



DETERMINATION OF MERGER NOTIFICATION M/15/054 - SPORTS DIRECT / THE HEATONS GROUP (WARRNAMBOOL)

Section 21 of the Competition Act 2002

Proposed acquisition by Sports Direct International plc of the Heatons Group through Warrnambool

Dated 13 November 2015

Introduction

1. On 06 October 2015, in accordance with section 18(1) of the Competition Act 2002, as amended¹ (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Sports Direct International plc (“Sports Direct”) would acquire the majority of the issued share capital and thus sole control of Warrnambool, the parent company of Heatons, and of all of its wholly-owned subsidiaries² (collectively “the Heatons Group”).

The Transaction

2. Sports Direct is currently a shareholder in the Heatons Group by virtue of a non-controlling 50 per cent interest in the Heatons Group’s parent company, Warrnambool. Pursuant to an Agreement in regard to the Sale and Purchase of Shares, dated 05 October 2015, between Sports Direct and an individual minority shareholder in Warrnambool³, Sports Direct will acquire an additional [0-5]% shareholding in Warrnambool. This will result in Sports Direct acquiring sole control of the Heatons Group.
3. As part of the proposed transaction, Sports Direct has also entered into a Put and Call Option Agreement with the remaining individual shareholders⁴ of Warrnambool, the terms of which allow Sports Direct ultimately to acquire the entire issued share capital in Warrnambool should it wish to do so at a future date.

The Undertakings Involved

The Acquirer – Sports Direct

¹ It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.

² The wholly-owned subsidiaries of Heatons in the State are Heatons Stores Limited, Heatons Sports Limited and Megavalue Retail Limited. The wholly-owned subsidiaries of Heatons in Northern Ireland are Heatons (N.I.) Limited and Heatons Logistics Limited.

³ Sandra Minor, of [...].

⁴ Mark Heaton ([...]%), Hugh Heaton ([...]%) and John O’Neill ([...]%)



4. Sports Direct is a public limited company, listed on the London Stock Exchange, with its head office at Unit A, Brook Park East, Shirebrook, Derbyshire, England. It is primarily a UK sports and fashion retailer and has a portfolio of recognised sports, fashion and lifestyle brands, including *Dunlop*, *Slazenger*, *Everlast*, *Lonsdale* and *Karrimor*.⁵
5. Sports Direct operates approximately 400 sports stores in the UK, together with another 270 sports stores in approximately 19 European countries. In addition, its 'Premium Lifestyle' division operates 160 stores in the UK under the *Flannels*, *Cruise*, *USC*, *Republic* and *Van Mildert* fascias.
6. Sports Direct does not have any stores or physical presence in the State, other than its non-controlling 50% interest in Warrnambool. Sports Direct's Northern Irish activities are limited to three fashion stores in Belfast (two stores being *USC* branded and the other being *Cruise* branded).
7. Sports Direct generally has a limited wholesale operation and its typical business model is to enter into non-exclusive trademark licensing agreements with third parties, enabling those third parties to manufacture products of their choice using Sports Direct brands under licence. In the context of the State and Northern Ireland, however, Sports Direct is directly involved in the wholesale distribution of, primarily, sports clothing apparel, equipment and athletic footwear to the Heatons Group.
8. Sports Direct's worldwide turnover for the financial year ended 26 April 2015 was approximately €3.47 billion, of which approximately €[...] was derived from sales to Irish-based customers (approximately €[...] from internet sales⁶, approximately €[...] from sales to the Heatons Group and approximately €[...] from products sold under licence and from royalties.⁷

