



# DETERMINATION OF MERGER NOTIFICATION M/18/098 – EAGLE TARGET IRELAND (OTPP) / GIRAFFE CHILDCARE

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## Section 21 of the Competition Act 2002

### Proposed acquisition by Eagle Target Ireland Holdings Limited of 100% of the issued share capital of Giraffe Childcare Unlimited Company

Dated 17 January 2019

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#### Introduction

1. On 21 December 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 acquisition whereby Eagle Target Ireland Holdings Limited (“Eagle Target”), a newly incorporated entity which is ultimately controlled by the Ontario Teachers’ Pension Plan (“OTPP”), would acquire 100% of the issued share capital of Giraffe Childcare Unlimited Company (“Giraffe”) (the “Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement (the “Share Purchase Agreement”) dated 19 December 2018 between Yokota Unlimited, the legal and beneficial owner of Giraffe, Eagle Target and the ultimate shareholders of Yokota Unlimited.<sup>1</sup>
3. Under the terms of the Share Purchase Agreement, Eagle Target will purchase the entire issued share capital of Giraffe from Yokota Unlimited and its ultimate shareholders. As such, following the implementation of the Proposed Transaction, Eagle Target will have sole control of Giraffe.

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<sup>1</sup> The ultimate shareholders of Yokota Unlimited are listed as: Simon Dowling, Tony Kilduff, Tony McCormack, Mary Ann McCormack and Verawal Limited.



## The Undertakings Involved

### *The Acquirer - Eagle Target*

4. Eagle Target is a private company limited by shares, incorporated in the State.<sup>2</sup> Eagle Target is a newly incorporated entity, incorporated on 21 November 2018 for the purposes of the Proposed Transaction, and is ultimately controlled by OTPP.
5. OTPP was established under the Teachers' Pension Act 1990 (Ontario), and has its head office in Toronto, Ontario, Canada. OTPP is active in the administration of pension benefits and the investment of pension plan assets on behalf of approximately 323,000 active and retired school teachers in the Canadian province of Ontario. It is the largest single-profession pension plan in Canada, with CAD \$193.9 billion (€124.03 billion) in net assets as of 30 June 2018.<sup>3</sup>
6. The following OTPP portfolio companies supply goods and/or services to customers in the State:
  - Premier Lotteries Ireland Limited: the national lottery operator in the State. Premier Lotteries was awarded a 20-year licence to operate the National Lottery by the Irish Government in November 2014.
  - Burton's Foods Limited: a biscuit manufacturer based in the United Kingdom.<sup>4</sup> Burton's Foods' products include Jammie Dodger, Viscount and Wagon Wheels.
  - Camelot Group Limited: the licensed operator of the national lottery in the United Kingdom.<sup>5</sup> The UK national lottery raises money for causes designated by the United Kingdom Parliament.
  - Flexera Software: a licensing management software provider. Flexera provides software to corporate clients to manage overall IT expenditure and risk.<sup>6</sup>

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<sup>2</sup> Eagle Target is registered with the Companies Registration Office under registration number 638076.

<sup>3</sup> Conversion to euro based on European Central Bank Euro Foreign Exchange Reference Rates, 29 June 2018.

[https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/index.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html)

