



## DETERMINATION OF MERGER NOTIFICATION M/17/070 OCM LUXEMBOURG (OAKTREE)/ INDEGO

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### Section 21 of the Competition Act 2002

### Proposed acquisition by Oaktree Capital Group LLC, through OCM Luxembourg Square Retail S.à.r.l., of sole control of Indego Limited

Dated 1 February 2018

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#### Introduction

1. On 20 December 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 whereby Oaktree Capital Group LLC (“Oaktree”), through OCM Luxembourg Square Retail S.à.r.l. (“OCM”), would acquire sole control of Indego Limited (“Indego”) (the “Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction is part of a larger transaction pursuant to which Oaktree will acquire control of The Square Town Centre shopping centre in Tallaght, the surrounding car park and certain related loans and security. The overall transaction will be effected as follows:
  - Under the terms of a share purchase agreement dated 15 December 2017<sup>1</sup>, Oaktree (via OCM) will acquire the entire issued share capital of Indego and its subsidiaries<sup>2</sup>, such that, following completion of the Proposed Transaction, Oaktree will have sole control of Indego;

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<sup>1</sup> The share purchase agreement dated 15 December 2017 is between George Maloney, Karlam Unlimited, Gosford Limited, OCM, Bernard Hamill, Lorna Lyons and Michael Kearns.

<sup>2</sup> The subsidiaries of Indego, over which Oaktree will acquire sole control pursuant to the Proposed Transaction, are Patara Limited, Laseda Limited, Rixus Limited, Ueda Property Holdings Limited, Baradine Limited and Carstan Limited. Patara Limited, Laseda Limited, Rixus Limited and Ueda Property Holding Limited have a collective shareholding of [...] % in The Square Management Limited, which is the management company and owner of the freehold in The Square Town Centre shopping centre in Tallaght.



- Under the terms of a contract for sale dated 15 December 2017, Oaktree will also acquire the freehold interest in the car park surrounding The Square Town Centre shopping centre, which is currently owned by National Asset Property Management DAC; and
  - Under the terms of a loan sale agreement dated 15 December 2017, Oaktree will acquire the loans and related security which are currently held by National Asset Loan Management DAC over and in respect of Indego.
3. Following completion of the Proposed Transaction, Indego will become a wholly-owned subsidiary of OCM. While The Square Town Centre shopping centre will be owned by OCM following completion of the above transactions, it is envisaged by the parties that Sigma Retail Partners (“Sigma”)<sup>3</sup> will be appointed as exclusive asset advisor for OCM in relation to The Square Town Centre shopping centre. The parties have informed the Commission that, in its capacity as exclusive asset advisor, Sigma would have no ownership or control interest in either Indego or The Square Town Centre shopping centre, but would be responsible for the operation and management of The Square Town Centre shopping centre.

## **The Undertakings Involved**

### ***Oaktree***

4. Oaktree is a global investment manager, specialising in alternative investments with over US\$100 billion in assets under management. Oaktree is a Delaware-registered company, which is listed on the New York Stock Exchange.
5. Oaktree's European private equity division has previously invested in the State through Oaktree's Targeted Investment Opportunities ICAV (“TIO”), which is a fund regulated by the Central Bank of Ireland. Oaktree's existing investments in the State include eight operational retail real estate assets, a number of office development assets, sites for residential development and aparthotels.

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<sup>3</sup> Services provided by Sigma include asset strategy, transaction advice and asset management, see <http://www.sigmaretailpartners.com/>. Sigma is essentially a service provider to the owner of the asset, to ensure the efficient management of the asset and to help the owner optimise the return on their investment. In relation to rents, Sigma's role is primarily to act as liaison between the owner and the various specialists (for example, Savills, Bannion or Cushman & Wakefield) appointed to handle negotiations on new lettings and rent reviews, and to make recommendations in line with the approved asset management strategy, which the owner is then free to accept or reject, with the owner being Oaktree in this case.



6. TIO currently makes investments through eight specialist sub-funds, each with segregated liability<sup>4</sup>. Each of these sub-funds has an assets advisor and Oaktree is the investment manager in each case.
7. Details of Oaktree's investments in eight operational retail real estate assets in the State are outlined in Table 1 below<sup>5</sup>.

