



DETERMINATION OF MERGER NOTIFICATION M/18/058 - KW PRS ICAV/GRANGE, STILLORGAN ROAD, DUBLIN

Section 21 of the Competition Act 2002

Proposed acquisition by KW PRS ICAV of sole control of certain lands and premises at the development known as the Grange, Stillorgan Road, Blackrock, Co Dublin.

Dated 27 August 2018

Introduction

1. On 2 August 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 KW PRS ICAV, acting for and on behalf of two of its sub-funds KW PRS Fund 9 and KW PRS Fund 10, would acquire sole control of certain lands and premises at the development known as the Grange, Stillorgan Road, Blackrock, Co. Dublin (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 Agreement (the “Agreement”) dated 11 July 2018 between Glenkerrin Investments Unlimited Company (in receivership) acting by its statutory receivers Paul McCann and Michael McAteer¹, Glenkerrin Homes Unlimited Company (in receivership) acting by its statutory receivers Paul McCann and Michael McAteer, Wixtow Enterprises Limited (in receivership) acting by its statutory receivers Paul McCann and Michael McAteer and certain assets of Raymond Grehan acting by his statutory receivers Paul McCann and Michael McAteer (collectively the “Vendors”), and

¹ Paul McCann and Michael McAteer are both partners in Grant Thornton Ireland.



KW PRS ICAV, acting for and on behalf of its sub-funds KW PRS Fund 9 and KW PRS Fund 10.

- Pursuant to the Agreement, KW PRS ICAV, acting for and on behalf of its sub-fund KW PRS Fund 9 and KW PRS Fund 10, is to acquire ownership and, thus, sole control of the Target Asset.

The Undertakings Involved

The Acquirer – KW PRS ICAV

- KW PRS ICAV is a full-function joint venture established between AXA S.A.² (“AXA”) and Kennedy Wilson Holdings, Inc.³ (“KWH”) which is constituted as an Irish collective asset-management vehicle (the “JV”). The formation of the JV received clearance from the European Commission on 7 June 2018⁴. Each of AXA and KWH own 50% of the shares in the JV [...]. The JV was established with the objectives of acquiring, developing, owning, and managing private rented real estate assets in Ireland.
- Table 1 below provides an overview of the JV’s Irish property portfolio. [...]

Table 1: Overview of the JV’s Property Portfolio in Ireland

Asset type	Property	Location
Residential	Liffey Trust	Sheriff Street, Dublin 1
	Alliance (part of the Gasworks development)	South Lotts Road, Dublin
	Clancy Quay (Phase 1, 2 and 3, and Black and Amber Inn)	South Circular Road, Dublin
	Sandford Lodge	Ranelagh, Dublin
	North Bank	Castleforbes Road, Dublin 1
	Elysian	Cork

² AXA’s interest in the JV is held through Avicdale Limited, a private limited company incorporated in Ireland, which is in turn held by subsidiaries of and other funds controlled indirectly by AXA.

³ KWH’s interest in the JV is held through KW EU PRS Investor LLC, a Delaware limited liability company incorporated in the State of Delaware, which is in turn held and controlled indirectly by KWH.

⁴ See European Commission Case M.8882 *Kennedy Wilson/AXA/JV*.



Source: Based on information provided by the JV

6. For the financial year ending 31 December 2017, the assets of the JV generated a turnover of approximately €[...]million, all of which was generated in the State.

KWH

7. 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 United States of America, the UK, Ireland, Spain, Italy and Japan.
8. 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 2 and Table 3 below outline KWH's investments in real estate in the State (excluding the JV).

Table 2: KWH's (excluding the JV) Real Estate Interests in the State

Asset type	Property	Location
Commercial (Office)	40-42 Mespil Road	Dublin 4
	Baggot Plaza, Dublin	Baggot Street, Dublin 4
	South Bank House	Barrow Street, Dublin 4
	The Chase	Sandyford, Dublin 18
	Charlemont House	Charlemont Place, Dublin 2
	Russell Court	St Stephen's Green, Dublin 2
	94 St. Stephen's Green	St Stephen's Green, Dublin 2
	The Warehouse, Dublin	35 Barrow St, 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, Co. Dublin
	State Street Building*	Sir John Rogerson's Quay, Dublin 2
Commercial (Retail)	Marshes Shopping Centre	Dundalk, County Louth
	Stillorgan Shopping Centre	Stillorgan, Co. Dublin
	16 Westmoreland Street	Dublin 2



Asset type	Property	Location
Commercial (Other)	The Residence Social Club	St. Stephen's Green, Dublin 2
Residential	Vantage, Central Park	Central Park, Dublin 18
	Alto Vetro	Dublin 2
Hotel	Portmarnock Hotel and Golf Links	Portmarnock, Co. Dublin
	Shelbourne Hotel	St. Stephen's Green, Dublin

Source: Based on information supplied by KWH. * [...]

Table 3: KWH's Real Estate Developments in the State

Property type	Project	Location
Commercial and residential (multifamily)	Capital Dock - [...]	Dublin Docklands, Dublin 2
Commercial (Office)	Kildare Street - [...]	Dublin 2
Mixed	Leisureplex Stillorgan - [...]	Co. Dublin
Commercial (Office)	Office development [...] located in Dublin 2	10-12 Hanover Quay / Green Street East, Dublin Docklands, Dublin 2

Source: Based on information supplied by KWH

9. For the financial year ending 31 December 2017, KWH had a worldwide turnover of approximately €719.9 million⁵, of which approximately €[...] was generated in the State.