The Targets – Warrnambool & the Heatons Group

9. Warrnambool is an Irish private unlimited company, with its registered office at Heaton House, IDA Business Park, Whitestown, Tallaght, Dublin 24. Warrnambool is the parent company of the Heatons group of companies, which consists of the trading companies, Heatons and Heatons (N.I.) Limited. Heatons is an Irish unlimited company, with the same registered address as Warrnambool, which operates the *Heatons* chain of stores and a distribution service⁸ in the State.⁹ Heatons (N.I.) Limited is a Northern Irish company, which operates all of the group's stores in Northern Ireland.
10. The Heatons Group operates a chain of 53 department stores under the '*Heatons*' brand on the island of Ireland, focussing on retailing men's, women's and children's clothing, together with home wares.¹⁰ Of the 43 *Heatons* stores located in the State, 27 incorporate a dedicated 'Sports World' section within the store, which sells sports clothing apparel, equipment and athletic footwear. Supplies of sporting goods,

⁵ <http://www.sportsdirectplc.com/>

⁶ Sports Direct does not operate directly in the State but it has an online sales operation based in the UK whereby customers based in the State can order sports and leisure equipment, clothing, footwear and accessories.

⁷ Based on an average ECB exchange rate of €1 = GBP 0.80612 for 2014.

⁸ From its warehouse located in County Antrim.

⁹ Heatons is also the holding company of Heatons Stores Limited, Heatons Sport Limited and Megavalue Retail Limited, [...].

¹⁰ These include a large variety of home living products, children's toys and entertainment goods (e.g., CDs and DVDs).



equipment and athletic footwear for the Sports World sections are sourced from Sports Direct and a variety of other suppliers.

11. Each of the Heatons Group's ten *Heatons* stores in Northern Ireland either incorporates a 'Sports Direct' branded section or is located immediately adjacent to a 'Sports Direct' outlet which forms part of the Heatons Group's business. In addition, the Heatons Group owns and operates a further five standalone 'Sports Direct' branded stores in Northern Ireland.
12. The worldwide turnover of the Heatons Group in the financial year ended 30 April 2015 was approximately €[...], of which €[...] was generated in the State.¹¹ The Heatons Group's total turnover from the retail sale of sports clothing apparel, equipment and athletic footwear amounted to €[...] in the last financial year, which equated to approximately [10-20]% of total sales.

Rationale for the Proposed Acquisition

13. The notification states:

"The Acquirer has been an investor in the Heatons business since 2002, and a non-controlling 50 per cent shareholder since 2010. The Acquirer now wishes to take a controlling shareholding in the Heatons business to build on its existing goodwill in the Sports World and Sports Direct brands currently operated by Heatons in the State and in Northern Ireland respectively. The Acquirer would anticipate that through its experience of providing value and choice for customers and its extensive distribution methods, that it will increase price competition for, in particular, sporting goods in the Ireland due to an increased supply of products from a reduced operating cost."

Third Party Submissions

14. No submission was received.

Competitive Analysis

15. The Commission defines 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 since there is only a minor horizontal overlap in the activities of the parties within the State. This minor overlap relates to the supply of sporting goods.
16. Sports Direct has an online sales operation based in the UK whereby customers in the State can order sports and leisure equipment, clothing, footwear and accessories. The Heatons Group's *Sports World* offering does not have an internet presence, nor does the *Heatons* business actively sell sporting goods, apparel and footwear online. In addition, the Heatons Group's sales of sporting goods, equipment and athletic footwear represents only a small proportion (less than 20%) of its sales.

¹¹ Based on an average ECB exchange rate of €1 = GBP 0.80612 for 2014.



17. There is, however, a vertical overlap between the parties and the proposed transaction is in essence a vertical merger, whereby Sports Direct is seeking to increase its level of vertical integration.¹²
18. Apart from turnover generated in the State via internet sales, Sports Direct supplies the Heatons Group with sports clothing apparel, equipment and athletic footwear for the 27 *Heatons* stores in the State that operate *Sports World* sections.
19. A potential anti-competitive effect sometimes associated with vertical integration is foreclosure. Although the Commission is not defining a precise relevant market in this matter, for the purposes of the competitive analysis and taking into account the activities of the parties, there appear to be two possible market levels at which potential vertical foreclosure could arise, i.e. upstream in the wholesale supply of sports clothing apparel, equipment and athletic footwear, and downstream in the retailing of sporting goods and apparel.

