Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí | Competition and Consumer Protection Commission

DETERMINATION OF MERGER NOTIFICATION M/21/029 – MURDOCK/BROOKS

Section 21 of the Competition Act 2002

The proposed acquisition by MBM Brooks Limited of sole control of Papoulas Limited and its subsidiaries.

Dated 29 July 2021

Introduction

1. On 21 June 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 MPBM Holdings Limited ("MPBM Holdings"), through its wholly owned subsidiary MBM Brooks Limited ("Murdock BidCo"), would acquire sole control of Papoulas Limited ("Papoulas") and its three subsidiaries, Premier Forest ROI Limited ("Premier Forest"), Brooks Timber & Building Supplies Limited ("BTBS") and The Dublin Plywood & Veneer Company Limited ("DPV") (together with Papoulas, the "Brooks Group") (the "Proposed Transaction").

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement dated 18 June 2021 between the current shareholders of Papoulas[1] (the "Vendors"), Murdock BidcCo and MPBM Holdings Limited (the "SPA"). Pursuant to the SPA, Murdock BidCo will acquire the entire issued share capital of Papoulas and its three subsidiaries (Premier Forest, BTBS and DPV). Therefore, following the implementation of the Proposed Transaction, the Brooks Group will be solely owned and controlled by Murdock BidCo.

[1] The current shareholders of Papoulas are private individuals, namely, […], […] and […].

The Undertakings Involved

The Acquirer – The Murdock Group

3. Murdock BidCo is a company incorporated in the Isle of Man under registered number 018991V and having its registered office at 6th Floor, Victory House, Prospect Hill, Douglas, IM1 1EQ Isle of Man. Murdock BidCo's ultimate parent is MPBM Holdings. MPBM Holdings and its subsidiaries (the "Murdock Group") operate fourteen builders merchant stores across the island of Ireland, in counties Antrim, Armagh, Derry, Down, Dublin and Tyrone. The Murdock Group's builders merchant stores sell building materials, doors, floors, hardware, outdoor and landscaping products, trusses and space joists, rainwater and drainage solutions, roof windows, roofing materials and timber. The Murdock Group supplies customers through its builders merchants stores and direct-to-site delivery.

4. The Murdock Group manufactures machined timber products from rough timber, including architraves, skirting boards, window frames, door frames, wall panelling and planed timber products, such as bespoke timber profiles, in Northern Ireland. The Murdock Group operates two sawmills in Northern Ireland – one located in Warrenpoint, Co. Down, and another in Newry, Co. Down. The Murdock Group does not operate sawmills in the State. The Murdock Group is also a wholesale supplier of the above-mentioned machined timber products to fit-out contractors, joinery manufactures, third party builders merchants and the Murdock Group's own builders merchant stores in the State.

5. For the financial year ending 31 December 2020, the Murdock Group's worldwide turnover was approximately […], of which approximately […] was generated in the State.

The Target – the Brooks Group

6. The Brooks Group consists of Papoulas, a private limited company incorporated in Ireland under registered number 683779 and having its registered office at Bluebell, Old Naas Road, Dublin 12, and its three subsidiaries Premier Forest, BTBS and DPV. The Brooks Group operates seven builders merchant stores in the State, in counties Cork, Dublin, Galway, Offaly and Sligo. The Brooks Group's builders merchant stores sell building materials, timber, insulation, doors, floors, plastering materials, heating and renewables solutions, plumbing

materials, bathroom and kitchen products, and outdoor and landscaping products. The Brooks Group supplies customers through its builders merchant stores and direct-to-site delivery.

7. The Brooks Group, through its subsidiary DPV, is a wholesale supplier of certain specialist categories of laminate, veneer and composite timber panels, flooring and fire door blanks to DIY outlets, builders merchant stores, furniture manufacturers and timber frame producers throughout the island of Ireland.

8. For the financial year ending 30 April 2020, the Brooks Group's worldwide turnover was approximately […], all of which was generated in the State.

Rationale for the Proposed Transaction

9. The Parties state in the notification:

> *"Murdock Group's goals in completing the acquisition of Brooks Group are as follows:*
>
> - *To provide a platform to enable the development of a strong competitor to Chadwicks in the Republic of Ireland.*
> - *To significantly grow the Murdock Group business on the island of Ireland.*
> - *With a larger footprint, to be able to provide a better service for the existing customers of Murdock Group and Brooks Group.*
> - *To generate economies of scale, synergies and efficiencies between the two organisations that will enable a more competitive offering to their customers."*

Third Party Submissions

10. No third party submissions were received.

Competitive Analysis

Horizontal Overlap

11. There are horizontal overlaps in the State between the Murdock Group and the Brooks Group in respect of the following business activities:

a. the supply of building materials and fittings through builders merchant stores; and,

b. the wholesale supply of timber products.

