



DETERMINATION OF MERGER NOTIFICATION M/20/004 - WSH INVESTMENTS / HESSCROFT

Section 21 of the Competition Act 2002

Proposed acquisition by WSH Investments Limited (part of Clayton, Dubilier & Rice, LLC) through Nutrition Cater Limited of sole control of Hesscroft Limited.

Dated 23 March 2020

Introduction

1. On 11 February 2020, 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 WSH Investments Limited (“WSH”), through its wholly-owned subsidiary Nutrition Cater Limited (“Nutrition”), would acquire sole control of Hesscroft Limited (“Hesscroft”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share purchase agreement (the “Agreement”) between [...] (collectively the “Sellers”), Baxterstorey Limited (as Nutrition’s guarantor), Nutrition, and [...]. Pursuant to the Agreement, WSH will acquire sole control, through Nutrition, of Hesscroft.

The Undertakings Involved

The Acquirer - WSH

3. WSH is the parent company for a number of brands operating in the food services and hospitality sector. The majority of its business is focused in the United Kingdom, but it is also active in a number of other countries in Europe, including the State. In the State, WSH is active through its wholly-owned subsidiary, BaxterStorey Ireland Limited (“BaxterStorey Ireland”), which offers contract catering services.



4. Nutrition is a private limited company, incorporated in the State in November 2019, which has been established for the purpose of implementing the Proposed Transaction. Following completion of the Proposed Transaction, WSH will have a 75% shareholding in, and will exercise sole control over, Nutrition. Following completion of the Proposed Transaction, [...] ¹ will hold 20% and 5%, respectively, of the shares in Nutrition. The parties have informed the Commission that neither [...] will, individually or jointly, exercise control over Nutrition for the purposes of section 16(2) of the Act.
5. WSH is an indirectly wholly-owned subsidiary of Clayton, Dubilier & Rice Fund X, L.P., which is a private equity fund managed by Clayton, Dubilier & Rice, LLC, the fund manager for the private equity investment firm known as Clayton, Dubilier & Rice (“CD&R”). ²
6. CD&R is a private equity investment firm based in the United States of America that makes investments through a number of different funds (collectively, the “CD&R Funds”). The CD&R Funds control, or may be deemed to control within the meaning of the EU Merger Regulation, ³ a number of portfolio companies which are active in a variety of economic sectors. None of the other portfolio companies currently controlled by the CD&R Funds are active in the same market as Hesscroft, or in a market that is upstream or downstream of any of the markets in which Hesscroft is active.
7. For the financial year ended 31 December 2018, CD&R Funds’ worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State. For the financial year ended 31 December 2018, the worldwide turnover of WSH was approximately €[...], of which approximately €[...] was generated in the State.

The Target - Hesscroft

8. Hesscroft is a private company incorporated in the State with its head office located in Cork. Hesscroft is a food service provider that offers contract catering and private event catering services in the State. It trades in the State under the name *Brook Foods*.

¹ [...] are two of the current shareholders in Hesscroft. As part of the consideration for the Proposed Transaction, [...] will, following completion of the Proposed Transaction, together hold 25% of the share capital in Nutrition.

² The parties informed the Commission that “Clayton, Dubilier & Rice” is a colloquial reference used regularly in the firm’s website, media etc. to refer to the private equity firm as a whole.

³ Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the “EU Merger Regulation”).



9. For the financial year ended 31 December 2018, Hesscroft's turnover was approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

10. The parties state the following in the notification:

"The Proposed Transaction offers WSH the opportunity to acquire a complementary food service offering in terms of product offering and geographic footprint in the contract catering segment in Ireland."

Third Party Submissions

11. No submission was received.

Competitive Analysis

Horizontal Overlap

Product Market Definition

12. As described above in paragraph 3, WSH, through its wholly-owned subsidiary BaxterStorey Ireland, is active in the provision of contract catering services in the State. Hesscroft is active in the provision of contract catering services and private event catering services in the State. Therefore, there is a horizontal overlap between the activities of the parties, as both WSH and Hesscroft provide contract catering services in the State.⁴
13. The parties suggest in the notification that the relevant product market could be defined broadly of the overall food service segment to cover restaurants, hotels, fast food outlets, pubs, coffee shops/cafes/delis as well as contract catering services, or more narrowly as a market for the provision of contract catering services. However, the parties submit that the product market definition can be left open in this instance as the Proposed Transaction would not, in their view, lead to any competition concerns under any possible market definition.

⁴ WSH is not active in the provision of private event catering services in the State.



14. 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 reach a definitive view on the precise product market because, regardless of whether the potential product market is defined broadly (i.e. overall food service) or narrowly, (i.e. contract catering services), it does not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State. Nonetheless, for the purpose of its competitive assessment of the Proposed Transaction, the Commission assessed the likely impact of the Proposed Transaction on competition in respect of the narrowest potential product market, namely the provision of contract catering services.

Geographic Market Definition

15. While BaxterStorey Ireland is headquartered in Dublin and Hesscroft is headquartered in Cork, both BaxterStorey Ireland and Hesscroft provide contract catering services throughout the State. From a supply-side perspective, contract catering providers compete for business from clients based throughout the State. From a demand-side perspective, when requesting tenders for future business, customers seek bids from contract catering service providers across the State for the provision of catering services on their premises. The parties submit that the majority of the large food service providers active in the State, including contract caterers, have a national footprint and serve customers across the State. The parties also state in the notification that suppliers based in Northern Ireland also compete to provide contract catering services in the State.
16. It is not necessary for the Commission to define the precise geographic market in this instance because to do so would not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State. However, given the factors described in paragraph 15 above, for the purpose of its competitive assessment of the Proposed Transaction, the Commission assessed the likely impact of the Proposed Transaction on competition with respect to the State.

Competitive Analysis

17. The total size of the market for the provision of contract catering services in the State was estimated at €496.4 million for 2018.⁵ The parties submitted to the Commission

⁵ Based on figures available in the Irish Foodservice Market Insights report from November 2018.



that WSH and Hesscroft held market shares of [5-10]% and [0-5]%, respectively, in 2018 in relation to the provision of contract catering services in the State.⁶ Following implementation of the Proposed Transaction, WSH's estimated share of the market for the provision of contract catering services in the State would therefore increase by [0-5] percentage points to approximately [10-20%].

18. Following implementation of the Proposed Transaction, there will remain a number of significant competitors to WSH (including *Aramark Ireland, Compass Ireland, Sodexo Ireland, and Kylemore Services Group*) which have estimated larger market shares than WSH, which will continue to exert a competitive constraint on WSH in the market for the provision of contract catering services in the State.
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 have stated in the notification that there is no vertical relationship between WSH and Hesscroft. The Commission has not identified any vertical relationship between the parties in the State.
21. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

22. 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

23. Clause 11.1 of the Agreement contains restrictive obligations on each of the Sellers including non-compete and non-solicitation obligations. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration

⁶ Market share figures were provided by the parties.



acceptable to the Commission.⁷ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction.

⁷ In this respect, the CCPC follows the approach adopted by the European Commission in paragraphs 20 and 26 of its Notice on restrictions directly related and necessary to concentrations (2005) OJ C56/03. For more information see [http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.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 WSH Investments Limited, through its wholly-owned subsidiary Nutrition Cater Limited, would acquire sole control of Hesscroft 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