



DETERMINATION OF MERGER NOTIFICATION M/18/065 – RHENUS / AVANT AIR AND SEA

Section 21 of the Competition Act 2002

Proposed acquisition by Rhenus Beteiligungen International GmbH of the entire issued share capital of Avant Air and Sea Limited.

Dated 17 September 2018

Introduction

1. On 9 August 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 Rhenus Beteiligungen International GmbH (“Rhenus”) would acquire the entire issued share capital of Avant Air and Sea Limited (“Avant Air and Sea”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction will be implemented pursuant to a sale and purchase agreement (the “SPA”) between Avant Holdings Limited and Michael McLeod (the “Sellers”), David Warren¹ and Rhenus dated 3 August 2018. Pursuant to the SPA, Rhenus would acquire the entire issued share capital and, therefore, sole control of Avant Air and Sea within the meaning of section 16(1)(b) of the Act.

The Undertakings Involved

The Acquirer – Rhenus

3. Rhenus, a private limited company incorporated in Germany, is ultimately owned by Rhenus SE & Co. KG, which has various direct or indirect subsidiaries (collectively “Rhenus Group”). Rhenus Group provides transport logistics, warehouse logistics,

¹ David Warren is the director and company secretary of Avant Air and Sea.



transshipment logistics, value added logistics and contract logistics² solutions for different industries worldwide. Rhenus Group is also active in the public transport sector, where it provides transportation of passengers by land in the form of regional and urban public bus services and local public railways in Germany.

4. In the State, primarily through Rhenus Logistics Limited, Rhenus Group provides the following services:

- Air freight worldwide;
- International trailer services import and export;
- Deep sea LCL³ consolidations to/from the US and all parts of the Far East directly to bonded facilities in Dublin;
- Liner agency for full loads to/from the US and the Far East;
- Warehouse facilities including pick and pack, fully bar-coded; and
- Distribution throughout the State.

5. For the financial year ending 31 December 2017, Rhenus Group's worldwide turnover was approximately €4,302 million, of which approximately €[...] million was generated in the State.

The Target – Avant Air and Sea

6. Avant Air and Sea, a private limited company incorporated in the State, is a logistics company, which has subsidiaries in China and Hong Kong. In the State, Avant Air and Sea provides the following services:

²The European Commission defines contract logistics as “the part of the supply chain process that plans, implements and controls the efficient, effective flow and storage of goods, services and related information from the point of origin to the point of consumption in order to meet customers’ requirements”. COMP/M.2411-Autologic/TNT/Wallenius/CAT JV, Par. 15, which can be accessed at http://ec.europa.eu/competition/mergers/cases/decisions/m2411_en.pdf

³ Less than Container Load.



- Air freight worldwide: import and export air services to/from the State, and cross trade services to and from the US, the Far East, Middle East and Eastern Europe;
 - Ocean services: import export and cross trade sea freight services to and from the Far East, the US and the EU;
 - Specialised logistics services to the pharma industry. These include both air freight and sea freight services, import, export and cross trade;
 - Managed logistics services: including vendor hubbing China, European full container load distribution and fiscal representation in Europe. Avant Air and Sea states on its website that its managed logistics services *“design our freight management programmes to save our customers money. In consultation with our customers, we will design and implement a programme which identifies a best in class solution to maximise supply chain efficiency. Our targets are to reduce cycle time and lower production costs.*
7. For the financial year ending 31 December 2017, Avant Air and Sea’s worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

Rationale for the Proposed Transaction

8. The notification states:

“The ultimate aim of Rhenus in the acquisition of Target is the expansion of its existing logistics services in Ireland. In particular the Proposed Transaction will provide Rhenus with an opportunity in the area of pharma freight a service which is particular to the Target in Ireland and is not currently carried on by Rhenus in Ireland.”

Third Party Submissions

No submission was received.



Competitive Analysis

Horizontal Overlap

9. There is a horizontal overlap between the parties' activities in the State. Both Rhenus and Avant Air and Sea provide logistics services⁴ in the State. In particular, both Rhenus and Avant Air and Sea are active in freight forwarding services (including both air freight forwarding services and sea freight forwarding services).⁵ There is no overlap between the parties' activities with respect to contract logistics⁶.
10. The parties state in the notification that "*the relevant market is that for Air & Ocean freight forwarding services in the Republic of Ireland*".⁷
11. 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, because its conclusion on the likely competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is either:
 - Broad, as the parties suggested, that is, the provision of sea and air freight forwarding services constitutes one single product market, or

⁴ Logistics is a fundamental part of supply chain management. It consists of the organisation and management of flows of goods related to purchasing, production, warehousing, distribution and the disposal, reuse and exchange of products, as well as the provision of added value services.