**Table 1: Oaktree's Retail Real Estate Interests in the State, December 2017**

| Asset | Distance from<br>Dublin City<br>Centre (km) | Size (square<br>metres) |
|-------|---|-------------------------|
| [...] | [...]                                       | [...]                   |
| [...] | [...]                                       | [...]                   |
| [...] | [...]                                       | [...]                   |
| [...] | [...]                                       | [...]                   |
| [...] | [...]                                       | [...]                   |
| [...] | [...]                                       | [...]                   |
| [...] | [...]                                       | [...]                   |
| [...] | [...]                                       | [...]                   |
| Total | -   | [...]                   |

Source: The Commission based on information supplied by Oaktree.

8. In addition to the retail real estate assets outlined in Table 1 above,[...]. As there is no horizontal overlap between Oaktree and Indego in relation to this activity, the Commission has not considered the supply of office space further in this determination.
9. The Proposed Transaction will be effected through OCM. OCM is incorporated under the laws of Luxembourg and is a special purpose vehicle, separate to TIO, that has been incorporated for the purposes of implementing the Proposed Transaction. OCM does not currently own or control any assets in the State or elsewhere.

<sup>4</sup> This means that the assets of one sub-fund of TIO will not be available to satisfy the liabilities of, or which are attributable to, another sub-fund within TIO.

<sup>5</sup> Sigma is responsible for the operation and management of the retail real estate assets set out in Table 1. Other than Oaktree's retail real estate assets described in Table 1, Sigma also manages Dungarvan Shopping Centre, Thurles Shopping Centre, Harbour Place Shopping Centre in Mullingar, Johnstown Shopping Centre in Navan and Manor Mills Shopping Centre in Maynooth. Only two of the aforementioned shopping centres could be considered to be located in the Greater Dublin Area, albeit on the fringes of same, namely Johnstown Shopping Centre in Navan and Manor Mills Shopping Centre in Maynooth. These retail real estate assets would not be considered close competitors of The Square Town Centre shopping centre in Tallaght.



10. For the financial year ending 31 December 2016, Oaktree had a worldwide turnover of approximately €[...], of which approximately €[...] was generated in the State<sup>6</sup>.

### **Indego**

11. Indego is a private limited company incorporated in the State. Indego has an indirect [...] %<sup>7</sup> controlling interest in The Square Management Limited (“TSML”), the management company for and the owner of the freehold interest in The Square Town Centre shopping centre in Tallaght. Indego does not have any other interests or activities.
12. The Square Town Centre shopping centre is located in Tallaght in south west Dublin, which is approximately 10 km from Dublin city centre. It comprises: (i) a large retail shopping centre of approximately 140 retail units and 53,650 square meters of retail space; and (ii) a large surface car park [...].
13. The current shareholders of Indego are Karlam Unlimited [...] and Gosford Limited [...], both of which are Jersey-incorporated companies. George Maloney of RSM Ireland has been appointed as receiver in respect of the shareholdings of both of Karlam Unlimited[...] and Gosford Limited [...] in Indego.
14. For the financial year ending 30 June 2016, Indego generated turnover in the State of approximately €[...] million, all of which was attributable to income derived from its interest in The Square Town Centre shopping centre in Tallaght.

### **Rationale for the Proposed Acquisition**

15. Oaktree states the following in the notification:

*“The Proposed Transaction is consistent with Oaktree’s strategy of making real estate investments, focusing on value creation in operational and strategic assets. The Square compliments*

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<sup>6</sup> Oaktree indicated in the notification that precise turnover data for the 2016 financial year was not available for some Oaktree portfolio companies and that, where such data was unavailable, Oaktree used turnover data for the 2015 financial year. The notification states that Oaktree does not consider that any material year-on-year change in respect of its turnover in the State would have occurred between 2015 and 2016.

<sup>7</sup> Indego’s controlling interest in TSML is held through four subsidiaries,[...]. The remaining shares in TSML are held by the owners of certain units in The Square Town Centre shopping centre, but this interest does not confer any form of control on these shareholders.