AXA

10. AXA is a global insurance group headquartered in Paris. The group companies of AXA are active in life, health and other forms of insurance, as well as in investment management. AXA operates primarily in Western Europe, North America, the Asia-Pacific region and the Middle East.
11. Within the State, AXA is active through AXA Insurance DAC, which provides car, home, small business, commercial vehicle, and taxi insurance. It operates through 42 branches

⁵ A conversion rate of US\$1 = €0.887 has been applied to this turnover based on the average ECB exchange rate for the 12 months to 31 December 2017.



across Ireland. In addition, Table 4 below provides an overview of assets held by AXA in Ireland. [...].

Table 4: Axa's Real Estate Interests in the State

Asset type	Property	Location
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]

Source: Based on information supplied by AXA

12. For the financial year ended 31 December 2017, AXA generated worldwide revenues of €98.5 billion and had global gross written premiums of €92.1 billion. The revenue attributable to AXA in the UK and Ireland in the same period was approximately €5.1 billion.⁶

Target Asset – The Grange, Stillorgan Road, Blackrock, Co. Dublin

13. The Target Asset consists of the lands and premises known as the Grange, Stillorgan Road, Blackrock, Co. Dublin. It comprises of 274 apartments and 275 parking spaces, together with other lands and premises adjoining the Grange development.
14. For the financial year ending 31 December 2017, the revenue derived from the Target Asset was approximately €[...], all of which was generated in the State.

Rationale for the Proposed Acquisition

15. The following is stated in the notification:

⁶ AXA does not generally report the income it generates in the State separately from its combined UK and Ireland income.



“... the JV was established with the purpose of seeking development and investment opportunities in the private rental sector across Ireland, in particular targeting opportunities in Dublin and other large urban centres. The acquisition of the Target Assets will, therefore, provide the JV with an ideal investment opportunity that is aligned with its overall commercial strategy.”

Third Party Submissions

16. No submission was received.

Competitive Analysis

Horizontal Overlap

17. There is a horizontal overlap between the activities of JV and the Target Asset in the State with respect to the supply of rentable residential real estate.
18. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. With respect to the relevant product market, it is not necessary for the Commission to define the precise relevant markets in this instance because the product market definition adopted will not alter the Commission’s assessment of the competitive impact of the Proposed Transaction. In this case, the Commission considers that there are no reasons to depart from its previous approach to market definition in relation to real estate rental market for the purpose of assessing the competitive effect of the Proposed Transaction⁷.
19. For the purposes of assessing this determination, the Commission has considered the likely competitive impact of the Proposed Transaction on the potential product market for the supply of rentable residential real estate.

⁷ Please see, for example, merger determinations M/18/025 – Kennedy-Wilson / Elysian Building, Cork, which can be accessed at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m18025-kennedy-wilson-elysian-building-cork/> and – M/15/070 - Starwood/Elm Park which can be accessed at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m15070-starwood-elm-park/>



20. Similarly, it is also not necessary for the Commission to define precise relevant geographic markets in this instance since the choice of geographic market will not materially alter the competitive impact of the Proposed Transaction in the State. In relation to the geographic scope of the relevant product market, the Commission has previously assessed the competitive impact of similar transactions by reference to a 50 km radius around Dublin City centre, which substantially encompasses the whole of the Greater Dublin Area (“GDA”)⁸. The Commission has adopted this approach in assessing the competitive impact of the Proposed Transaction by reference to the narrowest possible relevant geographic market, namely the GDA.
21. According to the information provided by the acquiring parties, Table 5 presents the respective shares of rentable residential real estate in the GDA. The combined share of the JV and the Target Asset of the overall rentable residential real estate in Dublin City and surrounding areas is estimated at [...] % with an incremental increase of [...] % arising from the implementation of the Proposed Transaction. KWH’s non-JV estimated market share is [...] %, therefore following the Proposed Transaction the parties’ estimated market share would be less than [...] %.

Table 5: Share of rentable residential real estate (all units), Dublin, 2017

Party	Number of Units	% market share
The JV	[...]	[...]
Target Asset	[...]	[...]
Combined	[...]	[...]
KWH (non-JV)	[...]	[...]
Others	[...]	[...]
TOTAL	[...]	[...]

Source: Parties’ estimates, based on Cushman & Wakefield and Sherry Fitzgerald research paper on the rental market, September 2017.

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 residential space in the GDA⁹

⁸ Please see, for example, merger determinations M/17/046 – Hammerson/Teba, which can be accessed at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m17046-hammersonteba/> and merger determinations M/17/070 – OCM Luxembourg (Oaktree)/Indego which can be accessed at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m17070-ocm-luxembourg-oaktreeindego/>

⁹ These competitors include, for example, Irish Life, IRES REIT plc, and Tristan Capital.



and, more generally, in the State. These competitors will continue to act as a competitive constraint on the JV 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 residential real estate in the GDA, and in the State.

Vertical Relationship

24. The parties have stated in the notification that there is no vertical relationship between the JV 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.

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 KW PRS ICAV, acting for and on behalf of two of its sub-funds KW PRS Fund 9 and KW PRS Fund 10, would acquire sole control of certain lands and premises at the development known as the Grange, Stillorgan Road, Blackrock, Co. Dublin, 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