



# DETERMINATION OF MERGER NOTIFICATION M/18/017 - SAINT-GOBAIN PERFORMANCE PLASTICS/MICRO HYDRAULICS

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## Section 21 of the Competition Act 2002

**Proposed acquisition by Saint-Gobain Performance Plastics Europe SAS of sole control of the pharma division of Micro Hydraulics Limited.**

**Dated 22 March 2018**

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### Introduction

1. On 9 February 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 Saint-Gobain Performance Plastics Europe SAS (“Saint-Gobain”) would acquire sole control of the pharma division of Micro Hydraulics Limited (“the Target”) from Micro Hydraulics Limited (“Micro Hydraulics”) (the “Proposed Transaction”).

### The Proposed Transaction

2. The parties have informed us that it is proposed that all the intangible and tangible assets of the Target (i.e. the pharma division of Micro Hydraulics) will be transferred to a newly incorporated company (“NewCo”) by way of a business transfer agreement between Liam Collins, Joan Collins,<sup>1</sup> Micro Hydraulics and NewCo. Saint-Gobain will purchase 100% of the issued share capital of the NewCo by way of a share purchase agreement between Liam Collins, Joan Collins, and Saint-Gobain, thereby acquiring sole control of the Target.
3. As at the date of this determination, the parties have not yet executed the proposed share purchase agreement or business transfer agreement referred to in

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<sup>1</sup> Liam Collins and Joan Collins are Micro Hydraulics’ shareholders.



paragraph 2 above. Nonetheless, the parties have provided a copy of a draft share purchase agreement to the Commission. The Commission considers that the undertakings involved have demonstrated a good faith intention to conclude an agreement for the purpose of section 18(1A)(b)(ii) of the Act.

## **The Undertakings Involved**

### *The Acquirer - Saint-Gobain*

4. Saint-Gobain is controlled by Compagnie de Saint-Gobain S.A., a French multinational corporation. Compagnie de Saint-Gobain S.A. is active in: (i) the manufacture of innovative materials such as flat glass and high performance materials; (ii) the manufacture of construction products; and (iii) the distribution of building materials.
5. The Proposed Transaction concerns Saint-Gobain's high performance materials sector and, in particular, its performance plastics business. This business is responsible for producing engineered high performance polymer products for various industries across the globe.
6. Saint-Gobain's performance plastic business is mainly conducted under three sub-segments:
  - a) Composite or CMP (thin films, tapes, aero films and fabrics);
  - b) Engineering component or ENC (seals and bearings); and
  - c) Fluid systems, process systems and life science (also known as FLS).
7. Saint-Gobain has a bioprocess solutions business which is active in the manufacture and supply of various fluid-handling components and assemblies used in biopharmaceutical manufacturing, consisting of Single Use Technology ("SUT") products. SUT products are plastic based products used to process, store, or transport bio-pharmaceutical material in the manufacturing of protein based biological drugs. SUT products are intended for one-time use to improve safety and



reduce cleaning and sterilisation costs and include media bags, tubing and connectors, bioprocess containers, disposable mixing systems, and filter cartridges for bio pharmaceutical uses.

8. For the financial year ending 31 December 2016, Compagnie de Saint-Gobain S.A's worldwide turnover was approximately €[...] of which approximately €[...] was generated in the State.

#### *The Vendor- Micro Hydraulics*

9. Micro Hydraulics is a private limited company located in Dublin and Cork, founded by Liam Collins in 1982. Micro Hydraulics is engaged in the integration and distribution of biopharmaceutical and industrial products and provides assembly line services (also known as integration services) for the European market. Micro Hydraulics business is conducted under three divisions: hydraulics; industrial; and pharma.

#### *The Target*

10. The Target is active in the distribution of SUT products and provides assembly line services (also known as integration services) to the bioprocessing and biopharmaceutical industry. The Target also distributes and integrates Non-SUT products<sup>2</sup> which represent a small proportion of its sales.
11. For the financial year ending 31 December 2016, the Target's worldwide turnover was approximately €[...] million, all of which was generated in the State.

