



DETERMINATION OF MERGER NOTIFICATION M/16/012 HOME PROJECT CENTRE / SAINT-GOBAIN BUILDING DISTRIBUTION (ROI)

Section 21 of the Competition Act 2002

Proposed acquisition by Home Project Centre Limited, through HPC Management Services Limited, of certain assets of Saint-Gobain Building Distribution (ROI) Limited

Dated 11 April 2016

Introduction

1. On 29 February 2016, in accordance with section 18(1) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby HPC Management Services Limited (“HPC Management Services”), a wholly-owned subsidiary of Home Project Centre Limited (“Home Project Centre”)¹, would acquire certain assets, namely three retail stores selling building materials and DIY products and operating under the brand name ‘JP Corry’ (collectively “the Target Assets”) from Saint-Gobain Building Distribution (ROI) Limited (“the Vendor”).²

The Proposed Transaction

2. The proposed transaction is to be implemented pursuant to an asset purchase agreement entered into between HPC Management Services, Home Project Centre and the Vendor on 24 February 2016 (the “Asset Purchase Agreement”).
3. Pursuant to the proposed transaction, Home Project Centre, through HPC Management Services, is to acquire ownership and thus sole control of the businesses and assets of three existing JP Corry-branded retail stores which sell building material and DIY products in the following locations: (i) Oranmore, County Galway, (ii) Gort, County Galway, and (iii) Cahir, County Tipperary.

¹ Home Project Centre and its subsidiaries constitute the HPC Group.

² In the Merger Notification Form it was stated that the parties were making a joint notification, however in response to Requests for Further Information by the Commission, the parties indicated that the notification was made by HPC Management Services only, as the proposed transaction is an acquisition of assets, as provided for in section 18(2)(c)(ii) of the Act.



The Undertakings Involved

Home Project Centre

4. HPC Management Services³, a private limited company incorporated in the State, is a wholly-owned subsidiary of Home Project Centre and, as such, is part of the HPC Group.⁴ HPC Management Services is the vehicle being used to acquire the Target Assets and it does not currently generate any turnover in the State.
5. Home Project Centre is a holding company and the ultimate parent of the HPC Group, which operates nine retail stores in the State, each of which supply DIY and building material to the general public and building trade.⁵ For the financial year ending 31 December 2015, the HPC Group had a turnover of approximately €[...], the entirety of which was generated in the State.

Target Assets

6. The assets to be acquired by Home Project Centre, through HPC Management Services, consist of three JP Corry-branded retail stores:
 - a. Oranmore Industrial Park, Oranmore, Co. Galway;
 - b. Station Road, Gort, Co. Galway; and
 - c. Cahir Business Park, Tipperary Road, Cahir, Co. Tipperary.
7. The Target Assets are retail stores, which supply DIY products and building materials, including plumbing and heating products, roofing, drainage systems, dry lining and insulation, timber, doors, landscaping, specification washroom systems, tools and equipment, laminates, flood defence, commercial doors, painting and decorating and workwear.
8. For the financial year ending 31 December 2015, the Target Assets generated aggregated turnover of €[...], the entirety of which was generated in the State.

The Vendor

9. The Vendor is controlled by the Saint-Gobain Group and is the relevant vendor of the Target Assets. Following the proposed transaction, the Saint-Gobain Group will no longer operate any retail stores for the supply of building materials or DIY products in the State. In Northern Ireland, the Saint-Gobain Group will remain active in 15 locations, which do not form part of the proposed transaction.

³ On 03 March 2016, the company changed its name to HPC Sales Limited. However, since the Commission was not notified of this change the Commission will, for purposes of this Determination, use the company name which was used in the Merger Notification Form.

⁴ The other subsidiaries of Home Project Centre are TJ O'Mahony & Sons Limited, PH Ross Limited, Commons Providers Limited and C+D Providers Limited.

⁵ These retail stores are: TJ O'Mahony's Ballymount; TJ O'Mahony's Kilshane; TJ O'Mahony's Glasnevin; McCarthy's Hardware, Naas; PH Ross, Cabra; Commons Hardware, Navan; Arklow Building Supplies; C+D Providers; and Home & Hardware in Wexford.



