



DETERMINATION OF MERGER NOTIFICATION M/20/020 ARTHROPODA (ORPEA) / BRINDLEY HEALTHCARE LIMITED

Section 21 of the Competition Act 2002

Proposed acquisition by Arthropoda Limited of joint control of Brindley Healthcare Limited.

Dated 6 August 2020

Introduction

1. On 2 July 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 acquisition, whereby Orpea S.A. (“Orpea”), through Arthropoda Limited (“Arthropoda”), a newly created acquisition company that is indirectly owned and controlled by Orpea, would acquire a 50% shareholding in, and joint control of, Brindley Healthcare Limited and its subsidiaries (“Brindley”) from: (i) BGF Ireland Nominees Limited, BGF Ireland IA LP, BGF Nominees Limited and BGF Investments LP (together “BGF Sellers”); (ii) Drumineney Investment Holding DAC (“Drumineney”); and (iii) Mr Neal McGroarty (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to two share purchase agreements:
 - I. A share purchase agreement dated 29 June 2020 between Arthropoda and the BGF Sellers (“SPA I”); and,
 - II. A separate share purchase agreement dated 29 June 2020 between Orpea, Arthropoda, Drumineney, Amanda Torrens, and Mr Neal McGroarty (“SPA II”).



3. SPA I relates to the acquisition of BGF's 25% shareholding in Brindley and SPA II relates to the acquisition of an additional 25% shareholding in Brindley from Drumineney and Mr Neal McGroarty (20% and 5% respectively).¹
4. SPA II is conditional on completion of SPA I and will not be implemented until the Proposed Transaction is cleared by the Commission.
5. Following completion of the Proposed Transaction, Orpea will indirectly and jointly control Brindley, along with Drumineney/Ms Amanda Torrens, since both Orpea and Ms Amanda Torrens will have the ability to influence key decisions of Brindley through express veto rights over decisions in relation to [...].

The Undertakings Involved

The Acquirer - Orpea

6. Orpea is a publicly traded company on the Euronext stock exchange in Paris, and its shareholding is widely held.² Orpea is active in the residential care and nursing home services sector worldwide, with a presence across 22 countries on three continents.
7. Orpea entered the Irish market in 2020 through the acquisition of the TLC Group³ in January 2020. Orpea currently owns and operates the following five residential care and nursing homes in the State:

Table 1: Orpea's portfolio of residential care and nursing homes in the State

| Nursing Home | County | Rooms |
|---------------------|---------|-------|
| TLC Carton | Dublin | 163 |
| TLC Centre Santry | Dublin | 128 |
| TLC Centre Maynooth | Kildare | 141 |

¹ The entire issued share capital of Brindley is currently held by Drumineney (70%), which is solely controlled by Ms Amanda Torrens, BGF Sellers (25%) and Mr. Neal McGroarty (5%).

² Further details of Orpea's Euronext listing is available on the Euronext website:
<https://live.euronext.com/en/product/equities/FR0000184798-XPAR>

³ Further details of the TLC Group is available from the company's website at: <http://tlccentre.ie/>



| | | |
|----------------------|--------|------------|
| TLC City West | Dublin | 139 |
| TLC Cara Care Santry | Dublin | 103 |
| Total | | 674 |

Source: HIQA Register of older people's services⁴

8. For the financial year ending 31 December 2019, Orpea generated worldwide turnover of €3.74 billion, of which approximately €[...] was generated in the State.⁵

The Target – Brindley

9. Brindley is the parent company of a group that owns and controls 10 residential care and nursing homes in the State. Brindley and its subsidiaries are each private limited companies incorporated in the State.
10. Brindley provides residential care and nursing home services in the following locations:

Table 2: Brindley's portfolio of residential care and nursing homes in the State

| Nursing home | County | Rooms |
|--------------------------------------|---------------|--------------|
| Brentwood Manor Private Nursing Home | Donegal | 56 |
| Mill Lane Manor | Kildare | 70 |
| Maynooth Lodge Nursing Home | Kildare | 79 |
| Brindley Manor Private Nursing Home | Donegal | 43 |

⁴ The HIQA register is available to download from HIQA'S Website at: <https://www.hiqa.ie/guidance-providers/older-peoples-services/registration-information>.