The Supply of Builders Materials and Fittings through Builders Merchant Stores

Market Definition

Product Market

12. In its determination in *M/04/51 - Grafton Group plc/Heiton Group plc,*[2] the Commission's predecessor, the Competition Authority (the "Authority"), assessed the impact of the relevant proposed transaction with respect to the supply of building materials and fittings (predominantly to building and construction firms including trade professionals such as joiners, plumbers, electricians and plasterers and to non-professionals)[3] through different distribution channels. The Authority recognised in that case that the supply of building materials and fittings through different distribution channels could constitute separate product markets, i.e., builders merchant stores were a separate product market from DIY stores.[4]

13. With regard to the Proposed Transaction, the Commission does not see any reason to depart from the Authority's previous market definition and has therefore assessed the Proposed Transaction in respect of the supply of building materials and fittings through builders merchant stores.

Relevant Geographic Market

14. The Authority has previously analysed the supply of building materials and fittings by reference to local geographic markets. In its determination in *M/04/51 - Grafton Group plc/Heiton Group plc*,[5] the Authority considered that, in Dublin and Cork city, the catchment area radius was approximately 5-10 miles, and that elsewhere the catchment area radius was

[2] https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/m_04_051_p2d.pdf
[3] See paragraph 7.1 of *M/04/51 - Grafton Group plc/Heiton Group plc.*
[4] See paragraphs 7.1, 7.2, 7.3 and 7.4 of *M/04/51 - Grafton Group plc/Heiton Group plc.*
[5] https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/m_04_051_p2d.pdf

approximately 20-25 miles. The Commission sees no reason to depart from this approach with respect to the Proposed Transaction.

15. The only horizontal overlap between the Murdock Group's and the Brooks Group's builders merchant stores in relation to the supply of building materials and fittings through builders merchant stores occurs in the Dublin area. There is no horizontal overlap in the supply of building materials and fittings through builders merchant stores between the Murdock Group's and the Target's Brooks Group's builders merchant stores outside of the Dublin area.

16. In light of the above, the Commission has examined the Proposed Transaction in respect of the supply of building materials and fittings through builders merchant stores within a 10 mile radius of each of the Brooks Group's builders merchant stores in the Dublin area, on the basis that the parties' only overlapping activities in respect of the supply of building materials and fittings through builders merchant stores in the State are in the Dublin area. [6]

Competitive Analysis

17. The Murdock Group operates five builders merchant stores in the Dublin area located at the following locations:

Unit 4, M1 Business Park, Balbriggan, Dublin, K32 KT18
Lower Ballymount Road, Walkinstown, Dublin 12, D12 X239
McKee Avenue, Finglas, Dublin 11, D11 K8KT
Kilbarrack Parade, Kilbarrack, Dublin 5, D05 XN88
Murdock Civils, Kilbarrack Parade, Kilbarrack, Dublin 5, D05 XN88[7]

The Brooks Group operates three builders merchants stores in the Dublin area located at:

Old Naas Road, Bluebell, Dublin 12, D12 YXN2
Broombridge Close, Ballyboggin Road, Glasnevin, Dublin 11, D11 AX66
60 Heather Road, Sandyford Industrial Estate, Dublin 18, D18 Y677

18. Based on a 10 mile radius, there are three builders merchant stores operated by the Brooks Group that fall within the same 10 mile catchment area as builders merchant stores operated

[6] For completeness, the Commission has also analysed the horizontal competition concerns in the market for the supply of building materials and fittings through builders merchant stores within a 5 mile radius of each of the Brooks Group's builders merchant stores in the Dublin area and this analysis had no impact on our assessment.
[7] The Commission has considered the Murdock Group's two builders merchant stores located at Kilbarrack Parade, Kilbarrack, Dublin 5, D05 XN88 collectively for the purposes of this determination.

by the Murdock Group, namely those located at Old Naas Road, Dublin 12; Glasnevin, Dublin 11; and Sandyford Industrial Estate, Dublin 18. Table 1 below shows the parties' builders merchant stores which are located within a 10 mile radius of each other (the "Overlapping Builders Merchant Stores within a 10 mile radius").

