



DETERMINATION OF MERGER NOTIFICATION M/21/046 – BANK OF IRELAND/DAVY (WEALTH MANAGEMENT AND CAPITAL MARKETS)

Section 21 of the Competition Act 2002

Proposed acquisition by Bank of Ireland Nominee 1 Limited of sole control of the wealth management and capital markets business of Amber Note Unlimited Company

Dated 6 December 2021

Introduction

1. On 20 August 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 Bank of Ireland Nominee 1 Limited (“BOIN1”), a wholly owned subsidiary of The Governor and Company of the Bank of Ireland (“Bank of Ireland”), would acquire sole control of the capital markets and wealth management divisions of Amber Note Unlimited Company (“Amber Note”), the parent company of J&E Davy Holdings (“Davy”) (the “Proposed Transaction”). Bank of Ireland and Amber Note are the notifying parties (the “Parties”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement dated 22 July 2021 between Ailmount Investments Unlimited Company (“Ailmount”), the parent company of Amber Note, BOIN1 and Bank of Ireland (the “SPA”). Pursuant to the SPA, Bank of Ireland, through BOIN1, will acquire the entire issued share capital, and thus sole control, of the wealth management and capital markets business of Amber Note.

The Undertakings Involved

The Acquirer – Bank of Ireland

3. Bank of Ireland, registered in the State, is a financial services group providing a wide range of banking and financial services in the State and the United Kingdom.
4. In the State, Bank of Ireland is active in the provision of retail banking products and services to personal and business customers. As part of its retail banking activities in the State, Bank of Ireland provides residential/owner occupier mortgages and buy to let mortgages at a variety of fixed and variable rates. Bank of Ireland also provides services



- including current and deposit accounts, associated services such as payment cards and overdraft facilities, and credit facilities to personal and business customers in the State.¹
5. Bank of Ireland provides wealth management products to a wide range of customers in the State, primarily as a bank and, to a lesser extent, as an assurance company through its wholly owned subsidiary New Ireland Assurance Company P.L.C (“New Ireland”).
 6. In the State and the United Kingdom, Bank of Ireland provides capital markets services which comprise of corporate banking services, property finance services, leveraged acquisition finance services and global markets services. Bank of Ireland also provides life insurance, life assurance and pension products in the State through New Ireland.
 7. For the financial year ending 31 December 2020, Bank of Ireland’s worldwide turnover was €3.3 billion, of which €2.2 billion was generated in the State.

The Target – Amber Note/Davy

8. Amber Note, a private unlimited company registered in the State, is [...], with offices in the State, the United Kingdom and Luxembourg.
9. Amber Note, which trades as Davy in the State through its subsidiary Davy, comprises of three operating divisions:
 - (i) Wealth Management: Amber Note provides both discretionary and advisory wealth management services in the State and in Northern Ireland;
 - (ii) Capital Markets: Amber Note provides capital markets services in the State and the United Kingdom. These services include equity capital markets, corporate broking, corporate advisory services, equity trading and equity research; and
 - (iii) Global Fund Management: Amber Note, through its division *Davy Global Fund Management*, provides asset management services in the State.²
10. Amber Note provides real estate services in the State through its subsidiary Davy Real Estate Limited, a real estate investment manager which acquires and operates real estate assets. Amber Note also provides a credit union consultancy service in the State.
11. For the financial year ending 31 December 2020, Amber Note’s worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

Rationale for the Proposed Transaction

12. Bank of Ireland states the following in the notification:

¹ On April 16 2021, the proposed acquisition by Bank of Ireland of certain assets and liabilities of KBC Bank Ireland P.L.C was notified to the Commission. For more information, please see:

<https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-21-021-bank-of-ireland-certain-assets-of-kbc/>

² This division is not being acquired as part of the Proposed Transaction. The Parties state in the notification that the Global Fund Management Division is being acquired by a third party unrelated to Bank of Ireland and the Proposed Transaction.



“Bank of Ireland considers that Davy's market offering and robust and diversified recurring income streams offers an attractive opportunity to grow Bank of Ireland's wealth footprint and the Proposed Transaction closes a number of gaps identified in Bank of Ireland's wealth and insurance strategy and product offerings that had previously been deprioritised. Bank of Ireland management considers that the acquisition of [Davy] offers a number of attractive synergies for both parties and customers.”

Contact with the Undertakings Involved

13. On 29 September 2021, the Commission served a Requirement for Further Information (“RFI”) on each of Bank of Ireland and Amber Note pursuant to section 20(2) of the Act. The service of these RFIs adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.
14. Upon receipt of full responses from Bank of Ireland and Amber Note on 27 October 2021, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act)³ became 27 October 2021.
15. During its investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the Parties involved in the Proposed Transaction.

