



DETERMINATION OF MERGER NOTIFICATION M/16/055 - UPMC/BON SECOURS HEALTH SYSTEM/DRUID STONE

Section 21 of the Competition Act 2002

Proposed acquisition of joint control by the University of Pittsburgh Medical Centre and Bon Secours Health System Limited of Druid Stone Limited

Dated 09 December 2016

Introduction

1. On 01 November 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 the University of Pittsburgh Medical Centre (“UPMC”)¹ and Bon Secours Health System Limited (“Bon Secours”) (collectively “the Acquirers”) would acquire joint control over, through the acquisition by each of the Acquirers of 50% of the issued share capital in, Druid Stone Limited (“the JV Company”).
2. Post-transaction, the JV Company will be operated as a joint venture between the Acquirers. The JV Company will provide radiotherapy services to patients from a leased facility at Bon Secours Hospital in Cork.

The Proposed Transaction

3. The creation of the JV Company was agreed on 19 September 2016 pursuant to a joint venture agreement (“JV Agreement”) entered into between UPMC Ireland Limited, Bon Secours and the JV Company on the same date.
4. The proposed transaction involves the creation of a joint venture, the JV Company, to perform, on a lasting basis, all the functions of an autonomous economic entity, as provided for in section 16(4) of the Act.
5. Following implementation of the proposed transaction, each of the Acquirers will own 50% of the JV Company. The parties state in the notification that each of the Acquirers will be entitled to appoint the same number of directors in the JV Company and the Chairman will not have a casting vote. Decisions taken in relation to the JV Company will require unanimity. On this basis, the parties consider that the Acquirers will exercise joint control over the JV Company.

¹ Through its indirect wholly-owned subsidiary UPMC Ireland Limited.



6. Post-transaction, UPMC will provide hospital management services to the JV Company pursuant to a management agreement to be entered into between the parties². The JV Company will provide radiotherapy services from a facility to be leased from Bon Secours Hospital in Cork³.

The Undertakings Involved

UPMC

7. UPMC is an international health services group, headquartered in Pittsburgh, Pennsylvania, USA, and is affiliated with the University of Pittsburgh Schools of the Health Sciences. UPMC is a not-for-profit organisation governed by a voluntary board of directors.
8. In the State, UPMC is active through its 50% interest⁴ in Waterford Oncology Associates Limited, which owns and operates the UPMC Whitfield Cancer Centre, a cancer care centre located at the Whitfield Clinic on North Cork Road, Waterford. The Whitfield Clinic is a private hospital offering a range of services to patients in the South-East of the State and is owned by a third party. UPMC also provides hospital management services⁵ to the UPMC Whitfield Cancer Centre.
9. For the financial year ending 30 June 2015, UPMC's worldwide turnover was approximately €10 billion⁶, of which approximately €[...]⁷ was generated within the State.

Bon Secours

10. Bon Secours is a private company limited by guarantee registered in the State in 1993. It is part of a not-for-profit organisation founded in 1824 by the Sisters of Bon Secours. According to the Bon Secours website⁸, the group is the largest independent hospital group in the State, with four technologically advanced hospitals located in Cork, Dublin, Galway and Tralee, a consultation centre in Limerick and a care village in Cork.

² A formal written management agreement had not been executed at the time of the notification but the Commission has reviewed a copy of the draft agreement submitted to it by the parties as part of the merger notification.

³ A heads of agreement for a [...] lease are still to be agreed between Bon Secours and the JV Company.

⁴ Through another indirect wholly-owned subsidiary of UPMC, UPMC Cancer Centres Ireland Limited.

⁵ The hospital management services provided by UPMC involve the management of clinical, operational and technical service delivery.

⁶ Euro figure converted from USD 12 billion using the European Central Bank (ECB) conversion rate for 1 July 2014 – 30 June 2015.

⁷ Figure calculated by taking 50% equity share of the annual turnover of Waterford Oncology Associates Limited for the most recent audited accounts as at 30 June 2015, of approximately €[...], and adding a management fee received from that joint venture of approximately €[...].

⁸ <http://www.bonsecours.ie/>



11. In the State, Bon Secours is active in the provision of a broad range of private hospital services⁹, which include in-patient, day-care and out-patient healthcare services, and pathology and laboratory testing services¹⁰.
12. For the financial year ending 31 December 2015, Bon Secours' worldwide turnover was approximately €230 million, the entirety of which was generated in the State.

