



DETERMINATION OF MERGER NOTIFICATION M/12/033 -

DCC / Kent

Section 21 of the Competition Act 2002

Proposed acquisition by DCC plc of Kent Pharmaceuticals

Dated 22 January 2013

Introduction

1. On 27 December 2012, in accordance with section 18 of the Competition Act 2002 (the "Act"), the Competition Authority ("the Authority") received a notification of a proposed transaction whereby DCC plc ("DCC"), through its wholly owned subsidiary DCC Vital Ltd. ("DCC Vital"), would acquire sole control of Kent Pharmaceuticals (Holdings) Limited ("Kent").¹

The Undertakings Involved

The Acquirer

2. DCC is an Irish registered public company listed on the Irish and the London stock exchanges and headquartered in Dublin.² DCC is active globally and within the State in a variety of sectors and operates through five business divisions: DCC Healthcare (which comprises DCC Vital and DCC Health and Beauty Solutions), DCC Energy, DCC Sercom, DCC Environment and DCC Food and Beverage.³
3. Of greatest relevance to the proposed transaction is DCC Healthcare, and in particular DCC Vital.⁴ Both globally and within the State DCC Vital is involved in the sale, marketing and distribution of products and services including pharmaceutical products, intra venous ("IV") compounding services (i.e., the breaking down of bulk IV pharmaceuticals in an aseptic environment into dosages tailored for specific patients and medical devices).

¹ DCC proposes to purchase the entire shareholding of the three largest shareholders Mr Denis O'Neill [...], Mr Michael Overy [...], and Mr James Aylott [...] under the Share Purchase agreement dated 18 December 2012. [...].

² For more information on DCC see <<http://www.dcc.ie>>.

³ DCC Health and Beauty Solutions is involved in outsourced product development, manufacturing, packing and other services to health and beauty brand owners, principally in the areas of nutrition and beauty products. DCC Energy is involved in the sales, marketing and distribution of oil/fuel products, and liquid petroleum gas ("LPG"). DCC SerCom is involved in the sales, marketing and distribution of information technology ("IT"), communications and home entertainment products, and in chain management services. DCC Environmental is involved in the provision of waste management and recycling services to commercial, industrial and public sector customers. DCC Food & Beverage is involved in the sales, marketing and distribution of food and beverage products.

⁴ For more information on DCC Healthcare see <<http://www.dcc.ie/our-businesses/dcc-healthcare/markets-and-market-position.aspx>>.

4. Within the State pharmaceutical wholesalers and hospitals are DCC Vital's main distribution customers. Hospitals are also DCC Vital's main customers for manufactured pharmaceuticals products.⁵
5. For the year ended 31 March 2012 DCC's worldwide turnover was approximately €10.690 billion, of which approximately €958 million was generated in the State.⁶

The Target

6. Kent is a private company headquartered in Ashford, Kent, UK. Kent is involved in the manufacture and supply of pharmaceutical products, in particular generic beta lactam antibiotics (e.g., penicillin), mainly for customers in the UK.⁷
7. Kent operates primarily through a manufacturing subsidiary Athlone Pharmaceuticals Limited ("APL"), and two distribution subsidiaries, Kent Pharmaceuticals Limited ("KPL") and GAP Pharma ("GAPP").⁸ These subsidiaries are described below:
 - APL is located in Ballymurray, County Roscommon and specialises in the manufacture of beta lactam antibiotics,
 - KPL is located in Ashford, Kent, UK and distributes pharmaceutical products including but not limited to APL products, to community/retail pharmacies, hospitals and home care providers, and
 - GAPP is located in Ardsallagh, County Roscommon and distributes pharmaceutical products, including but not limited to APL products, primarily to community/retail pharmacies in the State.⁹
8. For the year ended 31 August 2012 Kent's combined worldwide turnover was approximately €88.4 million¹⁰ of which approximately €3.7 million was generated in the State.¹¹

Third Party Submissions

9. No submissions were received.

⁵ Within the State DCC Vital operates primarily through its wholly owned subsidiary Fannin Limited.

⁶ DCC's Worldwide turnover includes €330.0 million worldwide turnover from DCC Healthcare. Within the State DCC's turnover includes €[...] million from pharmaceutical manufacture and €[...] from pharmaceutical distribution. Notification Annex 4.11(a).

