



DETERMINATION OF MERGER NOTIFICATION M/18/055 – DTZ WORLDWIDE LIMITED/SHERRY FITZGERALD

Section 21 of the Competition Act 2002

Proposed acquisition by DTZ Worldwide Limited of sole control of Sherry FitzGerald (Ireland) Holdings Limited and Sherry FitzGerald (Commercial) Limited

Dated 03 September 2018

Introduction

1. On 19 July 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 notification of a proposed acquisition whereby DTZ Worldwide Limited (“DTZ”), would acquire the entire issued share capital of Sherry FitzGerald (Ireland) Holdings Limited (“Sherry FitzGerald Holdings”), and certain shares in Sherry FitzGerald (Commercial) Limited (“Sherry FitzGerald Commercial”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a Sale and Purchase Agreement (the “SPA”) dated 6 July 2018 between: the shareholders of Sherry FitzGerald Holdings (“the Vendors”¹); 5 individual shareholders of Sherry FitzGerald Commercial (“the SFCL Vendors”²); DTZ (“the Purchaser”); and Sherry FitzGerald Limited (“Guarantor”).
3. DTZ through its indirectly wholly-owned subsidiary Cushman & Wakefield International Limited (“Cushman & Wakefield”) presently holds 19.6% of Sherry FitzGerald Commercial. Pursuant to the SPA, DTZ will acquire the entire issued share capital of

¹ Sherry FitzGerald Holdings is currently 100% owned by 15 individual shareholders. Mark FitzGerald is the single largest shareholder in Sherry FitzGerald Holdings, with a holding of 38.39%, while one other individual shareholder has holdings of greater than 10%.

² Sherry FitzGerald Commercial is majority owned by Sherry FitzGerald Holdings, with a holding of 71.4%. Cushman & Wakefield International Limited (an indirectly wholly owned subsidiary of DTZ) has a holding of 19.6%. The remaining 9% of shares are held by 5 individual shareholders (the SFCL Vendors).



Sherry FitzGerald Holdings from the Vendors. This will result in DTZ acquiring Sherry FitzGerald Holdings' 71.4% share in Sherry FitzGerald Commercial. Further to the SPA, DTZ will acquire the remaining 9% of shares in Sherry FitzGerald Commercial from the SFCL Vendors.

The Undertakings Involved

The Purchaser – DTZ

4. DTZ³ is the controlling entity of the Cushman & Wakefield group of affiliated companies (“the Cushman & Wakefield Group”), following the 2015 global merger of DTZ and the Cushman and Wakefield Group⁴.
5. DTZ is a provider of real estate services in Asia, Europe and North America. DTZ represents tenants and owners in real estate transactions, advises on real estate investments, and provides consulting, property management and valuation services.
6. The Cushman & Wakefield Group provides the following services, namely:
 - a. Asset services such as property management throughout the asset lifecycle;
 - b. Capital markets services:
 - i. Corporate capital markets, e.g., providing financing products at various levels including property-level, portfolio-level and entry-level;
 - ii. Investment, sales and acquisitions, e.g., offering comprehensive global transaction solutions to investors wishing to sell or buy investment grade properties;
 - iii. Equity, debt and structured finance, e.g., the provision of customised advisory and integrated capital solutions for all commercial asset classes to both domestic and international clients;

³ DTZ Worldwide is ultimately owned by a consortium of investors comprising TPG Capital (TPG), PAG Asia Capital (PAG), and Ontario Teachers' Pension Plan (OTPP). OTPP has no controlling interest in DTZ Worldwide. Subsequent to the parties' submission of their notification Cushman & Wakefield have issued an Initial Public Offering (IPO). As a result of the IPO and the consequent spread of Cushman & Wakefield's shares, TPG and PAG no longer control Cushman & Wakefield.

⁴ http://ec.europa.eu/competition/mergers/cases/decisions/m7663_20150827_20310_4470078_EN.pdf



- c. Consulting, including global business consulting, office platform solutions, retail consulting, business continuity and risk management, world market access and global supply chain solutions;
 - d. Global occupier services including account management, project management, agency/landlord leasing, facilities management, transaction management and lease accounting advisory services;
 - e. Leasing services including tenant representation, office leasing, industrial services; and,
 - f. Valuation and advisory services, i.e., providing advice to clients on real estate equity and debt including advice on appraisal management, diligence advisory, property tax services, financial reporting, valuation/portfolio valuation and dispute analysis/litigation support.
7. In 2016, Sherry FitzGerald Commercial became Cushman & Wakefield's exclusive affiliate in Ireland (the "Affiliate Agreement"), rebranding as Cushman and Wakefield on 31 August 2016⁵.
8. Excluding a facilities management business (Cushman & Wakefield Facilities Management Limited), Cushman & Wakefield is only active in the State through its affiliation with Sherry FitzGerald Commercial.
9. DTZ is only active in the State through Cushman & Wakefield's affiliation with Sherry FitzGerald Commercial.
10. For the financial year 2017, the Cushman & Wakefield Group generated an estimated worldwide turnover of approximately [...] ⁶.

