



DETERMINATION OF MERGER NOTIFICATION M/18/042 - OAKTREE & ALANIS CAPITAL/LIONCOR (JV)

Section 21 of the Competition Act 2002

Proposed acquisition by Oaktree Capital Group LLC and Alanis Capital Limited of joint control of Lioncor Developments Limited

Dated 12 September 2018

Introduction

1. On 22 May 2018, 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 acquisition whereby Oaktree Capital Group LLC (“Oaktree”), through OCM Luxembourg OPPS Xb S.à.r.l., (“OCM”) would acquire 50% of the issued share capital of Lioncor Developments Limited (“Lioncor”) from Alanis Capital Limited (“Alanis”) and thereby confer joint control of Lioncor on Oaktree and Alanis (the “Proposed Transaction”).

The Proposed Transaction

2. Alanis currently holds 100% of the issued share capital of, and thus exercises sole control over, Lioncor.
3. The Proposed Transaction will be implemented pursuant to an Investment Agreement (the “Investment Agreement”) between OCM, Alanis, the Executives¹ and Lioncor. At the time of the notification, the Investment Agreement had yet to be signed and finalised. However, the parties provided a draft version of the Investment Agreement (the “Draft Agreement”) to the Commission as part of their notification of the Proposed Transaction. The Commission considers that the undertakings involved have

¹ Information provided by the parties to the Commission noted the following in relation to the Executives, “The Executives will be a number of individuals whose identities are not yet known”.



demonstrated a good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii) of the Act.

4. Pursuant to the Draft Agreement, Alanis and OCM will subscribe for new shares in Lioncor. The parties have indicated to the Commission that, following such subscriptions, Alanis and Oaktree (through OCM), will each hold 50% of the issued share capital of Lioncor. Therefore, following implementation of the Proposed Transaction, Alanis and Oaktree (through OCM) will exercise joint control over Lioncor.
5. The parties informed the Commission that, separate to the Proposed Transaction, it is intended that Alanis and Oaktree will jointly purchase development sites pursuant to a co-investment arrangement (the “Co-Investment Arrangement”) and Lioncor will provide residential property development management services to these sites. These development sites will be acquired by special purpose vehicles (“SPV”) which will be solely controlled by Oaktree. Lioncor will thus be engaged by these SPVs to manage the development of these sites.

The Undertakings Involved

The Acquirer – Oaktree

6. Oaktree is a global alternative investment management firm headquartered in Los Angeles with 16 offices worldwide. Oaktree is ultimately controlled by Oaktree Capital Group Holdings GP LLC (“Oaktree Holdings”), which is listed on the New York Stock Exchange and over which no undertaking or individual exercises control. Oaktree has over US\$100.5 billion in assets under management. It has investments in a variety of industries including packing, manufacturing, healthcare, clothing, travel, real estate, mining and exploration, food, telecommunications and media and entertainment. Oaktree’s client base includes pension funds, state governments, local governments, university foundations, charitable foundations, sovereign wealth funds and other institutional investors.
7. Oaktree's investments in the State include operational retail assets, office development assets, sites for residential development and aparthotels, as well as other distressed assets, e.g., loan and mortgage portfolios and loan origination.



TIO

8. Oaktree has invested in Irish real estate through Oaktree's Targeted Investment Opportunities ("TIO"), an Irish Collective Asset-management Vehicle ("ICAV") regulated by the Central Bank of Ireland. TIO currently makes its investments through [...] specialist sub-funds, each with segregated liability. Each sub-fund has an asset advisor and Oaktree is the investment manager in each case. These sub-funds specialise in long-term operational real estate including offices, residential houses, apartments, aparthotels and operational retail assets.
9. TIO, through one of these specialist sub-funds, is currently developing a residential development of [...] units located in Drumcondra, Dublin 3, known as Grace Park Wood.² In addition, TIO, through another sub-fund, is also developing a site with planning permission for 72 apartments at 76 Sir John Rogerson's Quay, Dublin 2.³
10. In 2017, TIO was engaged in the following activities through its sub-funds:
 - sold [...] residential units located throughout the State, through its sub-funds, [...], [...] and [...]; and,
 - sold [...] commercial units in the State through its sub-funds, [...] ⁴, [...] and [...].
11. TIO is also engaged in the following activities in the State through its sub-funds:
 - involved in the supply of residential rental property through its ownership of approximately [...] residential units through the [...];

² For more information, please see www.graceparkwood.ie.

³ The parties informed the Commission that, "TIO will not provide residential property development management services to development sites which it currently owns in the State following implementation of the Proposed Transaction ...TIO outsources these services to third parties".

⁴ Separately, [...], acts as a property manager and asset advisor to the [...] Fund in respect of the residential units in that fund. [...] was carved out of Mars Acquisition Limited which was previously an Oaktree portfolio company. Oaktree sold Mars Acquisition Limited in 2017 but retained the carved-out business of [...]. [...].