⁵ The European Commission has defined freight forwarding services as "*the organisation of transportation of items (possibly including activities such as customs clearance, warehousing, ground services, etc.) on behalf of customers according to their needs.*". COM/M.1794-Deutsche Post / Air Express International, par 8, which can be accessed at http://ec.europa.eu/competition/mergers/cases/decisions/m1794_en.pdf

⁶ In its email to the Commission dated 7 September 2018, Avant Air and Sea states that it does not bring goods to the point of consumption, in effect it provides customs clearance and transport of goods. Therefore, it does not provide contract logistics services such as Rhenus provides in the State. In its email to the Commission dated 7 September 2018, Rhenus provides that in terms of Rhenus' service portfolio, these services (Managed Logistic services provided by Avant Air and Sea) are considered auxiliary services to ocean and air freight forwarding and thus are not mentioned separately but form an integral part of forwarding understood as a comprehensive service.

⁷ Section 5.1 of the notification.



- Narrow, following the European Commission precedent⁸, that is, separate markets for: (i) the provision of sea freight forwarding services; and (ii) the provision of air freight forwarding services.⁹
12. The parties submit that, in 2017, their combined estimated market share was approximately [0-5]% in respect of the provision of sea and air freight forwarding services in the State.¹⁰¹¹
13. Using the narrow market definitions, the Commission estimates that, in 2017, Rhenus and Avant Air and Sea had a combined market share of approximately [0-5]%¹² in respect of the provision of sea freight forwarding services in the State. For the same period, Rhenus and Avant Air and Sea had a combined market share of approximately [0-10]%¹³ in respect of the provision of air freight forwarding services in the State.
14. The Commission considers that the parties' combined estimated market share is minimal regardless of whether the relevant product market is:
- Broad, as the parties suggested, that is, the provision of sea and air freight forwarding services constitute one single product market, or

⁸ The European Commission has considered a sub-segmentation of freight forwarding services according to the type of operations into: (i) domestic and international freight forwarding, as well as according to the type of freight forwarding means into (ii) freight forwarding by air, land and sea. Please see the European Commission's case *M.5152-Posten AB/Post Danmark AS*, recital 108 at:

http://ec.europa.eu/competition/mergers/cases/decisions/m5152_20090421_20212_en.pdf, COM/M.6059

Norbert Dentressangle/Laxey Logistics, par 18, which can be accessed at:

http://ec.europa.eu/competition/mergers/cases/decisions/m6059_755_2.pdf, and case *M.1794 - Deutsche*

Post/Air Express International, recital 9, which can be accessed at:

http://ec.europa.eu/competition/mergers/cases/decisions/m1794_en.pdf

⁹For purposes of assessing the Proposed Transaction, the Commission also considered the possibility of further segmentation of the freight forwarding services by the industry, such as freight forwarding services for the pharma sector. Since Rhenus does not provide freight forwarding services for the pharma sector in the State, the Commission considers it is not necessary to make such a distinction.

¹⁰The percentages calculated on the basis of turnover of Rhenus and Avant Air and Sea (provided on 7 September 2018) against the estimated total market size for air and cargo freight forwarding services in the State (provided by the parties on 6 and 7 September 2018). *Top 100 in European Transport and Logistic Services 2017 and 2018 by Fraunhofer Center for Applied Research on Supply Chain Services* provides that the estimated overall ocean and air cargo revenues in the State in 2016 is approximately € 1.01 billion. Given the European Union economic winter forecast 2018, the GDP-growth for the State was 7.3 percent, the estimated overall ocean and air cargo revenues in the State in 2017 is approximately €1.1 billion.

¹¹ The parties agree with the Commission's recalculation.

¹² Rhenus and Avant Air and Sea's estimated market shares are approximately [0-5]% and [0-5]%, respectively.

¹³ Rhenus and Avant Air and Sea's estimated market shares are approximately [0-5]% and [0-5]%, respectively.



- Narrow following the European Commission precedent, that is, separate markets for: (i) the provision of sea freight forwarding services; and (ii) the provision of air freight forwarding services.
15. Furthermore, following implementation of the Proposed Transaction, Rhenus will continue to face competition in the State from other logistics companies which offer sea and air freight forwarding services in the State, such as DHL Global Forwarding Ireland Limited, Aramex Ireland Limited, Schenker (Ireland) Limited, DSV Air and Sea Limited, and XPO Supply Chain Ireland Limited.
 16. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

17. There is no existing vertical relationship between the parties. However, the parties submit that the *“Contract logistics services offered by Rhenus may be considered up or downstream business to any service offered by the Target Company. However, currently no such business exists between the parties.”* For example, an item might first be processed through a supply chain provided by Rhenus and subsequently be shipped by Avant Air and Sea.
18. Even if the Commission considers that there is a potential vertical relationship between the parties, the Proposed Transaction will not result in vertical foreclosure concerns. Following implementation of the Proposed Transaction, Rhenus will continue to face competition from other contract logistics companies in the State, such as DFDS Logistics (Ireland) Limited, Agility Logistics Limited, All-Star Logistics Limited, CEVA Logistics, Hytech Logistics Limited and GEODIS Ireland Limited. Furthermore, as stated at paragraph 14 above, Avant Air and Sea’s estimated market shares are minimal with respect to both the provision of air freight forwarding services and sea freight forwarding services in the State. On these bases, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.



Conclusion

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 to the Commission by the parties.



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 Rhenus Beteiligungen International GmbH would acquire the entire issued share capital, thus sole control, of Avant Air and Sea 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