

CCPC DECIDES COMPETITION CONCERNS ADDRESSED AND BERENDSEN/KINGS LAUNDRY MERGER CAN NOW GO AHEAD

Introduction

On 26 June 2020, the Competition and Consumer Protection Commission (CCPC) decided that, in its view, Elis/Berendsen has fulfilled the requirements set out in the commitments attached to the CCPC Merger Determination.¹ Following the CCPC decision, on 7 July 2020, the acquisition of Kings Laundry Limited (Kings Laundry) by Berendsen Ireland limited (Berendsen) was put into effect. At the same time, Berendsen has sold a number of contracts of a specified value and composition to Linencare Laundries Limited (Linencare), with the consent of the healthcare customers holding these contracts. Linencare has achieved all that is required, including RABC accreditation, which will contribute to it becoming an active competitive force in the provision of outsourced flat linen rental and maintenance services to healthcare customers.

Background

On 7 August 2018, the CCPC received a notification of a proposed transaction whereby Berendsen would acquire sole control of Kings Laundry Limited. Berendsen is ultimately controlled by Elis S.A. Both Berendsen and Kings Laundry supplies outsourced flat linen rental and maintenance services to healthcare and hospitality customers in the State.

The CCPC carried out an intensive and extensive full investigation which involved formal requests for information, site visits, market survey, the parties accessing the merger file, and written and oral submissions. Following this investigation, pursuant to section 20(3) of the Competition Act 2002, as amended, Berendsen submitted proposals to the CCPC to ameliorate any effects of the proposed acquisition on competition in any market for goods or services in the State.

The Commission took these proposals into account and on 8 July 2019, in light of the said proposals (which form part of the basis of the Determination) (the “Commitments”), determined that the Proposed Transaction may be put into effect, subject only to the Commitments being satisfied.

The Commitments bound Berendsen to divest certain healthcare contracts to a suitable third party purchaser. In particular:

“Berendsen hereby undertakes to the Commission to procure, to the extent it is within its powers of procurement to do so, the divestment to a Third Party Purchaser by the Long Stop Date all of its rights, title and interests in respect of:

- (i) three (3) Healthcare Contracts, [.....]; and*
- (ii) (ii) such additional Healthcare Contracts of an aggregate value (by reference to 2018 revenue figures), which, when aggregated with the value of the Healthcare Contracts referred to in (i) above, have a total value of not less than [.....].”²*

The Commitments also required the continued economic viability, marketability and competitiveness of the healthcare contracts.³

¹ Determination of Merger Notification M/18/063 – Berendsen(Elis)/Kings Laundry, 8 July 2019

² Clause 6(i) and (ii) of the Commitments

³ Clause 27 of the Commitments

At the time of making the Determination on 8 July 2019, Berendsen and Kings Laundry were two of the three main suppliers of outsourced flat linen rental and maintenance services to healthcare customers in the State. The third supplier is Celtic Linen. The CCPC identified competition concerns related to the likely impact on price and quality of service due to the reduction in the number of suppliers in the healthcare market. The CCPC maintained that the competition which would be lost as a consequence of the proposed acquisition had to be replaced in order to avoid a substantial lessening of competition in the healthcare market.

In order to address the identified competition concerns, and at the request of the CCPC, Berendsen submitted commitments that it will divest a number of contracts with healthcare customers to a suitable third-party supplier to replace the competition that would be lost as a result of the proposed acquisition. The commitments specified the value and composition of the healthcare contracts (i.e., public hospitals) to be sold. The suitability of the purchaser of the healthcare contracts was subject to the approval of the CCPC.

Compliance with Commitment Process

A Monitoring Trustee was appointed on 24 July 2019 to monitor and advise the CCPC on the preservation and divestment of the healthcare contracts. The CCPC has worked closely with the Monitoring Trustee, both formally via monthly Monitoring reports, and informally through meetings. This engagement, which was particularly intensive in the latter stages of the process, meant that issues arising during the preservation and divestment process were readily identified and addressed early and efficiently. In addition, a CCPC team carried out a site visit to Linencare's plant in January 2020 in order to: (i) inspect the facilities of Linencare; (ii) engage with the owner of the business; and (iii) understand the Linencare business and how it operated at the time, and intended to operate if it were to be approved as a suitable purchaser.

On 31 January 2020, the CCPC⁴ decided to approve Linencare as a third-party purchaser of the Healthcare Contracts subject to the following conditions being met in advance, or at the time, of any submission by Berendsen/Elis:⁵

- Condition 1: Berendsen/Elis demonstrating that Linencare has achieved the RABC accreditation awarded by the NSAI;
- Condition 2: Berendsen/Elis submitting a signed copy of the Transitional Services Agreement (TSA) entered with Linencare, to allow the CCPC to assess whether the TSA contains clauses that raise competition concerns; and,
- Condition 3: Berendsen/Elis submitting evidence of each hospital's consent to transferring the relevant Healthcare Contracts from Berendsen to Linencare.

On 12 June 2020,⁶ Elis submitted to the CCPC and Monitoring Trustee a copy of a binding contract between Berendsen and Linencare and a fully documented and reasoned report with the objective of enabling the Monitoring Trustee and the CCPC to verify that the requirements set out in the Commitments are fulfilled and that there has been no material change in the status of Linencare.

⁴ Clause 12 of the Commitments

⁵ Clause 11(b) of the Commitments

⁶ Clause 11(b) of the Commitments

On 19 June 2020,⁷ the Monitoring Trustee submitted a written report. The Monitoring Trustee Report concluded that the requirements set out in the commitments have been fulfilled, and that there has been no material (adverse) change in the status of Linencare.

The CCPC has now decided that, in its view, Berendsen has fulfilled the requirements set out in the commitments, and there has been no material change in the status of Linencare since the CCPC decision of 31 January 2020. Consequently, Linencare acquired the divested contracts and Berendsen and Kings Laundry completed the acquisition.

Additional information

Berendsen Ireland Limited is controlled by Elis S.A. (“Elis”). Elis is a public limited company listed on the Euronext Paris Stock Exchange. Elis specialises in the rental and maintenance of linen, professional garments (i.e. workwear) and hygiene and wellness equipment across Europe and Latin America. In Ireland, Elis, through Berendsen, provides rental and maintenance of workwear, linen, mops, mats, workwear for organisations operating cleanrooms (e.g. pharmaceuticals) and provision of washroom services (e.g. toilet paper, soap dispensers and hand sanitizer).

Kings Laundry Limited, a privately-owned company registered in Ireland, is a provider of linen rental and maintenance services to customers throughout the State.

Linencare Laundries Limited is a privately-owned company registered in Ireland. It provides linen rental and maintenance services to customers throughout the State.

⁷ pursuant to Clause 13 of the Commitments