



DETERMINATION OF MERGER NOTIFICATION M/16/056 - ESB PENSION FUND/ULYSSES PROPERTIES

Section 21 of the Competition Act 2002

Proposed acquisition by the trustees of the ESB Pension Fund of sole control of thirteen commercial and residential properties

Dated 30 November 2016

Introduction

1. On 2 November 2016, in accordance with section 18(1)(a) 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 trustees of the ESB Pension Fund (“the Purchaser”) would acquire sole control of five commercial properties and two commercial and residential properties located in Dublin 1, and six commercial properties located in Naas, Co. Kildare (the “Target Properties”).
2. The proposed transaction comprises the acquisition by the Purchaser, through Tetrarch ICAV,¹ of sole control over the Target Properties as a result of two interrelated transactions which are described below, namely: (a) the “Ulysses Transaction”; and, (b) the “Millennium Transaction”.

The Ulysses Transaction

3. PIMCO Funds Ireland plc (“Pimco”), a public limited company incorporated in the State, acting solely in respect of its sub-fund PIMCO Property Fund, proposes to assign, transfer and convey to Tetrarch ICAV: (a) all of its current interest in Ulysses Properties General Partner L.L.C.;² and (b) the entire interest, rights and obligations currently held by Pimco as the limited partner in Ulysses Properties Limited Partnership (“Ulysses Properties”). Tetrarch ICAV is an investment company acting solely in respect of its sub-fund, Tetrarch Capital Commercial Real Estate Fund.
4. Ulysses Properties owns five commercial properties and two commercial and residential properties located at the following addresses in Dublin 1:
 - 21-24 Capel Street – commercial property;
 - Kings Inn House – commercial property;

¹ Tetrarch ICAV is a [collective asset management vehicle], incorporated in the State.

² Pimco is the sole member of Ulysses Properties General Partner L.L.C., which is a limited liability company incorporated in the United States and the general partner of Ulysses Properties Limited Partnership.



- Chapter House – commercial and residential property;
 - Macken House – commercial property;
 - Millennium House – commercial property;
 - Jervis House – commercial property; and
 - No.1 Jervis Street – commercial and residential property.
5. The Ulysses Transaction will be implemented pursuant to a share purchase agreement (“SPA”) between Pimco, Tetrarch ICAV and Ulysses Properties [...] L.L.C. dated 28 October 2016.

The Millennium Transaction

6. In a separate but related transaction to the Ulysses Transaction, Pimco, acting solely in respect of its sub-fund PIMCO Property Fund III, proposes to transfer to Tetrarch ICAV six commercial properties located in Millennium Park in Naas, Co. Kildare which are currently owned by Millennium Properties Limited Partnership.³
7. The Millennium Transaction will be implemented pursuant to a contract for sale (“CFS”) between Millennium Properties Limited Partnership and Tetrarch ICAV dated 28 October 2016. Pimco is the sole member of Joyce Properties 3 General Partner L.L.C., which is the general partner of Millennium Properties Limited Partnership. Pimco proposes to transfer the six commercial properties currently held by Millennium Properties Limited Partnership to Ulysses Properties by way of a novation of the CFS in favour of Ulysses Properties. Tetrarch ICAV will not acquire any interest in Millennium Properties Limited Partnership as a result of the Millennium Transaction.

Investment in Tetrarch ICAV by the Purchaser

8. Pursuant to an investment agreement (“IA”) between the Purchaser, Tetrarch Capital Limited⁴ and Tetrarch Capital Partners Limited dated 23 August 2016 (as amended⁵), the Purchaser has agreed to subscribe for [...] % of the issued share capital of Tetrarch ICAV and Tetrarch Capital [Partners] Limited has agreed to subscribe for the remaining [...] % issued share capital of Tetrarch ICAV. The parties envisage that each of the Ulysses Transaction and the Millennium Transaction will complete on the same day as the transaction described in the IA will complete. Completion of the transaction described in the IA and of the Ulysses Transaction are conditional on the receipt of the Commission’s approval of the proposed transaction, while completion of the Millennium transaction is conditional on completion of the Ulysses Transaction.

³ These six properties are: Ash House, Birch House, Beech House, Chestnut House, Hazel House and Willow House.

⁴ Tetrarch Capital Limited currently manages the Target Properties.

⁵ The Purchaser, Tetrarch Capital Limited and Tetrarch Capital Partners Limited entered into an amendment agreement to the IA on 28 October 2016.



9. Following completion of the Ulysses Transaction and the Millennium Transaction, the Purchaser will own [...] % of Tetrarch ICAV, thereby acquiring sole control of the Target Properties listed in paragraphs 4 and 6 above.

The Undertakings Involved

The Purchaser

10. The Purchaser is responsible for the assets of the ESB Defined Benefit Pension Scheme, which is a funded defined benefit pension scheme as defined by the Pensions Act 1990. The ESB Defined Benefit Pension Scheme was established under the Electricity Supply Board (Superannuation) Act 1942 and provides benefits based on pensionable salary and length of service for members and their dependants upon retirement, death or ill health.
11. The Purchaser and the superannuation committee are responsible for overseeing all aspects of the ESB Defined Benefit Pension Scheme, with ESB acting as the registered administrator. The Purchaser has overall responsibility for the investment of the ESB Defined Benefit Pension Scheme's assets. The superannuation committee oversees the payment of benefits to members and their dependants.
12. For the financial year ending 31 December 2015, the Purchaser's worldwide turnover was €[...], of which €[...] was generated in the State.

The Target Properties

13. The Target Properties comprise eleven commercial properties and two commercial and residential properties, all of which are located in either Dublin 1 or Naas, Co. Kildare, and which account for a total rentable area of 44,910 square metres.
14. For the financial year ending 31 December 2015, the Target Properties' worldwide turnover was €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

15. The parties state in the notification:

"The proposed transaction is consistent with the investment strategy of the Purchaser to acquire property assets with a view to earning ongoing returns and eventually profiting from their sale."

Third Party Submissions

16. No submission was received.

Competitive Analysis

17. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant product and geographic markets since there is no horizontal overlap between the parties' activities in the State. The Purchaser's existing property



interests⁶ are managed on behalf of the Purchaser by investment fund managers which are neither owned nor controlled by the Purchaser. As a result, there is no horizontal overlap between the activities of the Purchaser and the Target Properties in the State.

18. The proposed transaction does not raise any vertical competition concerns.
19. 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

20. No ancillary restraints were notified.

⁶ The Purchaser holds a passive, non-controlling shareholding of 11.76% in the Irish Property Unit Trust which is the largest unlisted property vehicle in the State. The Purchaser also holds a passive, non-controlling shareholding of 2.8% in the CBRE Global Alpha Fund which invests in property interests worldwide, including in the State.



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 the trustees of the ESB Pension Fund would acquire sole control of five commercial properties and two commercial and residential properties located in Dublin 1, and six commercial properties located in Naas, Co. Kildare 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