Rationale for the Proposed Acquisition

10. The notification states:

“The Proposed Transaction aligns with the HPC Group’s plan for future growth by way of geographical expansion of the business and the addition of more outlets to increase the scale of the business.”

Third Party Submissions

11. No submission was received.

Competitive Analysis

12. The HPC Group’s primary business is the supply of building materials and DIY products to the general public and the building trade in the State. The HPC Group’s subsidiaries operate nine retail stores in the State as set out in Table 1 below.

Table 1: HPC Group subsidiaries and retail stores in the State

Subsidiary of HPC Group	Retail Store	Address of Retail Store	Principal Area of Supply
TJ O’Mahony & Sons Ltd	TJ O’Mahony’s Ballymount	Ballymount Cross, Ballymount Rd, Dublin 24	Dublin
	TJ O’Mahony’s Kilshane	Kilshane Cross, North Rd, Finglas, Dublin 11	Dublin
	TJ O’Mahony’s Glasnevin	126 Broombridge Close, Ballyboggan Rd, Glasnevin, Dublin 11	Dublin
	McCarthy’s Hardware	Downings North, Prosperous, Naas, Co. Kildare	Kildare & Dublin
PH Ross Ltd	PH Ross Cabra	12-32 Old Cabra Road, Cabra, Co. Dublin	Dublin
Commons Providers Ltd	Commons Hardware	Commons Rd, Navan, Co. Meath	Meath, Louth & Dublin
C+D Providers Ltd	Arklow Building Supplies	Yellow Lane, Knockenrahan Lower, Arklow, Co. Wicklow	Wicklow, Wexford and Dublin
	C+D Providers	Larkins Cross, Wexford	Wexford
	Home & Hardware	Trinity St, Wexford	Wexford

13. The Target Assets consist of three retail stores, of which two are located in County Galway and one is located in County Tipperary.



14. There is a minor horizontal overlap in the activities of the parties within the State in relation to retail sales of building materials and DIY products.
15. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission's predecessor, the Competition Authority, has previously defined separate product markets for building materials and DIY products, in respect of which the relevant geographic markets were found to be local and regional, respectively⁶. However, the Commission is of the view that in this case it is not necessary for the Commission to define precise relevant product or geographic markets since the competitive effects of the proposed transaction would be unaffected whether or not the Commission defines precise relevant product and geographic markets.
16. However, for the purposes of its review of the proposed transaction the Commission has analysed its impact in the market where the activities of the parties overlap, i.e. the retail supply of building material and DIY products. The Commission has also examined the competitive impact of the proposed transaction by reference to the geographic areas in which the parties' respective retail stores are located using the methodology described in its merger determination in M/04/051 – Grafton Group plc/Heiton Group plc, namely:
 - In relation to the supply of building materials (builders merchanting) – in Dublin and Cork cities, builders merchants have a catchment area radius of about 5-10 miles and elsewhere an effective catchment area radius of about 20-25 miles; and
 - In relation to the supply of DIY products – a typical DIY superstore has a catchment area of about 4-5 miles for large urban areas and 10-15 miles elsewhere.
17. The principal areas of supply of the nine retail stores currently operated by Home Project Centre are set out in Table 1 above. The table shows that these catchment areas are primarily within (i) the greater Dublin area, and (ii) Wexford.
18. Information supplied by the Vendor suggests that 80% of annual sales of the Target Assets, takes place within a radius of approximately 20 km of each store.⁷
19. As the Target Assets are located in either County Galway or County Tipperary, and Home Project Centre does not operate any retail stores supplying DIY products within 10-15 miles of the Target Assets or any retail stores supplying building materials within 20-25 miles of the Target Assets. Consequently there is no overlap between the parties' activities between the various relevant catchment areas within the State.
20. On a national basis, there are a number of competing groups supplying building materials and DIY products, such as the Grafton Group (which includes Chadwicks, Heiton Buckley, Davies and Woodies), Brooks Group, Dublin Providers Limited, McMahons and a range of independent merchants operating as part of the United Hardware Group (which includes Homevalue and Arro) and Amalgamated Hardware (which includes Topline).

