



DETERMINATION OF MERGER NOTIFICATION M/15/067 - PRL/CP

Section 21 of the Competition Act 2002

Proposed acquisition by PRL Group of sole control of Contract People Limited, Sales Placement Contract People (NI) Limited, Shelfwatch Limited (an Irish registered company), Shelfwatch Limited (a Northern Ireland registered company), and Sales Placement Limited.

Dated 31 December 2015

Introduction

1. On 24 November 2015, in accordance with section 18(3) of the Competition Act 2002, as amended¹ (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby PRL Group (“PRL”) would acquire the entire issued share capital and, thus, sole control of each of Contract People Limited, Sales Placement Contract People (NI) Limited, Shelfwatch Limited (an Irish registered company, referred to hereafter as “Shelfwatch Rol”), Shelfwatch Limited (a Northern Irish registered company, referred to hereafter as “Shelfwatch NI”), and Sales Placement Limited (all of which are collectively referred to hereafter as “CP”).
2. In the notification to the Commission, the parties provided a copy of a non-binding Heads of Terms dated 17 October 2014. Section 18(1A)(b)(ii) of the Act allows for parties to make a notification to the Commission where the parties have demonstrated to the Commission a good faith intention to conclude an agreement. In this case, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii) of the Act.

The Undertakings Involved

PRL

3. PRL, an unlimited company incorporated in the State which is ultimately owned by Michael Brannigan and Jack O’Riordan, provides logistics services and retail sales services to customers in the State and worldwide in the following sectors:
 - Ambient food and beverages;

¹ It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.



- Chilled and frozen food; and
 - Pharmaceutical and healthcare products.
4. PRL's logistics solutions business involves the provision of the following services to customers: bonded alcohol solutions; multi-temperature warehousing; multi-temperature nationwide distribution; storage for medicinal products²; medicinal product repacking under HPRA guidelines; product repacking and co-packing; quality management and regulatory approvals; and inventory management.
 5. PRL's retail sales solutions business involves acting as an agent or distributor on behalf of clients and providing the following services: order capture; credit control; field sales management; van selling; taking title of product; merchandising of product in-store; infield audit and planogram maintenance; and financial management.
 6. PRL acts as a distributor of Unilever Ireland's HB-branded ice cream products along the eastern seaboard in the State. PRL purchases such products from Unilever Ireland and resells them to the retail sector and to other customers. PRL also takes title over Birds Eye-branded frozen food products and a limited range of frozen pizzas and chips and distributes these products along the eastern seaboard in the State.
 7. PRL is headquartered in Dublin and operates four distribution facilities in the State. Two of these distribution facilities are located in close proximity to each other in Rathcoole, Co. Dublin, one of which PRL owns and the other of which is leased to PRL. The other two distribution facilities operated by PRL (which it leases) are located in Cork and Kilkenny.³ In addition, PRL has three partner-operated distribution facilities located in counties Sligo, Limerick and Donegal.
 8. PRL also owns Moran Freight Services Limited and Moran Freight Services (UK) Limited (together "MFS") which operate in the State and the United Kingdom, respectively.⁴ MFS's core focus is the provision of logistics services to the electronics, plastics, automotive, pharmaceutical, healthcare and chemicals sectors. MFS specialises in providing temperature-controlled solutions for the pharmaceutical and healthcare sectors.
 9. MFS is also involved in the provision of international freight forwarding services (which consists of arranging for the transport and delivery of goods) in the State, the United Kingdom, and Europe, with a small presence in the United States. Freight forwarding services provided by MFS include international and domestic transport services, bonded warehousing and customs clearance, contract logistics and retail distribution.
 10. For the financial year ending 31 December 2014, PRL's worldwide turnover was approximately €[...], of which €[...] was generated in the State.

² This is authorised by the Health Products Regulatory Authority ("HPRA").

³ PRL does not own or lease the distribution facility in Kilkenny. This facility is owned and operated by Michael Brannigan & Sons Limited, the owner of which (Michael Brannigan) is a shareholder in and director of PRL. Michael Brannigan & Sons Limited provides warehousing and handling services to PRL at the distribution facility in Kilkenny.

