



# DETERMINATION OF MERGER NOTIFICATION M/20/024 – BUNZL/ABCO KOVEX

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## Section 21 of the Competition Act 2002

### Proposed acquisition of sole control of Abco Kovex Limited by Bunzl plc.

Dated 30 September 2020

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#### Introduction

1. On 24 August 2020, 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 Bunzl plc (“Bunzl”), through its wholly-owned indirect subsidiary Selectuser Limited (“Selectuser”), would acquire sole control of Abco Kovex Limited (“Abco Kovex”) (the “Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented through a Share Purchase Agreement, dated 21 August 2020, between Selectuser, Behzr Limited (“Behzr”), Mr Noel Sullivan,<sup>1</sup> and Mr Brian Fitzsimons<sup>2</sup> (the “SPA”). Pursuant to the SPA, Selectuser will acquire [...]% of the issued share capital of Abco Kovex, and Mr Brian Fitzsimons will retain [...]% of the issued share capital of Abco Kovex via Behzr.
3. Pursuant to the SPA and a draft Shareholders’ Agreement between Selectuser, Behzr, Mr. Brian Fitzsimons and Abco Kovex (“SHA”), Bunzl, through Selectuser, will ultimately exercise sole control of Abco Kovex following implementation of the Proposed Transaction.

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<sup>1</sup> Mr Noel Sullivan currently owns [...]% of the issued share capital of Abco Kovex.

<sup>2</sup> Mr Brian Fitzsimons currently owns [...]% of the issued share capital of Abco Kovex through Behzr.



## The Undertakings Involved

### *The Acquirer - Bunzl*

4. Bunzl, listed on the London Stock Exchange, is an international distribution group providing outsourcing solutions, including packaging solutions, cleaning and safety supplies, hotel and guest amenities supplies, and catering equipment solutions, to businesses. It supplies consumable (i.e., non-reusable) packaging products, such as foodservice items, food packaging, personal protective equipment, cleaning materials, retail packaging, and healthcare consumables.
5. In the State, Bunzl operates through the following four main business divisions:
  - *Bunzl Irish Merchants*, which provides food and retail packaging, cleaning supplies and equipment to businesses in the State;
  - *Bunzl Rafferty Hospitality*, which supplies hospitality products to hotels in the State;
  - *Bunzl McLaughlin*, which supplies non-food catering and cleaning supplies to businesses in the State and provides commercial catering design for catering, hospitality and foodservice industries in the State; and
  - *Bunzl Cleaning and Safety Supplies*, which provides safety and cleaning supplies to businesses in the State.
6. For the financial year ending 31 December 2019, Bunzl's worldwide turnover was approximately €10,623 million, of which approximately €[...] million was generated in the State.

### *Abco Kovex*

7. Abco Kovex, incorporated in the State, is an importer, distributor, and manufacturer of flexible packaging products and machinery with premises and customers located in the State and the United Kingdom.



8. Abco Kovex distributes packaging materials and machinery including stretch film, strapping, protective packaging, polythene packaging, transit packaging, food trays, paper packaging and auxiliary packaging products. Abco Kovex serves sectors such as food and beverage, construction, pharmaceutical and manufacturing in the State.
9. For the financial year ending 31 December 2019, Abco Kovex's worldwide turnover was approximately €[...] million, of which approximately [...] was generated in the State.

#### **Rationale for the Proposed Transaction**

10. The parties state in the notification that:

“[...]”

#### **Third Party Submissions**

11. No third party submission was received.

#### **Competitive Analysis**

##### ***Horizontal Overlap***

12. There is a horizontal overlap between the parties' activities in the State in the supply of polythene packaging, and within that category, specifically in the supply of polythene bags. Neither of the parties manufacture the polythene bags it sells to businesses in the State, i.e., Bunzl and Abco Kovex are distributors in the State in respect of polythene bags.

##### **Product Market Definition**

##### ***Views of the parties***

13. The parties state the following in the notification:

*“While the precise market definition can be left open in this case in light of the limited overlap between the parties, adopting a conservative approach and without prejudice to the parties' views on market definition, the parties have considered the competitive impact of the Proposed Transaction on the narrowest plausible basis, i.e. the supply of polythene bags.”*



