



DETERMINATION OF MERGER NOTIFICATION M/18/005 - THORNTONS/A PLUS

Section 21 of the Competition Act 2002

Proposed acquisition by Pdraig Thornton Waste Disposal Limited t/a Thorntons Recycling of sole control of Skipfull Limited and Skipfull Two Limited

Dated 2 March 2018

Introduction

1. On 24 January 2018, 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 Pdraig Thornton Waste Disposal Limited t/a Thorntons Recycling (“Thorntons Recycling”) would acquire sole control of each of Skipfull Limited and Skipfull Two Limited (collectively, the “Target”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement (the “SPA”) and a transfer of undertaking agreement (the “TUA”). A copy of the heads of terms dated 29 November 2017 (the “Heads of Terms”)¹ was provided to the Commission with the notification. At the date of notification, the parties had not yet executed the SPA or the TUA. Nonetheless, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii) of the Act.
3. Skipfull Limited and Skipfull Two Limited are non-trading companies set up by the vendors for the purposes of the Proposed Transaction. The parties have informed the Commission that, pursuant to the TUA, the assets currently held by Ballinvalley Limited (“Ballinvalley”) and Green Energy Recycling Limited (“Green Energy Recycling”) are to be transferred to Skipfull Limited and Skipfull Two Limited, respectively. Thorntons Recycling would then acquire the entire issued share capital of each of Skipfull Limited and Skipfull Two Limited. Following completion of the Proposed Transaction, Thorntons Recycling will exercise sole control over Skipfull Limited and Skipfull Two Limited.

The Undertakings Involved

The Acquirer - Thorntons Recycling

¹ The Heads of Term dated 29 November 2017 was signed by Thorntons Recycling, Green Energy Recycling Limited, Ballinvalley Limited and Paul McCann, the current owner of Ballinvalley Limited.



4. Thorntons Recycling is a vertically integrated waste and recycling business, engaged in the following business activities in the State (primarily in the Greater Dublin Area (“GDA”)²):
 - the supply of domestic waste collection services;
 - the supply of waste collection services to individual commercial and industrial (“C&I”) customers;
 - the supply of waste collection services to multi-site C&I customers;
 - the processing of waste collected from domestic and C&I customers;³ and
 - the supply (for sale) of recyclable materials.⁴
5. With respect to waste processing, Thorntons Recycling operates six material recovery facilities (“MRF”), three of which are located in Co. Dublin, two in Co. Meath and one in Co. Wicklow.⁵
6. For the financial year ending 31 December 2016, Thorntons Recycling’s worldwide turnover was approximately €67.6 million, all of which was generated in the State.

The Target

7. The Target comprises two companies, namely: Skipfull Limited and Skipfull Two Limited.
8. Skipfull Limited is currently jointly owned by Claire McCann and Philomena McCann. As noted in paragraph 3 above, the parties have informed the Commission that, pursuant to the TUA, the assets currently held by Ballinvalley are to be transferred to Skipfull Limited. Ballinvalley is active in the waste sector in the State under the brand name *A Plus Skips* (“A Plus Skips”). A Plus Skips provides skip hire services to customers in the GDA. A Plus Skips also operates an MRF in Co. Dublin which processes waste collected from its skip hire business in the GDA.⁶
9. Skipfull Two Limited is currently jointly owned by Paul McCann and Shay McCann. As noted in paragraph 3 above, the parties have informed the Commission that, pursuant to the TUA, the assets currently held by Green Energy Recycling are to be transferred to Skipfull Two Limited. Green Energy Recycling supplies domestic waste collection

² The “GDA” comprises counties Dublin, Meath, Kildare and Wicklow, i.e., the areas administered by Dublin City Council, Dun Laoghaire-Rathdown County Council, Fingal County Council, South Dublin County Council, Meath County Council, Kildare County Council and Wicklow County Council.

³ Thorntons Recycling’s MRFs are primarily used to process waste collected from its own customers but it also has a significant third-party processing business. In 2016, approximately [...] % of Thorntons Recycling’s waste processing capacity was used to process waste on behalf of third party waste operators.

⁴ Thorntons Recycling recycles approximately 90% of the waste that it processes.

⁵ The MRF in Co. Wicklow is a timber shredding facility which is operated as a joint venture between Thorntons Recycling and Sretaw Unlimited Company, the ultimate parent of the waste management services business that trades in the State as *Panda*.