Market Enquiries

16. During its investigation, the Commission conducted market enquiries which included issuing questionnaires to a number of customers of the Parties. The Commission received full responses from the majority of the customers that it contacted.

Third Party Submissions

17. No third party submission was received.

Competitive Analysis

Horizontal Overlap

18. There is a horizontal overlap between the business activities of Bank of Ireland and Amber Note in the State in relation to the provision of investment and wealth management services.
19. While both Bank of Ireland and Amber Note provide what the notification refers to as “capital markets” products and services in the State, the products and services provided by the Parties are different. The Parties state the following in the notification: “*the term*

³ The “appropriate date” is the date from which the time limits for making Phase 1 or Phase 2 determinations begin to run.



capital markets is an umbrella term (like 'economics' or 'law') applied differently by different parties. Bank of Ireland and Davy use the same term 'capital markets' to describe different products. ... there is no overlap in the products or services offered by the parties in the area of 'capital markets'." The Commission has examined the "capital markets" products which both parties provide and considers that there is no horizontal overlap between the Parties in the provision of capital markets products and services in the State.

20. There is also a minor horizontal overlap between Bank of Ireland and Amber Note in the State in relation to the distribution of life insurance products. As mentioned in paragraph 5 above, Bank of Ireland distributes life insurance products through New Ireland. Bank of Ireland is also a tied agent/intermediary of New Ireland for life assurance and pension products. Davy does not underwrite life insurance products and has minimal activities in the distribution of life insurance products in the State. The Parties state in the notification that Amber Note generated commissions amounting to €[...] from distributing life insurance products in the State in 2020.⁴
21. There are a number of distributors of life insurance products currently active in the State, including Aviva Life and Pensions Ireland DAC, Irish Life Assurance P.L.C, VHI Insurance DAC and Zurich Life Assurance P.L.C. The Commission considers that, given the minimal turnover generated by Amber Note in the distribution of life insurance products in the State and the fact that there are a large number of entities currently active in the distribution of life insurance products in the State, the Proposed Transaction does not give rise to any horizontal competition concerns in the distribution of life insurance products in the State. Accordingly, the Commission does not consider it necessary to consider the activities of Bank of Ireland and Amber Note in the distribution of life insurance products in the State any further in this determination.

Vertical Relationship

22. There is a vertical relationship between the business activities of Bank of Ireland and Amber Note in the State. Bank of Ireland provides banking services to Amber Note including, for example, [...].
23. On the basis of the information available to the Commission during its review of the Proposed Transaction, the Commission considers that the vertical relationship between Bank of Ireland and Amber Note in the provision of the banking services does not raise any vertical foreclosure concerns in the State.
24. Specifically, in relation to the banking services provided by Bank of Ireland to Amber Note, there are other banking institutions who will continue to provide these banking services in the State following the implementation of the Proposed Transaction. The Commission therefore considers that the vertical relationship between Bank of Ireland and Amber Note raises no vertical foreclosure concerns in the State.

Market Definition

Relevant Product Market

⁴ The Parties state in the notification that, on average, Amber Note earns between €[...] to €[...] per annum in commissions from the distribution of life insurance products in the State.



25. The Commission defines the markets to the extent necessary depending on the particular circumstances of a given case. The Commission has previously examined transactions involving the provision of investment and wealth management services. In *M/21/012 – AIB/Goodbody*, the Commission stated the following regarding the provision of investment and wealth management services:

“It is not necessary for the Commission to conclude on the relevant product markets in respect of the provision of investment and wealth management services because, regardless of whether the potential product market is defined narrow (e.g., separate markets for the provision of investment and wealth management services to high-net worth individuals and mass-affluent individuals), or broader (e.g., investment and wealth management services for a mass market)” the Proposed Transaction is unlikely to raise any competition concerns. For the purpose of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the potential market for the provision of investment and wealth management services.”⁵

26. Bank of Ireland provides wealth management services to a wide range of customers including mass market, mass affluent, high net worth (“HNW”) individuals, corporates and small and medium sized enterprises. Amber Note provides both discretionary and advisory services to customers through its wealth management division. [The majority of] Amber Notes’ customers are either HNW customers or mass affluent customers. Amber Note also operates an “execution only” service called Davy Select. Davy Select is an investment platform serving clients directly and via intermediaries. The Parties state in the notification that customers “*may not invest all their investable wealth with one wealth provider or in one wealth manager product or service.*” Instead, customers of wealth management services will deliberately spread their wealth with different providers so as to spread risk. Therefore, the competitors that operate in the wealth management sector provide a range of investment and management options to all customer segments including HNW individuals, mass-affluent and mass market.⁶