- involved in the supply of rentable retail commercial property in respect of [...] retail properties⁵ in the State through one of its sub-funds and one holding company; and,
- holds investment interests in office space located at 6 Hanover Quay, Dublin 2; and 76 Sir John Rogerson's Quay, Dublin 2, through its sub-funds.⁷

EmRu

12. OCM EmRu Debtco Designated Activity Company ("EmRu"), another Oaktree Irish portfolio company, owns a non-performing loan portfolio secured by assets in the State. The secured assets include residential development sites located throughout the State. The parties state that Lioncor will provide residential property development management services to certain EmRu secured sites. Additionally, EmRu's subsidiary, South Dublin Routing 4 Limited, owns industrial property located at Orion Business Park, Ballycoolin, Dublin 15.⁸

Cannon Kirk

13. Oaktree has a [...] % minority stake in Cannon Kirk Limited ("Cannon Kirk").⁹ Cannon Kirk is a residential property developer, active in both the State and the UK. Its activities include acquiring sites; constructing residential property units and selling these units.
14. In the State, Cannon Kirk has plans to develop residential property units in Malahide, Donabate, Dundalk and Kill. Cannon Kirk currently has planning permission to build 86 units at Waterside, Malahide, and [...] units at Haggardstown, Dundalk. Cannon Kirk does not engage third parties to carry out residential property development management services; instead it has the relevant expertise to manage the residential

⁵ The [...] retail properties are as follows: [...]; Drogheda Retail Park; Navan Retail Park; [...]; The Square Shopping Centre, Tallaght; [...]; Gateway Retail Park; [...]; and the [...].

⁶ The Commission notes that TIO's sub-fund, [...], holds Oaktree's interest in all of the retail parks listed in footnote 5 except for the [...], which is held by Indego Limited. The parties provided the following description of Indego Limited, "*Indego Limited is the holding company that owns the property structure relating to [...]. It is incorporated in Ireland under registration number 427184.*"

⁷ The Commission notes that the office space at 76 Sir John Rogerson's Quay is currently under construction [...]. Additionally, at the time of writing, [...]. Accordingly, Oaktree does not currently generate rent from such commercial office space located in the State.

⁸ The parties note the following in relation to the industrial property, ["..."].

⁹ Information received from the parties noted the following in response to an informal query issued by the Commission, "*Oaktree exercises decisive influence over Cannon Kirk as a result of the veto rights it holds over the strategic matters considered to afford decisive influence.*"



developments on an in-house basis. In 2017, Cannon Kirk sold a total of [...] residential units in the State. In addition, Cannon Kirk is involved in the supply of rentable residential property in the State and currently rents out [...], all of which are located in the Greater Dublin Area¹⁰ (the “GDA”).

15. For the financial year ending 31 December 2016, Oaktree’s worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

The Vendor – Alanis

16. Alanis is a subsidiary of CIM Blue Light Finance Unlimited Company (“CIM”), the group holding company of the wider Alanis Group which is ultimately owned by the McCormack family (collectively the “Alanis Group”). In addition to ultimately controlling the Alanis Group, members of the McCormack family also own/control commercial property assets in their own personal capacity. For completeness, the CCPC has included these properties in its assessment. Therefore, for the purposes of the Commission’s competitive assessment, the McCormack family have been included within the “Alanis Group” defined term.
17. The Alanis Group is involved in property asset and development management in the State, the United Kingdom, Europe and Central America.
18. The Alanis Group manages assets in the office, retail, and residential sectors and has been engaged as a development manager in the development of a number of commercial and residential assets. The Alanis Group also has experience in debt refinancing, loan portfolio acquisitions, loan portfolio management, arranging consensual asset sales and trading asset portfolios.
19. The Alanis Group is not currently active in the sale of residential property units nor in the sale of commercial properties in the State. However, the Alanis Group’s ultimate owners, the McCormack family, are active in the sale of commercial property in the State.¹¹

¹⁰ The geographic area comprising a 50 km radius around Dublin city.

¹¹ As previously mentioned in paragraph 16, such commercial property assets are/were owned and/or controlled by members of the McCormack family in their own personal capacity.



20. The Alanis Group is also active in the supply of residential property development management services in the State in relation to two development sites.¹² Both of these development sites constitute secured assets within Oaktree's EmRu portfolio. The residential property development management services for these sites will not transfer to Lioncor following implementation of the Proposed Transaction. The first development, known as [...], comprises [...] which are completed and ready for market launch. The second development, known as [...], is a partly completed development in [...]. This development comprises [...].
21. The Alanis Group is also active in the supply of rentable residential property through [...], a subsidiary of CIM. [...] currently rents out approximately [...] square metres of residential property to tenants in the State. These residential properties are located at [...] and [...].¹³ In addition, the Alanis Group rent out approximately [...] square metres of residential property in the State, all of which is located in the GDA, at the following locations: [...]. The Alanis Group are also active in the supply of rentable commercial space in the State and currently rent out retail units in the [...]¹⁴ and the [...], respectively, to third parties.¹⁵ Furthermore, the Alanis Group rent out [...] square metres of commercial office space in the State in 2017, all of which is located in the GDA.
22. For the financial year ending 30 June 2017, the Alanis Group's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

The Joint Venture - Lioncor

23. Lioncor is a residential property development management company which is not currently trading. Lioncor is currently wholly owned by Alanis.

¹² The parties note the following in relation to the Alanis Group's residential property development management services in the State, "*The Alanis group's residential property development management activities will, on foot of the Proposed Transaction, be carried out by Lioncor ... This excludes the activities currently carried out by the Alanis group company on the [...] developments which will not transfer to Lioncor*".

¹³ The Alanis Group provided the following information in relation to these properties, "*The apartments in [...] and the property on [...] were acquired on 22 December 2017 ... Accordingly, the Alanis group did not have turnover from the supply of rentable residential property in 2017*".

¹⁴ The parties noted the following in respect of the units in [...], "*they were not rented by Alanis in 2017 and were only acquired on 22nd December 2017*".

¹⁵ In addition, the [...].



