



## DETERMINATION OF MERGER NOTIFICATION M/18/025 - KENNEDY-WILSON/ELYSIAN BUILDING, CORK

---

### Section 21 of the Competition Act 2002

**Proposed acquisition by Kennedy-Wilson Holdings, Inc., through KW Investment Funds ICAV, of sole control of the Elysian Building situated in Cork**

**Dated 13 April 2018**

---

#### Introduction

1. On 7 March 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 Kennedy-Wilson Holdings, Inc. (“KWH”), through its wholly owned subsidiary Kennedy-Wilson Investment Funds Irish Collective Asset Management Vehicle (“KW ICAV”)<sup>1</sup>, would acquire sole control of the Elysian Building, Eglinton Street, Cork (the “Target Asset”), (the “Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to the Particulars and Conditions of Sale (“the Agreement”) signed on 27 February 2018 by Carbon Elysian Limited (“the Vendor”), KW ICAV acting for and on behalf of its sub-fund KW Investment Fund XI, and KWH, which acts as guarantor to the Proposed Transaction.
3. Pursuant to the Agreement, KWH, through KW ICAV acting for and on behalf of its sub-fund KW Investment Fund XI, is to acquire ownership and, thus, sole control of the Target Asset.

---

<sup>1</sup> For the Proposed Transaction, KW ICAV is acting for and on behalf of its sub-fund KW Investment Fund XI.



## The Undertakings Involved

### *The Acquirer - KWH*

4. KWH, a Delaware-incorporated company, listed on the New York Stock Exchange, is a global real estate investment company, which owns, operates, and invests in real estate with primary focus on residential and commercial properties located in the Western U.S., the UK and the State.
5. KWH has an ownership interest in a number of commercial and residential properties, as well as a number of properties under development in the State. Table 1 and Table 2 below outline KWH's investments in real estate in the State.

**Table 1: KWH's Real Estate Interests in the State, March 2018**

Asset type	Asset
Commercial (Office)	40-42 Mespil Road, Dublin 4
	Baggot Plaza, Baggot Street, Dublin 4
	South Bank House, Barrow Street, Dublin 4
	The Chase, Sandyford, Dublin 18
	Charlemont House, Charlemont Place, Dublin 2
	Beaver House, Clonskeagh Road, Dublin 4
	Russell Court, St. Stephen's Green, Dublin 2
	The Warehouse, 35 Barrow Street, Dublin 4
	14-15 Sir John Rogerson's Quay, Dublin 2
	16 Sir John Rogerson's Quay, Dublin 2
	Blocks 3, 4, 5 Blackrock Bus Park, Blackrock, Dublin
	State Street Building*, Dublin Docklands, Dublin 2
5 School House Lane, Dublin 2	
Commercial (Retail)	Marshes Shopping Centre, Dundalk, County Louth
	Stillorgan Shopping Centre, Stillorgan, Dublin
	Retail units on Westmoreland Street, Dublin 2
Commercial (Other)	The Residence Social Club, St. Stephen's Green, Dublin 2
Residential	Liffey Trust, Sheriff Street, Dublin 1
	Vantage, Central Park, Dublin 18



Asset type	Asset
	Alto Vetro, Grand Canal Quay, Dublin 2
	Alliance*, South Lotts Road, Dublin 4
	Clancy Quay*, South Circular Road, Dublin 8
	Sandford Lodge*, Ranelagh, Dublin 6
	North Bank, 94 St. Stephen's Green, Dublin 2
Hotel	Portmarnock Hotel and Golf Links, Portmarnock, County Dublin
	Shelbourne Hotel, St. Stephen's Green, Dublin 2

Source: The Commission based on information supplied by KWH. \*KWH holds a 50% interest in these assets.

**Table 2: KWH's Real Estate Developments in the State, March 2018**

Property type	Project
Commercial and residential	Capital Dock, Dublin Docklands, Dublin 2
Residential	Clancy Quay, South Circular Road, Dublin 8
Commercial (Office)	Kildare Street, Dublin 2
Mixed	Leisureplex, Stillorgan, Dublin
Commercial (Office)	10-12 Hanover Quay/Green Street East, Dublin Docklands, Dublin 2

Source: The Commission based on information supplied by KWH

6. For the financial year ending 31 December 2017, KWH had a worldwide turnover of approximately €719.9 million, of which approximately €[...] was generated in the State.



### **Target Asset – The Elysian Building, Cork**

7. The Target Asset consists of the property known as the Elysian Building situated in Eglinton Street, Cork. It comprises of 206 apartments, 553 car parking spaces and a number of retail, office and commercial units. Commercial occupational lessees in the Target Asset include Aldi Stores (Ireland) Limited and Skyworks Ireland Limited.
8. For the financial year ending 31 December 2017, the revenue derived from the Target Asset (all of which was generated in the State) was approximately €[...].

