



DETERMINATION OF MERGER NOTIFICATION M/19/041 FIDUCIA BIDCO LIMITED/ SORA HEALTHCARE LIMITED & CARINGANGELS LIMITED

Section 21 of the Competition Act 2002

Proposed acquisition by Fiducia Bidco Limited of sole control of Sora Healthcare Limited and Caringangels Limited.

Dated 10 January 2020

Introduction

1. On 29 November 2019, 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 the MML Funds¹ (managed by MML Growth Capital Partners Ireland II Limited (“MML Capital”)), through Fiducia Healthcare Limited (“Fiducia Healthcare”), and Fiducia Healthcare’s wholly-owned subsidiary Fiducia Bidco Limited (“Fiducia Bidco”) (collectively “the Acquirer”), would acquire sole control of each of Sora Healthcare Limited (“Sora”) and Caringangels Limited (“Caringangels”) (together the “Target Undertakings”) (the “Proposed Transaction”). Fiducia Healthcare is currently a wholly-owned subsidiary of MML Growth Capital Partners Ireland Fund II LP, one of the MML Funds.
2. Each of Sora and Caringangels are currently [...] by Talura Holdings Limited (the “Vendor”).

¹ MML Growth Capital Partners Ireland Fund II LP, MML Ireland II Coinvest LPC, and MML Finance Company Ireland II DAC are collectively referred to in this determination as the “MML Funds”.



The Proposed Transaction

3. The Proposed Transaction is to be implemented pursuant to two agreements:
 - I. A share purchase agreement dated 28 November 2019 between Fiducia Bidco and the Vendor (the “SPA”); and
 - II. A share subscription and shareholders agreement [...] (the “SSSA”).
4. The SPA provides that Fiducia Bidco will acquire 95% of the entire issued share capital of Sora and 100% of the entire issued share capital of Caringangels. The SPA provides that the remaining 5% of the issued share capital of Sora is subject to a separate put and call option agreement in favour of Fiducia Bidco.
5. Table 1 below provides details of the shareholding structure of Fiducia Healthcare in terms of voting rights following implementation of the Proposed Transaction.



Table 1: Post-Proposed Transaction shareholding structure in Fiducia Healthcare in terms of voting rights	
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]

Source: Based on information provided to the Commission by the parties. Note: Figures rounded to one decimal place.

6. The SSSA provides [...].
7. Fiducia Bidco is a private limited company which has been newly incorporated in the State for the purposes of the Proposed Transaction. Fiducia Bidco is a wholly-owned subsidiary of Fiducia Healthcare, a private limited company also incorporated in the State. The parties informed the Commission that following completion of the Proposed Transaction, the Target Undertakings will be subsidiaries of Fiducia Bidco, and will be indirect subsidiaries of Fiducia Healthcare. Following implementation of the Proposed Transaction, the MML Funds (which are managed by MML Capital) will solely control each of Sora and Caringangels indirectly through Fiducia Healthcare and Fiducia Bidco.



The Undertakings Involved

The Acquirer

8. The MML Funds are private equity funds that provide growth capital to private businesses on the island of Ireland. One of the MML Funds, namely MML Growth Capital Partners Ireland Fund II LP, currently owns the entire issued share capital of Fiducia Healthcare.
9. A list of companies owned and controlled by the MML Funds which are active in the State as of 22 November 2019 is provided below in Table 2.

Table 2: Companies owned and controlled by MML Funds which are active in the State as at 22 November 2019	
Company Name	Description of Activity
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]

Source: *Based on information provided to the Commission by the parties.*



10. For the financial year ending 31 December 2018, companies owned and controlled by the MML Funds generated worldwide turnover of €[...] million, of which approximately €[...] million was generated in the State.

The Target Undertakings

11. Sora is a private limited company incorporated in the State which provides domiciliary care and disability care services throughout the State. Sora trades as Irish Homecare (“IHC”), [...].
12. Caringangels is a private limited company incorporated in the State which provides domiciliary care and disability care services predominantly in the west of Ireland.
13. For the financial year ending 31 December 2018, the combined worldwide turnover of the Target Undertakings was approximately €[...] million,² [...] which was generated in the State.

Rationale for the Proposed Transaction

14. The parties state in the notification:

“The Proposed Transaction reflects MML Capital's strategy of backing managers of small and medium size private businesses located on the island of Ireland to reach the next stage of their evolution, maximising growth opportunities at home and abroad.”

Third Party Submissions

15. No submission was received.

² This figure includes turnover generated by AHL.



Competitive Analysis

Horizontal Overlap

16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant product and geographic markets as the Proposed Transaction does not raise competition concerns in any potential market in the State.
17. None of the companies owned and controlled by the MML Funds have any activities in the provision of domiciliary care and disability care services in the State or elsewhere.³
18. None of the companies owned and controlled by the MML Funds are currently involved in the same business activities in which the Target Undertakings are active in the State. Similarly, neither Sora nor Caringangels are currently involved in any of the business activities in which companies owned and controlled by the MML Funds in the State are active.
19. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

20. The parties informed the Commission that there is no vertical relationship between the MML Funds and the Target Undertakings in the State. The Commission has not identified any vertical relationship between the parties in the State. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

³ The Commission notes that domiciliary care services, as provided by Sora and Caringangels, can be distinguished from residential care services as provided by Baile Acquisitions Limited trading as Ashdale Care (which is owned or controlled by the MML Funds). Residential care services do not include the provision of healthcare services for individuals in their own homes, unlike domiciliary care services. Please see for example, merger determination M.7958 – McKesson Group/Bupa Home Healthcare, available at https://ec.europa.eu/competition/mergers/cases/decisions/m7958_51_3.pdf and ME/2936/07 Bupa Finance PLC/Clinovia Group Limited, available at https://ec.europa.eu/competition/mergers/cases/decisions/m7958_51_3.pdf.



Conclusion

21. 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

22. Clause 8.1 of the SPA contains non-solicitation, no-hire and non-compete obligations on the Vendor. The duration of those non-solicitation, non-compete and no-hire obligations does not exceed the maximum duration acceptable to the Commission.⁴ The Commission considers these non-solicitation, no-hire and non-compete obligations to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

⁴In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its Notice on restrictions directly related and necessary to concentrations OJ (2005) C56/03, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](https://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 the MML Funds,⁵ through Fiducia Healthcare Limited (“Fiducia Healthcare”) and Fiducia Healthcare’s wholly-owned subsidiary Fiducia Bidco Limited, would acquire sole control of Sora Healthcare Limited and Caringangels 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

Brian McHugh
Member
Competition and Consumer Protection Commission

⁵ The MML Funds are MML Growth Capital Partners Ireland Fund II LP, MML Ireland II Coinvest LPC, and MML Finance Company Ireland II DAC.