⁶ A very small proportion (approximately 5%) of the total volume of waste processed by A Plus Skips at its MRF in 2017 was processed on behalf of third party waste operators.



services to customers in counties Meath, Westmeath, Cavan and Longford under the brand name *Green Energy Recycling*.⁷

10. For the financial year ending 31 December 2016, the worldwide turnover of the assets that are to be transferred to the Target pursuant to the Proposed Transaction was approximately €5.3 million, all of which was generated in the State.⁸

Rationale for the Proposed Transaction

11. The parties state the following in the notification:

“(i) Thorntons Recycling will scale up its presence in the skip hire segment of the waste market where it is already active, but limited [in] the overall size of the market; (ii) Thorntons Recycling will increase its capacity to process construction and demolition (C&D) waste in particular and commercial and industrial (C&I) to a lesser extent; and, (iii) Thorntons Recycling will reduce its carbon foot print by having a facility on the north side of Dublin City where it can deposit and treat waste. This will lead to a better service to its clients and ensure that Thorntons Recycling remains competitive in this market.”

Third Party Submissions

12. No submission was received.

Overlap in the activities of the parties

13. The parties overlap horizontally in the State in the following business activities:

- The supply of domestic waste collection services;
- The supply of waste collection services to individual C&I customers;⁹
- The processing of waste collected from domestic and C&I customers; and
- The supply (for sale) of recyclable materials.

14. The parties state in the notification that there is no vertical relationship between the parties as both Thorntons Recycling and the Target are vertically integrated since they both collect and process waste in the State. Although the parties state that there is no

⁷ The domestic waste collected by Green Energy Recycling is delivered to a landfill in Co. Meath operated by AGB Landfill Holdings Limited and, in the case of recyclable waste, to an MRF in Co. Offaly operated by AES Bord na Mona for mixed recycling.

⁸ This comprises turnover of approximately €5 million generated by Ballinvalley and turnover of approximately €300,000 generated by Green Energy Recycling.

⁹ There is no horizontal overlap between Thorntons Recycling and the Target in the supply of waste collection services to multi-site C&I customers in the State since the Target does not currently supply waste collection services to multi-site C&I customers.



vertical relationship between Thorntons Recycling and the Target,¹⁰ both parties supply waste processing services to third party waste collectors in the State.

Competitive Analysis

15. The Commission's analysis of the competitive impact of the Proposed Transaction focuses on the collection, processing and disposal of non-hazardous waste in the State. Neither A Plus Skips, nor Green Energy Recycling, is active in the collection, transportation or processing of hazardous waste in the State.¹¹
16. The Commission defines markets to the extent necessary, depending on the particular circumstances of a given case. The non-hazardous waste management sector in the State comprises the following four sequential activities:
 - Production of waste at domestic and C&I premises;
 - Collection of waste from domestic and C&I premises;
 - Processing of waste; and
 - Disposal and recycling of waste.
17. For a detailed description of the waste management sector in the State, see section 2 of the Commission's determination of 16 August 2016 in *M/16/008 – PandaGreen/Greenstar* (the "2016 Decision").¹²
18. In the 2016 Decision, the Commission defined the following four relevant product markets in the waste sector:
 - The market for the supply of domestic waste collection services;
 - The market for the supply of waste collection services to individual C&I customers;
 - The market for the processing of waste collected from domestic and C&I customers; and
 - The market for the supply (for sale) of recyclable materials.¹³
19. In light of the recent decisional practice of the Commission and the absence of any evidence to the contrary obtained by the Commission pursuant to its market inquiries, the Commission considers that there is no reason to depart from the views expressed in the 2016 Decision on relevant product market definition.

¹⁰ Neither party processes waste on behalf of the other.

¹¹ While Thorntons Recycling is involved in the transportation of hazardous waste in the State, it does not process hazardous waste.

¹² This decision can be accessed at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2016/02/M_16_008-PandaGreen_Greenstar-Phase-2-Public-Determination.pdf

¹³ See paragraphs 3.3-3.8 of the 2016 Decision for a detailed discussion of relevant product market definition.



20. In paragraph 3.24 of the 2016 Decision, the Commission expressed the following view in relation to the relevant geographic market for the supply of domestic waste collection services:

“...the Commission concludes that each of the local authority areas within the GDA constitutes a relevant geographic market for the supply of domestic waste collection services.”¹⁴

21. Thorntons Recycling and the Target overlap in the supply of domestic waste collection services in Co. Meath.¹⁵ In light of the recent decisional practice of the Commission, the Commission considers that the local authority area administered by Meath County Council, namely Co. Meath, constitutes a potential relevant geographic market for the supply of domestic waste collection services.

22. In paragraph 3.25 of the 2016 Decision, the Commission expressed the following view in relation to the relevant geographic market for the remaining relevant product markets:¹⁶

“...the geographic scope of the relevant markets may be the GDA or possibly larger than the GDA.”