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

9. KWH states the following in the notification:

*“The Target Asset will complement the Purchaser’s current real residential estate portfolio in Ireland.”*

### **Third Party Submissions**

10. No submission was received.

### **Competitive Analysis**

#### *Horizontal Overlap*

11. There is a horizontal overlap between the activities of KWH and the Target Asset in the State with respect to the supply of rentable residential and commercial space.
12. The Commission has previously assessed the competitive impact of transactions involving the acquisition of rentable commercial and/or residential space.<sup>2</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.

---

<sup>2</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-hammersonteba/> and *M/15/070 - Starwood/Elm Park* which can be assessed at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m15070-starwood-elm-park/>



13. In COMP/M.8229 – *Hammerson/Irish Life/ILAC Shopping Centre*, the European Commission<sup>3</sup> 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.
14. 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:
  - a) the market for the supply of rentable space is distinguished into separate markets for rentable commercial space and rentable residential space, or
  - b) the market for the supply of rentable commercial space is further distinguished into separate markets for each category of rentable commercial space (i.e., the supply of office space, the supply of retail space and the supply of industrial space).
15. However, for the purposes of this determination, the Commission has followed its approach in *M/15/070 – Starwood/Elm Park* and has assessed the likely competitive impact of the Proposed Transaction on the potential product market for the supply of rentable commercial space and the potential product market for the supply of rentable residential space.
16. In relation to the geographic scope of the relevant product market, the Commission in *M/17/046 – Hammerson/Teba* 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”).
17. The European Commission<sup>4</sup> in COMP/M.8229 – *Hammerson/Irish Life/ILAC Shopping Centre* considered, but ultimately left open, whether real estate markets can be regarded as national, regional or local, stating the following:

---

<sup>3</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>4</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).



*“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”).”*

18. Similarly, 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., Cork City and surrounding areas<sup>5</sup>) or broad (e.g., the State). If the Commission considers a narrow market, i.e., Cork City and surrounding areas, there will be no overlap in the activities of the parties. As set out in paragraph 7 above, the Target Asset is situated in Eglinton Street, Cork. KWH has a number of assets in the GDA and one asset in County Louth, as set out in Table 1 and Table 2 above. KWH’s closest residential and commercial assets (in terms of distance) are located approximately 260 and 265 kilometres away<sup>6</sup> from the Target Asset respectively.
19. For completeness, the Commission also assessed the Proposed Transaction’s competitive impact in the broader potential geographic market, namely, the State.
20. According to the information provided by KWH, it had an ownership interest in approximately [...] square metres (“sqm”) of rentable residential space and [...] sqm of rentable commercial space in the State at the end Q4 2017<sup>7</sup>. The Target Asset comprises [...] sqm of rentable residential space and [...] sqm of rentable commercial space. KWH estimates that there is a total rentable residential property space in the State of

---

<sup>5</sup> A 50 kilometre radius around Cork City centre encompasses the whole Cork City and the substantial part of County Cork.

<sup>6</sup> See: <https://www.google.ie/maps/dir/Clancy+Quay,+South+Circular+Road,+Dublin/The+Elysian,+Eglinton+Street,+Centre,+Cork/> and <https://www.google.ie/maps/dir/The+Chase,+Arkle+Road,+Dublin/The+Elysian,+Eglinton+Street,+Centre,+Cork/>.

<sup>7</sup> These estimates include rentable space of properties under development as at completion.



42.2 million sqm<sup>8</sup> and a total rentable commercial space in excess of 8.4 million sqm<sup>9</sup>.

21. On this basis, following the implementation of the Proposed Transaction, KWH's market share in the potential markets for the supply of rentable residential space and the supply of rentable commercial space in the State will be approximately [0-5]% in each market respectively.
22. In addition, there are currently (and there would remain after the proposed transaction is put into effect) a number of other suppliers of rentable commercial and/or residential space in Cork City and surrounding areas<sup>10</sup> and, more generally, in the State<sup>11</sup>. These competitors will continue to act as a competitive constraint on KWH following implementation of the Proposed Transaction.
23. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns with respect to the supply of rentable commercial and/or residential space in Cork City and surrounding areas, and in the State.

#### *Vertical Relationship*

24. The parties have stated in the notification that there is no vertical relationship between KWH and the Target Asset. 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**

25. 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.

---

<sup>8</sup> This figure is estimated by multiplying the total number of rented households (as per the Central Statistics Office's 2016 census, i.e., 497,111 households) by the average unit size of 85 sqm (estimated by KWH).

<sup>9</sup> This figure includes a 4.99m sqm of office space and 3.37m sqm of rentable retail space estimated by CBRE in 2017. It excludes high street retail and all other rentable commercial space, such as industrial and leisure.

<sup>10</sup> These competitors include, for example, Irish Life, IPUT plc and Green REIT plc.

<sup>11</sup> These competitors include, for example, Irish Residential Properties REIT plc, IPUT plc, Hibernia REIT, Tristan Capital and Green REIT plc.



### **Ancillary Restraints**

26. 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 acquisition, whereby Kennedy-Wilson Holdings, Inc., through Kennedy-Wilson Investment Funds Irish Collective Asset Management Vehicle, would acquire sole control of the Elysian Building situated in Eglinton Street, Cork, 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**