### *Views of the Commission*

14. The Commission, in a number of its previous decisions, has conducted competitive assessments of mergers relating to specific packaging product categories without coming to a definitive view on the precise product market definition.<sup>3</sup>
15. In previous cases, the European Commission has considered segmenting the potential market for the supply of “flexible packaging”<sup>4</sup> according to end-use application, namely: (i) food, (ii) medical supplies, (iii) pharmaceuticals, (iv) household products, and (v) other non-food. Within these potential five separate product market segments based on end-use application, the European Commission has further considered a possible narrower segmentation in respect of various categorisations of food packaging by type of food.<sup>5</sup> In addition, within flexible packaging for pharmaceuticals, the European Commission has considered a possible sub-division between blister packaging and laminated sachets.<sup>6</sup>
16. The Commission defines relevant markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant markets because, regardless of whether the potential product market is defined broadly (i.e., by end-use application) or narrowly (i.e. sub segmentation in each end-use application), it does not alter the Commission’s assessment of the likely competitive effects of the Proposed Transaction in the State. Nonetheless, for the purpose of the competitive assessment of the Proposed

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<sup>3</sup> [M/18/040 – Novolex \(Carlyle\)/Waddington](#), paragraph 17. [M/16/051 SAICA/Ridgmont/Americk](#), where the Commission considered a number of separate product markets within the broader packaging products sector, focusing in that case on light cardboard boxes/printed folding cartons. Similarly in [M/14/034 ESNT \(Essentra\)/Blue NewCo 1 \(Clondalkin\)](#) and [M/11/008 Clondalkin Group/Catalent](#) the Commission considered the overlap between the parties in relation to packaging material and end use.

<sup>4</sup> Flexible packaging involves the manufacture, supply and conversion of plastic and cellulose films, aluminium foils and papers into reels of packaging to be used for primary retail food packaging and labelling and certain other non-food sectors. Flexible packaging excludes shrink and stretch films used for secondary packaging, pallet wrap, carrier bags, supermarket self-service and counter bags, silage bags, refuse sacks, and industrial heavy duty sacks.

<sup>5</sup> See e.g. [Case COMP/M.2441-Amcor/Danisco/Ahlstrom](#), paragraph 12; Case [COMP/M.2840-Danapak/Teich/JV](#), paragraphs 13; Case [COMP/M.3049-Alcan/FlexPack](#), paragraph 11-12; Case [COMP/M.3225- Alcan/Pechiney](#), paragraphs 128 and 131; Case COMP/M.5599-Amcor/Alcan, paragraph 15.

<sup>6</sup> Case No [COMP/M.6681 – STRATEGIC VALUE PARTNERS/ KLOECKNER HOLDINGS](#), paragraphs 12, 13.



Transaction, the Commission has assessed the likely impact of the Proposed Transaction on competition in respect of the supply of polythene bags.

### Geographic Market Definition

17. In previous cases, the European Commission has consistently considered the geographic scope of the market for the supply of flexible packaging to be at least EEA-wide.<sup>7</sup> The Commission has not, in its previous decisions, defined a relevant geographic market for 'flexible packaging'.
18. Similarly, in this instance, it is not necessary for the Commission to define the relevant geographic market, since the delineation of the geographic market will not materially alter the Commission's conclusions as to the likely competitive impact of the Proposed Transaction. For the purpose of its competitive assessment of the Proposed Transaction, the Commission has assessed the likely impact of the Proposed Transaction on competition with respect to the State.

### Competitive analysis

19. The Commission notes that the parties' overall business propositions in the State are distinct. Bunzl is an international distribution group for safety and cleaning supplies, packaging solutions, hotel and guest amenities supplies, and catering equipment solutions. Abco Kovex is an importer, distributor of flexible packaging products and machinery. The parties state in the notification that there is very limited overlap between the activities of Bunzl and Abco Kovex in the State. The only material overlap that arises concerns the supply of polythene bags, where the parties' aggregate sales revenues in the State were approximately [...] in 2019. While the parties state that there is no accurate data regarding the total size of sub-segments of the flexible packaging sector in the State, a significant portion of the polythene bags supplied in the State are direct imports from European and Asian manufacturers. The parties further submit that

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<sup>7</sup> Case [COMP/M.2441-Amcor/Danisco/Ahlstrom](#), paragraph 14-17; Case [COMP/M.2840-Danapak /Teich/JV](#), paragraph 19; Case [COMP/M.3049-Alcan/FlexPack](#), paragraph 15.