Table 1: The Overlapping Builders Merchant Stores within a 10 mile radius[8]

The Brooks Group's Builders Merchant Stores	The Murdock Group's Builders Merchant Stores	Distance (in miles)
Old Naas Road, Bluebell, Dublin 12, D12 YXN2	Lower Ballymount Road, Walkinstown, Dublin 12, D12 X239	0.76 miles
	McKee Avenue, Finglas, Dublin 11, D11 K8KT	5.19 miles
	Kilbarrack Parade, Kilbarrack, Dublin 5, D05 XN88	8.8 miles
Broombridge Close, Ballyboggin Road, Glasnevin, Dublin 11, D11 AX66	Lower Ballymount Road, Walkinstown, Dublin 12, D12 X239	4.26 miles
	McKee Avenue, Finglas, Dublin 11, D11 K8KT	1.6 miles
	Kilbarrack Parade, Kilbarrack, Dublin 5, D05 XN88	6.2 miles
60 Heather Road, Sandyford Industrial Estate, Dublin 18, D18 Y677	Lower Ballymount Road, Walkinstown, Dublin 12, D12 X239	6.2 miles
	McKee Avenue, Finglas, Dublin 11, D11 K8KT	8.9 miles
	Kilbarrack Parade, Kilbarrack, Dublin 5, D05 XN88	8.42 miles

Source: the parties' estimates, based on Google Maps

[8] The approximate distance is based on a search on Google Maps using straight-line distance measurements.

19. There is no overlap between the parties' building merchant stores in Balbriggan, on the basis that the Brooks Group does not operate any building merchant stores within a 10 mile radius of the Murdock Group's store at Unit 4, M1 Business Park, Balbriggan, Co. Dublin, K32 KT18.

Table 2: The parties estimated market shares in respect of the supply of building materials and fittings through builders merchant stores within a 10 mile radius of each of the following builders merchant stores

Builders Merchant Store	The Murdock Group estimated market share within a 10 miles radius	The Brooks Group's estimated market share within a 10 mile radius	Estimated combined market share within a 10 mile radius	The Number of Competing Merchant Stores within a 10 mile radius
Old Naas Road, Bluebell, Dublin 12, D12 YXN2 ("Naas Road Store")	[5-10]%	[10-15]%	[20-25]%	24[9]
Broombridge Close, Ballyboggin Road, Glasnevin, Dublin 11, D11 AX66 ("Glasnevin Store")	[5-10]%	[10-15]%	[15-20]%	20[10]
60 Heather Road, Sandyford Industrial Estate, Dublin 18, D18 Y677 ("Sandyford Store")	[5-10]%	[15-20]%	[20-25]%	20[11]

Source: the parties

20. As shown in Table 2 above, following implementation of the Proposed Transaction, the parties' estimated combined market shares would be [20-25]%, [15-20]% and [20-25]% within a 10 mile radius of the Naas Road Store, the Glasnevin Store and the Sandyford Store respectively.

21. Furthermore, Table 2 also shows that there will remain a number of competitors in respect of the supply of building materials and fittings through builders merchant stores following the

[9] Including 7 Chadwicks, 2 Mannions, 2 PH Ross, 3 Heatmerchants, 1 SIG Ireland, 2 TJ O'Mahony, 1 DPL Group Ltd., 2 McMahons Builders Providers, 1 T McCann & Co Ltd, 1 Smiths Building Supplies, 1 ABS Building Supplies and 1 Clondalkin Builders Providers.

[10] Including 7 Chadwicks, 1 Torpedo Construction Limited ("Grange Builders Providers") Grange Builders Providers, 2 Heatmerchants, 1 Davies, 1 Goodwins, 1 McMahons Builders Providers, 2 TJ O'Mahony, 1 Mannions Building Supplies, 1 Smiths Building Supplies, 1 SIG Ireland, 1 PH Ross and 1 Clondalkin Builders Providers.

[11] Including 6 Chadwicks, 1 Irish Building Supply Co. Ltd., 1 Blackrock Builders Providers Ltd., 1 T McCann & Co. Ltd., 1 SIG Ireland, 4 Heatmerchants, 1 Davies, 1 Smiths Building Supplies, 1 KCR Builders Providers Ltd., 1 TJ O'Mahony, 1 Mannions Building Supplies and 1 Clondalkin Building Providers.

implementation of the Proposed Transaction, including Chadwicks,[12] Mannions,[13] Davies,[14] Grange Builders Providers,[15] Heatmerchants,[16] TJ O'Mahonys[17] and SIG Ireland.[18] These competing merchant stores will continue to exert a competitive constraint on the Murdock Group following implementation of the Proposed Transaction.