27. In this instance it is not necessary for the Commission to conclude on the precise relevant product markets in respect of the provision of investment and wealth management services because, regardless of whether the potential product market is defined on a narrow basis (e.g., separate product markets for the provision of investment and wealth management services to HNW individuals, mass affluent individuals, etc.), or more broadly (e.g., the provision of investment and wealth management services to all types of customers), the Proposed Transaction is unlikely to raise any competition concerns. For the purposes of assessing whether the Proposed Transaction will result in a substantial lessening of competition, the Commission has not found any reasons to depart from the approach previously taken in *M/21/012 – AIB/Goodbody* and has

⁵ See paragraph 29 of merger determination *M/21/012 – AIB/Goodbody* which can be accessed at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2021/03/2021.07.19-M.21.012-Determination-Public.pdf>

⁶ The Parties acknowledge in the notification that these terms are defined differently across the industry. Typically, wealth management providers consider that customers with investable assets of (a) [...] are mass affluent; (b) [...] are HNW; and [...] are ultra HNW.



analysed the likely competitive impact by reference to the potential market for the provision of investment and wealth management services.⁷

Relevant Geographic Market

28. With respect to the relevant geographic market for the provision of investment and wealth management services, the Commission, in *M/21/012 – AIB/Goodbody*, left the precise geographic market definition open but analysed the competitive impact of that proposed transaction by reference to the narrowest potential geographic market, i.e., the State.⁸ For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has not found any reasons to depart from the approach previously taken in *M/21/012 – AIB/Goodbody* and has analysed the likely competitive impact of the Proposed Transaction in the State.

Conclusion on Market Definition

29. For the purposes of its competitive analysis of the horizontal overlap between Bank of Ireland and Amber Note, the Commission has analysed the competitive impact of the Proposed Transaction in the potential market for the provision of investment and wealth management services in the State.

Competitive Assessment

The Provision of Investment and Wealth Management Services in the State

Market Structure

30. Table 1 below provides estimated market shares in the provision of investment and wealth management services in the State in 2020. In the notification, the Parties provide two different share estimates, based on: (i) an estimate of total market size by PricewaterhouseCoopers Ireland Unlimited Company (“PWC”) on behalf of Amber Note of the invested financial assets of the top 10% of the wealthiest households in the State; and (ii) an estimate of total market size by PWC on behalf of Amber Note of the investable financial assets of the top 10% of the wealthiest households in the State. These share estimates are calculated based on the estimated assets under management (“AUM”) of the investment and wealth management services providers in the State.
31. PWC estimated the total market size for both invested and investable assets based on the financial assets of the top 10% of wealthiest households in the State as this approach focuses on Amber Note’s target customer market. The Commission considers this to be a conservative approach to calculating market shares in the provision of investment and wealth management services in the State. Following this approach, the market shares of Amber Note and other investment and wealth management services providers who focus on the top 10% of wealthiest households may look larger and retail wealth management services providers, such as Irish Financial Advisors (“IFAs”) and life insurers, may look smaller. This is because the AUM of IFAs and life insurers is spread across all households

⁷ This includes the provision to high-net worth individuals, mass-affluent individuals and mass market individuals.

⁸ See paragraph 30 of merger determination *M/21/012 – AIB/Goodbody* which can be accessed at: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2021/03/2021.07.19-M.21.012-Determination-Public.pdf>



rather than focused on the top 10% of wealthiest households in the State. Alternatively, if the addressable market were defined as the financial assets of the top 50% or top 100% of wealthiest households in the State, this would dilute the market shares of the merged entity as it would include more AUM held by IFAs and life insurers.

32. PWC estimated the total market size for invested assets of the top 10% of the wealthiest households in the State in 2020 to be [between €[...] and [...]].⁹ [For ease of estimating the market shares, the Commission uses the mid-point of €[...] as the estimated total market size for invested assets of the top 10% of the wealthiest households in the State in 2020]. The shares of supply based on an estimated market size of €[...] invested assets are shown in column 2 of Table 1 below. PWC estimated the total market size for investable assets of the top 10% of the wealthiest households in the State in 2020 to be €[...].¹⁰ The shares of supply based on an estimated market size of €[...] investable assets are shown in column 3 of Table 1 below.