24. The parties state that Lioncor will initially provide residential property development management services to companies primarily owned and/or controlled by Oaktree and/or to receivers appointed over secured assets within the EmRu loan portfolio. It is intended that, following implementation of the Proposed Transaction, Lioncor will also work with third party landowners to manage the development of residential schemes across the State. Furthermore, pursuant to the Co-Investment Arrangement, it is intended that Oaktree and Alanis will jointly purchase development sites to which Lioncor will provide residential property development management services. Lioncor will not provide residential property development management services to Cannon Kirk, TIO or Alanis.
25. Lioncor's services will include sourcing development opportunities, arranging debt financing facilities and overseeing development of sites from planning through to completion.¹⁶ Lioncor will not engage in construction as this will be provided by independent third-party contractors. Lioncor's activities will focus on managing residential housing building projects with scope to expand into managing the development of student housing, social and affordable housing and multi-family apartment schemes. Lioncor will neither own nor sell development sites or units.
26. Information provided by the parties noted that it is intended that Lioncor will provide residential property development management services to the development sites listed in Table 1 below.

Table 1: Development sites to which it is currently intended that Lioncor will provide residential property development management services to following implementation of the Proposed Transaction¹⁷

Site	Location
[...]	[...]
[...]	[...]

¹⁶ The parties subsequently informed the Commission that Lioncor will provide the following residential property development management services to each development site owning entity, "financial compliance and reporting, planning services, a range of advisory services, monitoring the contractor and professional team".

¹⁷ The parties noted the following in relation to the development sites, "Please note that, in many cases, the development site has not yet been acquired and is the subject of a bidding process. Accordingly, Lioncor ultimately may not provide these services to all sites ...". In addition, the Commission notes that planning permission has not been achieved for all of the listed development sites.



[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]

Source: Information provided by the parties.

Rationale for the Proposed Transaction

27. The parties state the following in the notification:

“Recognising that there is an Irish housing shortage, the Parties wish to establish a successful residential development management company with a strong brand. The business will manage the delivery of high quality and competitively priced new homes to the Irish market.”

Contacts between the Commission and the Undertakings Involved

28. On 29 June 2018, the Commission served a Requirement for Further Information (“RFI”) on each of Oaktree and Alanis pursuant to section 20(2) of the Act. This adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.

29. Upon receipt of the responses to the RFIs from each of Oaktree and Alanis, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 20 July 2018.¹⁸

30. On 29 August 2018, Oaktree and Alanis submitted draft proposals (the “Draft Proposals”) to the Commission, in accordance with section 20(3) of the Act, for the

¹⁸ The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.



purpose of ameliorating the Commission's competition concerns regarding the Proposed Transaction.¹⁹ Following receipt of the Draft Proposals, the Commission's timeline to review the Proposed Transaction was extended by 15 working days in accordance with section 21(4) of the Act.

Third Party Submissions

31. No submission was received.

Competitive Assessment

32. The Commission completed a two-stage test when conducting its competition assessment of the Proposed Transaction. This two-stage test involved the following: (i) an examination of any horizontal overlap and/or any vertical relationship between Oaktree and the Alanis Group (collectively the "Parents"); and (ii) an examination of any horizontal overlap and/or any vertical relationship between the Parents and Lioncor.

Horizontal Overlap

33. There are horizontal overlaps between the Parents' activities in the State with respect to: (i) the provision of residential property development management services²⁰; (ii) the sale of commercial properties; (iii) the supply of rentable residential properties; (iv) the supply of rentable commercial space; and, (v) the supply of real estate asset management services.

34. In addition, there is a horizontal overlap between the Parents' and Lioncor's activities in the State with respect to the provision of residential property development management services in the State.

¹⁹ Discussed in more detail in paragraphs 60-62 below.

²⁰ There is a minimal horizontal overlap between the Parents' activities in the State with respect to residential property development management services. Alanis and Cannon Kirk are currently active in the provision of residential property development management services in the State. In addition, the Commission notes that Alanis' residential property development management activities will, following implementation of the Proposed Transaction, be carried out by Lioncor except for two residential property development sites as discussed in paragraph 20 and footnote 12, above. It is intended that Cannon Kirk will continue to provide in-house residential property development management services to its own residential development sites. Cannon Kirk does not provide such services to third party residential development site owners. As such, there is a horizontal overlap between Cannon Kirk and Alanis and, as such, the Commission will examine the competitive impact of the Proposed Transaction with respect to the provision of residential property development management services.



35. The Commission defines markets to the extent necessary depending on the circumstances of a given case. In this instance, the Commission does not need to come to a definitive view on the precise relevant market since its conclusions on the likely competitive impact of the Proposed Transaction will be unaffected whether the relevant product market is defined narrowly or more broadly. In order, however, to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission assessed its impact on competition by reference to the narrowest potential product markets.
36. Similarly, in this instance, it is not necessary for the Commission to define the precise geographic market because doing so will not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State. In order, however, to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission assessed its impact on competition by reference to the State.

Conclusion on market definition

37. For the purposes of its competitive analysis, the Commission has assessed the likely competitive impact of the Proposed Transaction on the following potential markets: (i) the provision of residential property development management services in the State; (ii) the sale of commercial properties in the State; (iii) the supply of rentable residential property in the State; (iv) the supply of rentable retail commercial space²¹ in the State; and, (v) the supply of real estate asset management services in the State.

Horizontal Overlap between the Parents' activities in the State

38. Based on estimates provided by the parties, the combined market shares of the Parents in respect of each of - (i) the provision of residential property development

²¹ The Commission has previously assessed the competitive impact of transactions involving the acquisition of rentable retail space. In its determination in *M/16/004 – Dekabank/Whitewater Development*, the Commission assessed the competitive impact of the relevant transaction in the potential market for the “supply of rentable commercial property (i.e., retail premises)”. Please see, merger determination *M/16/004 – Dekabank/Whitewater Development* which can be accessed at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m16004-deka-immobilien-dekabank-whitewater-development/>



management services in the State²²; (ii) the sale of commercial properties in the State²³; (iii) the supply of rentable residential properties in the State²⁴; (iv) the supply of rentable retail commercial space in the State²⁵; and, (v) the supply of real estate asset management services in the State²⁶ – are each less than 10%.

