



DETERMINATION OF MERGER NOTIFICATION M/14/026 - VALEO/WARDELL/ROBERT ROBERTS

Section 22 of the Competition Act 2002

Proposed acquisition by Valeo Foods UK Limited of sole control of Wardell Roberts Limited and Robert Roberts (NI) Limited

Dated 17 February 2015

Determination

Pursuant to section 20(3) of the Competition Act 2002, Valeo Foods UK Limited (“Valeo”) has submitted to the Competition and Consumer Protection Commission (the “Commission”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services, with a view to the said proposals becoming binding on Valeo.

The Commission has taken the proposals into account and, in light of the said proposals (which form part of the basis of its determination), has determined in accordance with section 22(3)(a) of the Competition Act 2002 that the result of the proposed acquisition will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, that the acquisition may be put into effect.

Proposals submitted by Valeo to the Commission (“Proposals”):

A. Definitions

1. For the purpose of the Proposals, the following terms shall have the following meaning:

“Act” means the Competition Act 2002, as amended;

“Business” means the Business identified in Part C below and in the Schedule;

“CCPC” means the Competition and Consumer Protection Commission;

“CapVest” means CapVest Equity Partners II, L.P. and its subsidiaries, divisions, groups and affiliates which are directly or indirectly controlled by it;

“DCC” means DCC plc and its subsidiaries, divisions, groups and affiliates which are directly or indirectly controlled by it;



“Determination” means the Determination of the CCPC pursuant to Section 22(3)(a) of the Act that the Proposed Transaction may be put into effect;

“Divestment Package” means the Business to be sold by Valeo under the terms of these Proposals;

“Hold Separate Manager” means the person appointed by Valeo to undertake the day-to-day management of the Business, under the supervision of the Trustee, pending the disposal of the Business;

“Key Personnel” means any applicable personnel necessary to maintain the viability and competitiveness of the Business;

“Proposed Transaction” means the proposed acquisition by Valeo of sole control of Wardell Roberts Limited and Robert Roberts (NI) Limited as notified to the Competition Authority on 17 October 2014 pursuant to Section 18(1) of the Act;

“Valeo” means the company known as Valeo Foods UK Limited and, where the context admits and requires, the subsidiaries, divisions, groups and affiliates which are directly or indirectly controlled by Valeo.

B. The Proposal to Divest

2. Valeo undertakes, subject to the provisions set out below, to effect the sale of the Divestment Package within [...] of the Determination to an independent third party purchaser or purchasers approved by the CCPC (whose approval shall not be unreasonably withheld).
3. Valeo recognises that for a prospective purchaser to meet with the CCPC’s approval pursuant to paragraph 2 above such purchaser shall be unconnected to and independent of CapVest and Valeo, and shall be able to maintain and develop the relevant Business as an active competitive force.
4. Valeo further recognises that for a prospective purchaser to meet with the CCPC’s approval, that purchaser must be deemed reasonably likely to obtain all authorisations and consents required to effect a transfer of the relevant Business.
5. Valeo shall be deemed to have complied with paragraph 2 above if, within a [...] period from the Determination of the CCPC under Section 22(3)(a) of the Act (or such longer period as may be allowed by the CCPC or as may result from the delays referred to in paragraph 8 below), it has entered into a binding letter of intent or a binding contract for the sale of all elements of the Divestment Package (subject to due diligence, regulatory consents and any other conditions not within the control of Valeo or the purchaser)



- provided that such sale is completed within a [...] period from the date of the relevant letter of intent or contract (or such longer period as may be allowed by the CCPC).
6. Valeo shall:
- (i) promptly inform the CCPC in writing, with a fully documented and reasoned proposal, of any prospective purchaser who indicates a serious desire to purchase the relevant Business and to whom Valeo is seriously considering the sale of the said Business, enabling the CCPC to verify the suitability of the prospective purchaser; and
 - (ii) when the parties have entered into a binding letter of intent or a binding contract for the sale of the relevant Business, submit a fully documented and reasoned proposal enabling the CCPC to verify that the conditions laid down in these commitments are fulfilled and that there has been no material change in the status of the purchaser not reasonably foreseeable at the time the CCPC assessed that purchaser's suitability subject to the CCPC agreeing to keep confidential all such information received.
7. The CCPC shall communicate in writing its approval or non-approval of a prospective purchaser within two weeks of receipt of a fully documented and reasoned proposal identifying a prospective purchaser in accordance with paragraph 6(i) and a binding agreement and accompanying fully documented and reasoned proposal in accordance with paragraph 6(ii).
8. In each case, failure of the CCPC to communicate its approval or non-approval within two weeks shall delay the running of the [...] period established in paragraph 5 above until the CCPC communicates its approval or non-approval. However, if the CCPC does not communicate its approval or non-approval within 30 days of receipt as aforesaid, such approval shall be deemed to have been given unconditionally. In the case of a plurality of offers from prospective purchasers to whom the CCPC does not object, Valeo shall be free to accept any offer or to select the offer it considers best.

