



DETERMINATION OF MERGER NOTIFICATION M/22/042 – ARACHAS/GLENNON

Section 21 of the Competition Act 2002

Proposed acquisition by Arachas Bidco Designated Activity Company of sole control of Frank Glennon Limited, and Administration and Management Services Limited, together with their subsidiaries

Dated: 16 September 2022

Introduction

1. On 10 August 2022, 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 Arachas Bidco Designated Activity Company (“Arachas”) would acquire 100% of the issued share capital, and thus sole control, of (i) Frank Glennon Limited, and (ii) Administration & Management Services Limited, together with their subsidiaries (“Glennon”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement dated 29 July 2022, between Arachas, Ardonagh Midco 3 plc, David Glennon and the Sellers¹ (the “SPA”).

The Undertakings Involved



The Acquirer – Arachas

3. Arachas is wholly owned by Arachas Midco Designated Activity Company, which is in turn wholly owned by Arachas Topco Limited, a private company limited by shares, registered in England and Wales.
4. Arachas distributes commercial and personal non-life insurance products through its retail and wholesale channels predominantly to customers located in the State.² Arachas’ wholesale distribution business includes the following non-life insurance products:



¹ Galsesburg Securities Unlimited Company and John Bisset (together the “Sellers”).

² Arachas has office locations in Dublin, Cork, Waterford, Galway, Limerick, Tipperary, Birr, Kildare, Tullamore, Sligo, Letterkenny, Cavan, Wexford, Kilkenny and Castlebar.



- i. Construction liability;
 - ii. Tradespersons liability;
 - iii. Property;
 - iv. Professional indemnity;
 - v. Home (owner occupied and non-owner occupied);
 - vi. Mobile home & caravan;
 - vii. Private motor;
 - viii. Commercial vehicle;
 - ix. Childcare providers;
 - x. Sports liability; and,
 - xi. Security, cleaning & recruitment agencies.
5. Arachas has a focus on the small and medium-sized enterprises (“SME”) sector, and the majority of Arachas’ insured business customers, from both direct distribution and indirect distribution through wholesale, are SMEs.
6. For the financial year ending 31 December 2021, Arachas’ worldwide turnover was €[], [] of which was generated in the State.

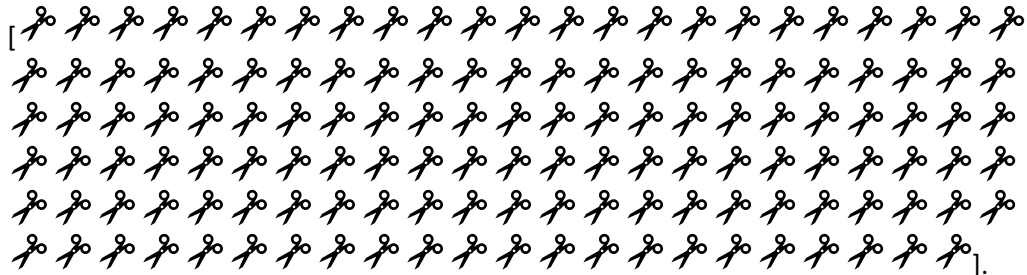
The Target - Glennon

7. Glennon is a family-owned independent insurance broker, providing life and non-life insurance intermediary and associated services to private and commercial customers. Glennon is based in Dublin and trades under the *Glennons* brand.
8. Glennon operates through four divisions:
- i. commercial insurance lines;
 - ii. personal insurance lines;
 - iii. life and pensions; and
 - iv. third party administration.
9. For the financial year ending 31 December 2021, Glennon’s worldwide turnover was €[] million, [] of which was generated in the State.

Rationale for the Proposed Transaction



10. The parties state the following in the notification:

[].

Market Enquiries

11. During its investigation, the Commission conducted market enquiries which included the issuance of written questionnaires to known competitors of Arachas and Glennon. The Commission received a response to a majority of those questionnaires.

Third Party Submissions

12. No third party submission was received.

Industry background: Wholesale insurance broker and retail broker

13. The parties operate as intermediaries for the distribution of non-life insurance products. They do not produce insurance products but rather distribute insurance products to end-users. Arachas and Glennon also act as a wholesale distributors of non-life insurance products. Wholesale brokers have agreements with insurance providers/producers to distribute insurance products to other brokers. In the agreements the insurance providers/producers authorise the wholesaler to set the price (within set parameters) of insurance to brokers who then sell the products to end-users. The wholesaler does not become the insurer and does not accept risk.
14. The wholesale brokers then in turn conclude agreements with retail brokers (known as sub-brokering agreements) to distribute insurance products. In the State wholesale brokers include managing general agents,³ underwriting agents and other insurance brokers with divisions dedicated to wholesale brokering.