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

12. The parties state in the notification:

*"Saint-Gobain's strategic rationale for the Proposed Transaction is to improve its ability to compete more effectively in the market for SUT products for biopharmaceuticals. The Proposed Transaction*

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<sup>2</sup> Non-SUT products, which are traditionally made of steel, are reusable and require cleaning and sterilisation.



*will also provide Saint-Gobain with an opportunity to increase its presence in Ireland, which is considered a prominent European Pharma hub. Ireland is among the top 10 pharmaceutical exporters in the world and the number one medicines exporter in the EU.*

*The value proposition for local distributors generally is their ability to rapidly respond to service, product and assembly requests thereby reducing shutdown potential in these continuous processing lines for pharmaceutical liquids. Micro Hydraulics has been Saint-Gobain's channel partner to distribute its components locally in Ireland since the pharma industry began its heavy investment there in the 1990s. This Proposed Transaction would allow Saint-Gobain to accelerate its sales, capture channel margin on existing business and to compete more effectively for new projects. "*

### **Third Party Submissions**

13. No submission was received.

### **Horizontal Overlap in the activities of the parties**

14. There is a horizontal overlap between the activities of the parties in the State, as both Saint-Gobain and the Target are active in the distribution and assembly of SUT products used in the biopharmaceutical industry.

### **Competitive Analysis**

15. The Commission has not previously considered SUT products for biopharmaceutical processes.
16. In *M.8541 Thermo Fisher Scientific / Patheon*<sup>3</sup> (the "European Commission Decision") the European Commission<sup>4</sup> considered the manufacture and supply of

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<sup>3</sup> This can be accessed at [http://ec.europa.eu/competition/mergers/cases/decisions/m8541\\_147\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8541_147_3.pdf).

<sup>4</sup> See paragraphs 20-25 of the European Commission decision.



SUT products and the differentiation of SUT products between different functions, but left the definition of the product market open. Nonetheless, the European Commission assessed the likely impact of the transaction with respect to SUT products. The European Commission considered that the market for SUT products was at least EEA-wide.

17. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this case, the Commission does not need to come to a definitive view on the precise relevant geographic market definition since its conclusion on the competitive impact of the proposed transaction will be unaffected. Following the European Commission Decision, the Commission has assessed the likely competitive impact of the Proposed Transaction in the potential market for the integration and distribution of SUT products in the State, as this is the area of overlap in the activities of the parties in the State.

***The potential market for the integration and distribution of SUT products in the State***

18. There is a potential horizontal overlap between the activities of the parties within the State with respect to the integration and distribution of SUT products.
19. Estimates provided by the parties indicate that Saint-Gobain's market share in the potential market for the integration and distribution of SUT markets is minimal in the State.<sup>5</sup> Following the implementation of the Proposed Transaction, the estimated combined market share of the parties in the potential market for the assembly and distribution of SUT products in the State is approximately [10-20]%.<sup>6</sup>
20. The Commission contacted competitors of the parties to ascertain their presence in the potential market for the integration and distribution of SUT products in the

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<sup>5</sup> The parties estimate Saint-Gobain's direct sales of SUT products to end users account for [<1]% of the Irish market.

<sup>6</sup> There is no reliable figure for the value of the market for SUT products in the State. The parties estimate the market shares, using the assumption that the market for SUT products is proportionate to the total biopharmaceutical drug production market, as this market drives demand for SUT products. Figures provided by the parties report the 2016 market value of worldwide biopharmaceutical drug production is €[...], and the Irish market is €[...] billion, or [5-10]% of global biopharmaceutical drug production. The BCC Research Report, "Single Use Technology for Biopharmaceuticals: Global Marks" (June 2017) ("the BCC Report") estimates the global value for the SUT market is USD[...], giving a comparative value of USD[...] for the value of SUT products in the State.



State. The Commission notes that many integrators and distributors of SUT products offer multiple categories of SUT products. Following implementation of the Proposed Transaction, the parties will continue to face competition from a number of integrators and distributors of SUT products located in the State, such as ESI Technologies Limited<sup>7</sup>, Fisher Scientific Ireland Limited,<sup>8</sup> VWR International Limited<sup>9</sup> and Sartorius Ireland Limited.<sup>10</sup>

21. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the potential market for the integration and distribution of SUT products in the State.