Table 1: The Provision of Investment and Wealth Management Services in the State, Estimated Annual Share of Supply, 2020

Providers	% of PWC estimated total market size of €[...] (invested assets)	% of PWC estimated total market size of €[...] (investable assets)
Amber Note (Davy Wealth Management)	[25-30]% ¹¹	[15-20]%
Bank of Ireland	[5-10]%	[0-5]%
Combined	[30-35]%	[20-25]%
AIB/Goodbody	[10-15]%	[5-10]%
Irish Life (part of Great Lakes of Canada)	[10-15]%	[5-10]%
Cantor Fitzgerald Ireland Ltd	[5-10]%	[5-10]%
Brewin Dolphin Wealth Management Limited	[5-10]%	[5-10]%
Key Capital Investment Management Limited	[0-5]%	[0-5]%
Quilter International Ireland DAC	[0-5]%	[0-5]%
Appian Asset Management (Nominees) DAC	[0-5]%	[0-5]%
Bank Julius Baer Europe S.A.	[0-5]%	[0-5]%

⁹ PWC estimated the total market size of invested assets using data from the Central Bank of Ireland, the Central Statistics Office, company accounts, company websites and PWC analysis.

¹⁰ PWC estimated the total market size of investable assets using data from the Central Bank of Ireland and the Central Statistics Office. The difference between the market size of invested and investable assets refers to the household financial assets which are held in currency/deposits mainly in retail banks in the State.

¹¹[In Table 1, Amber Note's estimated share of supply based on AUM of Davy Private Client combined with the AUM of Davy Select Davy. An alternative method to calculate Amber Note's estimated share of supply is to base the estimate on Davy Private Client AUM only, as Davy Private Client is focused on the top 10% wealthiest households in the State. On the basis of Davy Private Client AUM only, Amber Note's estimate share of supply in Table 1 columns 2 and 3 would be [15-20%] and [10-15%] respectively.]



Smith & Williamson Investment Management (Ireland) Limited	[0-5]%	[0-5]%
Other ¹²	[15-20]%	[40-45]%
Total	100%	100%

Source: *The Parties*

33. On the basis of the information available to the Commission during its review of the Proposed Transaction, the Commission considers that the Proposed Transaction raises no horizontal competition concerns in the provision of investment and wealth management services in the State for the reasons set out below.
34. First, Bank of Ireland's share of supply in the potential market for the provision of investment and wealth management services in the State in 2020 is relatively small, irrespective of how the shares of supply are calculated (ranging from [0-5]% to [5-10]%, as set out in Table 1 above).
35. Second, following implementation of the Proposed Transaction, the merged entity will continue to face a competitive constraint from a number of providers of investment and wealth management services in the State, including AIB, Cantor Fitzgerald Ireland Limited and Brewin Dolphin Wealth Management Limited.
36. Third, the majority of the customers of the Parties contacted by the Commission during its review of the Proposed Transaction expressed no competition concerns about the Proposed Transaction. A number of customers expressed the view that there are a large number of alternative providers of investment and wealth management services currently active in the State, such as those listed in Table 1 above.
37. Finally, Amber Note and Bank of Ireland are not especially close competitors in the provision of investment and wealth management services in the State. Bank of Ireland provides investment and wealth management services to a wide range of customers in the State. In contrast, most of Amber Note's customers are either HNW or mass affluent individuals. Estimates provided to the Commission by Bank of Ireland indicate that whereas [...] % of Amber Note's estimated share of supply (based on AUM) in the provision of investment and wealth management services in the State in 2020 was attributable to HNW customers, only [...] % of Bank of Ireland's share of supply in 2020 was attributable to HNW customers.

Conclusion on competitive analysis

38. 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

39. Section 1 of the SPA describes both Restrictive Covenant Agreements and Employment RCA Agreements, which will be entered into on completion of the Proposed Transaction. Annex 13 of the notification provided a sample Restrictive Covenant Agreement and Employment RCA Agreement. Clause 1.2.1 of the sample Restrictive Covenant Agreement

¹² The "other" category includes independent financial advisors and retail LifeCo's.



- and Clause 2.3 of the sample Employment RCA contain non-compete and non-solicitation clauses.
40. The restraints in the sample Restrictive Covenant Agreement and the sample Employment RCA Agreement do not exceed the maximum scope and duration acceptable to the Commission.¹³ The Commission considers that they are directly related to and necessary for the implementation of the Proposed Transaction, in so far as they relate to the State.
 41. The Parties also submit in the notification that the sample Restrictive Covenant Agreement contains a clause in relation to the non-solicitation of employees that the Parties consider to be directly related and necessary to the implementation of the Proposed Transaction.
 42. Following engagement with the Commission, the parties subsequently withdrew their request that the non-solicitation of employees clause in the sample Restrictive Covenant Agreement be considered by the Commission as a restriction that is directly related and necessary to the implementation of the proposed transaction. This clause is therefore not addressed in this determination as an ancillary restraint.

¹³ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see: [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 transaction whereby Bank of Ireland Nominee 1 Limited, a wholly owned subsidiary of The Governor and Company of the Bank of Ireland, would acquire sole control of the capital markets and wealth management divisions of Amber Note Unlimited Company, the parent company of J&E Davy Holdings, 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