Bunzl and Abco Kovex are relatively small suppliers of polythene bags in the State and that, following implementation of the Proposed Transaction, the parties' combined estimated share of the supply of polythene bags in the State would account for less than [0-5]% of the total supply of polythene bags in the State.<sup>8</sup>

20. Furthermore, the Commission considers that the parties are not close competitors in the supply of polythene bags. The polythene bags supplied by the parties have different end uses and have different target customers. Bunzl is active in the supply of polythene bags to customers operating in the retail, catering and hospitality sector in the State, such as [...]. Abco Kovex's customers of polythene bags in the State are mainly active in the pharmaceutical/medical industry, such as [...].
21. Specifically, the polythene bags supplied by Bunzl in the retail sector are typically used for carrying and holding perishable food products. By contrast, the polythene bags supplied by Abco Kovex in the pharmaceutical/medical industry are not used for the purposes of carrying food products, but are used as liners within carton packaging for the purposes of ensuring that durable, non-food products, including medical and pharma components, are not damaged by liquids or other external contaminants.
22. In addition, there are a number of other firms active in the supply of polythene bags in the State, including NPP Group Limited, Ireland West Plastics Limited, Unified 2 Global Packing Group LLC, Wraptite Packaging Limited Ireland, Zeus Packaging Limited, and Southern Tapes & Packing Limited. These firms will continue to compete with Bunzl in respect of the supply of polythene bags in the State following implementation of the Proposed Transaction.
23. In light of the above, the Commission considers that the Proposed Transaction does not give rise to any horizontal competition concerns in respect of the supply of polythene bags in the State.

### ***Vertical Relationship***

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<sup>8</sup> Estimated by Abco Kovex based on per person per annual consumption of plastic packaging in the State by Eurostat and Plastic Index for Raw Material plus industry standard conversion costs.



24. The parties have not identified any material existing vertical relationship between the parties in the State. The parties state in the notification that the only vertical relationship between the parties relates to the supply by Abco Kovex of limited quantities (worth less than [...] in total per annum) of pallet wrap and bubble wrap to Bunzl in Northern Ireland. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

### **Conclusion**

25. 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**

26. Clause 19 of the SPA imposes a number of restrictive obligations on Mr Noel Sullivan and Mr Brian Fitzsimons. The parties state in the notification that none of these restrictive obligations exceeds two years in duration, and each is directly related to and necessary for the implementation of the Proposed Transaction.
27. The scope and duration of the restrictions in clauses 19.1(a), 19.1(b), 19.1(c) and 19.1(e) of the SPA do not exceed the maximum scope and duration acceptable to the Commission.<sup>9</sup> The Commission considers the restrictions in clauses 19.1(a), 19.1(b), 19.1(c) and 19.1(e) of the SPA to be directly related to and necessary for the implementation of the Proposed Transaction, in so far as they relate to the State.
28. Clause 19.1(d) of the SPA imposes obligations on Mr Noel Sullivan and Mr Brian Fitzsimons not to [...].

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<sup>9</sup> 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) (the EU Commission’s Notice”). 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).



29. The Commission is of the view that, when read in the context of clause 19.1 as a whole, clause 19.1(d) of the SPA appears to function as a ‘non-disparagement’ clause rather than a ‘non-compete’ clause. For this reason, the Commission has not reached a view as to whether or not clause 19.1(d) of the SPA is directly related and necessary to the implementation of the Proposed Transaction. Clause 19.1(d) of the SPA will not therefore benefit from the protections offered by sections 4(8) and 5(3) of the Act.<sup>10</sup>
30. Schedule 5 of the draft SHA that was submitted to the Commission with the notification contains a number of restrictive obligations on Bunzl, Behzr and its management shareholder Mr Brian Fitzsimons. The scope and duration of the restrictive obligations in Schedule 5 of the draft SHA do not exceed the maximum scope and duration acceptable to the Commission. The Commission considers these restrictions, in the form contained in the draft SHA submitted to and reviewed by the Commission, to be directly related to and necessary for the implementation of the Proposed Transaction, in so far as they relate to the State.<sup>11</sup>

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<sup>10</sup> In any event, the Commission notes that, unlike the restrictions in clauses 19.1(a), 19.1(b), 19.1(c) and 19.1(e) of the SPA, the restriction contained in clause 19.1(d) of the SPA is not limited in time. As Clause 19.1(d) of the SPA has no temporal limit, it is not consistent with paragraph 20 of the EU Commission’s Notice. The Commission is therefore of the view that the duration of the restriction seems to exceed what the implementation of the Proposed Transaction would reasonably require.

<sup>11</sup> The parties confirmed to the Commission in writing on 29 September 2020 that the draft SHA submitted to the Commission with the notification is in agreed form between the parties, within the meaning of the SPA, and that the parties would provide a copy of the executed SHA to the Commission upon completion of the Proposed Transaction.





### **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 Bunzl plc, through its wholly-owned indirect subsidiary Selectuser Limited, would acquire sole control of Abco Kovex 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**