process of being sold by receivers.

⁵ NSGL reported that examples of major customers who have switched their business away from the Target Companies (including the RoI Target Companies) in 2008 include [...].

16. The Authority concludes that, by putting into effect the proposed transaction before the Authority has determined that the transaction may be put into effect, NSGL has infringed section 19(1)(a) of the Act. This section provides that a merger or acquisition to which subsection 18(1)(a) or 18(1)(b) applies shall not be put into effect until the Authority has so determined. Section 19(2) of the Act provides that a merger or acquisition which purports to be put into effect, where that putting into effect contravenes subsection (1), is void.
17. Section 19(2) does not state whether a merger or acquisition which contravenes section 19(1)(a), is rendered void for all time, or merely until such time as the Authority makes a determination. Based on a reading of all the pertinent provisions, the Authority is of the view that the section is designed to protect the Authority's right of review and is not intended to render a merger or acquisition void indefinitely. In particular, the Authority notes that section 19(1)(a) does not provide that a clearance determination of the Authority should be subject to subsection 19(2), giving rise to the inference that the Authority's determination would allow the merger to be implemented, notwithstanding that the prior purported implementation was void. The Authority takes the view that any other interpretation would result in an absurdity: namely, that a completed merger would be void for all time. This position is consistent with international best practice.⁶
18. Therefore the Authority considers that it can make a determination under section 21 of the Act despite the fact that there has been a contravention of section 19(1)(a) rendering the acquisition void. The Authority considers that a merger or acquisition which has been put into effect prior to a clearance determination from the Authority remains void only until such time as the Authority issues a clearance determination.
19. Apart from voidness, the Act does not provide for any penalty in respect of an infringement of section 19(1)(a). In its submission of December 2007 to Department of Enterprise, Trade and Employment in connection with the public consultation on a review of the Competition Act 2002, the Authority recommends that the Act be amended to provide a substantial fine for putting a merger or acquisition into effect prior to clearance by the Authority⁷.

Third Party Submissions

20. No submissions were received.

Analysis

21. NSGL submitted that both NSGL and the Target Companies (including the RoI Companies) are involved in the provision of security services in the State, in particular manned guarding services. According to NSGL, the security services sector which includes the manned guarding services is fragmented with a wide range of both large and smaller players. Contracts for the provision of security services are generally

⁶ However, in other jurisdictions laws envisage civil fines for putting into effect a merger before obtaining clearance from the competent authority.

⁷ See paragraph 3.37 of the S/07/008 Competition Authority Submission to the Department of Enterprise Trade and Employment, available at the following page of the Authority's website: http://www.tca.ie/PromotingCompetition/Submissions.aspx?selected_item=57

entered into following a competitive tender process and may generally be re-tendered on short notice.

22. NSGL submitted that security services are characterised by a low level of customer and brand loyalty. NSGL also noted that where a contract for the provision of security services is lost to another company, the staff allocated to that contract will transfer to the new service provider pursuant to the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003. This makes it easier for customers to switch suppliers and for new or smaller competitors to gain new business.
23. NSGL noted that in the European Commission's decision in *Group 4 Falck/Securicor* (COMP/M.3396)⁸, the European Commission suggested that the market for "integrated security services" could be subdivided into the following distinct markets:
 - The provision of manned guarding services (including consultancy and risk management/auditing);
 - The provision of alarm monitoring and response services; and
 - The provision of electronic guarding equipment (alarm installation and maintenance).
24. While NSGL currently provides only manned guarding services, the RoI Target Companies provide not only manned guarding services but also, to a limited extent, alarm monitoring and response services and electronic guarding equipment. NSGL submitted that the market is national in scope, similarly to the European Commission's finding in *Group 4 Falk/Securicor*.
25. NSGL estimates that the market for security services in the State was valued at €[...]m in 2008. NSGL estimates that its market share for this period was [0-5]% while the market share of the Target Companies for this period was [15-20]%. NSGL submitted that [...].
26. According to NSGL, there is a wide range of competitors providing similar services to the parties in the State, ranging from divisions of large corporations such as G4S and Securitas, to national players such as Top Security. NSGL estimates that the parties' most significant competitors in the State include the following: G4S ([10-15]% market share), ISS/Chubb⁹ ([10-15]%), Top Security ([0-5]%), Securitas ([0-5]%) and Express/Rapier ([0-5]%).
27. According to NSGL, the market share estimates of NSGL and the Target Companies would not be substantially different whether the market is defined as manned guarding services or total security services, since the majority of the revenue of the Target Companies in 2007 was derived from the provision of manned guarding services.
28. The Authority considers that it is not necessary to make a finding on the relevant product market(s) since the acquisition is unlikely to give

⁸ See: http://ec.europa.eu/competition/mergers/cases/decisions/m3396_en.pdf

⁹ NSGL understands that ISS acquired the Irish business of Chubb earlier this year, although NSGL has been unable to identify any publicly available data regarding this transaction.

rise to any competition concerns in any markets in the State for the following reasons:

- Assuming the 2008 level of activity in the provision of manned guarding services in the State by the Target Companies, the combined market share of NSGL and the Target Companies would be around [15-20]%; and,
- NSG Security Limited will continue to face competition in the State from the presence of internationally active reinsurers (e.g., G4S and ISS/Chubb¹⁰) and national players (e.g., Top Security and Securitas).

Determination

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the acquisition by Noonan Services Group Limited of Federal Security Solutions Limited, Federal Security Services Limited, Federal Electronic Security Limited, Federal Investigations Limited, Central Monitoring Services (Ireland) Limited and Security Technology Ireland Limited will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, having regard to the fact that a breach of section 19(1)(a) of the Competition Act 2002 has occurred and that the acquisition is void until the Competition Authority's determination, the acquisition may now be put into effect.

For the Competition Authority

Dr Stanley Wong

Member of the Competition Authority

¹⁰ See footnote n. 9.