22. In light of the above, the Commission considers that the Proposed Transaction will not give rise to any horizontal competition concerns in the market for the supply of building materials and fittings through builders merchant stores within a 10 mile radius of the each of the Brooks Group's builders merchant stores.

The Wholesale Supply of Timber Products

23. Both the Murdock Group and the Brooks Group are active as wholesale suppliers of timber products in the State. The Murdock Group is a wholesale supplier of machined timber products, including architraves, skirting boards, window frames, door frames, wall panelling and planed timber products, to fit-out contractors, joinery manufactures, third party builders merchant stores and the Murdock Group's own builders merchant stores in the State. In the Brooks Group, DPV is a wholesale supplier of certain specialist categories of laminate, veneer and composite timber panels and flooring and fire door blanks to DIY outlets, builders merchant stores, furniture manufacturers and timber frame producers throughout the island of Ireland.

Market Definition

[12] The parties submitted that the estimated market share for Chadwicks would approximately be between [25-35]% within the relevant 10 mile radius of the Brooks Group's builders merchant stores.
[13] The parties submitted that the estimated market share for Mannions would approximately be between [0-5]% within the relevant 10 mile radius of the Brooks Group's builders merchant stores.
[14] The parties submitted that the estimated market share for Davies would approximately be between [0-15]% within the relevant 10 mile radius of the Brooks Group's builders merchant stores.
[15] The parties submitted that the estimated market share for Grange Builders Providers is approximately [5-10]% within a 10 mile radius of the Brooks Group's builders merchant store at Broombridge Close, Ballyboggin Road, Glasnevin, Dublin 11, D11 AX66.
[16] The parties submitted that the estimated market share for Heatmerchants would approximately be between [0-5]% within the relevant 10 mile radius of the Brooks Group's builders merchant stores.
[17] The parties submitted that the estimated market share for TJ O'Mahonys would approximately be between [5-15]% within the relevant 10 mile radius of the Brooks Group's builders merchant stores.
[18] The parties submitted that the estimated market share for SIG Ireland would approximately be between [5-15]% within the relevant 10 mile radius of the Brooks Group's builders merchant stores.

24. The Authority has previously segmented the market for the timber products on the basis of the type of timber product in question. For example, in M/06/57 – *Coillte Teoranta/Weyerhauser*, the Authority considered that there were separate product markets for oriented strand board and medium-density fibreboard and also considered that the geographic market could be broader than national but assessed the relevant transaction in the State.[19] In examining the Proposed Transaction, the Commission sees no reason to depart from its previous approach whereby there are different product markets depending on the type of timber product in question.

25. If the product market is defined according to the category of timber product supplied by each of the parties at wholesale level in the State, there is no horizontal overlap between the parties' activities in respect of the wholesale supply of timber products in the State. As mentioned in paragraph 23 above, the Murdock Group is active in the wholesale supply of machined timber products, and the Brooks Group is active in the wholesale supply of specialist categories of laminate, veneer and composite timber panels. The Murdock Group does not supply any category of timber products which are supplied by the Brooks Group, and vice versa.

26. If the market is defined more broadly to include the wholesale supply of all timber products in the State, the parties' estimated combined market shares in the wholesale supply of timber products in the State is minimal at [5-10]%[20] following the implementation of the Proposed Transaction. There are a number of competing firms, including Glennon Bros. Timber Ltd., Murray Timber Products, GP Wood Ltd., Balcas Timber Ltd., Earrai Coillte Chonnacht Cuideachta Neamhtheoranta, Flanagan Timber Ltd., R.T.D. Crawfords Ltd., Tradewoods Ltd., Noyeks Ltd. and Panelling Centre Ltd., which are active in the wholesale supply of timber products in the State and will continue to exert a competitive constraint on the Murdock Group following implementation of the Proposed Transaction.

[19] https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/Determination_Coillte_Weyerhaeuser_M06057_0.pdf
[20] Source: the parties.

27. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the wholesale supply of any particular timber product in the State.