The JV Company

13. Following implementation of the proposed transaction, it is envisaged that the JV Company will provide radiotherapy services¹¹ at Bon Secours Hospital in Cork. The JV Company, which is in the process of changing its name to Cork Radiation Oncology Associates Limited, will be jointly owned and controlled by the Acquirers in accordance with the terms of the JV Agreement between the parties. As mentioned in paragraph 6 above, the JV Company will provide radiotherapy services from a facility in Cork leased from Bon Secours and UPMC will provide hospital management services to the JV Company.

Rationale for the Proposed Transaction

14. The parties state in the notification:

“The parties wish to combine their healthcare expertise to establish a new 'state of the art' radiotherapy centre at Bon Secours' campus in Cork. Combining UPMC's specific expertise in radiotherapy with Bon Secours' existing facility, this proposal is a final key component in the provision of a full suite of cancer and oncology services and, specifically, will enable the provision of a comprehensive oncology service for patients from the Bon Secours Cork hospital campus.”

Third Party Submissions

15. No submission was received.

Competitive Analysis

Horizontal Overlap

16. The Acquirers are both active in the provision of healthcare services in the State. Bon Secours operates a network of private hospitals in Cork, Dublin, Galway and Tralee and UPMC has a 50% interest in UPMC Whitfield Cancer Centre in Waterford.
17. Following implementation of the proposed transaction, the JV Company will provide radiotherapy services to patients at Bon Secours Hospital in Cork. As such, the JV Company will be competing directly with Cork University Hospital, the only other radiotherapy centre in Cork, and the parties suggest that the proposed transaction will

⁹ Hospital services include the provision of patient beds, nursing care, diagnostic facilities, surgery facilities, pharmacy, post-operative care, imaging and, in most instances, intensive care units and emergency services.

¹⁰ Laboratory and pathology testing services are provided by Bon Secours to other healthcare service providers, including the Health Service Executive (“HSE”) (both private and public) and other medical practitioners.

¹¹ Radiotherapy is the use of high-energy rays to cure or control cancer. It is a common cancer treatment in the State and worldwide; see: <https://www.cancer.ie/cancer-information/treatments/radiotherapy#sthash.qjx0ZeEn.dpbs>



thereby increase competition for the provision of radiotherapy services in the Munster region. Bon Secours does not currently provide radiotherapy services in any of its private hospitals and therefore the JV Company will not compete with Bon Secours. While UPMC does currently provide radiotherapy services in the State, such services are limited to those provided at the UPMC Whitfield Cancer Centre in Waterford.

18. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission does not need to come to a definitive view on the precise relevant product market in this instance, since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant product market is defined narrowly (e.g., the provision of radiotherapy services) or more broadly (e.g., to encompass the provision of private healthcare services in general).
19. In order to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to a narrow product market, i.e. the provision of radiotherapy services.
20. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market in this instance, since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the relevant geographic market is defined as regional or national. However, in order to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to both a narrow regional geographic market and a State-wide geographic market.
21. Thus, for the purposes of its review of the competitive effects of the proposed transaction, the Commission has examined the competitive impact of the proposed transaction by reference to the market for the supply of radiotherapy services: (i) regionally and (ii) within the State.

(i) The supply of radiotherapy services in the South/South East

22. There is an overlap between the parties' activities in the State with respect to the provision of radiotherapy services since, following implementation of the proposed transaction, both of the JV Company and UPMC will be involved in the provision of radiotherapy services. However, these services will be provided in two different regions, thus catering for different geographic catchment areas. In particular:
 - a. UPMC is currently involved in the provision of radiotherapy services through a joint venture, Waterford Oncology Associates Limited, trading as UPMC Whitfield Cancer Centre, at Whitfield Clinic in Waterford; and
 - b. The JV Company will be providing radiotherapy services, as Cork Radiation Oncology Associates Limited, at Bon Secours Hospital in Cork.
23. UPMC's current cancer facility at Whitfield Clinic in Waterford is more than 120 kilometres away from the JV Company's planned facility at Bon Secours Hospital in Cork and, although there may be some overlap, the two facilities will mainly cater for two



different catchment areas.¹² Although the HSE divides the State into four main regions, namely Dublin Mid Leinster, Dublin North East, South and West, hospitals in the State are grouped together by the HSE into eight further sub-regions or clusters.¹³ While both Cork, where the JV Company will be providing radiotherapy services, and Waterford, where UPMC's current cancer facility is based, are located in the South region for the HSE's purposes, Cork falls into the HSE's "Southern Hospitals Group" whereas Waterford falls into the HSE's "South Eastern Hospital Group". Thus, at a regional level, it could be concluded that there will be some overlap between the parties' activities at the fringes of the Southern and South Eastern sub-regions, although this overlap is likely to be limited.

