



DETERMINATION OF MERGER NOTIFICATION M/14/013 -

Radius / DCI / NCS

Section 21 of the Competition Act 2002

Proposed acquisition by Radius Payment Solutions Limited of sole control of Diesel Card Ireland Limited ("DCI") and Nicholl Card Services Limited

Dated 16 May 2014

Introduction

1. On 17 April 2014, in accordance with section 18(1)(a) of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed transaction whereby Radius Payment Solutions Limited ("Radius") would acquire sole control of Diesel Card Ireland Limited ("DCI") and Nicholl Card Services Limited ("NCS").
2. The proposed transaction is pursuant to two Share Purchase Agreements ("SPAs"), dated 15 April 2014.¹ Radius would acquire the 50% of the issued share capital of DCI currently held by Nicholls' (Fuel Oils) Limited ("Nicholls") and thereby increase its shareholding to 100%.² Radius would also acquire 100% of the issued share capital of NCS from Nicholls.

The Undertakings Involved

The Acquirer - Radius

3. Radius is a private company³, headquartered in Crewe, England, with offices in 11 European countries (including Ireland). Within Europe, through its various wholly owned subsidiaries and minority interests, Radius is primarily involved in
 - Fuel cards, and
 - Business outsourcing services.⁴
4. Fuel cards provide an alternative payment mechanism to cash or credit cards. That is, fuel and other products can be purchased on account from fuel station forecourts.

¹ There are two SPS between Nicholls, Radius and Nicholls' shareholders. One SPA refers to the acquisition of sole control of DCI and the other refers to the acquisition of sole control of NCS.

² [...].

³ Mr William Holmes is the controlling shareholder with [...] of the issued share capital. Radius confirms, in correspondence dated 14 May 2014, that Mr Holmes does not have any other controlling or minority interests in the Fuel Card sector in the State or the island of Ireland.

⁴ The parties describe these services as "white label" services.

5. Fuel cards can be purchased in two ways:
 - Sale – e.g., Radius selling its own branded fuel cards.
 - Resale – e.g., Radius reselling cards originating from other firms.
6. The parties state that there are various methods for selling fuel cards to fuel users, such as direct sales (via telephone/sales person), service station promotions, e-mail marketing and web marketing (including web ordering direct on relevant websites).⁵
7. Radius sells its own branded fuel cards for use in over 5,000 sites in 23⁶ European countries (including Ireland). As stated by the parties Radius branded cards include local brands for use in individual countries (e.g., Diesel Card Belgium and UK Fuels) and the European Diesel Card (“EDC”) for use throughout Europe.
8. From 1 December 2014 Radius will also be involved in the sale of Esso fuel cards in Europe, through its joint control [...] of Wex European Services Limited (WES).⁷
9. Radius resells fuel cards across Europe for third parties (e.g., BP, Shell, and Texaco). Radius’s reselling activities include supplying sales, marketing and financial services.
10. Business outsourcing services provided by Radius in Europe include:
 - Card and PIN protection.
 - Card issuing.
 - Transaction authorisation and collection.
 - Data processing and velocity checking.
 - Invoicing and direct debiting.
 - Credit vetting and management.
 - Web-based customer services.
 - Management accounting and reporting.⁸
11. Within the State (and outside of its interest in DCI described below) Radius is primarily involved in selling Radius brand fuel cards, in particular the EDC card which can be used at over 600 locations in the

⁵ Correspondence with Parties dated 9 May 2014.

⁶ The parties state, in correspondence dated 9 May 2014, that

“Radius has a physical site or presence in 11 European countries, but its products can be used additionally on third party networks (such as the oil companies and other card providers) throughout a further 12 European countries.”

⁷ On 5 March 2014 the European Commission approved the acquisition by Wex Inc. and Radius of joint control of Esso’s European commercial fuel cards business, effective from 1 December 2014. The acquisition was accomplished through WES, a joint venture [...] owned by Wex Inc. For information on Wex Inc. see <<http://www.wexinc.com>>. For information on the decision see <http://ec.europa.eu/competition/mergers/cases/decisions/m7156_20140305_20310_3540345_EN.pdf>.

⁸ For more information on Radius see <www.radiuspaymentsolutions.com>.

