



# DETERMINATION OF MERGER NOTIFICATION M/17/060 – CASCADE/JOHN USHER/GUDU

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## Section 21 of the Competition Act 2002

**Proposed acquisition by Cascade Management Limited of sole control of John Usher Limited and GUDU Limited.**

**Dated 7 December 2017**

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### Introduction

1. On 6 November 2017, 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 transaction (the “Proposed Transaction”) whereby Cascade Management Limited (“Cascade”), which is controlled by funds<sup>1</sup> managed by MML Growth Capital Partners Ireland Limited (the “MML Funds”), would acquire sole control of John Usher Limited (“John Usher”) and GUDU Limited (“GUDU”).

### The Proposed Transaction

2. The Proposed Transaction will be implemented by way of a Share Purchase Agreement (the “SPA”) between Cascade, John Usher & Sons (Dublin) Limited (“John Usher & Sons”) and Anna Usher (together, the “Vendors”), and Dermot Usher and Gerard Usher (the “Warrantors”) dated 3 November 2017. Pursuant to the SPA, Cascade, which is solely controlled by the MML Funds, will acquire sole control of John Usher and GUDU.

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<sup>1</sup> The funds comprise [...].



## The Undertakings Involved

### *The Acquirer – MML Funds*

3. Cascade, a private limited company incorporated in the State for the purpose of the Proposed Transaction, is controlled by the MML Funds. An Investment Agreement (the “Investment Agreement”) between [...],<sup>2</sup> Dermot Usher and Richard Sloan<sup>3</sup>, dated 3 November 2017, provides that the MML Funds owns [...] % of the non-voting shares and [...] % of the voting shares in Cascade and that the Usher Entities owns [...] % of the non-voting shares and [...] % of the voting shares in Cascade.<sup>4</sup> The parties have informed the Commission that Cascade is solely controlled by the MML Funds.
4. The MML Funds are private equity funds, providing capital to private businesses on the island of Ireland for expansion, acquisitions, recapitalisations and shareholder reorganisations. The following five portfolio companies are [...] the MML Funds and managed by MML Capital:
  - Lowe Refrigeration Solutions Limited;
  - Identigen Limited;
  - H&MV Engineering Limited;
  - Agenda Communications & Conference Services Limited
  - Havelock Acquisitions Limited (trading as *Fastway couriers (Ireland)*).

The following three portfolio companies [...] the MML Funds and managed by MML Capital generated turnover in the State in 2016:

- Identigen Limited - provider of DNA-based solutions to the agri-food industry;
- H&MV Engineering Limited - high-voltage electrical contractor; and

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<sup>2</sup> [...].

<sup>3</sup> [...].

<sup>4</sup> [...].



- Havelock Acquisitions Limited - parcel delivery business.

5. For the financial year ending 31 December 2016, companies owned and controlled by the MML Funds generated worldwide turnover of approximately €[...] million, of which approximately €[...] million was generated in the State.

#### *The Target Companies – John Usher and GUDU*

6. John Usher is a limited company established in the State. John Usher, trading as *Sonas Bathrooms*, is a wholesale supplier of bathroom products in the State. *Sonas Bathrooms* supplies its products via third party retail bathroom showrooms and builders merchants. It also operates as an independent business-to-business distributor of bathroom and sanitary ware products in the State, servicing residential and non-residential end-users.

7. GUDU is a limited company established in the State. GUDU, trading as *Bathandshower.com*, is an online retailer of bathroom products in the United Kingdom.

8. For the financial year ending 31 December 2016, GUDU's worldwide turnover was approximately €[...] million, none of which was generated in the State.

9. John Usher & Sons currently owns [...] % of the issued share capital of John Usher and Anna Usher owns the remaining issued share capital of John Usher. GUDU is [...] % owned by John Usher & Sons. [...] currently own [...], [...], and [...], respectively, of the issued share capital of John Usher & Sons.

10. For the financial year ending 31 December 2016, John Usher's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

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

11. The parties state in the notification:



*“The Proposed Transaction reflects MML Capital's strategy of backing managers of small and medium size private businesses located on the island of Ireland to reach the next stage of their evolution, maximising growth opportunities at home and abroad.”*

### **Third Party Submissions**

12. No submission was received.

### **Competitive Analysis**

13. There is no horizontal overlap between the business activities of the parties in the State. None of the three portfolio companies owned and controlled by the MML Funds and managed by MML Capital that generated turnover in the State in 2016 are engaged in the same business activities as John Usher and GUDU, namely the wholesale and retail supply of bathroom products. Therefore, the Proposed Transaction does not raise any horizontal competition concerns in the State.
14. The parties have stated in the notification that there is no identifiable vertical relationship between the portfolio companies owned and controlled by the MML Funds and managed by MML Capital and John Usher and GUDU in the State. Therefore, the Proposed Transaction does not raise any vertical competition concerns in the State

### **Conclusion**

15. 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

16. The SPA contains non-compete and non-solicitation obligations on Warrantors<sup>5</sup> and their spouses, minor children and companies or enterprises controlled by them collectively and/or separately. The duration of those restrictive obligations does not exceed the maximum duration acceptable to the Commission.<sup>6</sup> The Commission considers those non-compete and non-solicitation obligations to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State and insofar as they relate to the Warrantors only and to a company or enterprise controlled by the Warrantors collectively and/or separately.

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<sup>5</sup> Dermot Usher and Gerard Usher.

<sup>6</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). 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)



## **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 Cascade Management Limited, which is controlled by funds managed by MML Growth Capital Partners Ireland Limited, would acquire sole control of John Usher Limited and GUDU 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**