39. The Parents' combined share in the above-mentioned potential product markets will only account for a minimal share of the total amount of such services provided in the State. Additionally, there is a large and varied (in size) number of competitors which are currently active in the above-mentioned product markets in the State, e.g., *Ardstone Homes, Homeland Projects, Chartered Land, Hines, Kennedy Wilson, Bennett Construction, National Asset Management Agency, Patrizia, Carysfort Capital, Comer Brothers, Lugus Capital, Irish Life, IPUT, Hammerson, Davidson Kempner, Burlington Real Estate, Savills, O'Dwyer Real Estate Management, Hooke and McDonald* and *JLL*.

²² At present, Cannon Kirk has planning permission for [...] units in the State. In total, planning permission was granted for 20,776 housing and apartment units in the State in 2017. Please see: http://www.cso.ie/multiquicktables/quickTables.aspx?id=bhq05_1. On the basis of the 2017 planning permission figures obtained from the Central Statistics Office Ireland ("CSO"), Cannon Kirk provided residential property development management services to approximately [0-5]%, of the residential property development sites in the State in 2017. In addition, the Alanis Group provided residential property development management services to just [...] units in the State in 2017, which is equivalent to approximately [0-5]%, of the residential property development sites in the State in 2017 (on the basis of the 2017 CSO planning permission figures). Therefore, on the basis of 2017 CSO planning permission figures, it is estimated that Cannon Kirk and the Alanis Group will have a combined [0-5]%, share in the supply of residential property development management services to residential property development sites in the State, following implementation of the Proposed Transaction.

²³ Information provided by the parties to the Commission noted that Oaktree and the McCormack family held a [5-10]%, and a [0-5]%, share, respectively, in the sale of commercial properties in the State in 2017. On the basis of these estimates, the parties will have a combined minimal estimated market share of approximately [5-10]% in the sale of commercial properties in the State, following implementation of the Proposed Transaction. The parties estimated market shares using information obtained from <http://pdf.euro.savills.co.uk/ireland-research/investment-brochure-final.pdf> concerning the levels of activity for the sale of commercial real estate assets in the State.

²⁴ According to *Savills* (a real estate advisory firm) the private rental sector in the State comprised approximately 322,000 residential units in 2017. (Estimation submitted by the parties and based on information provided to them by *Savills*). Based on this estimate, the parties estimated that Oaktree and the McCormack family held a [5-10]%, share and a [5-10]% share, respectively, in the supply of rentable residential property in the State in 2017. Therefore, on the basis of the 2017 estimated market shares, the parties will have a minimal combined estimated market share of approximately [5-10]% in the supply of rentable residential property in the State, following implementation of the Proposed Transaction.

²⁵ The parties estimate that Oaktree and the McCormack family held a [0-5]% and a [0-5]% share, respectively, in the State in 2017 in respect of the supply of rentable retail commercial space in the State, with reference to total square metres of retail parks and shopping centres in the State. Market share estimates were provided by the parties and based on information from *Sigma Retail Partners, Bannon* and *Savills*.

²⁶ Oaktree and the Alanis Group estimated that their share in the supply of real estate asset management services in the State is likely to be less than [0-5]% and [0-5]%, respectively. Market share estimates were based on the parties turnover and their industry knowledge.



Horizontal Overlap between the activities of the Parents and Lioncor in the State

40. Based on estimates provided by the parties, it is estimated that Oaktree (through Cannon Kirk²⁷), the Alanis Group²⁸ and Lioncor²⁹ will have a combined [0-5]% market share in the supply of residential property development management services to residential property development sites in the State, following implementation of the Proposed Transaction.³⁰
41. The Parents' and Lioncor's combined market share in the provision of residential property development management services will only account for a minimal share of the total amount of such services provided in the State. Additionally, there is a large and varied (in size) number of competitors which are currently active in the provision of residential property development management services in the State, e.g., *Ardstone Homes, Richmond Homes, Homeland Projects, Chartered Land, Hines and Kennedy Wilson*.

Conclusion on Horizontal Overlap

42. Based on the estimates provided by the parties, the Parents and Lioncor currently have a minimal, estimated, combined market share in the above-mentioned potential markets. The parties stated the following in relation to their estimated, combined market share in the provision of residential property development management services in the State:

“However, the parties note that the market is quite fast moving and this figure can increase or decrease quite quickly. For example, it does happen that entire sites are purchased mid-construction. In that case, the residential development management

²⁷ Please see footnote 22 for more information regarding Cannon Kirk's share in the supply of residential property development management services to residential property development sites in the State in 2017.

²⁸ Please see footnote 22 for more information regarding the Alanis Group's share in the in the supply of residential property development management services to residential property development sites in the State in 2017.

²⁹ Information provided by the parties to the Commission noted that EmRu had secured planning permission for [...] residential units in the State. On the basis of 2017 CSO planning permission figures, Lioncor will thus provide residential property development management services to approximately [0-5]% of the residential property development sites in the State.

