



## DETERMINATION OF MERGER NOTIFICATION M/16/054 – EXERTIS (DCC) /T.O.S.

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### Section 21 of the Competition Act 2002

### Proposed acquisition by Exertis Ireland Limited of T.O.S. Ireland Limited

Dated 29 November 2016

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#### Introduction

1. On 28 October 2016, in accordance with section 18(1) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby Exertis Ireland Limited (“Exertis”), a wholly-owned indirect subsidiary of DCC plc (“DCC”), would acquire the entire issued share capital of T.O.S. Ireland Limited (“TOS Ireland”).

#### The Proposed Transaction

2. The proposed transaction is to be implemented pursuant to a share purchase agreement (“SPA”) between TOS Holdings (Ireland) Limited (the “Seller”), Exertis and Martin O’Sullivan and Philip Nartey (the “Covenantors”) dated 27 October 2016.
3. Following the implementation of the proposed transaction, TOS Ireland will be a wholly-owned direct subsidiary of Exertis and thus a wholly-owned indirect subsidiary of DCC.

#### The Undertakings Involved

##### *Exertis*

4. Exertis is a wholly-owned indirect subsidiary of DCC<sup>1</sup>. DCC is a public limited company registered in the State which is listed on the London Stock Exchange. DCC is organised into four divisions, namely: DCC Energy, DCC Healthcare, DCC Technology and DCC Environmental.

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<sup>1</sup> Headquartered in Dublin.



5. Exertis is part of the DCC Technology division. Exertis primarily distributes/resells information technology (“IT”) and home entertainment products to resellers and retailers, who then sell such products to end-users<sup>2</sup>.
6. Exertis has a Direct Channel division which specialises in the sale and service of multi-function printing and copying devices (“MFD”) to end-users. It principally sells MFD products manufactured by Sharp and Samsung through this channel.
7. Exertis also has a branch in Dubai, United Arab Emirates, which mainly trades in the airport duty free sector. Its other export business is limited to occasional deals with its customers in the State who also have a UK presence.
8. For the financial year ended 31 March 2016, DCC’s worldwide turnover was approximately €14,492 million<sup>3</sup>, of which approximately €[...] million was generated in the State.

#### *TOS Ireland*

9. TOS Ireland is a private limited company incorporated in the State which is wholly-owned by the Seller. The beneficial owners of the Seller are Martin O’Sullivan and Philip Nartey. The Seller also owns T.O.S. Distribution Limited.
10. TOS Ireland is a distributor/reseller of IT products, with a particular focus on supplying MFDs and managed print services to business users and resellers in the State. The major technology brand TOS Ireland distributes/sells is Toshiba. TOS Ireland’s customer base is a network of dealers and approximately [...] end-user customers, all of which are located in the State.
11. TOS Ireland’s total turnover in the financial year ended January 2016 was €[...] million. The entirety of this turnover was generated in the State.

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

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<sup>2</sup> Exertis also provides a small amount of related services to its customers, such as pre-sales advice.

<sup>3</sup> Euro figure converted from approximately GBP 10,601 million using the average ECB conversion rate for “1 April 2015- 31 March 2016”.



12. The parties state in the notification:

*“DCC/Exertis plans to acquire TOS Ireland to acquire further expertise in the resale of MFD products and technologies, to widen its product portfolio and to access potential new customers.*

*The acquisition of TOS Ireland will allow DCC, through Exertis, to compete more effectively and more efficiently in this area.”<sup>4</sup>*

### **Third Party Submissions**

13. No submission was received.

### **Competitive Analysis**

#### *Horizontal Overlap*

14. There is a horizontal overlap between the activities of the parties in the distribution and resale of MFDs and the provision of managed print services to business users and resellers in the State. For the reasons given below, the Commission considers that the horizontal overlap is not significant and that, post-transaction, Exertis will continue to face competition for distributing/reselling MFDs and providing managed print services to business users and resellers in the State.
15. Both of Exertis and TSO Ireland are involved in distributing/reselling MFDs and the provision of related managed print services to business users and resellers in the State. Both of Exertis and TOS Ireland focus on the office channel, i.e., excluding the home and home office segments. The distribution/resale of MFDs and provision of managed print services involves:
- an end-user leasing<sup>5</sup> or purchasing a printer, photocopier or MFD from the reseller;

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<sup>4</sup> Page 7, section 2.7 of the notification.

<sup>5</sup> A leasing agreement typically includes an obligation on the reseller to install and maintain the machine for an agreed amount for the term of the lease.



- an end-user entering into a service agreement contract providing for the leased or purchased printer, photocopier or MFD to be serviced for a specific period by the reseller;
- the service agreement contract may include the supply of toner, spare parts and related repairs, maintenance and labour. Such services are typically billed as a cost per page printed.

