



DETERMINATION OF MERGER NOTIFICATION M/18/070 - COOPERATIEF H2 / PRIMACY HEALTHCARE 21 (AQUILANT)

Section 21 of the Competition Act 2002

Proposed acquisition by Cooperatief H2 Equity Partners Fund V U.A. and Primacy Healthcare 21 Holding Company Unlimited Company of joint control of Primacy Healthcare 21 Limited, and the proposed acquisition of sole control by Primacy Healthcare 21 Limited of Healthcare Acquisition Limited

Dated 26 September 2018

Introduction

1. On 23 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: (1) Cooperatief H2 Equity Partners Fund V U.A. (“H2 Fund V”) and Primacy Healthcare 21 Holding Company Unlimited Company (“HC21 TopCo”) would acquire joint control of Primacy Healthcare 21 Limited (“HC21”) (“Transaction 1”); and (2) Primacy Healthcare 21 Limited (“HC21”) would acquire sole control of the Aquilant Target Group¹ via its acquisition of Healthcare Acquisition Limited (“Aquilant TopCo”) (“Transaction 2”) (the “Proposed Transactions”). The completion of Transaction 2 is conditional on the prior completion of Transaction 1.
2. Following the Proposed Transactions, H2 Fund V and HC21 TopCo will ultimately have joint control over the Aquilant Target Group via their joint control of HC21.

The Proposed Transactions

3. The Proposed Transactions are dependent upon a number of conditions including H2 Fund V having first acquired 100% of the issued share capital of Aquilant Target Group from UDG Healthcare plc (and certain of its subsidiaries) through its newly established

¹ Aquilant Target Group comprises Aquilant Endoscopy Limited, Aquilant Limited, Aquilant Pharmaceuticals Limited, Aquilant Analytical Sciences Limited, Aquilant Medical (ROI) Limited, Aquilant Scientific (ROI) Limited, Aquilant Northern Ireland Limited and Pyramed Limited and each of their subsidiaries.



Irish company, Aquilant TopCo². This transaction was signed and completed on 7 August 2018.

4. The Proposed Transactions are to be implemented as follows: H2 Fund V and HC21 TopCo would acquire joint control of HC21 pursuant to a conditional share purchase agreement signed on 31 July 2018 (the “HC21 SPA”) whereby H2 Fund V will acquire 49.9% of the issued share capital of HC21, with HC21 TopCo retaining the remaining 50.1% of the issued share capital of HC21. Upon completion, pursuant to the Shareholders Agreement signed on 31 July 2018, H2 Fund V will exercise joint control of HC21 with HC21 TopCo as of result of certain veto rights which relate to the strategic decisions and the business policy of HC21 (Transaction 1).
5. Upon completion of Transaction 1, HC21 will acquire 100% of the issued share capital and thereby sole control of Aquilant Topco (the parent company of the Aquilant Target Group) from H2 Fund V (i.e. Transaction 2). Signing and completion of the SPA for Transaction 2 (the “Aquilant SPA”) is a deliverable under the HC21 SPA, and will take place upon completion of Transaction 1.
6. The Proposed Transactions would result in H2 Fund V and HC21 Topco acquiring joint control of HC21, which in turn will own 100% of the Aquilant Target Group via its acquisition of Aquilant Topco.

The Undertakings Involved

The Acquirers – Transaction 1

H2 Fund V

7. H2 Fund V is a private equity pound sterling denominated fund launched in March 2016, with a hard-cap of £200 million. H2 Fund V focuses on making investments in the UK and Ireland, as well as in the Benelux region. H2 Fund V operates out of its offices in London and Amsterdam.
8. [...]

² This was not a notifiable transaction because the turnover thresholds set out in s. 18(1)(a) of the Act were not met.



9. [...]

10. For the financial year ending December 2017, H2 Fund V's worldwide turnover was approximately €[...]³, of which approximately €[...] was generated in the State.

HC21 TopCo

11. HC21 TopCo is the holding company of HC21. It is an Irish registered company and is jointly owned by seven individuals. As it is a holding company it does not generate turnover of its own; its turnover is represented as consolidated turnover of HC21.

The Target - Transaction 1 / The Acquirer - Transaction 2

HC21

12. HC21 was established in 2003. It is a privately owned healthcare company with operations in the UK, Germany, Austria and Ireland. HC21 is a provider of sales, marketing, customer service, engineering service and logistics for a variety of market leading global medtech manufacturers. HC21 supplies the following product categories in the State: critical care, imaging, lymphoedema, medical, medical furniture, mobility, orthopaedic, patient monitoring, plinths, podiatry, primary care, respiratory, sensory equipment, surgical, temperature management, ventilation and wound care.

