



DETERMINATION OF MERGER NOTIFICATION M/18/022 - CARLYLE/FERMOY MEDICAL HALL

Section 21 of the Competition Act 2002

Proposed acquisition by Sam McCauley Chemists Limited of sole control of Fermoy Medical Hall Limited

Dated 27 March 2018

Introduction

1. On 19 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 Sam McCauley Chemists Limited (“Sam McCauley”), an Irish-incorporated entity owned by a fund managed by Carlyle Cardinal Ireland Fund (“CCIF”), and which is an affiliate of Carlyle Group L.P. (“Carlyle”), would acquire the entire share capital, and thereby sole control, of Fermoy Medical Hall Limited (“Fermoy Medical Hall”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction involves the acquisition by Sam McCauley of the entire issued share capital of the Target pursuant to a share purchase agreement dated 16 February 2018 between Sam McCauley and McEvoy Investments Limited, Seamus McEvoy, Orla Mellerick and Brian Whelan (the “Vendors”) (the “SPA”).

The Undertakings Involved

The Acquirers – CCIF, Carlyle, Sam McCauley,

3. CCIF, headquartered in Dublin, is a private equity fund managed by a 50:50 joint venture between Carlyle and the Cardinal Capital Group. It is focused solely on private equity investments in the State.
4. A number of companies owned by CCIF and managed by affiliates of Carlyle are headquartered and generate turnover in the State:
 - Sam McCauley;
 - Sonoma Valley Limited;



- [...];
 - Payzone Ireland Limited;
 - Carroll Cuisine Unlimited Company;
 - Abtran Unlimited Company; and
 - AA Ireland Limited.
5. Carlyle, headquartered in the United States, is a limited liability partnership listed on the NASDAQ stock exchange. Carlyle is a global alternative asset manager which manages funds that invest globally across four investment categories:
- Corporate private equity (e.g., buyouts and growth capital);
 - Real assets (e.g., real estate, infrastructure and renewable resources);
 - Global market strategies (e.g., structured credit, mezzanine, distressed, hedge funds and middle market debt); and
 - Investment solutions (e.g., private equity and related activities).
6. 42 portfolio companies currently controlled by funds managed by Carlyle generated turnover in the State in the most recent financial year.
7. For the financial year ended 31 December 2016, Carlyle's worldwide revenue was approximately €[...], of which approximately €[...] was generated in the State.
8. Sam McCauley is a private limited company which owns and operates 30 retail pharmacies in the State under the *Sam McCauley* brand.
9. Sam McCauley's core activities include the retail sale of prescription medicines and non-prescription medicines (i.e., over-the-counter medicines). In addition to its core business, Sam McCauley is also engaged in the retail sale of a range of products including, but not limited to, cosmetics, fragrances, skincare, vitamins and supplements, hair and women's care, photography equipment, mother and baby accessories, electrical appliances, and beauty salon services. Six of the Sam McCauley retail pharmacies also provide beauty treatment services to customers.
10. Sam McCauley also operates an online shop which sells to customers nationally and internationally via its website.¹ The portfolio of products available via the online shop

¹ www.sammccauley.com.



includes a wide range of branded medicines,² vitamins and slimming aids, beauty products, photo apparatus, baby equipment, toiletries and electrical equipment.

11. For the financial year ending 30 September 2016, Sam McCauley's worldwide revenue was approximately €[...], all of which was generated in the State.

The Target - Fermoy Medical Hall Limited

12. Fermoy Medical Hall operates a retail pharmacy and a beauty salon business from premises located at 61-63 McCurtain Street, Fermoy, Co. Cork (the "Target"). The Target's core business activities include the retail sale of prescription medicines and non-prescription medicines (i.e., over-the-counter medicines). In addition to its core services, the Target also provides a range of services including photographic film developing, skin analysis and treatments, health testing (e.g., blood pressure check, BMI check, emergency contraception services, food intolerance testing, weight management services, etc.) and beauty treatment.
13. For the financial year ending 31 December 2016, the Target's worldwide revenue was approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

14. The parties state in the notification:

"The commercial objective of the Purchaser is to expand its network of retail pharmacies in the State. Orla Mellerick and Brian Whelan, two of the principal shareholders in the Target who established the business in 2005 and who have been employed in the business since this time, wish to realise the value of the business."

Third Party Submissions

15. No submission was received.

Competitive Analysis

Horizontal Overlap

16. There is a horizontal overlap between the parties' business activities in the State since both Sam McCauley and the Target are active in the (a) supply of prescription and non-prescription medicines in retail pharmacies and (b) the supply of beauty treatment services in the State.

² Prescription medicines are not available online.



17. 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 since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant product market is narrow (e.g., the supply of prescription and non-prescription medicines in retail pharmacies and the supply of beauty treatment services) or broader to encompass the supply of prescription medicines, non-prescription medicines and non-medicinal products and services in retail pharmacies.
18. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant geographic market is local, regional or national. However, in order to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to the narrowest possible relevant geographic market (namely, the potential market for the supply of prescription and non-prescription medicines in retail pharmacies and the supply of beauty treatment services in each potential local market).

Local Market Analysis

The supply of prescription and non-prescription medicines in retail pharmacies in Fermoy, Co. Cork

17. The Target currently operates a pharmacy in Fermoy, Co. Cork which trades as *Fermoy Medical Hall Pharmacy & Beauty Salon*. Sam McCauley does not currently own or operate a pharmacy in Fermoy. The nearest Sam McCauley pharmacy to the Target is located in Unit A1-2 Market Green Shopping Centre, Midleton, Co. Cork, which is a distance of approximately 27km. Thus, on the basis of a geographic market comprising the local area around the Target in Fermoy, Co. Cork, there is no horizontal overlap between Sam McCauley and the Target in relation to the supply of prescription and non-prescription medicines in retail pharmacies.

The supply of beauty treatment services in Fermoy, Co. Cork

19. As noted above, Sam McCauley does not currently own or operate a pharmacy in Fermoy. The nearest Sam McCauley pharmacy which provides beauty treatment services is located in Blackpool, Co. Cork, which is a distance of approximately 31 km. Thus, on the basis of a geographic market comprising the local area around the Target in Fermoy, Co. Cork, there is no horizontal overlap between Sam McCauley and the Target in relation to the supply of beauty treatment services.

Local Market Conclusion

20. For the reasons set out above, the Commission considers that the Proposed Transaction will not substantially lessen competition in the supply of prescription and non-prescription medicines in retail pharmacies or in the supply of beauty treatment services in the local catchment area of Fermoy, Co. Cork.



Vertical Overlap

21. The parties have informed the Commission that there is no vertical relationship between Carlyle (including any of the portfolio companies owned by Carlyle), CCIF, or Sam McCauley and the Target. The Commission has not identified any vertical relationship between the parties. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

22. 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

23. The SPA (referred to in paragraph 2 above) contains a number of restrictive obligations on the Vendors. These include non-compete and non-solicitation clauses.³ None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.⁴ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction.

³ The non-compete and non-solicitation clauses in the SPA exclude from its scope Mellerick's Pharmacy and Mellericks Opticians which are owned by Seams McEvoy and Orla Mellerick, two of the vendors to this Proposed Transaction.

⁴ 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 Sam McCauley Chemists Limited would acquire the entire issued share capital of Fermoy Medical Hall 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