⁷ For more information on Kent see <<http://www.kentpharm.co.uk>>.

⁸ Kent also includes a number of other smaller trading companies, a number of licence holding entities and several dormant / investment entities which do not trade.

⁹ GAPP is a wholly owned subsidiary of APL.

¹⁰ Calculated using the ECB average annual exchange rate, for the period 1 September 2011 to 31 August 2012, of €£ = €0.829.

¹¹ This comprises €1.37 million from APL and €2.36 million from GAPP. Notification page 21 and Annex 4.11 (b). The parties further state that only 5% of APL sales are within the State. Notification page 10.

Rationale for Transaction

10. DCC states that:

"DCC has believed that there is an opportunity to build a substantial pharma business principally focused on established niche generic products that are a number of years post patent expiry. Such products are well positioned to benefit from the macro trend for healthcare systems to seek to meet the increasing demands of ageing populations with more cost effective healthcare solutions." and

"Kent Pharma is an excellent strategic fit for DCC Healthcare's existing pharma business and their combined strengths will create new growth opportunities for DCC."¹²

Analysis

11. There is a minimal overlap in the activities of the parties within the State. Both DCC, through DCC Vital, and Kent, through APL, are involved in the production and distribution of pharmaceutical products.
12. For the purpose of examining the competitive effects of the proposed transaction, the Authority does not need to come to a definitive view on the precise relevant pharmaceutical product market because its conclusions concerning the competitive effects of the proposed transaction, outlined below, would be unaffected whether the relevant product market is narrow (e.g., beta lactam antibiotics or compounded IV pharmaceutical products) or broad (e.g., encompassing all licensed pharmaceutical products.)¹³
13. The parties estimate¹⁴ that approximately 80% of pharmaceutical compounding is performed in-house by hospitals with the remainder outsourced to external suppliers. The parties estimate that within the State DCC Vital supplies approximately [50-60]% of outsourced compounded pharmaceutical products in competition with Baxter and Braun. Kent is not involved in pharmaceutical compounding.
14. The parties estimate¹⁵ that APL's market share for the supply of beta lactam antibiotics (including penicillin) within the State is approximately [25-35]% and DCC Vital's market share is close to 0%.
15. Furthermore APL-manufactured and DCC Vital-compounded pharmaceutical products are not close substitutes. As described previously APL manufactures generic pharmaceutical products in oral form predominately for distribution to retail or community pharmacists, whereas DCC Vital's compounded products are in IV form, tailored for specific patients and supplied to hospitals.

¹² See <<http://otp.investis.com/clients/ie/dcc/rns/regulatory-story.aspx?cid=207&newsid=298879>>.

¹³ The Authority also does not consider it necessary to distinguish between distribution channels (i.e., distribution direct to community/retail pharmacies and hospitals or distribution via wholesalers).

¹⁴ Notification Annexes 5.2(a) and 5.2(b).

¹⁵ *ibid.*

16. For the purpose of examining the competitive effects of the proposed transaction, the Authority does not need to come to a definitive view on the precise relevant pharmaceutical distribution market because its conclusions concerning the competitive effects of the proposed transaction, would be unaffected whether or not the Authority distinguished between any or all of direct distribution to community/retail pharmacies, distribution via wholesalers or distribution to hospitals.
17. The parties estimate¹⁶ that within the State:
 - DCC accounts for approximately [5-15]% of the distribution of branded and generic pharmaceutical to hospitals,
 - DCC accounts for less than [0-5]% in the distribution of generic and limited branded pharmaceuticals to community/retail pharmacies,
 - GAPP accounts for approximately [0-10]% of a market limited to suppliers of limited line generic products and/or parallel imports, and
 - GAPP accounts for less than [0-5]% of the total full-line wholesale market.
18. These market share estimates do not indicate likely competition concerns arising from the proposed transaction with respect to the distribution of pharmaceutical products within the State.
19. In light of the minimal horizontal overlap and also Kent's low turnover within the State, the Authority concludes that the proposed transaction will not raise competition concerns in any market for goods or services in the State.

¹⁶ *ibid.*

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 DCC plc, through its wholly owned subsidiary DCC Vital Ltd., would acquire sole control of Kent Pharmaceuticals (Holdings) Limited, will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect.

For the Competition Authority

Stephen Calkins
Member of the Competition Authority
Director, Mergers Division