



DETERMINATION OF MERGER NOTIFICATION M/13/015 -

Promontoria/Greenstar

Section 21 of the Competition Act 2002

Proposed acquisition by Promontoria Holdings 52 B.V. of Starrus Holdings Limited

Dated 28 May 2013

Introduction

1. On 2 May 2013, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed acquisition whereby Promontoria Holdings 52 B.V. ("Promontoria") would acquire sole control of Starrus Holdings Limited ("Starrus").
2. On 23 August 2012, Mr. David Carson of Deloitte was appointed as receiver to Greenstar Holdings Limited ("Greenstar") by The Governor and Company of the Bank of Ireland. As part of the receivership of Greenstar, it is proposed that Greenstar is to be transferred to Starrus. Thus, following the proposed transaction, Promontoria would acquire sole control of Greenstar.

The Undertakings Involved

Promontoria

3. Promontoria, a private company organised under the law of the Netherlands, is 100% owned by Cerberus Capital Management, LP ("Cerberus"), a private investment firm with over US\$20 billion under management. The parties informed the Authority that Promontoria does not carry on any business activities in the State and is simply the investment vehicle through which Cerberus is acquiring Greenstar.
4. Cerberus is active in the State only through ownership of Lucida plc ("Lucida") and a minority, non-controlling interest in Gala Coral Group ("GC").
5. Lucida, a subsidiary of Cerberus, is active in the State [...]. Lucida is "an insurance company focused on the annuity and longevity risk business, including the defined benefit pension buyout market and the market for bulk annuities".¹ Lucida is authorised and regulated by the Financial Services Authority ("FSA"). In November 2012, the board of directors of Lucida stopped writing any new business. Lucida has since voluntarily obtained from the FSA a variation of its permission, under which it has stopped writing new business but will continue to fulfil its contractual obligations under existing policy contracts.

¹ <http://www.lucidapl.com/about-us> as accessed on 27 May 2013.

6. Cerberus informed the Authority that it owns a minority interest in the GC, but does not control GC for the purpose of merger control analysis. GC offers online betting services in the State via its Coral.co.uk and Gala.Bingo.com websites.
7. For the year ending 31 December 2011, Cerberus's worldwide turnover was €[...]. Cerberus's turnover in the State for the same period was €[...].²

Greenstar

8. Greenstar provides integrated waste management services to domestic and commercial customers in the State. Using its own fleet of collection vehicles or subcontracting to other collectors, Greenstar takes waste from customers' premises to one of its waste transfer stations where the waste is segregated before being directed to the most appropriate disposal facility (i.e., landfill, incineration, recycling, etc).
9. Greenstar operates six waste transfer stations in Dublin, Cork, Limerick, Kilkenny, Wexford, and Sligo. Greenstar operates four material recovery facilities, three of which are located in Dublin and one located in Cork.
10. Greenstar is also involved in the [extraction] of landfill gas which is created by the decomposition of organic waste. Greenstar has gas rights at ten landfill sites in the State where it extracts and burns gas to generate electricity, which is then sold to various customers such as Airtricity Limited.
11. Finally, Greenstar owns four landfill sites in Kildare, Meath, Wicklow, and Galway which are not being acquired by Promontoria as part of the proposed transaction.³ Greenstar expects to, however, have arms length commercial relationships with [some of the] landfill sites post-transaction in order to: (a) preserve and maintain the landfill gas business carried on by Greenstar; and (b) dispose of waste at [some] of the four landfill sites.
12. For the financial year ending 31 March 2011, Greenstar's worldwide turnover was approximately €[...]. For the year ending 31 December 2011, Greenstar's turnover in the State was approximately €[...]

Rationale for the Proposed Acquisition

13. The parties state in the notification:

"Greenstar is currently in receivership, this is a sale of the Greenstar Business by the Receiver. The Buyer believes that the proposed transaction will allow it to develop the potential of the Greenstar business, by driving efficiencies and synergies that the Greenstar business, due to its current financial difficulties, is unable to achieve – including innovation and the development of services."

² The parties informed the Authority that "[...]"

³ [...] while the ownership of the [...] landfill sites post-transaction is [...] settled. [...].

Third Party Submissions

14. No submission was received.

Competitive Analysis

15. Neither Cerberus nor any of the operating entities controlled by Cerberus (including Promontoria) own or operate a business that provides waste management services on the island of Ireland. Furthermore, neither Cerberus nor any of the operating entities controlled by Cerberus own a landfill site on the island of Ireland. Thus, there is no horizontal or vertical overlap of concern between Cerberus and Greenstar in the State.
16. In light of the above, the Authority considers that the proposed transaction will not raise any competition concerns in the State.

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 proposed acquisition whereby Promontoria Holdings 52 B.V. would acquire sole control of Starrus Holdings Limited will not be to substantially lessen competition in markets for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Stephen Calkins

Member of the Competition Authority

Director, Mergers Division