³⁰ Information provided to the Commission by the parties notes the following, *“However, the parties note that the market is quite fast moving and this figure can increase or decrease quite quickly. For example, it does happen that entire sites are purchased mid-construction. In that case, the residential development management services often cease and are taken over by the new owner. Similarly, new sites can be acquired with planning permissions in place.”*



*services often cease and are taken over by the new owner. Similarly, new sites can be acquired with planning permissions in place”.*³¹

43. Notwithstanding the minimal combined market shares of the parties at the time of notification of the Proposed Transaction, the Commission was concerned about potential information sharing between the Parents via Lioncor in potential markets where the Parent’s activities overlap horizontally. This is discussed in more detail below in paragraphs 56 to 57.

Vertical Relationship

44. The Commission assessed whether the Proposed Transaction is likely to result in vertical competition concerns, e.g., foreclosure concerns – as discussed in paragraphs 44 to 54 - and potential information sharing concerns – as discussed in paragraph 58 to 59.

Vertical Relationship between the Parents

45. There are currently two supply arrangements between Oaktree, through EmRu, and the Alanis Group in the State in relation to: (i) the provision of credit servicing activities; and, (ii) the provision of residential property development management services.

The provision of credit servicing activities to EmRu by the Alanis Group

46. There is an existing vertical relationship between the Parents with respect to the provision of credit servicing activities. Fitzwilliam Loan Management Unlimited Company (“FLM”), a company within the Alanis Group, currently carries out credit servicing activities on the EmRu loan portfolio.³² FLM provides credit servicing activities on all Republic of Ireland loans, secured primarily by assets in the State, within the EmRu portfolio.
47. The Commission considers that the Proposed Transaction does not give rise to any vertical foreclosure concerns in the State in relation to the provision of credit servicing activities for the following reasons:

³¹ Response to the CCPC’s initial queries dated 20 June 2018.

³² The EmRu loan portfolio was acquired by Oaktree in 2016.



- Customer foreclosure: information provided by the parties noted that the EmRu loan portfolio serviced by FLM accounts for approximately [5-10]% of all non-performing loans sold in the State between 2014 and 2017.³³ Additionally, there are a number of other entities that control loan portfolios in the State, e.g., *Deutsche Bank, Apollo Global Management, Colony Capital* and *Cerberus Capital Management*.³⁴ Therefore, following implementation of the Proposed Transaction, there will likely be a significant number of alternative non-performing loans in the State, not controlled by EmRu, for which competing credit servicing providers of FLM can provide such services to;
- Input foreclosure: there are a number of competing credit servicing providers of FLM currently active in the State, e.g., Cabot Financial (Ireland) Limited, Hudson Advisors Ireland Designated Activity Company, Lapithus Management Designated Activity Company, Link ASI Limited, Mars Capital Finance Ireland Designated Activity Company, Mount Street Mortgage Servicing Limited and Situs Asset Management (Ireland) Designated Activity Company.³⁵ As such, non-performing loan owners will have a number of credit servicing providers - other than FLM - to choose from following implementation of the Proposed Transaction; and
- The Commission considers that there will remain a sufficient number of competitors and customers following implementation of the Proposed Transaction in all markets in which both the Alanis Group and Oaktree currently compete.

48. In light of the above, the Commission considers that, following implementation of the Proposed Transaction, the parties will have neither the ability nor the incentive to: (i) foreclose any credit servicing providers from accessing non-performing loans; and/or, (ii) foreclose any non-performing loan owners from accessing alternative credit

³³ The parties provided the following description, “*The loan book had a par value of c€[...]. Between 2014 and 2017 there has been c€79bn of par value non-performing loans (NPL’s) sold (Source <https://www2.deloitte.com/uk/en/pages/financial-advisory/articles/deleveraging-europe-market-update.html>).*”

³⁴ For more information in relation to these loan portfolios, please see <https://www.nama.ie/market-activity/loan-sales/>.

³⁵ The Central Bank publishes a list of the current credit servicing firms on its website. Please see “Register of Credit Servicing Firms” which is accessible at the following link: <http://registers.centralbank.ie/DownloadsPage.aspx>.



servicing providers. Accordingly, the Commission considers that the Proposed Transaction is not likely to lead to any vertical foreclosure concerns in the State in relation to the provision of credit servicing activities.

The provision of residential property development management services to EmRu by the Alanis Group

49. There is an existing vertical relationship between the Parents with respect to the provision of residential property development management services, as the Alanis Group supplies residential property development management services to two development sites in Oaktree's EmRu portfolio, i.e., [...] and [...].³⁶ In addition, following implementation of the Proposed Transaction, Lioncor will provide residential property development management services to sites within the EmRu portfolio.
50. The Commission considers that the Proposed Transaction does not give rise to any vertical foreclosure concerns in the State in relation to the provision of residential property development management services for the following reasons:
- Customer foreclosure: the Alanis Group provided residential property development management services to just [0-5]% of the residential property development sites in the State in 2017.³⁷ Therefore, following implementation of the Proposed Transaction, there will likely be a significant number of alternative residential property development sites in the State for which alternative providers of residential property development management services can provide such services to;
 - Customer foreclosure: there are a large number of competing entities with significant interests in the development of residential property in the State that are currently active in the State, e.g., *Cairn Homes, McGarrell Reilly, Glenveagh Properties, Cosgrave Group, Park Developments Group, Kelland Homes, O'Flynn Group, Ballymore Group, Gannon Homes, Ardstone Homes, Shannon Homes and Castlethorn*. As such, following implementation of the Proposed Transaction,

³⁶ As previously mentioned in paragraph 23, above, Lioncor will not provide residential property development management services to Cannon Kirk, TIO or Alanis. The Commission notes that Cannon Kirk has the relevant expertise to manage their residential developments on an in-house basis and, in addition, TIO outsources residential property development management services to external asset advisors.