The Targets - Sherry FitzGerald Holdings and Sherry Fitzgerald Commercial

11. Sherry FitzGerald Holdings is a holding company which owns the majority interest in its subsidiary company Sherry FitzGerald Commercial. Sherry Fitzgerald Commercial is Sherry FitzGerald Holdings' sole direct holding.

⁵ In 1998, Sherry FitzGerald formed a joint venture with DTZ Holdings to form DTZ Sherry FitzGerald.

⁶ This figure does not include the turnover of TPG, PAG and OTPP.



12. Sherry FitzGerald Holdings is part of the overall Sherry FitzGerald group of companies (“Sherry FitzGerald Group”⁷) which currently employs 650 people in a privately owned Irish residential and commercial property business.
13. Sherry FitzGerald Commercial is a private limited company that provides advice and business solutions in the commercial property market including such areas as commercial agency, valuation & advisory services and property management.
14. The commercial services offered by Sherry FitzGerald Commercial in the State are:
 - a. Investments services which includes providing tailored solutions to achieve clients’ risk/return objective through, e.g., portfolio management and transaction services;
 - b. Office services which include disposal of office buildings on behalf of landlords and developers, acquisition of office buildings on behalf of corporate occupiers, management of the office lettings process for landlords, clients and occupiers;
 - c. Retail services which include providing advice on asset management, investments, retail consultancy, strategy, tenant mix and tone, transactions and valuation;
 - d. Industrial services which include the provision of commercial property advice on the acquisition or disposal of industrial space;
 - e. Development land services including identifying development opportunities, site sale and acquisition;
 - f. Hotel solutions which includes advising on all aspects relating to hotels i.e., acquisition, disposal, lettings and professional services;
 - g. Valuation and advisory services which include multiple purpose valuations e.g., secured lending, company accounts, taxation and finance;
 - h. Asset management which involves the creation and action of a positive management strategy at the pre-purchase stage through to implementation;

⁷ The Sherry FitzGerald Group was founded in 1982. Mark FitzGerald is the largest shareholder of the Sherry FitzGerald Group, the remaining shareholders being mainly the senior management team. The Group can be divided into 5 business units; Residential (second hand homes), Commercial (i.e. the subject of the Proposed Transaction), New Homes & Multi-family, Countrywide (franchise business) and Financial Services.



- i. Property management which includes providing advice on early stage development through to the ongoing management of an existing building or portfolio. This includes invoicing of rent, service charges and insurance, budgeting and control, administration of services, staff employment and training, tenant compliance, marketing, in landlord and tenant legislation;
 - j. Rating which includes assessing the rateable value on a proposed certificate issued by the Valuation Office;
 - k. Rent review which includes carrying out the following activities: analysis of lease arrangements, service or acknowledgement of rent review notices, property inspections, rental value estimation and negotiation;
 - l. Corporate recovery which includes the provision of appropriate strategy in cases where the property, portfolio or loans need to be reviewed, managed or realised; and,
 - m. Corporate consulting which includes the provision of strategic advice to corporate occupiers and the public sector, the provision of development consultancy advice and project management for major development opportunities.
15. Sherry FitzGerald Commercial wholly owns Sherry FitzGerald (Commercial) NI Limited (“Sherry FitzGerald NI”), which has a 20% interest in McCombe Pierce LLP, which is located in Belfast. McCombe Pierce LLP offers commercial real estate services in Northern Ireland and is the commercial partner of Cushman & Wakefield Northern Ireland. Sherry FitzGerald Commercial also has a 27% shareholding in Sherry FitzGerald (Commercial) Cork Ltd⁸.
16. For the financial year 2017, Sherry FitzGerald Commercial generated turnover of [...].

Rationale for the Proposed Transaction

17. The notification states:

⁸ Following the Proposed Transaction Sherry FitzGerald Cork will become Cushman & Wakefield Commercial Ireland Limited.