13. For the financial year ending 30 December 2017, HC21's worldwide turnover was approximately €[...], of which €[...] was generated in the State.

Target – Transaction 2

Aquilant Target Group via Aquilant TopCo

14. Aquilant Target Group comprises Aquilant Endoscopy Limited, Aquilant Limited, Aquilant Pharmaceuticals Limited, Aquilant Analytical Sciences Limited, Aquilant Medical (ROI) Limited, Aquilant Scientific (ROI) Limited, Aquilant Northern Ireland Limited and Pyramed Limited and each of their subsidiaries. Aquilant Target Group is a provider of specialist healthcare and scientific products and services, providing outsourced sales, marketing, distribution and engineering for the medical and scientific sectors. It has operations in the UK and Ireland. The group is a distributor of medical

³ The various portfolio companies of H2 Fund V have different fiscal years and investments are made during the year. For the purpose of the information provided in the notification, the parties have included normalised full-calendar year information. All revenues denominated in GBP sterling have been converted at a £0.88 to €1 exchange rate.



supplies manufactured by a range of medical product manufacturers, typically large multinational healthcare organisations, primarily to hospitals within the UK and Ireland.

15. For the financial year ending December 2017, Aquilant Target Group's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

Rationale for the Proposed Transactions

16. The parties state in the notification:

[...] ["Both H2 Fund V and the shareholders of HC21 TopCo believe that the proposed transaction will enable the combined group to provide high quality products to customers across the UK, Ireland, Germany and Austria. The businesses complement each other extremely well and the combined group offers an expanded product portfolio in many exciting therapy areas. In addition, the combined group's infrastructure and expertise will ensure that both companies can maintain focus on their current plans and continue to deliver world-class outcomes for their customers and suppliers alike".]

Third Party Submission

17. No third party submission was received by the Commission.

Competitive Analysis

Horizontal Overlap

18. There is a horizontal overlap between the parties' activities in the State with respect to the supply of medical supplies, specifically in relation to the following: compression products; general surgery products; general medical consumables; and wound care products.
19. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. With respect to the relevant product market, it is not necessary for the Commission to define the precise relevant markets in this instance because the product market definition adopted will not alter the Commission's assessment of the competitive impact of the Proposed Transactions. In this case, the Commission considers that there are no reasons to depart from its previous approach



to market definition in relation to the supply of medical supplies for the purpose of assessing the competitive effect of the Proposed Transactions⁴.

20. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market in this instance since its conclusion on the competitive impact of the Proposed Transactions will be unaffected whether the precise relevant geographic market is defined as national or EEA-wide. However, in order to determine whether the Proposed Transactions might result in a substantial lessening of competition, the Commission analysed their impact by reference to the State.
21. In order to determine whether the Proposed Transactions might result in a substantial lessening of competition, the Commission assessed their impact on competition in the State by reference to both: (i) the broader product market, namely, the provision of medical supplies; and (ii) the areas of overlap between the activities of the parties in the State, namely: (a) the supply of compression products; (b) the supply of general surgery products; (c) the supply of general medical consumables; and (d) the supply of wound care products.

(i) *The Provision of Medical Supplies in the State*

22. The parties estimate that the total value of the medical supplies market in the State is approximately €3 billion⁵. In 2017, HC21 had sales of approximately €[...] with Aquilant Target Group having sales of approximately €[...], representing an estimated market share of [0-5]% and [0-5]% respectively, resulting in a combined market share of [0-5]%.
23. The parties note and the Commission concurs that there are a number of other providers of medical supplies in the State, including for example manufacturers such as Johnson & Johnson, Smith & Nephew and 3M, and distributors such as Uniphar, Fannin Healthcare and Reid Healthcare. These companies will continue to act as a competitive constraint on the parties following the implementation of the Proposed Transactions.

⁴ Please see, for example, merger determination M/12/027 – Uniphar/CMR which can be accessed at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-12-027-Uniphar-CMR-Determination-Public.pdf> and M/18/031 – Uniphar / SISK Healthcare, full determination yet to be published but will be accessible at <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m18031-uniphar-sisk-healthcare/>.

⁵ Source - The Central Statistics Office and the System of Health Accounts.



24. For these reasons, the Commission considers that the Proposed Transactions will not substantially lessen competition in the potential market for the provision of medical supplies in the State.

(ii) The areas of overlap between the activities of the parties in the State

(a) The Supply of Compression Products

25. The supply of compression products includes a range of products designed to manage the causes and symptoms of conditions such as lymphoedema and deep vein thrombosis. The parties have identified that HC21 and Aquilant Target Group both supply the following products: compression bandages, compression garments, and compression hosiery.