C. The Business to be Divested

The YR business (Business)

9. Valeo undertakes to dispose of the entirety of the Business conducted by it under the YR brand (as more particularly described in the Schedule hereto).
10. Valeo undertakes not to seek or accept a licence in respect of any part of the YR brand.
11. Valeo undertakes that if it attempts to buy the purchaser of YR, it will inform the CCPC prior to doing so and will notify any such proposed acquisition in accordance with Section 18(3) of the Act if required to do so by the CCPC.



12. Valeo undertakes to sell the Business identified in the Schedule as a going concern including (if requested by the purchaser) any appropriate supply agreements and any suitable sales and marketing and distribution staff.
13. For the avoidance of doubt, Valeo confirms that it will not impose, as a condition of sale of the Business, an obligation on the purchaser to acquire associated production facilities or staff from Valeo.

D. Common Provisions

Appointment of a Trustee

14. Within [...] after the Determination, Valeo will propose to the CCPC [...] trustees, who are independent of CapVest, Valeo and DCC (**Proposed Trustee**). The appointment of the Proposed Trustees is subject to approval of the CCPC. If the CCPC does not reject the Proposed Trustees by notice in writing within [...] of the proposal, the Proposed Trustees shall be deemed to have been approved. If [...] Proposed Trustees have been approved, then Valeo shall, at its own discretion, appoint one of them.
15. If the Proposed Trustees are rejected, Valeo will propose the name of a new trustee (**New Trustee**) within [...] of being informed of the rejection. If the CCPC does not reject the New Trustee by notice in writing to Valeo within [...] of the new proposal, the New Trustee shall be deemed to have been approved.
16. If the New Trustee is rejected by the CCPC, the CCPC shall nominate a suitable Trustee (**the CCPC Trustee**) which Valeo will appoint or cause to be appointed.

Trustee's Mandate

17. Within [...] of the date on which the CCPC has approved or is deemed to have approved either the Proposed Trustees, the New Trustee or the CCPC Trustee, Valeo shall enter into a mandate agreement (**Mandate**) with the approved Trustee (**Trustee**), the terms of which shall have previously been agreed with the CCPC which confers on the Trustee all the rights and powers necessary to permit the Trustee to monitor Valeo's compliance with the terms of these Proposals and in a manner consistent with the purpose of these Proposals.
18. The Trustee shall be independent of CapVest, Valeo and DCC, possess the necessary qualifications and experience to carry out its mandate, and shall neither have nor become exposed to a conflict of interest.
19. Throughout the duration of the Trustee's appointment the Trustee shall:



