

DETERMINATION OF MERGER NOTIFICATION M/21/038 – PMI GROUP / FERTIN PHARMA

Section 21 of the Competition Act 2002

Proposed acquisition by PMI Global Services Inc. of sole control of Claudio HoldCo A/S, the parent entity of the corporate group trading as Fertin Pharma A/S

Dated: 13 August 2021

1. On 28 July 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 PMI Global Services Inc. (“PMI Global”) would acquire sole control of Claudio HoldCo A/S, the parent entity of the corporate group trading as Fertin Pharma A/S (“Fertin”) (the “Proposed Transaction”).

2. The business activities of the undertakings involved are:
 - The Acquirer: PMI Global is a part of the Philip Morris International Inc. (“PMI Group”). The PMI Group is an international tobacco company engaged in the manufacture and sale of cigarettes, cigarillos and roll your own tobacco products, as well as smoke-free products, associated electronic devices and accessories, and other tobacco and non-tobacco nicotine containing products. The PMI Group does not manufacture or sell any Nicotine Reduction Therapy (“NRT”) product in the State.

 - The Target: Fertin is a Danish contract development and manufacturing organisation with a specialism in oral and intra-oral delivery technologies for pharmaceutical and consumer healthcare applications. Fertin is active in four primary fields of application, namely, nicotine reduction therapy, oral non-tobacco nicotine containing products, select consumer healthcare and cannabinoids.



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 18(1)(a) of the Act since none of the undertakings involved in the merger or acquisition are active or potentially active in the same product and geographic markets, or in any market(s) which is upstream or downstream to a market(s) in which another undertaking is active in the State.
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 19 of the Share Sale and Purchase Agreement dated 30 June 2021 (“SPA”). The parties submit that these restrictions are directly related and necessary to the Proposed Transaction.
6. The restrictions contained in Clause 19 of the SPA relate to the future relationship between the buyer and the seller, which is located outside of the State. Therefore, the Commission does not propose to express an opinion as to whether the restrictive covenants in the SPA are directly related and necessary for the implementation of the Proposed Transaction as they relate to the State.



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 PMI Global Services Inc. would acquire sole control of Claudio HoldCo A/S, the parent entity of the corporate group trading as Fertin Pharma A/S, 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

Competition Enforcement and Mergers