26. The parties estimate that the total value of the supply of compression products market in the State is approximately €10 million. In 2017, HC21 had sales of approximately €[...] with Aquilant Target Group having sales of approximately €[...], representing an estimated market share of [0-5]% and [0-5]% respectively, resulting in a combined market share of [5-10]%. Also, there are a number of other providers in the State, including both manufacturers and other distributors, who will continue to act as a competitive constraint on the parties following the implementation of the Proposed Transactions.

27. For these reasons, the Commission considers that the Proposed Transactions will not substantially lessen competition in the market for the supply of compression products in the State.

(b) The Provision of General Surgery Products

28. The provision of general surgery products includes a broad and diverse range of products used generally in surgical procedures such as sponge counters, drapes, skin markers, light handles, needle counters and surgical attire etc. The parties have identified that HC21 and Aquilant Target Group both supply the following products: skin markers and light handles⁶.

⁶ Combined sales of skin markers and light handles for HC21 and Aquilant Target Group is estimated at less than €[...]



29. The parties estimate that the total value of the supply of general surgery products market in the State is approximately €268.8 million. In 2017, HC21 had sales of approximately €[...] with Aquilant Target Group having sales of approximately €[...], representing an estimated combined market share of [0-5]%. Also there are a number of other providers in the State, including both manufacturers and other distributors, who will continue to act as a competitive constraint on the parties following the implementation of the Proposed Transactions.
30. For these reasons, the Commission considers that the Proposed Transactions will not substantially lessen competition in the market for the supply of general surgery products in the State.

(c) The Supply of General Medical Consumables

31. The supply of general medical consumables includes a broad range of products used in a hospital environment such as aprons, wipes procedure packs, and disposable instruments etc. The parties have identified that HC21 and Aquilant Target Group both supply the following products: swabs, gloves, aprons and wipes.
32. The parties estimate that the total value of the supply of general medical consumables market in the State is at least €200 million. In 2017, HC21 had sales of approximately €[...] with Aquilant Target Group having sales of approximately €[...], representing an estimated combined market share of [0-5]%. Also there are a number of other providers in the State, including both manufacturers and other distributors, who will continue to act as a competitive constraint on the parties following the implementation of the Proposed Transactions.
33. For these reasons, the Commission considers that the Proposed Transactions will not substantially lessen competition in the market for the supply of general medical consumables in the State.

(d) The Supply of Wound Care Products

34. The supply of wound care products includes products such as dressings, adhesives, tapes and bandages etc. The parties have identified that HC21 and Aquilant Target Group both supply the following products: film and adhesive dressings, other dressings and skin care (cream, spray, swab and wipe).



35. The parties estimate that the total value of the supply of general wound care products market in the State is €25 million. In 2017, HC21 had sales of approximately €[...] with Aquilant Target Group having sales of approximately €[...], representing an estimated market share of approximately [5-10]% and [5-10]% respectively. Therefore, the combined market share following the Proposed Transactions would be approximately [10-20%]⁷. Also there are a number of other providers in the State, including both manufacturers and other distributors, who will continue to act as a competitive constraint on the parties following the implementation of the Proposed Transactions.
36. For these reasons, the Commission considers that the Proposed Transactions will not substantially lessen competition in the market for the supply of wound care products in the State.

Vertical Relationship

37. The parties have informed the Commission that there is no vertical relationship between the parties. The Commission has not identified any vertical relationship between the parties. On this basis, the Commission considers that the Proposed Transactions do not raise any vertical competition concerns in the State.

Ancillary Restraints

38. The HC21 SPA and the Shareholders Agreement signed on 31 July 2018 contain a number of restrictive obligations on the vendors (i.e. HC21 TopCo and three of the sellers/managers⁸). These include non-compete and non-solicitation clauses. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.⁹ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transactions insofar as they relate to the State.

⁷ [...]

⁸ The sellers/managers subject to the restrictive covenants being [...].

⁹ 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: (1) Cooperatief H2 Equity Partners Fund V U.A. and Primacy Healthcare 21 Holding Company Unlimited Company would acquire joint control of Primacy Healthcare 21 Limited; and (2) Primacy Healthcare 21 Limited would acquire sole control of the Aquilant Target Group¹⁰ via its acquisition of Healthcare Acquisition 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

¹⁰ Aquilant Target Group comprises Aquilant Endoscopy Limited, Aquilant Limited, Aquilant Pharmaceuticals Limited, Aquilant Analytical Sciences Limited, Aquilant Medical (ROI) Limited, Aquilant Scientific (ROI) Limited, Aquilant Northern Ireland Limited and Pyramed Limited and each of their subsidiaries.