#### *Product and Geographic Market Definition*

16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The precise product and geographic market definition can be left open in this instance since the transaction does not raise any significant competition concerns irrespective of whether the market is defined broadly to include all IT services or more narrowly to include MFDs and associated managed print services. However, for the purpose of reviewing the competitive effects of the proposed transaction, the Commission has assessed its impact by reference to a narrow market comprising the distribution/reselling of MFDs and the associated managed print services in the State.

#### *Competitive Effects*

17. InfoSource<sup>6</sup>, estimates that the annual market value for MFDs in the State in 2015 was approximately €96 million in total. There are approximately [...] MFD machines managed by Exertis under service contracts (i.e., Machine in Field (“MIF”)) in the State. TOS Ireland manages approximately [...] machines<sup>7</sup> in the State under service contracts. The parties estimate that their shares of the total number of installed MFDs for the office channel in the State in 2015<sup>8</sup> are as follows:

- Exertis’ MIF base of [...] machines accounts for [0-5]% of the estimated total number of installed MFDs in the State and generates an annual turnover of approximately €[...] million in managed print services;

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<sup>6</sup> A third party market research company, see <http://www.infosource.ch/>

<sup>7</sup> Around [...] of its MIFs belong to its top ten clients.

<sup>8</sup> Based on infoSource and DCC’s own estimation.



- TOS Ireland's MIF base of [...] machines accounts for [0-5]% of the estimated total number of installed MFDs in the State and generates an annual turnover of approximately €[...] million in managed print services.
18. Post-transaction, the merged entity's share of the total number of the MIF base in the State would be approximately [5-10]% and its share of the supply of managed print services in the State would be approximately [5-10]%. Furthermore, the parties estimate that the combined number of sales of new MFDs by Exertis ([...] machines) and TOS Ireland [...] machines) in 2015 represents approximately [0-5]% of sales of new MFDs in the State for that period.
  19. Given the merged entity's low market shares in the distribution/resale of MFDs and in the provision of managed print services and the presence of other larger competitors in the State which would continue to compete with the merged entity post-transaction (e.g., IBS/Xerox Corporation, MJ Flood Limited, Bryan S Ryan Limited, Ricoh Europe PLC, Datapac Unlimited Company), the Commission considers that the proposed transaction is unlikely to raise competition concerns in relation to the distribution/resale of MFDs and the provision of managed print services in the State.
  20. The parties submit that the key functions of printing and copying and the supporting services are largely substitutable and that the typical distribution/resale contracts between branded manufacturers and distributors/retailers are non-exclusive. The parties state in the notification that where a customer is switching suppliers during the term of a contract, the contract will be bought out by the new supplier, therefore, the customer will not be at a loss. Therefore, the Commission considers, on the basis of the information available to it, that switching costs for customers are likely to be low.
  21. Furthermore, the Commission considers that printer and photocopier consumers engage in lifecycle pricing, they make informed choices between competing photocopiers based on the price per copy, and new customers would adapt their purchasing behaviour within a reasonable timeframe in response to perceived price increases. Public bodies and many private companies put printing/copying service contracts out to tender, which gives those customers considerable bargaining power.
  22. In light of the above, the Commission considers that the proposed transaction does not give rise to any horizontal competition concerns.



### *Vertical relationship*

23. In the twelve months to 31 August 2016, Exertis sold approximately € [...] worth of HP print consumables (toners etc.) to TOS Ireland. Therefore, there is an existing vertical relationship between the parties. However, the Commission considers that this vertical relationship is not significant given that approximately [90-100]% of TOS Ireland's spending on print consumables goes to Toshiba UK, TOS Ireland's total purchases from Exertis, Datapac Unlimited Company and ICS Europe Ltd represent approximately [0-10]% of its aggregated print consumable spend. Furthermore, the presence of other distributors/resellers (e.g. those mentioned in paragraph 19) would continue to compete with the merged entity for the supply of print consumables post-transaction.
24. In light of the above, the Commission considers that the proposed transaction does not give rise to any vertical competition concerns.

### **Conclusion**

25. 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**

26. The parties state in the notification that clause 6.2 of the SPA contains various restrictive covenants, including a restriction on the Seller and the Covenantors from directly or indirectly competing with TOS Ireland for the sale, marketing, distribution, rental or leasing of scanners, photocopiers, faxes or printers and/or the provision of managed print services to businesses and/or the servicing of scanners, photocopiers, faxes or printers for a period of two years in the State.

The Commission considers that these restraints are directly related and necessary to the implementation of the proposed transaction.<sup>9</sup>

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<sup>9</sup>In this respect, the CCPC 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" (2002). For more information see [http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.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, has determined that, in its opinion, the result of the proposed transaction whereby Exertis Ireland Limited, a wholly-owned indirect subsidiary company of DCC plc, would acquire the entire issued share capital of T.O.S. Ireland 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

**Patrick Kenny**  
**Member**  
**Competition and Consumer Protection Commission**