⁵ Orpea's turnover in the State for 2019 relates to TLC Group's turnover in the State for 2019. In accordance with paragraphs 172 & 173 of the European Commission's Consolidated Jurisdictional Notice, the turnover of the TLC Group for 2019 was attributed to Orpea on the basis that Orpea's acquisition of TLC Group closed before the relevant date for establishing jurisdiction for this notification (i.e., the date of signing of the acquisition of Brindley). The European Commission's Consolidated Jurisdictional Notice is available from the European Commission's website: https://ec.europa.eu/competition/mergers/legislation/draft_jn.html



| | | |
|---------------------------------------|-----------|-----|
| Oughterard Manor | Galway | 41 |
| Brookvale Manor Private Nursing Home | Mayo | 57 |
| Beach Hill Manor Private Nursing Home | Donegal | 48 |
| Millbrae Lodge Nursing Home | Tipperary | 81 |
| Ashley Lodge Nursing Home | Kildare | 55 |
| Kilminchy Lodge Nursing Home | Laois | 52 |
| Total | | 582 |

Source: HIQA Register of older people's services

11. For the financial year ending 31 December 2019, the combined worldwide turnover of Brindley was approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

12. The parties state in the notification:

“Orpea’s strategic rationale for the Proposed Transaction is to expand its operations in Ireland through the acquisition of a target with a complementary geographic footprint.”

Third Party Submissions

13. No submission was received. However, the Commission did contact the Health Information and Quality Authority (“HIQA”) in relation to the Proposed Transaction.

Competitive Analysis

Horizontal Overlap



14. There is a horizontal overlap between the parties' activities in the State with respect to the provision of residential care and nursing home services.
15. 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 the precise relevant product market because the product market definition adopted will not alter the Commission's assessment of the Proposed Transaction. However, in order to examine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its likely impact by reference to the potential product market for the provision of residential care and nursing home services.
16. The parties argue that the geographic market at its narrowest is the Greater Dublin Area ("GDA")⁶. They state that services and prices of residential care and nursing homes offered in the GDA and across county lines are generally comparable such that the conditions of competition are similar. They also state that counties within the GDA are geographically proximate and well connected and most of the areas within the GDA are 'satellite' or 'commuter' towns for people working in Dublin and extensions of the greater Dublin community.
17. The Commission considers that it is not necessary to come to a definitive view on the precise relevant geographic market in this instance since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant geographic market is defined as local or national. However, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission analysed the likely impact by reference to the provision of residential care and nursing home services in (i) Co. Kildare, (ii) the GDA and (iii) the State.

Provision of residential care and nursing home services in Co. Kildare

⁶ The GDA is generally considered to include Dublin City, Fingal, South Dublin, Dún Laoghaire-Rathdown, Meath, Kildare and Wicklow and is consistent with the definition used by Central Statistics Office ("CSO") and the National Transport Authority ("NTA").



18. HIQA maintains and provides a register of residential care and nursing home services for older people in the State. On the narrow potential local market for the provision of residential care and nursing home services in Co. Kildare, which is the only county in which both parties have nursing homes, there are currently 1,659 residential care and nursing home rooms available. Orpea currently owns and operates one residential care home in Co. Kildare based in Maynooth. This home has 141 rooms and represents an estimated market share of [0-10]% of the residential care and nursing home rooms available in the Co. Kildare. Brindley owns and operates three residential care and nursing homes in the Co. Kildare. Together these homes have 204 rooms and represent and estimated [10-20]% of the market in Co. Kildare. Therefore post-transaction, the combined market share of the Parties would be approximately [20-30]% in the Co. Kildare.
19. Further, the parties will continue to face competition from a number of nursing homes in Co. Kildare following completion of the Proposed Transaction, including *Ryevale Nursing Home, Parke House Nursing Home, and Craddock House Nursing Home*. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in Co. Kildare.

Provision of residential care and nursing home services in the GDA

20. On the potential market for the provision of residential care and nursing home services in the GDA, the parties' estimated shares in the GDA would be as follows:

Table 3 – Provision of residential care and nursing homes services in the GDA

| | Rooms available in GDA | Estimated share in the GDA |
|---------------------------|------------------------|----------------------------|
| Orpea | | |
| Orpea's Current Portfolio | 674 rooms | [0-10]% |
| Brindley | | |



| | Rooms available in GDA | Estimated share in the GDA |
|--|------------------------|----------------------------|
| Brindley's Current Portfolio in GDA ⁷ | 204 rooms | [0-10]% |
| Parties' Combined Portfolio | 878 rooms | [0-10]% |
| Competitors | | |
| CareChoice | 542 rooms | [0-10]% |
| Mowlam | 201 rooms | [0-10]% |
| FirstCare | 552 rooms | [0-10]% |
| SilverStream | 313 rooms | [0-10]% |
| Bartra Healthcare | 241 rooms ⁸ | [0-10]% |
| Health Services Executive ("HSE") | 2,355 rooms | [10-20]% |
| Others | 4,336 | [40-50]% |
| Total | 9,049 rooms | 100% |

Source: HIQA Register of older peoples' services

21. Orpea currently owns and operates five residential care and nursing homes in the State, all of which are located in the GDA. Table 3 shows that these five residential care and nursing homes provide 674 rooms and represent an estimated market share of [0-10]% of the residential care and nursing home rooms available in the GDA. Brindley owns and operates three residential care and nursing homes in the GDA: Maynooth Lodge Nursing Home, Ashley Lodge Nursing Home and Mill Lane Manor Nursing Home. These nursing homes provide a total of 204 residential care and nursing home rooms and represent

⁷ Brindley's nursing homes in the GDA are all based in Co.Kildare. These are Maynooth Lodge, Ashley Lodge, and Mill Lane Manor.