- a. Upstream vertical foreclosure – wholesale supply of sports clothing apparel, equipment and athletic footwear

The Commission's predecessor, the Competition Authority has previously concluded that the top five brands of sports clothing and footwear in the State are (i) *Nike*, (ii) *Adidas*, (iii) *Puma*, (iv) *Reebok* and (v) *O'Neills*.¹³ These are third-party brands which are not owned by Sports Direct. Indeed, post-acquisition, the merged entity would not have the ability or incentive to input foreclose competing sports retailers since the brands supplied by Sports Direct to sports retailers in the State are limited (as evidenced by the wholesale turnover in its last financial year of €[...]) and all of the sales by Sports Direct to sports retailers were made to the Heatons Group.

- b. Downstream vertical foreclosure – retailing of sporting goods and apparel retailing

Suppliers of rival brands will continue to have the ability to sell their branded sports clothing and footwear to customers in the State through numerous other competing sports-themed retail stores, such as: *Lifestyle Sports*, *JD Sports & Champion Sports*, *Footlocker*, *Sports Savers*, *Elverys* and other independent retailers (including *Cummins Sports*, *Colgans Sports*, *Direct Sports* and *Welch Sports* etc).

20. The Commission further notes that:
 - a. an essential element for foreclosure is market power at one level of the market and where that is not present (as is the case in this matter) then there cannot be customer or input foreclosure; and

¹² "Non-horizontal mergers are generally less likely than horizontal mergers to generate competitive concerns as there is no direct loss of competition between firms in the same market." Guidelines for Merger Analysis adopted by the Competition and Consumer Protection Commission on 31 October 2014, p.24, available at:

<http://www.tca.ie/images/uploaded/documents/CCPC%20Merger%20Guidelines.pdf>

¹³ M/11/005 – JD Sports/Champion Sports.



- b. no increase in the market share of the merged entity will result from the proposed transaction given Sports Direct's lack of presence in the State.
21. With regard to the vertical aspects of the proposed transaction, it will not, in the Commission's view, result in foreclosure, in particular because, in both the upstream market for wholesale supply of sports clothing apparel, equipment and athletic footwear and the downstream retailing of sporting goods and apparel, there are other large competitors whose presence will constrain the activities of the merged entity post-transaction.
22. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

23. No ancillary restraints were notified in the proposed transaction flowing from the Agreement in regard to the Sale and Purchase of Shares. However, the Put and Call Option Agreement contains covenants restricting the individual shareholders, referred to in footnote 4 above, from carrying on any business which competes with the Heatons Group and from soliciting the custom of any existing customer or supplier and/or offering employment to any existing employee of the Heatons Group for a specified period.
24. The individual shareholders in question are also restricted, in the course of business, from using the names 'Heatons', 'Sports World', 'Sports Direct', 'Mega Value' or any other variation thereof.
25. All of the covenants will only apply if Sports Direct exercises its option to acquire the remaining shares from said individual shareholders.
26. The parties state that the covenants are appropriately limited in both time and geographic scope and are directly related and necessary to the acquisition of the entire shareholding of the Heatons Group. In such an acquisition scenario, the provisions would ensure that Sports Direct obtains the full value of the business being transferred and go no further than what is necessary to achieve that purpose.
27. The duration of the ancillary restraints does not exceed the maximum duration acceptable to the Commission¹⁴ and the Commission considers the restrictions to be directly related and necessary to the implementation of the proposed transaction.

¹⁴In this respect the Commission follows the approach adopted by the EU Commission in paragraph 20 of its "Notice on restrictions directly related and necessary to concentrations" (2005).

See [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=E](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=E).



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 Sports Direct International plc would acquire the majority of the issued share capital and thus sole control of Warrnambool, the parent company of Heatons, and of all of its wholly-owned subsidiaries (the Heatons Group), 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

Gerald FitzGerald
Member
Competition and Consumer Protection Commission