23. For each of the relevant product markets listed in paragraph 18 above (other than the market for the supply of domestic waste collection services), the Commission will assess the competitive impact of the Proposed Transaction in the GDA as Thorntons Recycling and the Target overlap in the supply of the relevant services in the GDA. This is likely to be the narrowest geographic market affected by the Proposed Transaction.

24. In conclusion, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission assessed its competitive impact by reference to the following four potential markets:

- The supply of domestic waste collection services in Co. Meath;
- The supply of waste collection services to individual C&I customers in the GDA;
- The processing of waste collected from domestic and C&I customers in the GDA; and
- The supply (for sale) of recyclable materials in the GDA.

The Supply of Domestic Waste Collection Services in Co. Meath

¹⁴ See paragraphs 3.9-3.25 of the 2016 Decision for a detailed discussion of relevant geographic market definition for the supply of domestic waste collection services.

¹⁵ As noted above, the Target supplies domestic waste collection services to customers in counties Meath, Westmeath, Cavan and Longford under the brand name *Green Energy Recycling*, while Thorntons Recycling supplies domestic waste collection services to customers in counties Dublin, Meath, Kildare and Wicklow.

¹⁶ Namely, the market for the supply of waste collection services to individual C&I customers; the market for the processing of waste collected from domestic and C&I customers; and the market for the supply (for sale) of recyclable materials.



25. For the reasons set out below, the Commission considers that the Proposed Transaction raises no competition concerns in the market for the supply of domestic waste collection services in Co. Meath.
26. First, the Target has a minimal market share in the supply of domestic waste collection services in Co. Meath.¹⁷ Table 1 below lists estimated shares of supply of suppliers active in the market for the supply of domestic waste collection services in Co. Meath in 2017. Following completion of the Proposed Transaction, Thorntons Recycling will remain the third largest supplier of waste collection services in Co. Meath with an estimated market share of 17%.

Table 1: The Supply of Domestic Waste Collection Services in Co. Meath, by value, 2017

Operator	Market Share (%)
AES Bord na Mona	[30-35]
Panda Waste Services	[25-30]
Thorntons Recycling	[10-15]
Allied Recycling	[5-10]
Oxigen Environmental Unlimited Company	[5-10]
The Target	[0-5]
Total	100

Source: The Commission, based on estimated market shares provided by Thorntons Recycling.

27. Second, Thorntons Recycling will continue to face competition from several alternative suppliers of domestic waste collection services in Co. Meath following completion of the Proposed Transaction. These suppliers include AES Bord na Mona, Panda Waste Services, Allied Recycling and Oxigen Environmental Unlimited Company.

The Supply of Waste Collection Services to Individual C&I Customers in the GDA

28. For the reasons set out below, the Commission considers that the Proposed Transaction raises no competition concerns in the market for the supply of waste collection services to individual C&I customers in the GDA.
29. First, the Target has a small market share in the supply of waste collection services to individual C&I customers in the GDA.¹⁸ Table 2 below lists the estimated shares of the suppliers active in the market for the supply of waste collection services to individual C&I customers in the GDA in 2017. Following completion of the Proposed Transaction, Thorntons Recycling will remain the second largest supplier of waste collection services to individual C&I customers in the GDA with an estimated market share of 18%.

¹⁷ The Target informed the Commission that it had 652 domestic customers in Co. Meath in 2017, generating turnover of approximately €176,000.

¹⁸ The Target informed the Commission that it had [...] C&I customers in the GDA in 2017, generating turnover of approximately €[...].



Table 2: The Supply of Waste Collection Services to individual C&I customers in the GDA, by value, 2017

Operator	Market Share (%)
Panda Waste Services	[25-30]
Thorntons Recycling	[15-20]
AES Bord na Mona	[10-15]
Key Waste Management Limited	[5-10]
Access Waste Recycling	[0-5]
The City Bin Co. Unlimited Company	[0-5]
Allied Recycling	[0-5]
Callan Skip Hire	[0-5]
M50 Skip Hire & Recycling Limited	[0-5]
Dolly Skip Hire	[0-5]
Greyhound Waste	[0-5]
The Target	[0-5]
Total	100

Source: The Commission, based on estimated market shares provided by Thorntons Recycling.

30. Second, Thorntons Recycling will face competition from multiple suppliers of waste collection services to individual C&I customers in the GDA following completion of the Proposed Transaction. These suppliers include Panda Waste Services, AES Bord na Mona, Key Waste Management Limited, Access Waste Recycling, The City Bin Co. Unlimited Company and Allied Recycling.
31. Third, the Commission sees no reason to depart from its view expressed in paragraph 4.32 of the 2016 Decision in relation to customer switching:

“[T]he Commission’s market inquiries indicated that the costs to individual C&I customers and multi-site C&I customers of switching between waste suppliers are low, and that customer switching is currently reasonably commonplace.”