(ii) The supply of radiotherapy services in the State

24. There are a number of competing providers of radiotherapy services in the State, such as Cork University Hospital, St. Luke's Radiation Oncology Network¹⁴, which operates from three Dublin locations (namely, St Luke's Hospital and St Luke's Radiation Oncology Units in St James's Hospital and Beaumont Hospital), St. Vincent's Hospital in Dublin and Galway University Hospital.
25. Table 1 below lists the primary providers of radiotherapy services in the State, as well as their estimated current shares of the 'radiotherapy market'. Table 1 shows that UPMC currently holds a market share of 5-10% and, as the JV Company will be opening a new facility, the JV Company is expected to attain a market share of 0-5%. Thus, while at the level of the State there is some overlap between the parties' activities, they are expected to have a combined national market share of less than 15% and there are a number of other large providers of radiotherapy services which would act as a competitive constraint on UPMC and the JV Company post-transaction.

Table 1: Radiotherapy centres in the State and estimated market shares

Radiotherapy Centre	Estimated market share ¹⁵
St. Luke's Radiation Oncology Network (SLRON), i.e. St. Luke's Hospital (Dublin 6), St. James's Hospital (Dublin 8) and Beaumont Hospital (Dublin 9)	40%
Cork University Hospital	20%
University Hospital Galway	20%
Mater Private/Midwestern Radiotherapy (Dublin & Limerick)	10-15%
UPMC Whitfield (Waterford)	5-10%

Source: The Parties

¹² <https://www.google.ie/maps/dir/Bon+Secours+Hospital+Cork,+Cork/Whitfield+Clinic,+Butlerstown,+North+Cork+Road,+Waterford/>

¹³ <http://www.hseland.ie/LCdn/Portals/0/pdf/HSE%20Hospitals%20Map%20260210.pdf>

¹⁴ <http://stlukesnetwork.ie/locations-and-visiting/>

¹⁵ Estimate based on radiotherapy patient volumes, taking into account the parties' knowledge of the number of linear accelerators (i.e., the radiotherapy treatment devices) at the various sites.



Vertical Relationship

26. There is a minor vertical relationship between the parties in the State, whereby, post-transaction, UPMC will supply hospital management services to the JV Company pursuant to a management agreement. UPMC's only other customer for hospital management services in the State is UPMC Whitfield Cancer Centre, which is located at the Whitfield Clinic in Waterford, as discussed in paragraph 8 above. The parties have informed the Commission that such services are supplied by UPMC at a nominal fee. In the case of UPMC Whitfield Cancer Centre, the fee charged by UPMC for the provision of hospital management services amounts to less than [...] % of the centre's annual turnover. It is anticipated that the JV Company will pay to UPMC a management fee of €[...] per annum (exclusive of VAT), [...].
27. Hospital management services can be supplied by any number of firms active in the provision of healthcare services in the State, including private hospitals such as Mater Private (Dublin and Limerick), Galway Clinic, Beacon Hospital (Dublin) and Hermitage Medical Centre (Lucan). In addition, UPMC already provides hospital management services to its other joint venture (i.e. UPMC Whitfield Cancer Centre) and therefore the proposed transaction would not result in any change to the status quo in this regard.

Conclusion

28. 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

29. The JV Agreement between the parties contains non-compete and non-solicitation covenants restricting the Acquirers, for as long as they remain shareholders of the JV Company and for a limited period thereafter, from carrying on any activity that competes with the business of the JV Company within the province of Munster and from soliciting existing customers and employees of the JV Company.
30. The duration of the ancillary restraints does not exceed the maximum duration acceptable to the Commission and, given the particular nature of the proposed transaction, the Commission considers the specific restrictions to be directly related to and necessary for the implementation of the proposed transaction.



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 transaction whereby the University of Pittsburgh Medical Centre and Bon Secours Health System Limited would acquire joint control of Druid Stone Limited, through the acquisition by each of the University of Pittsburgh Medical Centre and Bon Secours Health System Limited of 50% of the issued share capital in Druid Stone Limited, thus creating a joint venture, 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

Patrick Kenny
Member
Competition and Consumer Protection Commission