*Oaktree's existing retail assets in terms of both scale and geographic location. The Proposed Transaction also represents a development potential for Oaktree, as there is potential to extend and re-develop the asset, pending planning, in the future. From Indego's perspective, the Proposed Transaction represents an opportunity to dispose of the asset to an experienced and well-resourced investor, thus clearing outstanding debts over the asset."*

### Third Party Submissions

16. No submission was received.

### Competitive Analysis

#### *Horizontal Overlap*

17. There is a horizontal overlap between the activities of Oaktree and Indego with respect to the supply of rentable retail space in the State.
18. The Commission has previously assessed the competitive impact of transactions involving the acquisition of rentable retail space.<sup>8</sup> In its determination in *M/17/046 – Hammerson/Teba*, the Commission assessed the competitive impact of the relevant transaction in the potential product market for the supply of rentable retail space.
19. The European Commission<sup>9</sup> recently considered, but ultimately left open, whether the commercial real estate sector should be segmented in accordance with the following categories of property: (i) office properties; (ii) retail properties; and (iii) industrial properties.
20. The Competition and Markets Authority, United Kingdom, (the "CMA") in a recent decision<sup>10</sup> regarding Hammerson's acquisition of the Grand Central Shopping Centre in

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<sup>8</sup> Please see, for example, merger determinations *M/17/046 – Hammerson/Teba*, which can be assessed at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m17046-hammerson-teba/> and

– *M/16/004 - Dekabank/Whitewater Development* which can be assessed at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m16004-deka-immobilien-dekabank-whitewater-development/>

<sup>9</sup> Please see the European Commission decision in *Case No COMP/M.8229 – Hammerson/Irish Life/ILAC shopping centre* which can be accessed at: [http://ec.europa.eu/competition/mergers/cases/decisions/m8229\\_100\\_4.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8229_100_4.pdf).

<sup>10</sup> Please see paragraph 33 of the CMA decision in *ME/6597/16- Completed acquisition by Hammerson plc of the Grand Central Shopping Centre* which can be accessed at: <https://assets.publishing.service.gov.uk/media/57babace40f0b61272000008/hammerson-gc-full-text-decision.pdf>



Birmingham in the UK, assessed the competitive impact of the transaction by reference to the supply of retail space, including shopping centres and the high street, stating the following:

*“The CMA notes that these offerings supply the same core service (ie retail space) and most retailers indicated that other retail space may offer an alternative in the context of their preferences across a range of factors, including location.”*

21. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission does not need to come to a definitive view on the precise relevant product market in this instance since its conclusion on the likely competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is narrow (e.g., separate potential markets for each category of rentable commercial space: (i) the supply of office space; (ii) the supply of retail space; and, (iii) the supply of industrial space) or broader (e.g., the potential market for the supply of all categories of rentable commercial space). However, for the purposes of this determination, the Commission has followed its approach in *M/17/046 – Hammerson/Teba* and has assessed the likely competitive impact of the Proposed Transaction in the potential product market for the supply of rentable retail space.<sup>11</sup>
22. Similarly, in relation to the geographic scope of the relevant product market, the Commission has not, in the course of its assessment of the competitive effects of the Proposed Transaction, found reasons to depart from the approach previously adopted by the Commission in *M/17/046 – Hammerson/Teba*, in which the Commission assessed the competitive impact of the relevant transaction by reference to a 50 km radius around Dublin city centre, which substantially encompasses the whole of the Greater Dublin Area (“GDA”).

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<sup>11</sup> The Commission notes that in *Case COMP/M.8229 – Hammerson/Irish Life/ILAC shopping centre*, the European Commission assessed the impact of that transaction in a narrower potential product market, namely the rental of retail space in shopping centres of at least 8 000 or 10 000 square metres. The European Commission’s decision in *Case COMP/M.8229 – Hammerson/Irish Life/ILAC shopping centre* can be accessed at: [http://ec.europa.eu/competition/mergers/cases/decisions/m8229\\_100\\_4.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8229_100_4.pdf).