### Vertical Relationship

22. There is a vertical relationship between the activities of the parties in the State. Saint-Gobain manufactures SUT products. The Target purchases SUT products from Saint-Gobain which the Target then assembles and distributes to biopharmaceutical manufacturers.<sup>11</sup> The Target does not manufacture SUT products.
23. For the reasons outlined below, the Commission considers that the Proposed Transaction is not likely to raise any vertical concerns.
24. With regard to input foreclosure, the parties have told the Commission that post-transaction both Saint-Gobain and the Target will continue to sell any SUT products to any integrator, distributor or end user that requests its products.
25. As outlined in paragraph 16, the European Commission considers that the market for SUT products was at least EEA wide. The estimated market share of Saint-

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<sup>7</sup> The offering of ESI Technologies Limited in SUT products in the State can be viewed at <https://esiultrapure.com/>

<sup>8</sup> The offering of Fisher Scientific Ireland Limited in SUT products in the State can be viewed at <https://www.thermofisher.com/ie/en/home/life-science/bioproduction/single-use-bioprocessing.html>

<sup>9</sup> The offering of VWR International Limited in SUT products in the State can be viewed at [https://ie.vwr.com/store/content/externalContentPage.jsp?path=/ie.vwr.com/en\\_IE/vwr\\_single\\_use\\_solutions.jsp](https://ie.vwr.com/store/content/externalContentPage.jsp?path=/ie.vwr.com/en_IE/vwr_single_use_solutions.jsp)

<sup>10</sup> The offering of Sartorius Ireland Limited in SUT products in the State can be viewed at <https://www.sartorius.ie/sartoriusIE/it/EUR/integrated-solutions/regulatory-compliance>

<sup>11</sup> Figures provided by the parties indicate that in 2017, [...] % of Saint-Gobain's sales of SUT products in the State were made to the Target. The remaining sales were made to end-user customers. The Target purchased approximately [...] % of its SUT product supply from Saint-Gobain in 2017. The remaining [...] % of its SUT product supply is purchased from alternative manufacturers.



Gobain for the manufacture and supply of SUT products is small in the EEA.<sup>12</sup> Both Saint-Gobain and the Target will continue to face significant competition, across all categories of SUT products, from a number of manufacturers and suppliers of SUT products in the EEA, including GE Healthcare Limited, Thermo Fisher Scientific Inc., Merck Millipore Limited, Danaher Corporation, and Sartorius AG.

26. Furthermore, some integrators / distributors receive SUT products from alternative suppliers, and will continue to provide integration and distribution services following implementation of the Proposed Transaction.
27. In light of the above, the Commission considers that no integrator/distributor of SUT products would be foreclosed from accessing SUT products as a result of the Proposed Transaction.
28. The Commission also examined the possibility of customer foreclosure arising as a result of the Proposed Transaction. As mentioned in paragraph 23, following the implementation of the Proposed Transaction, many SUT product integrators and distributors will continue to operate in the State. Therefore no manufacturer of SUT products would be foreclosed from supplying their products to SUT integrators or distributors in the State following implementation of the Proposed Transaction.

## Conclusion

29. 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

30. The draft share purchase agreement contains a number of restrictive obligations on Liam Collins and Joan Collins, the shareholders of Micro Hydraulics. These include non-compete and non-solicitation clauses. The duration of these non-

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<sup>12</sup> The estimated market share of the parties of the SUT market in the EEA is [5-10]%. This is based on an estimate on page 18 of the BCC Report of a value of the European market for SUT products of USD [...].



compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission.<sup>13</sup> The Commission considers these non-compete and non-solicitation obligations to be directly related to and necessary for the implementation of the Proposed Transaction.

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<sup>13</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” (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, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Saint-Gobain Performance Plastics Europe SAS, would acquire sole control of the pharma division of Micro Hydraulics 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**