³⁷ Please see footnote 22 above for more information regarding this market share estimate.



there will be a number of alternative residential property developers for which competing residential property development management service providers will be able to provide such services to,³⁸

- Input foreclosure: there are a number of competing residential property development management service providers currently active in the State, e.g., *Ardstone Homes, Richmond Homes, Homeland Projects, Chartered Land, Hines* and *Kennedy Wilson*. As such, following implementation of the Proposed Transaction, residential property developers will have a number of alternative residential property development management service providers to choose from; and
- The Commission considers that there will remain a sufficient number of competitors and customers following implementation of the Proposed Transaction in all markets in which the Parents currently compete.

51. In light of the above, the Commission considers that, following implementation of the Proposed Transaction, the parties will have neither the ability nor the incentive to: (i) foreclose any residential property development management service providers from accessing residential property development sites; and/or, (ii) foreclose any residential property developers from accessing alternative residential property development management service providers. Accordingly, the Commission considers that the Proposed Transaction is not likely to lead to any vertical foreclosure concerns in the State in relation to the provision of residential property development management services.

Vertical Relationship between the Parents and Lioncor

52. There is currently one potential³⁹ supply arrangement between the Parents and Lioncor in the State in relation to the provision of residential property development management services.

The provision of residential property development management services to EmRu by Lioncor

³⁸ The Commission notes that this will depend on the amount of planning permission received by such competitors and whether such competitors outsource residential property development management services.

³⁹ Please see paragraph 52 for more details.



53. Following implementation of the Proposed Transaction, the parties intend that Lioncor will provide residential property development management services to sites within the EmRu portfolio.
54. The Commission considers that the Proposed Transaction does not give rise to any vertical foreclosure concerns in the State in relation to the provision of residential property development management services for the following reasons:
- Customer foreclosure: following implementation of the Proposed Transaction, it is currently intended by the parties that Lioncor will provide residential property development management services to [...] residential units in the State. On the basis of the 2017 CSO planning permission figures, this accounts for approximately [0-5]% of the residential property development sites in the State. Therefore, following implementation of the Proposed Transaction, there will likely be a significant number of alternative residential property development sites in the State for which alternative providers of residential property development management services can provide such services to;
 - Customer foreclosure: in addition, there are a large number of competing entities with significant interests in the development of residential property in the State which are currently active in the State, e.g., *Cairn Homes, McGarrell Reilly, Glenveagh Properties, Cosgrave Group, Park Developments Group, Kelland Homes, O'Flynn Group, Ballymore Group, Gannon Homes, Ardstone Homes, Shannon Homes and Castlethorn*. As such, following implementation of the Proposed Transaction, there will be a number of alternative residential property developers for which competing residential property development management service providers will be able to provide such services to;⁴⁰
 - Input foreclosure: there are a number of competing residential property development management service providers currently active in the State, e.g., *Ardstone Homes, Richmond Homes, Homeland Projects, Chartered Land, Hines and Kennedy Wilson*. As such, following implementation of the Proposed

⁴⁰ The Commission notes that this will depend on the amount of planning permission received by such competitors and whether such competitors outsource residential property development management services.



Transaction, residential property developers will have a number of alternative residential property development management service providers to choose from; and

- The Commission considers that there will remain a sufficient number of competitors and customers following implementation of the Proposed Transaction in all markets in which the Parents and Lioncor currently compete.

55. In light of the above, the Commission considers that, following implementation of the Proposed Transaction, the parties will have neither the ability nor the incentive to: (i) foreclose any residential property development management service providers from accessing residential property development sites; and, (ii) foreclose any residential property developers from accessing alternative residential property development management service providers residential property development sites. Accordingly, the Commission considers that the Proposed Transaction is not likely to lead to any vertical foreclosure concerns in the State in relation to the provision of residential property development management services.

The Commission's Competition Concerns regarding potential information sharing

56. During the assessment of the Proposed Transaction, the Commission had concerns regarding: (i) provisions in the Draft Agreement in relation to the appointment of persons to the board of directors of Lioncor; and, (ii) access to, and the potential sharing of, confidential third-party information through Lioncor with Alanis and/or Oaktree.

(i) Provisions in the Draft Agreement in relation to the appointment of persons to the board of directors of Lioncor

57. The Commission engaged with the parties in relation to the Commission's concern regarding certain provisions in the Draft Agreement concerning the appointment of persons by each of the Parents to the board of directors of Lioncor. This concern related to potential information sharing regarding the supply of rentable residential property and the supply of rentable retail commercial property in the State – activities in which both Parents are currently active in the State. The Commission was concerned about potential information sharing in respect of the appointment of persons to the board of directors of Lioncor who may also have roles in other companies (owned or controlled



by Alanis and/or Oaktree) that are engaged in the supply of rentable residential property and/or the supply of rentable commercial property in the State.

58. To address this concern, Alanis and Oaktree agreed to amend the Draft Agreement to ensure that persons appointed to the board of directors of Lioncor did not have a role in another company (owned or controlled by Alanis and/or Oaktree) engaged in the supply of rentable residential property and/or the supply of rentable commercial property in the State, so long as both Oaktree and Alanis remain active in the aforementioned activities in the State. The amendment to the Draft Agreement sufficiently alleviated the Commission's competition concern.

(ii) Access to and the potential sharing of confidential third-party information through Lioncor with Alanis and/or Oaktree

59. Following implementation of the Proposed Transaction, Lioncor will provide property development management services to third parties via property development management agreements with such third parties. The Commission had concerns that Oaktree and Alanis may obtain confidential third-party information, through such development management agreements, from Lioncor. The Commission is of the view that any such sharing of confidential information may potentially breach section 4 of the Act.
60. To address this competition concern, Alanis and Oaktree submitted proposals to the Commission in accordance with section 20(3) of the Act.