- (i) provide written reports (**Trustee Reports**) to the CCPC on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Trustee has been unable to discharge such duties. The Trustee Reports shall be provided at monthly intervals, commencing one month after the date of the appointment of the Trustee, or at such other times or time periods as the CCPC may specify and are notified in writing to Valeo. Valeo shall receive a non-confidential copy of such Trustee Reports;
 - (ii) monitor and advise the CCPC as to the development of the procedure for selecting a purchaser and as to the conduct of the negotiations;
 - (iii) monitor and advise the CCPC as to whether prospective purchaser(s) with whom Valeo intends to negotiate are likely to satisfy the CCPC's requirements as to suitability;
 - (iv) monitor the maintenance of the viability and marketability of the Business and the products to which they relate and ensure that they are managed in the ordinary course of business, pursuant to good business practice.
20. The Trustee's duties and functions as set out above shall not be extended or varied in any way by Valeo, save with the express consent of the CCPC. Any instruction or request to the Trustee from Valeo which conflicts with the terms of the Mandate and duties and functions as set out above will be considered null and void.
21. The CCPC may, on its own initiative or at the request of the Trustee, give any orders or instructions to the Trustee that are required in order to ensure compliance with the conditions and obligations attached to the Determination but so long as Valeo is given an opportunity to comment on any such orders or instructions in advance.
22. After [...] (or such longer period as may be agreed by the CCPC or as may result from the delays referred to in paragraph 8 of the Proposals above) have lapsed from the Determination without Valeo having entered into a binding agreement for the disposal of all elements of the Divestment Package, the Trustee shall be given an irrevocable mandate to negotiate and conclude arrangements for the sale of the Business in relation to which a binding agreement remains to be concluded within [...] and upon such terms and conditions as it considers appropriate for an expedient sale, to a viable and independent third party. The Trustee shall have regard to the legitimate financial interests of Valeo, [...].
23. If, however, the Trustee is unable to conclude such an arrangement at the end of the [...] period (or such longer period as may be agreed by the CCPC) within which the Trustee is required to conclude arrangements, the Trustee is entitled to enter into arrangements for a further maximum and non-extendable period of [...].

Miscellaneous



24. Valeo will provide the Trustee with all reasonable assistance and will procure (so far as it is able) that all relevant third parties provide such assistance required to ensure compliance with these Proposals. Valeo will provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible by Valeo as the Trustee may require in carrying out its Mandate, and will pay reasonable remuneration for the Trustee's services.
25. In addition, at the expense of Valeo, the Trustee may (during the trustee divestiture periods referred to in paragraphs 22 and 23 above) appoint advisors (in particular for corporate finance or legal advice), subject to Valeo's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Valeo refuse to approve the advisors proposed by the Trustee the CCPC may approve the appointment of such advisors instead, after having heard Valeo. Only the Trustee shall be entitled to issue instructions to the advisors.
26. The Trustee shall have full and complete access to the manager of the Business and any other employees of the Business in order to ensure compliance by Valeo with its obligation to maintain the financial and competitive viability of the Business.
27. Notwithstanding the Trustee's overall responsibility to discharge its functions and in particular notwithstanding the Trustee's position as an independent unrelated third party, the Trustee (who shall undertake in the Mandate to do so) shall have to the extent possible given the nature of its tasks due regard to the commercial interests of Valeo.
28. Valeo shall indemnify the Trustee and its employees and agents (each an "Indemnified Party") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Valeo for, any liabilities arising out of the performance of the Trustee's duties under the Proposals and the Mandate, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
29. The Mandate and these Proposals shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated if Valeo announces that the Proposed Transaction has been irrevocably abandoned.
30. The Trustee's and all other relevant third parties' powers of attorney and appointment shall be irrevocable.

Interim Position of the Business

31. Following the Determination and pending the sale of the Business, Valeo undertakes to hold separate the Business and preserve the economic viability, marketability, and



- competitiveness of the Business until the date of disposal in accordance with good commercial practice, and to manage the Business in the best interests of the Business. Valeo further undertakes to appoint a Hold Separate Manager who shall be responsible for the day-to-day management of the Business, under the supervision of the Trustee. The Hold Separate Manager shall manage the Business independently and in the best interest of the Business with a view to ensuring its continued economic viability, marketability, and competitiveness and its independence from the business retained by Valeo.
32. Valeo undertakes not to carry out any act upon its own authority which may reasonably be expected to have a significant adverse impact on the economic value, the management, or the competitiveness of the Business until the date of disposal.
 33. Valeo undertakes not to carry out upon its own authority any act which may be of such a nature as to alter the nature or the scope of activity, or the industrial or commercial strategy, or the investment policy of the Business. Sufficient resources shall be made available for the Business to develop until the disposal, based on any approved strategic and (annual) business plans of the Business as adopted in the ordinary course of its business.
 34. Valeo also undertakes to take all reasonable steps, including incentive schemes (based on industry practice), to encourage any applicable Key Personnel to remain with the Business pending the disposal of the Business. Valeo undertakes not to solicit any Key Personnel transferred with the Business for a period of [...] after the disposal of the Business.

For the Competition and Consumer Protection Commission

Isolde Goggin
Chairperson
Competition and Consumer Protection Commission