State. Within the State Radius is not involved in reselling third party fuel cards and supplies business outsourcing services to [...].⁹

12. For the financial year ended 31 January 2014 Radius's worldwide turnover was €[...] million¹⁰ of which approximately €[...] million was generated within the State.¹¹

The Vendor – Nicholls

13. Nicholls is a private limited company headquartered in Northern Ireland. Nicholls is involved primarily in fuel distribution comprising retail, domestic, commercial, industrial, agricultural and marine fuel distribution in Northern Ireland, Republic of Ireland and United Kingdom.¹²

The Target – DCI and NCS

DCI

14. DCI is a joint venture between Radius and Nicholls headquartered in Galway. Radius and Nicholls each hold 50% of DCI's issued share capital.¹³ In addition to being active in the State DCI is active in UK, France and Denmark. Through its various wholly and partially owned subsidiaries DCI is mainly involved in:

- Fuel cards:
 - Selling its own branded fuel cards - which can be used in over 2,500 sites in the UK and Ireland including 980 on the island of Ireland.
 - Reselling of third party branded fuel cards including for example BP Oil UK and BP Direct Fuels.
- Business outsourcing services e.g. providing services to customers such as Emo, Texaco and Topaz.¹⁴

15. Within the State DCI is active primarily in selling its DCI brand fuel card which is accepted at over 750 services stations. DCI also sells its Fuel Plus, Fuel Wise and Direct Fuels branded cards.¹⁵

16. Within the State DCI resells the EDC card (described above in paragraph 7) and also Esso, Texaco and Topaz cards. DCI also provides, to a lesser extent, business outsourcing services to customers such as Emo, Topaz and Texaco.

⁹ [...].

¹⁰ Calculated using an annual ECB Exchange rate for the period February 2013 to January 2014 of €1 = £ 0.8479. This figure includes the proportion of turnover attributable to Radius through its various joint ventures including DCI.

¹¹ This figure excludes the turnover of DCI in the State, which is described in paragraph 17.

¹² For more information in Nicholls see <www.nicholloils.com>.

¹³ The DCI board has two board members: William Holmes (Radius' nominee) and Gary Nicholls (Nicholls' nominee), who have equal influence in its management.

¹⁴ For more information on DCI see <www.dccard.ie>.

¹⁵ DCI has a [...] shareholding in Direct Fuels Limited and its wholly owned subsidiary Fuelplus Cards Limited. DCI has a [...] interest in Fuelwise Network Limited and its wholly owned subsidiary Network Ireland Limited. These interests will be acquired by Radius as part of the proposed transaction.

17. For the financial year ended 31 January 2014 the world-wide turnover of DCI was approximately €[...] million of which approximately €[...] million was generated within the State.¹⁶

NCS

18. NCS, headquartered in Northern Ireland, is a wholly owned subsidiary of Nicholls. NCS is a reseller of Texaco's Fastfuel card in the UK with almost [...] of its turnover generated within Northern Ireland. NCS does not sell own-branded fuel cards and does not supply business outsourcing services.
19. While NCS has neither a physical presence in the State, nor does it generate turnover in the State,¹⁷ the parties have included the proposed acquisition of NCS by Radius as part of the transaction notified to the Authority. The Authority is therefore required to form a view as to whether the result of this merger or acquisition would be to substantially lessen competition in markets for goods or services in the State pursuant to section 20(1)(c) of the Competition Act 2002.

Third Party Submissions

20. No submission was received.

Rationale for Transaction

21. The parties state that:

"Radius currently owns 50% of DCI and wishes to increase its holding to 100%. This will simplify decision-making and control, and enhance the financial strength and clarity of the business as it strives to develop opportunities with both existing and new partners. The acquisition of NCS represents a further opportunity to offer efficiencies and synergies to the Radius group. Overall, the Proposed Transaction will support the Radius group's drive for efficiencies, enabling its common businesses to function without internal divisions and separation."¹⁸

Analysis

Radius and NCS

22. There is no horizontal overlap within the State between Radius and NCS because NCS is not active in the State.

Radius and DCI Fuel Cards

23. There is a small horizontal overlap within the State between the activities of Radius and DCI. Both Radius and DCI are involved in the sale of fuel cards and in the supply of business outsourcing services to third parties in the State.

¹⁶ The vast majority [...] of this amount was generated from selling fuel cards.

¹⁷ For the financial year ended 31 January 2014 NCS's world-wide turnover was approximately €[...] million all of which was generated outside of the State.

¹⁸ Notification Form, page 7.