Proposals Submitted by Oaktree and Alanis to Ameliorate Competition Concerns

61. On 29 August 2018, Oaktree and Alanis submitted draft proposals to the Commission in accordance with section 20(3) of the Act for the purpose of ameliorating the Commission's competition concern regarding the Proposed Transaction. Following discussion with the Commission and suggested amendments proposed by the Commission, Oaktree and Alanis submitted final proposals (the "Proposals") on 11 September 2018. The Proposals included confidentiality commitments and in particular, Oaktree and Alanis agreed that any development management agreement which Lioncor enters into with a third-party customer will contain a confidentiality provision to prevent the disclosure by Lioncor of third party commercially sensitive information.



62. The Proposals are intended to prevent Oaktree and Alanis obtaining access to confidential third-party information from development management agreements entered into by Lioncor, which may constitute a breach of section 4(1) of the Act.
63. The Commission has taken the Proposals into account and, in light of the Proposals, (which form part of the basis of the Commission's determination) has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby Oaktree, through OCM, would acquire 50% of the issued share capital of Lioncor from Alanis and thereby confer joint control of Lioncor on Oaktree and Alanis, 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.

Conclusion

64. In light of the above, and having taken the Proposals into account, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

65. Schedule 7 of the Draft Agreement contains a number of restrictive obligations on the parties. The duration of these non-compete and non-solicitation restrictions does not exceed the maximum duration acceptable to the Commission.⁴¹ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

⁴¹ In this respect, the Commission follows the approach adopted by the EU Commission in 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

Pursuant to section 20(3) of the Competition Act 2002, as amended (the “Act”), Oaktree Capital Group LLC (“Oaktree”) and Alanis Capital Limited (“Alanis”) have submitted to the Competition and Consumer Protection Commission (the “Commission”) proposals, as set out below, relating to the proposed acquisition by Oaktree, through OCM Luxembourg Opps Xb S.à.r.l., of 50% of the issued share capital of Lioncor Developments Limited (“Lioncor”) from Alanis which will confer joint control of Lioncor on Oaktree and Alanis, for the purpose of ameliorating any effects of the proposed acquisition on competition in markets for goods or services, with a view to the proposals becoming binding on Oaktree and Alanis.

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 21(2)(a) of the Act, that the result of the proposed acquisition whereby Oaktree, through OCM Luxembourg Opps Xb S.à.r.l., would acquire 50% of the issued share capital of Lioncor from Alanis and which would thereby confer joint control of Lioncor on Oaktree and Alanis 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

Brian McHugh

Member

Competition and Consumer Protection Commission



**PROPOSALS BY OAKTREE CAPITAL GROUP LLC AND ALANIS CAPITAL LIMITED TO THE
COMPETITION AND CONSUMER PROTECTION COMMISSION RELATING TO THE PROPOSED
ACQUISITION BY OAKTREE CAPITAL GROUP LLC AND ALANIS CAPITAL LIMITED OF JOINT
CONTROL OF LIONCOR DEVELOPMENTS LIMITED (“Proposals”)**

RECITALS

- a) On 22 May 2018, the proposed acquisition by Oaktree and Alanis of Joint Control of Lioncor was notified to the Commission under Part 3 of the Act.
- b) Pursuant to section 20(3) of the Act, Oaktree and Alanis have submitted to the Commission these Proposals relating to the Proposed Transaction for the purpose of ameliorating any possible effect of the Proposed Transaction on competition in markets for goods or services, with a view to the Proposals becoming binding on each of Oaktree and Alanis.
- c) The Proposals submitted by Oaktree and Alanis are intended to strengthen existing measures to prevent the exchange between Lioncor and each of Oaktree and Alanis of Confidential Information of third party customers of Lioncor, which would constitute a breach of section 4(1) of the Act.

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;

“**Alanis**” means Alanis Capital Limited, a private limited company incorporated under the laws of Ireland (Registration 439156), which has its registered address at 61 Fitzwilliam Square, Dublin 2, D02 V099;

“**Alanis Termination Date**” means the date on which the shares in Lioncor acquired by Alanis are disposed of to a third party not owned or controlled by CIM Bluelight



Finance Unlimited;

“**Commencement Date**” means the date of the Commission’s Determination;

“**Commission**” means the Competition and Consumer Protection Commission and its successors;

“**Determination**” means the Determination of the Commission pursuant to section 21(2)(a) of the Act that the Proposed Transaction may be put into effect;

“**Lioncor**” means Lioncor Developments Limited, a private limited company incorporated under the laws of Ireland (Registration 611037), which has its registered address at 61 Fitzwilliam Square North, Dublin 2, D02 V099;

“**Oaktree**” means Oaktree Capital Group LLC, a Delaware incorporated limited liability company registered on the New York Stock Exchange;

“**Oaktree Investor**” means OCM Luxembourg Opps Xb S.a.r.l.;

“**Oaktree Termination Date**” means the date on which the shares in Lioncor acquired by the Oaktree Investor are disposed of to a third party not owned or controlled by Oaktree;

“**Proposed Transaction**” means the proposed acquisition by certain funds managed and advised by Oaktree Capital Group LLC, and Alanis Capital Limited of joint control of Lioncor Developments Limited as notified to the Commission on 22 May 2018; and

“**Term**” means the period beginning on the Commencement Date and ending for Oaktree on the Oaktree Termination Date and for Alanis on the Alanis Termination Date.



