

DETERMINATION OF MERGER NOTIFICATION M/21/020 – ORPEA/ BRINDLEY

Section 21 of the Competition Act 2002

Proposed acquisition by Orpea S.A of sole control of Brindley Healthcare Limited

Dated: 04 May 2021

1. On 15 April 2021, 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 its subsidiary Orpea Care Ireland Limited, would acquire a 100% shareholding and thus sole control of Brindley Healthcare Limited (“Brindley”) (the “Proposed Transaction”).
2. The business activities of the undertakings involved are:
 - Orpea is a publicly listed company on the Euronext stock exchange in Paris. Orpea is active in the residential care and nursing home services sector worldwide, with a presence across 22 countries on three continents. Orpea, through its TLC nursing home portfolio¹ and joint control of Brindley,² has 15 residential care and nursing homes in the state, located in counties Dublin, Kildare, Laois, Donegal, Galway, Mayo and Tipperary.
 - Brindley through its subsidiaries is active in the provision of residential care and nursing home services in the State with 10 nursing homes. Brindley is jointly controlled by Orpea S.A and Drumineney Investment Holdings Designated Activity Company (“Drumineney”).³

Assessment

3. After examination of the notification, the Commission has considered that the Proposed Transaction falls within the scope of paragraph 2.1 of the Simplified Merger Notification Procedure Guidelines for assessing certain notifiable mergers or acquisitions under section

¹ 5 nursing homes.

² 10 nursing homes. In addition on 30 April 2021, the Commission cleared the proposed acquisition by Brindley of Belmont Care Limited, see M/21/019, Brindley (Orpea) / Belmont at <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-21-019-brindley-orpea-belmont/>

³ Drumineney is ultimately controlled by Ms Amanda Torrens.

18(1)(a) of the Act since Orpea is acquiring sole control of Brindley over which it already holds joint control.

4. In light of this, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

5. The Parties state in the notification that certain ancillary restraints in relation to the Proposed Transaction are included in Clause 12 of the Put and Call Option Agreement (“PCOA”). The parties submit that these restrictions are directly related and necessary to the Proposed Transaction.
6. The scope and duration of the restrictions of Clause 12.1.1 of the PCOA do not exceed the maximum scope and duration acceptable to the Commission. The Commission considers the restrictions in Clause 12.1.1 of the PCOA to be directly related to and necessary for the implementation of the Proposed Transaction, insofar as they relate to the State.
7. The Commission notes that Clause 12.1.2 of the PCOA contains other restrictive obligations which restrict Drumineney and Ms. Amanda Torrens from [...]. The Commission notes that, unlike the restrictions in Clause 12.1.1 of the PCOA, the restrictions contained in Clause 12.1.2 of the PCOA are not limited in time and apply at any time after completion of the Proposed Transaction. For these reasons, the Commission has not reached a view as to whether or not Clause 12.1.2 of the PCOA is directly related and necessary to the implementation of the Proposed Transaction. Clause 12.1.2 of the PCOA will not therefore benefit from the protections offered by sections 4(8) and 5(3) of the Act.

Determination

8. 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 its subsidiary Orpea Care Ireland

Limited would acquire a 100% shareholding and thus sole control of Brindley Healthcare 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

Ibrahim Bah
Director
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