23. The European Commission<sup>12</sup> recently considered, but ultimately left open, whether real estate markets can be regarded as national, regional or local, stating the following:

*“the [European] Commission considered in previous cases, but ultimately left open whether there is any scope for a regional market definition and examined the markets for rental of retail space in shopping centres of at least 8 000 or 10 000 sqm within a 50 km radius around the relevant city in the region. As far as the present case is concerned, the Parties note that, in the case of Dublin, a 50 km radius substantially encompasses the whole of the Great Dublin Area (“GDA”).”*

24. The Commission does not need to come to a definitive view on the precise relevant geographic market in this instance since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant geographic market is narrow (e.g., the GDA) or broader (e.g., the State).
25. However, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition in the State, the Commission has analysed its likely competitive impact by reference to a 50 km radius around Dublin city centre which substantially encompasses the whole of the GDA.

#### Conclusion as to market definition

26. For the purposes of its competitive analysis, the Commission has assessed the competitive impact of the Proposed Transaction in the potential market for the supply of rentable retail space in the GDA.

#### *The Supply of Rentable Retail Space in the GDA*

27. On the basis of information available to the Commission, the Commission understands that there is an estimated 1,737,847 square metres of retail space in the GDA.<sup>13</sup> In the

<sup>12</sup> Please see paragraph 20 of the European Commission decision in Case COMP/M.8229 – Hammerson/Irish Life/ILAC shopping centre which can be accessed at: [http://ec.europa.eu/competition/mergers/cases/decisions/m8229\\_100\\_4.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8229_100_4.pdf).

<sup>13</sup> This figure was provided in the notification on the basis of the Commission’s determination in M-17-046 – Hammerson/Teba. Footnote 17 of the Commission’s determination in M-17-046 – Hammerson/Teba states that: “Hammerson states the following in the notification, “[...] estimates that at the end of 2016 (and into Q1 2017) there was a total of 1,737,847 square metres of retail space in the GDA. This consists of the following: 992,973 square metres of shopping centres >5,000 square metres, 390,453 square metres of retail parks >5,000 square metres, 111,186 square metres of retail schemes <5,000 square metres, 59,458



notification, the parties estimated that Oaktree currently owns approximately [...] square metres of rentable retail space in the GDA<sup>14</sup> and that Indego, through The Square Town Centre shopping centre, has 53,650 square metres of rentable retail space in the GDA. These figures suggest that, following implementation of the Proposed Transaction, Oaktree would own approximately [...] square meters of rentable retail space in the GDA, which constitutes approximately [...] of the total. On this basis, following implementation of the Proposed Transaction, Oaktree's increase in market share in the potential market for the supply of rentable retail space in the GDA would be approximately only [...] %.

28. In addition, there are a number of international property investors<sup>15</sup> currently active in the supply of rentable retail space in the GDA, as well as a number of Irish competitors<sup>16</sup>. These competitors will continue to act as a competitive constraint on Oaktree in the potential market for the supply of rentable retail space in the GDA, following implementation of the Proposed Transaction.
29. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State in respect of the supply of rentable retail space in the GDA.

#### *Vertical Relationship*

30. There is no identifiable vertical relationship between the parties in the State. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

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*square metres of retail space in Grafton Street, 119,357 square metres of retail space on Henry Street and 64,420 square metres of retail space on O'Connell Street. It does not include i) Kildare Village or ii) any other retail space on the high street in any other street in Dublin other than the three main retail streets above."*

<sup>14</sup> This figure was calculated on the basis of adding together the figures provided in Table 1 for Oaktree's retail real estate assets which are located in the GDA, [...].

<sup>15</sup> These include Hammerson plc. (Dundrum Town Centre, Pavilions Swords, Ilac Centre), Blackstone Group L.P. (Blanchardstown Shopping Centre, Co. Dublin), Deka Immobilien Investment GmbH (Whitewater Shopping Centre, Newbridge, County Kildare), and Universal-Investment-Gesellschaft mit beschränkter Haftung/BVK Highstreet Retail (Liffey Valley Shopping Centre).

<sup>16</sup> These include Irish Life, IPUT plc, and Green Reit plc.





### **Conclusion**

31. 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**

32. No ancillary restraints were notified.



## **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 transaction, whereby Oaktree Capital Group LLC, through OCM Luxembourg Square Retail S.à.r.l., would acquire sole control of Indego Limited, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the proposed transaction may be put into effect.

For the Competition and Consumer Protection Commission

**Brian McHugh**

**Member**

**Competition and Consumer Protection Commission**