24. The parties argue that

*"... to the extent that their activities overlap, these overlaps represent the status quo prior to the Proposed Transaction. Furthermore ... the Proposed Transaction does not give rise to competitive concerns on any view of the market."*¹⁹

25. In this instance, however, both in Europe and within the State, Radius (the acquirer) has a presence in both the fuel card and business outsourcing segments independent of its interest in DCI (the JV subject to the proposed transaction).²⁰.

26. The parties estimate that within the State, for the sale of own branded fuel cards segment, DCI has a market share of [20-30]%²¹ and Radius has a market share of [0-5]%. Even in December 2014, when Radius's interest in Esso described above will commence,²² Radius would be a small factor in the Irish Market. (Radius estimates that the market share for Esso in this segment is no greater than [0-5]%.)²³ In contrast, the parties estimate market shares of [20-30]% for Topaz, [10-20]% for Texaco and [10-20]% for Maxol, all of which are leading brands.

27. Within the State, Radius is not currently active in the reselling segment whereas DCI has a market share of [10-20]%. The proposed transaction would imply no change in market share for the merged entity in the resale of own branded fuel cards segment.

28. The above market share estimates and the small increase in market share by the combined entity, limited only to the own branded fuel card segment, do not suggest that significant competition concerns are likely to arise from the proposed transaction in relation to the sale or resale of fuel cards, particularly since Radius already possess joint control of DCI.

29. The Authority's conclusion in relation to the proposed transaction would be the same whether or not it defined narrower product markets for fuel cards, e.g. to distinguish between selling own branded cards (such the sale by Radius of Radius branded cards) to customers and the reselling of third party cards to customer) or more broadly e.g., to include both the sale and resale of fuel cards. It is not necessary, therefore, to define product markets precisely with respect to fuel cards.

Radius and DCI - Business Outsourcing

30. As stated by the parties the turnover, for the year ended 31 January 2014, attributable to business outsourcing services in the State amounts to approximately €[...] million for Radius and €[...] million for DCI.²⁴

¹⁹ Notification Form, page 20.

²⁰ The proposed transaction differs from other instances of joint to sole control where the vendor's and the acquirer's only interests in a relevant market segment, prior to a merger, are through their respective shareholdings in a target JV. See for example M/13/004 Bertelsman / BMG <<http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications/Bertelsmann--BMG.aspx>>.

²¹ Radius confirms, in correspondence dated 14 May 2014, that the DCI market share figure includes any market share attributable Direct Fuels Limited, Fuelplus Limited, Fuelwise Network Limited, and Network Ireland Limited.

²² See paragraph 8.

²³ Correspondence from Radius dated 14 May 2014.

²⁴ Notification Form Annex 4.11.

31. The low turnover figures for business outsourcing services, together with the availability of competitors such as Atos, Fleetcor and Wright Express, do not suggest that proposed transaction would be likely to lead to significant concerns in the business outsourcing services segment.
32. The parties state that business outsourcing services could be considered as either (i) part of a wider fuels card services market, i.e., to the extent that the services are tailored for the fuel sector or (ii) as part of a wider business outsourcing sector.²⁵
33. The Authority's conclusion in relation to the proposed transaction would be the same whether or defined business outsourcing services in either of the two ways described above or more narrowly. It is not necessary, therefore, to define product markets precisely with respect to business outsourcing services.
34. The proposed transaction will not give rise to significant concerns about potential competition. NCS is not present in the State and it does not appear that NCS currently provides an important competitive constraint as a potential competitor to Radius, DCI or their competitors within the State in relation to either the fuel cards or business outsourcing services segments.
35. The proposed transaction does not give rise to vertical competition concerns within the State.

Conclusion

36. In light of the above, the Authority considers that the proposed transaction will not result in a substantial lessening of competition in any market for goods or services in the State."

Ancillary Restraints

37. The parties have entered into non-solicitation covenants with the vendors to apply for [...] after the completion of the proposed transaction.²⁶ The parties have also entered into non-compete covenants with respect to the vendors which will apply for a period of [...] after the completion of the proposed transaction.²⁷ The Authority considers that these covenants are directly related to and necessary for the implementation of the proposed transaction.

²⁵ Notification Form, page 20.

²⁶ The covenants are [...]. The parties state that such a restriction is necessary in order to protect the goodwill and know-how passing to Radius as a result of the proposed transaction.

²⁷ [...].

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby Radius Payment Solutions Limited would acquire sole control of Diesel Card Ireland Limited and Nicholl Card Services 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 Authority

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