⁴ PRL's acquisition of MFS was cleared by the Commission on 11 May 2015. For more details, see <http://www.ccpc.ie/enforcement/mergers/merger-notices/m15016-prl-mfs>



CP

11. Contract People Limited and Shelfwatch RoI are currently owned by Niall Benson and Thomas Davis.⁵ Shelfwatch NI and Sales Placement Limited are currently owned by Niall Benson and Allan Rutherford.⁶ Sales Placement Contract People (NI) Limited is currently owned by Niall Benson Allan Rutherford, Russell Johnston, and June Wilson.⁷
12. CP is engaged in the following business activities:
 - Field sales and marketing outsourcing services to customers in the consumer goods, drinks, food service, telecommunications, pharmaceutical, hardware and cosmetic industries. The services provided by CP include outsourced sales operations, the provision of relief staff and temporary sales staff, pay-roll services, door-to-door sales services and sales training services.
 - Supply chain services including the provision of warehouse storage. CP operates out of two rented warehouses in Co. Dublin and a number of smaller depots located throughout the State.
13. For the financial year ending 31 December 2014, CP's combined worldwide turnover was €[...], of which €[...] was generated in the State.

Rationale for the Proposed Transaction

14. The parties state in the notification:

“PRL has identified a commercial need to expand by offering more services, including developing and expanding its sales related services, logistics services and recruitment services so that PRL can provide more expansive services to its customers. PRL is not currently engaged in recruitment services or the logistics services operated by CP. Certain of the shareholders of CP are seeking to dispose of their shareholding interest in CP with an intention to remain with the business operations on a contract basis for a certain period post-completion.”

Third Party Submissions

15. No submission was received.

Competitive Analysis

16. There is no horizontal overlap between the parties in the State with respect to the provision of recruitment services and the provision of logistics services since PRL is not engaged in the former activity and CP is not engaged in the latter activity.

⁵ Niall Benson currently has a 90% shareholding and Thomas Davis currently has a 10% shareholding in Contract People Limited. Each of Niall Benson and Thomas Davis currently has a 50% shareholding in Shelfwatch RoI.

⁶ Each of Niall Benson and Allan Rutherford currently has a shareholding of 50% in Shelfwatch NI and in Sales Placement Limited.

⁷ Niall Benson currently has a 51% shareholding, Allan Rutherford currently has a 40% shareholding, Russell Johnston currently has a 4.5% shareholding and June Wilson currently has a 4.5% shareholding in Sales Placement Contract People (NI) Limited.



17. There is, however, a horizontal overlap between the parties with respect to the provision of sales related services in the State.
18. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The narrowest potential product market affected by the proposed transaction is the provision of sales related services to customers. The narrowest potential geographic market affected by the proposed transaction is the State. The Commission, however, does not need to come to a definitive view on the precise relevant market definition in this instance since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the relevant market is defined narrowly (e.g., the provision of sales related services in the State) or more broadly to encompass the provision of sales related services, logistics services and recruitment services in the State.
19. There are a large number of undertakings currently active in the provision of sales related services in the State. PRL identified 16 undertakings, excluding CP, which compete with its retail sales services business in the State.⁸ CP identified 34 undertakings, excluding PRL, which compete with its retail sales services business in the State.⁹ The parties state in the notification that: “Whilst there is some competitive overlap between PRL and CP in providing retail sales services...there is no reason to believe that the services provided by PRL and CP are viewed by customers as close substitutes for one another.”
20. There is no vertical relationship between the parties and the proposed transaction does not raise 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. In the notification, the parties provided a draft Share Purchase Agreement between the parties to the proposed transaction, which contains a number of restrictive obligations on the vendors.¹⁰ These include non-compete and non-solicitation clauses. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.¹¹ The Commission considers these restrictions to be directly related to and necessary for the implementation of the proposed transaction.

⁸ This information was provided in the economic report prepared by Compecon Limited (the “Compecon Report”) on behalf of PRL that was submitted to the Commission with the notification.

⁹ This information was also provided in the Compecon Report.

¹⁰ The parties provided the Commission with a copy of a draft agreement for the sale and purchase of 100 ordinary shares of €1.00 each in the capital of Shelfwatch Rol between Mollyvale Limited (a subsidiary of PRL), Niall Benson, Thomas Davis, PRL Group Holdings Limited and Allan Rutherford.

¹¹ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby PRL Group would acquire sole control of Contract People Limited, Sales Placement Contract People (NI) Limited, Shelfwatch Limited (an Irish registered company), Shelfwatch Limited (a Northern Ireland registered company) and Sales Placement Limited 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.

For the Competition and Consumer Protection Commission

Gerald FitzGerald
Member
Competition and Consumer Protection Commission