⁸ The Parties note an additional 221 rooms are due to be opened by year end.



an estimated market share of [0-10]% of residential care and nursing home rooms available within the GDA. Therefore, post-transaction, the combined market share of the parties would be approximately [0-10]% in the GDA.

22. Table 3 also shows that there are a significant number of other providers of residential care and nursing home services in the GDA, including *CareChoice*, *Mowlam Healthcare*, *First Care*, *Silver Stream Healthcare* and *Trinity Care*, all of which will continue to provide residential care and nursing home services following completion of the Proposed Transaction.
23. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the GDA.

The provision of residential care and nursing home services in the State

24. The HIQA register indicates that there are 574 facilities providing residential care and nursing home services in the State. These facilities provide a total of 32,171 rooms for residential care and nursing home services.⁹

Table 4 – Providers of Residential Care and Nursing Homes Services in the State

| | No. of rooms available in the State | Estimated shares in the State |
|------------------------------------|-------------------------------------|-------------------------------|
| Orpea | 674 rooms | [0-10]% |
| Brindley | 582 rooms | [0-10]% |
| Parties' Combined Portfolio | 1,256 rooms | [0-10]% |
| Competitors | | |
| CareChoice | 906 rooms | [0-10]% |

⁹ The HIQA Register is available to access at: <https://www.hiqa.ie/areas-we-work/older-peoples-services>



| | No. of rooms available in the State | Estimated shares in the State |
|---|--|--------------------------------------|
| Mowlam | 1,003 rooms | [0-10]% |
| FirstCare | 552 rooms | [0-10]% |
| SilverStream | 367 rooms | [0-10]% |
| HSE | 5,708 rooms | [20-30]% |
| Others | 22,440 rooms | [60-70]% |
| Total rooms available in the State | 32,171 rooms / places | 100% |

Source: HIQA Register of older peoples' services

25. Table 4 shows that Orpea's five residential care and nursing homes provide 674 rooms and represent an estimated market share of [0-10]% of the residential care and nursing home rooms available in the State. Brindley owns and operates ten residential care and nursing homes in the State providing a total of 582 residential care and nursing home rooms. This represents an estimated market share of [0-10]% of residential care and nursing home rooms available within the State. Therefore, post-transaction, the parties' combined share of residential care and nursing homes in the State would be approximately [0-10].
26. Following completion of the Proposed Transaction, the merged entity will continue to face competition from a significant number of residential care and nursing home providers including *CareChoice* ([0-10]), *Mowlam Healthcare* ([0-10]), *FirstCare* [0-10], *Silver Stream Healthcare* ([0-10]. and the HSE which operates 121 facilities and provides 5,880 rooms throughout the State ([10-20]).



27. Additionally, there are other alternatives to residential care and nursing home services such as home care providers (e.g. *Home Instead*) which elderly people are increasingly using due to the desire to remain at home.¹⁰
28. The parties note that around 80% of residents in private residential care and nursing homes are funded through the Nursing Home Support Scheme (“NHSS”) and that residential care and nursing home providers are ‘price takers’ when it comes to the prices the HSE / State is willing to pay for such patients.¹¹ The HSE / State has significant negotiating power (as the primary payer for residents in the State) and dictates maximum prices to operators based on location, quality etc.
29. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the provision of residential care and nursing home services in the State.

Vertical Relationship

30. The parties informed the Commission that there is no vertical relationship between the parties in the State as the parties operate on the same level of the supply chain and are not potential customers of one another.
31. However, the parties did inform the Commission that [...].
32. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

33. 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

¹⁰ Further information on *Home Instead* is available from the company’s website at: <https://www.homeinstead.ie/home-care-home-help>

¹¹ A detailed description of the Nursing Home Support Scheme is available to view on the HSE’s website at: <https://www.hse.ie/eng/services/list/4/olderpeople/nhss/information-booklet.pdf>



34. Clause 15 of SPA II contains non-compete and non-solicitation obligations on [...] to solicit customers or suppliers and engage in a competing business. The duration of these restrictive covenants does not exceed the maximum duration acceptable to the Commission.¹² The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction.

¹² In 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 Orpea S.A., through Arthropoda Limited, a newly created acquisition company that is indirectly owned and controlled by Orpea S.A, would acquire a 50% shareholding in, and joint control of, Brindley Healthcare Limited and its subsidiaries 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