⁶ M/04/051 – Grafton Group plc/Heiton Group plc.

⁷ Response to Request for Further Information by the Commission, dated 23 March 2016.



21. In each of the catchment areas for stores of HPC Management Services and for the Target Assets, there are a large and varied (in size) number of competitors whose presence will constrain the activities of the merged entity post-transaction.
22. There is also a vertical aspect of the proposed transaction since Saint-Gobain Building Distribution Limited, trading as JP Corry, (“JP Corry NI”) is a supplier to the Target Assets of products manufactured by Technocover Limited (security products such as access doors, cabinets and enclosures) and Tensar International Limited (soil reinforcement products), as well as washrooms/cubicles (commercial toilet cubicles, vanity units, postform units, IPS panels, laminates, lockers and associated ironmongery). However, the proposed transaction is not likely, in the Commission’s view, to result in any foreclosure concerns. In both the upstream market for non-retail supply of building materials and DIY products and the downstream market for retail supply of building materials and DIY products, neither party has sufficient market power to implement a foreclosure strategy and there are a number of large competitors whose presence will constrain the activities of the merged entity post-transaction.
23. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

24. The Asset Purchase Agreement between the parties contains a number of restrictive covenants imposed on each of HPC Management Services and the Vendor. These include:
 - a. exclusive supply commitments by HPC Management Services [...]; and
 - b. non-compete and non-solicitation covenants restricting the Vendor, for a period [...] from competing with the businesses of the Target Assets nationally and from soliciting existing customers and employees of the Target Assets.
25. The parties state that the restrictive covenants are necessary in a transaction of the nature of the proposed transaction, i.e. transferring businesses as going concerns with goodwill. The parties therefore view the restrictive covenants to be fair and reasonable. The parties state that the exclusive supply commitments are fair and reasonable because in the first instance it does not restrict HPC Management Services from sourcing substitute products from alternative suppliers and manufacturers, and both commitments are limited in duration.
26. The Commission is of the view that the exclusive supply commitments imposed on HPC Management Services and the restrictive obligations imposed on the Vendor go beyond what is reasonable and proportionate to ensure the protection of their legitimate business concerns. In particular, the exclusive supply commitments, which are not limited to fixed quantities of products, are not consistent with paragraph 34 of the EU Commission Notice on restrictions directly related and necessary to concentrations (2005/C56/03), which states: *“Both supply and purchase obligations providing for fixed quantities, possibly with a variation clause, are recognised as directly related and necessary to the implementation of the concentration. However, obligations providing for unlimited quantities, exclusivity or conferring preferred-supplier or preferred-*



purchaser status, are not necessary to the implementation of the concentration."⁸ The Commission is therefore of the view that the exclusive supply commitments do not appear to be directly related to and necessary for the implementation of the proposed transaction.

27. In addition, the geographic scope of the restrictive covenants imposed on the Vendor is national and therefore is broader than the markets affected by the proposed transaction, which are regional/local in scope. The Commission is of the view that the geographic scope of these restrictive covenants therefore seems to go beyond what is reasonable and necessary for the protection of HPC Management Services' business interests and therefore they do not appear to be directly related to and necessary for the implementation of the proposed transaction.⁹
28. For these reasons, the Commission does not consider the exclusive supply commitments imposed on HPC Management Services and the restrictive obligations imposed on the Vendor to be directly related and necessary to the implementation of the proposed transaction. As a result, neither the exclusive supply commitments nor the restrictive obligations will benefit from the protection offered by sections 4(8) and 5(3) of the Act.

⁸ This is also in line with the Competition Authority Determination in M/11/032 – Kerry/Cargill, where a proposed preferred supplier arrangement was found not to be directly related and necessary to the implementation of the transaction.

⁹ This is in line with the Commission's recent decision in M/16/009 – Tedcastles/Sirio.



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 acquisition whereby HPC Management Services Limited, a wholly-owned subsidiary of Home Project Centre Limited, would acquire certain assets, namely three retail stores selling building materials and DIY products and operating under the brand name 'JP Corry' from Saint-Gobain Building Distribution (ROI) 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

Isolde Goggin
Chairperson
Competition and Consumer Protection Commission