Vertical Relationship

28. The parties state in the notification that there is no existing vertical relationship between the Murdock Group and the Brooks Group. The Murdock Group is not active in the manufacture of timber products in the State. Both the Murdock Group and DPV are active in the wholesale supply of timber products to builders merchant stores in the State.[21] Both parties are also active downstream as builders merchant stores in the State. The parties state that Murdock Group does not supply any timber products to the Brooks Group in the State. The Brooks Group does not supply any of its timber products to the Murdock Group's builders merchant stores, with two recent exceptions of low value.[22]

29. The parties state that, for the financial year ending 31 December 2020, the Murdock Group's two sawmills in Northern Ireland supplied approximately […] worth of timber products into the State. The vast majority of this turnover ([…] – [95-100]%) was attributable to direct supply by the Murdock Group to end users, namely joinery manufacturers and fit-out contractors (e.g., shop and office fitters). Only […] ([0-10]%) of this turnover was attributable wholesale supply to builders merchant stores in the State. For the financial year ending 30 April 2020, the Brooks Group generated a turnover of approximately […] from the wholesale supply of timber products to builders merchant stores in the State, which represents approximately [0-10]% of the total value of the wholesale supply of timber products to builders merchant stores in the State.

30. Furthermore, as noted at paragraph 26 above, the parties' estimated combined market shares in the wholesale supply of timber products in the State would be minimal ([5-10]%) following the implementation of the Proposed Transaction. There are a number of competing firms, including Glennon Bros. Timber Ltd., Murray Timber Products, GP Wood Ltd., Balcas Timber

[21] The Murdock Group also operates two sawmills in Northern Ireland, located in Warrenpoint, Co. Down, and Newry, Co. Down, Northern Ireland. The Murdock Group does not operate sawmills in the State.
[22] In Q1 2021, the Murdock Group purchased specialist timber products valued at […] in total from the Brooks Group and, in 2020, the Murdock Group purchased specialist timber products valued at […] in total, from the Brooks Group.

Ltd., Earrai Coillte Chonnacht Cuideachta Neamhtheoranta, Flanagan Timber Ltd., R.T.D. Crawfords Ltd., Tradewoods Ltd., Noyeks Ltd. and Panelling Centre Ltd., which are active in both the manufacture and wholesale supply of timber products in the State. Therefore, following implementation of the Proposed Transaction, the Murdock Group is unlikely to have the ability or incentive to foreclose builders merchant stores in respect of the wholesale supply of timber products in the State.

31. Based on the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

32. 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

33. The parties state in the notification that Clause 14 of the SPA contains certain post-transaction restrictions on the Vendors which the parties believe are directly related and necessary to the implementation of the Proposed Transaction. The Commission notes that the restrictions referred to by the parties appear to be contained in Clause 14.1 of the SPA. In particular, Clauses 14.1.1(a), 14.1.1(b), 14.1.1(c), and 14.1.1(d) of the SPA impose a number of non-compete and non-solicitation restrictive obligations on the Vendors. The restraints in Clauses 14.1.1(a), 14.1.1(b), 14.1.1(c), and 14.1.1(d) of the SPA do not exceed the maximum scope and duration acceptable to the Commission. The Commission considers that they are directly related and necessary to the implementation of the Proposed Transaction, in so far as they relate to the State.

34. The Commission notes that Clause 14.1.1(e) of the SPA imposes an obligation on the Vendors not to […]. However, this restriction does not relate to the State. Therefore, the Commission considers that Clause 14.1.1(e) of the SPA will not benefit from the protections offered by sections 4(8) and 5(3) of the Act.

35. The Commission notes that Clause 14.1.2 of the SPA imposes an obligation on the Vendors not to […]. In addition, the Commission notes that, unlike the restrictions in Clause 14.1.1(a) 14.1.1(b), 14.1.1(c), and 14.1.1(d) of the SPA, the restriction contained in Clause 14.1.2 of the SPA is not limited in time. The Commission is of the view that, when read in the context of Clause 14 as a whole, Clause 14.1.2 of the SPA appears to function as a 'non-disparagement' clause rather than a 'non-compete' clause. For this reason, the Commission has not reached a view as to whether or not Clause 14.1.2 of the SPA is directly related and necessary to the implementation of the Proposed Transaction. Therefore, the Commission considers that Clause 14.1.2 of the SPA will not benefit from the protections offered by sections 4(8) and 5(3) of the Act.

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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 MPBM Holdings Limited, through its wholly owned subsidiary MBM Brooks Limited, would acquire sole control of Papoulas Limited and its three subsidiaries, Premier Forest ROI Limited, Brooks Timber & Building Supplies Limited and The Dublin Plywood & Veneer Company 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