“DTZ Worldwide is seeking to acquire the balance of the shares in Sherry FitzGerald Commercial to grow its commercial property business in Ireland and in particular in commercial agency, valuations & advisory and property management.”

“The Vendors’ commercial objective of the proposed transaction is to allow the Sherry FitzGerald Group to invest in its wholly owned Irish residential business, in the areas of technology, infrastructure and employment.”

Third Party Submissions

18. No submission was received.

Competitive Analysis

Horizontal overlap

19. There is a minimal horizontal overlap between Sherry FitzGerald Commercial and the Cushman & Wakefield Group⁹ in the procurement of facilities management services, in the State. Facilities management encompasses the provision of a wide range of services including: cleaning services; security services; catering services; and ancillary services.
20. In addition to the Cushman & Wakefield Group, and Sherry FitzGerald Commercial, the Commission is aware of a number of commercial real estate service providers that procure facilities management services, including: JLL; Aramark Property; Savills; and Bannon.
21. Furthermore, the parties have informed the Commission that the Cushman & Wakefield Group does not have an interest in any business that competes with the Sherry FitzGerald Group relating to the residential real estate services sector in the State.
22. Given the relatively small scale of horizontal overlap in the procurement of facilities management services, and the existence of a number of commercial real estate service providers that procure facilities management services, the Commission considers that

⁹ Cushman & Wakefield Facilities Management Limited has approximately [...] on-site staff based in Ireland who manage the procurement of facilities management services on behalf of [...].



the Proposed Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

23. There is a vertical relationship between Cushman & Wakefield and Sherry FitzGerald Commercial in the State. The services currently provided by Sherry FitzGerald Commercial to Cushman & Wakefield¹⁰ under the terms of the Affiliate Agreement [...] ¹¹[...] ¹².
24. Following implementation of the Proposed Transaction, the Sherry FitzGerald Group will continue to provide these services to [...] It will also provide [...].
25. Under the terms of the Affiliate Agreement, Cushman & Wakefield also currently provides services to Sherry FitzGerald Commercial. [...].¹³
26. The Commission assessed whether this vertical relationship is likely to result in vertical foreclosure concerns. For the following reasons the Commission considers that the Proposed Transaction is not likely to raise vertical foreclosure concerns:
 - a. There are a number of providers of [...] within the State in addition to the Sherry FitzGerald Group, including: EY-DKM Economic Advisory; PWC; and CBRE Group, Inc.; and
 - b. Post-transaction, following termination of the Affiliate Agreement, there will be no services provided by Cushman & Wakefield to the Sherry FitzGerald Group save the [...]
27. The Commission therefore considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

¹⁰ Currently, the Sherry FitzGerald Group carries out the services which are then provided by Sherry FitzGerald Commercial to Cushman & Wakefield.

¹¹ [...].

¹² These services will be provided by the Sherry FitzGerald Group to Cushman & Wakefield [...] following implementation of the Proposed Transaction [...].

¹³ Cushman & Wakefield does not offer these services to third parties in Ireland.



Potential anti-competitive agreement between Sherry Fitzgerald Commercial and the Guarantor

28. During the assessment of the Proposed Transaction, the Commission requested the parties to provide a number of the transaction documents. On foot of that request, the parties provided the Commission with *inter alia* an agreement between Sherry Fitzgerald Commercial (i.e. one of the target companies) and the Guarantor [...] contained restrictions on both the Sherry Fitzgerald Group and the Cushman & Wakefield Group. [...]:

a. [...]

b. [...]

29. The Commission did not consider the restrictions of [...] to be directly related to, or necessary for, the implementation of the Proposed Transaction. The Commission was of the view that the provisions of [...] were potentially in breach of section 4 of the Act.

30. To address this competition concern, following engagement with the Commission, the parties agreed to amend [...] to remove restrictions on [...] In addition, the restrictions on soliciting employees were limited to [...] from the date of completion.

Conclusion

31. 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

32. Clause 7 of the SPA contains a number of restrictive obligations including non-compete and non-solicitation obligations on [...]. The duration of those restrictive obligations does not exceed the maximum duration acceptable to the Commission.¹⁴ The Commission considers the restrictive obligations in Clause 7 to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

¹⁴ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby DTZ Worldwide Limited would acquire sole control of Sherry FitzGerald (Ireland) Holdings Limited and Sherry FitzGerald (Commercial) 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

Brian McHugh
Member
Competition and Consumer Protection Commission