<sup>4</sup> <http://www.burtonsbiscuits.com/>

<sup>5</sup> <https://www.camelotgroup.co.uk/>

<sup>6</sup> <https://www.flexera.com/>



- Glass, Lewis & Co., LLC: a proxy advisory services provider. Glass Lewis & Co. provides global governance services to institutional investors such as pension funds, which allows these investors to monitor the activities of the companies in which they invest.<sup>7</sup>
  - Infiltrator Water Technologies LLC: a provider of chambers, leach fields, septic tanks and accessories for wastewater industries. Infiltrator Water Technologies primarily provides products across the United States and Canada for use on properties with onsite wastewater treatment systems.<sup>8</sup>
  - Munchkin Inc.: a designer, manufacturer and marketer of infant and toddler products. Munchkin was founded in 1991 and as well as its range of baby and toddler products, the company also supplies a grass-fed brand of baby formula primarily in the United States.<sup>9</sup>
  - Plano Molding Company, Inc.: a fishing and sports company selling tackle boxes, bait storage, gun cases, archery cases and ice fishing products. Plano also produces cases for cosmetics, tools and crafts, as well as storage containers and shelving for home and office.<sup>10</sup>
  - Quinte Limited: a Bermuda-based segregated accounts insurance company. Segregated funds are made up of assets purchased and managed by investment companies on behalf of clients. These funds are kept separate (or “segregated”) from the companies' other assets.<sup>11</sup>
7. Outside the State, OTPP-controlled investments include Busy Bees Holdings Limited, (“Busy Bees”), a private company incorporated in the United Kingdom.<sup>12</sup> Busy Bees is a childcare provider in the United Kingdom, operating 352 nurseries, with 8,000 staff

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7 <http://www.glasslewis.com/>

8 <https://www.infiltratorwater.com/>

9 <https://www.munchkin.com/>

10 <https://www.planomolding.com/>

11 <https://www.gov.bm/42660/quinte-limited-andre-perez-42660>

12 Busy Bees is registered in the United Kingdom under reference number: 06903391. See <https://beta.companieshouse.gov.uk/>



providing childcare services for 30,000 children. Busy Bees does not have any presence in the State nor does it operate on the island of Ireland.

8. For the financial year ending 31 December 2017, OTPP's worldwide turnover was approximately €[...]billion, of which approximately €[...] million was generated in the State.

#### *Giraffe*

9. Giraffe is wholly owned by Yokota Unlimited, an unlimited company incorporated in the Isle of Man.<sup>13</sup>
10. Giraffe was established in 2001 and is a provider of childcare and early learning services in the Greater Dublin Area, and operates 21 crèches (19 in County Dublin, one in County Meath and one in County Kildare).
11. Giraffe also provides after school care in Navan, Lucan, Adamstown, Stepside and Celbridge.
12. For the financial year ending 30 December 2017, Giraffe's turnover was approximately €[...]million, all of which was generated in the State.

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

13. The parties state in the notification:

*“Busy Bees has identified Giraffe as an appropriate commercial investment in Ireland as part of its international business expansion plans and objective of being a leading global provider of children’s services.”*

#### **Third Party Submissions**

14. No submission was received.

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<sup>13</sup> Yokota Unlimited is registered under company number 015615V. See <https://services.gov.im/companies-registry>



## Competitive Analysis

### *Horizontal Overlap*

15. There is no horizontal overlap in the activities of the parties. None of the companies in the OTPP portfolio which generated turnover in the State in 2017 are engaged in the same business activities as Giraffe, i.e., the provision of childcare and early learning services.
16. The Commission therefore considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

### Vertical Relationship

17. The parties informed the Commission that there is no vertical relationship in the State between Giraffe and any of the companies in the OTPP portfolio which generated turnover in the State in 2017. The Commission has not identified any vertical relationship between the parties.
18. The Commission therefore considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

## Conclusion

19. 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

20. The Share Purchase Agreement contains non-solicitation and non-compete obligations on Yokota Unlimited and its ultimate shareholders.<sup>14</sup> The duration of those restrictive obligations does not exceed the maximum duration acceptable to the Commission.<sup>15</sup> The Commission considers those non-compete and non-solicitation obligations to be

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14 The ultimate shareholders of Yokota Unlimited are listed as: Simon Dowling, Tony Kilduff, Tony McCormack, Mary Ann McCormack and Verawal Limited.

15 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)



directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.



### **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 Eagle Target Ireland Holdings Limited, a newly incorporated entity which is ultimately controlled by the Ontario Teachers' Pension Plan, would acquire 100% of the issued share capital of Giraffe Childcare Unlimited Company 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**