The Processing of Waste Collected from Domestic and C&I Customers in the GDA

32. The Commission considers that the Proposed Transaction raises no competition concerns in the market for the processing of waste collected from domestic and C&I Customers in the GDA. The Target operates one MRF in Co. Dublin, which has a minimal waste processing capacity of only 24,500 tonnes per annum. Furthermore, Thorntons Recycling will face competition from other waste processors in the GDA following completion of the Proposed Transaction. These waste processors include Panda Waste Services, AES Bord na Mona, Key Waste Management Limited, Access Waste Recycling, Greyhound Waste and Allied Recycling.



The Supply (for sale) of Recyclable Materials in the GDA

33. The Commission considers that the Proposed Transaction raises no competition concerns in the market for the supply (for sale) of recyclable materials in the GDA. The Target generated a minimal amount of revenue (approximately €187,000) from the supply (for sale) of recyclable materials in 2017.¹⁹ Furthermore, Thorntons Recycling informed the Commission that approximately 55% of the total revenue generated from the supply (for sale) of recyclable materials is attributed to exports.

Vertical Relationship

34. As noted in paragraph 14 above, both Thorntons Recycling and the Target are vertically integrated as they both collect and process waste in the State. While Thorntons Recycling operates six MRFs in counties Dublin, Meath and Wicklow, the Target operates one MRF in Co. Dublin. In contrast, some operators currently active in the State are only involved in waste collection.
35. As part of its assessment of the likely competitive impact of the Proposed Transaction, the Commission considered whether the Proposed Transaction would not provide Thorntons Recycling with the ability and incentive to foreclose rival operators currently active in the supply of waste collection services to C&I customers in the GDA (by, for example, refusing to process the C&I waste collected by rival operators).²⁰
36. The Commission considers that the ability and incentive of Thorntons Recycling to foreclose competing waste collectors following completion of the Proposed Transaction will be restricted by the presence of other waste processors in the GDA which currently compete with Thorntons Recycling and the Target. These waste processors as noted in paragraph 32.
37. Furthermore, the Target's MRF in Co. Dublin has a waste processing capacity of only 24,500 tonnes per annum. Thus, Thorntons Recycling's C&I waste processing capacity per annum in the GDA will only increase by approximately 8% following completion of the Proposed Transaction.²¹ Thorntons Recycling's C&I waste processing capacity currently accounts for approximately 10% of the total C&I waste processing capacity of all C&I waste processors currently active in the GDA. The Commission considers that, due to the size of its share of C&I waste processing capacity in the GDA, Thorntons Recycling's ability and incentive to foreclose competing waste collectors following completion of the Proposed Transaction will be limited.
38. The Commission considers that it is also significant that, as noted above, a very small proportion (approximately 5%) of the total volume of waste processed by the Target at its MRF in 2017 was processed on behalf of third party waste operators.²²

¹⁹ In contrast, Thorntons Recycling generated turnover of approximately €[...] from the supply (for sale) of recyclable materials in 2017.

²⁰ There is no prospect of the Proposed Transaction providing Thorntons Recycling with the ability to foreclose operators currently active in the supply of domestic waste collection services in the State since the Target's MRF in Co. Dublin is not licensed to process domestic waste.

²¹ Only two of Thorntons Recycling's six MRFs are licensed to process waste collected from C&I customers. The total C&I waste processing capacity of these two MRFs is 300,000 tonnes per annum.

²² The Target only processed waste on behalf of three waste collectors in 2017.



39. Finally, the Commission sees no reason to depart from its view expressed the following view in paragraph 4.41 of the 2016 Decision in relation to customer switching in the GDA:

“[W]aste collectors can switch between waste processors relatively easily.”

40. Furthermore, the Commission has identified no existing vertical relationship between the parties. Therefore, the Commission considers that the Proposed Transaction raises no vertical competition concerns in the State.

Conclusion

41. 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

42. The Heads of Terms contains a number of non-compete obligations on Paul McCann and Shay McCann restricting them, for a period of 18 months from the completion of the Proposed Transaction, from entering or starting up any other waste business (excluding scrap metal recycling) in Dublin, Meath, Kildare or Wicklow. The Commission considers these non-compete obligations, in the form contained in the Heads of Terms, to be directly related to and necessary for the implementation of the Proposed Transaction.²³

²³ See also Commission Notice on restrictions directly related and necessary to concentrations (2005/C 56/03) <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:056:0024:0031:EN:PDF>>.



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 Pdraig Thornton Waste Disposal Limited t/a Thorntons Recycling would acquire sole control of each of Skipfull Limited and Skipfull Two 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