B. Undertaking by Oaktree and Alanis- Confidentiality Commitment

During the Term, each of the Oaktree Investor and Alanis undertake to procure that any development management agreement which Lioncor enters into with a third party customer will contain a confidentiality provision in the form below or in substantially similar form to the clause below.

“1. Confidential Information

1.1 *The Development Manager [i.e. Lioncor Developments Limited] undertakes to the Owner [i.e. the owner of the site in respect of which Lioncor Developments Limited will be providing development management services] that all Confidential Information disclosed to the Development Manager by the Owner will:*

- (a) *be kept strictly confidential and not disclosed to any person by the Development Manager (save to its legal and professional advisors);*
- (b) *be securely retained such that the Development Manager shall not part with the possession, custody or control of Confidential Information provided to it; and*
- (c) *be afforded a level of protection and security against unauthorised access not less than that level of protection and security which the Development Manager affords to its own equivalent Confidential Information.*

1.2 *The Owner undertakes to the Development Manager that unless otherwise agreed to in writing, all Confidential Information disclosed to the Owner by the Development Manager will:*

- (a) *be kept strictly confidential and not disclosed to any person by the Owner (save to its legal and professional advisors);*



- (b) *be securely retained such that the Owner shall not part with the possession, custody or control of Confidential Information provided to it; and*
 - (c) *be afforded a level of protection and security against unauthorised access not less than that level of protection and security which the Owner affords to its own equivalent Confidential Information.*
- 1.3 *The obligations set out in clause 1.1 and 1.2 will not apply:*
- (a) *to any information which at the time of disclosure or thereafter is generally available to or known by the public (other than as a result of its disclosure by the relevant party to this Agreement in breach of any obligation of confidentiality);*
 - (b) *to any information which was or becomes available to the relevant party to this agreement on a non-confidential basis from a person, other than the other party (or any of its directors, employees, agents, consultants, representatives or advisers) and who is not bound by an obligation of confidentiality in respect of such information;*
 - (c) *to any information which the other party agrees in writing is not Confidential Information; and*
 - (d) *to any information which is required to be disclosed by judicial order or action or any applicable law, regulation or rule of any recognised investment exchange.*
- 1.4 *For the avoidance of doubt, Confidential Information shall not be deemed to be in the public domain merely because it is known to a limited number of third parties having experience in the relevant field. In addition, any combination of elements of the Confidential Information shall not be deemed to be within the foregoing exceptions merely because individual*



elements of the Confidential Information are in the public domain but only if the combination is in the public domain.

1.5 *For the purposes of this clause 1, “Confidential Information” means all information which is used in or otherwise relates to the business, customers or financial or other affairs of a party including information relating to:*

- (a) *the marketing of goods or services by that party, including customer names and lists and other details of customers, sales targets, sales statistics, market share statistics, prices and advertising or other promotional materials; and*
- (b) *future projects, business development or planning, commercial relationships and negotiations of that party.*

1.6 *The provisions of this clause 1 shall survive termination of the Development Manager’s engagement pursuant to this agreement.”*

Dated: 11 September 2018

SIGNED for and on behalf of

Oaktree Capital Group LLC

by its duly authorised representative

By: _____

Name: _____

Title: _____

SIGNED for and on behalf of

Alanis Capital Limited

by its duly authorised representative

By: _____

Name: _____

Title: _____



SCHEDULE A

[Oaktree Headed Paper]

Ibrahim Bah

Director

Competition Enforcement and Mergers

Competition and Consumer Protection Commission

Bloom House

Railway Street

Dublin 1

BY EMAIL & BY POST

Date: 11 September 2018

M/18/042 – Oaktree/Alanis Capital/Lioncor JV

Dear Sirs

Pursuant to section 20(3) of the Competition Act 2002, as amended (“**Act**”), Oaktree Capital Group LLC (“**Oaktree**”) and Alanis Capital Limited (“**Alanis**”) hereby provide the following proposals (“**Proposals**”) in order to enable the Competition and Consumer Protection Commission (“**Commission**”) to determine that the acquisition by Oaktree and Alanis of joint control of Lioncor Developments Limited (“**Lioncor**”) (the “**Proposed Transaction**”) may be put into effect by a determination pursuant to section 21(2)(a) of the Act (“**Determination**”).

Consistent with section 20(3) and section 26(1) and section 26(4) of the Act, Oaktree and Alanis acknowledge that the Proposals shall become binding on both of them if the Commission takes the Proposals into account and states in writing that the Proposals form the basis or part of the basis of the Determination.

Yours faithfully,

Oaktree Capital Group LLC



SCHEDULE B

[Alanis Headed Paper]

Ibrahim Bah
Director
Competition Enforcement and Mergers
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1
BY EMAIL & BY POST

Date: 11 September 2018

M/18/042 – Oaktree/Alanis Capital/Lioncor JV

Dear Sirs

Pursuant to section 20(3) of the Competition Act 2002, as amended (“**Act**”), Oaktree Capital Group LLC (“**Oaktree**”) and Alanis Capital Limited (“**Alanis**”) hereby provide the following proposals (“**Proposals**”) in order to enable the Competition and Consumer Protection Commission (“**Commission**”) to determine that the acquisition by Oaktree and Alanis of joint control of Lioncor Developments Limited (“**Lioncor**”) (the “**Proposed Transaction**”) may be put into effect by a determination pursuant to section 21(2)(a) of the Act (“**Determination**”).

Consistent with section 20(3) and section 26(1) and section 26(4) of the Act, Oaktree and Alanis acknowledge that the Proposals shall become binding on both of them if the Commission takes the Proposals into account and states in writing that the Proposals form the basis or part of the basis of the Determination.

Yours faithfully,

Alanis Capital Limited