Competitive Analysis

15. There is a horizontal overlap between the business activities of the parties in the distribution of non-life insurance products in the State.

³ The parties state in the notification that managing general agents are a specialised type of insurance intermediary that has been granted underwriting authority by an insurer and can administer programs and negotiate contracts for an insurer.



16. The parties state in the notification that there is a vertical relationship between their activities in the State as Arachas is a wholesale distributor of non-life insurance products to Glennon.

Relevant Product and Geographic Markets

17. The Commission defines the markets to the extent necessary depending on the particular circumstances of a given case. In this instance, however, the Commission does not need to come to a definitive view on the precise relevant product and geographic markets as its views on the likely competitive impact of the Proposed Transaction are unaffected regardless of the precise relevant markets adopted. For the purposes of its assessment of the likely competitive impact of the Proposed Transaction, the Commission has considered the potential product and geographic markets described below.
18. The European Commission (the “EC”) has, in its determinations, made a distinction between the distribution of life and non-life insurance products.⁴ The EC also considered whether it is appropriate to sub-divide non-life and life insurance further on the basis of business sectors or the type of risk insured. The EC did not definitively conclude as to whether these segments constitute distinct product markets. However, the EC noted that from a supply-side, substitutability exists as, (i) the same competitor set offers services to all customer types, and (ii) insurers rely on the same resources (e.g. IT systems and personnel) in order to service all customer types.
19. The Commission followed the EC’s approach in *M/17/010 - Liberty/Ironshore* by distinguishing between the distribution of life and non-life insurance products and segmenting non-life insurance products by the insured risk.⁵ The Commission also further considered segmenting the market by customers (i.e. commercial customers and private individual customers). However, in that case, the Commission did not definitively conclude on the precise market definition.
20. In *M/21/034 – Arachas/Hooper Dolan*, the Commission considered the competitive effects of the transaction with reference to:⁶
- i. the wholesale distribution of non-life insurance products in the State;
 - ii. the distribution of non-life insurance products in the state (intermediary services); and,

⁴ See paragraph 10 of Case No COMP/M.8010 Irish Life/Aviva Health/Glohealth, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016M8010> paragraphs 8 and 19 of IV/M.1307 -Marsh&McLennan/Segwick https://ec.europa.eu/competition/mergers/cases/decisions/m1307_en.pdf and paragraph 11 of *M.8257- NN Group/Delta Lloyd* https://ec.europa.eu/competition/mergers/cases/decisions/m8257_1125_3.pdf.

⁵ See *M/17/010 - Liberty/Ironshore* paragraph 12 to 15, <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-17-010-Liberty-Ironshore-Public.pdf>.

⁶ See paragraphs 21 and 22 of <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2021/07/2021.09.17-Arachas-Hooper-Dolan-Public-Determination-2.pdf>



- iii. the distribution of non-life insurance products by risk insured (i.e. property, employers' liability, public liability, private car & van) and type of customers (i.e. commercial and private individual) in the State.
21. The Commission considers that it is not necessary to come to a definitive view on the relevant product markets in this instance because the Proposed Transaction is unlikely to raise any competition concerns regardless of whether the potential product market is defined narrowly (e.g. by segmenting by risk insured and type of customer) or more broadly (e.g. provision of all non-life insurance products to all customers). However, for the purpose of its assessment, the Commission has assessed the likely competitive impact of the Proposed Transaction with reference to both the broad (i.e. the provision of all non-life insurance products to all customers) and narrow (i.e. segmenting by risk insured and type of customers) markets.
22. With respect to the relevant geographic market definition, the Commission⁷ and EC⁸ left the precise geographic market open in previous decisions but analysed the relevant transactions on a national basis. The Commission has not found any reason to deviate from this approach and has analysed the Proposed Transaction by reference to the State.

Conclusion on relevant product and geographic market

23. For the purposes of its competitive analysis of the horizontal overlaps that exist between the parties, the Commission has assessed the competitive impact of the Proposed Transaction in the following potential product and geographic markets:
 - a) the wholesale distribution of non-life insurance products in the State;
 - b) the distribution of non-life insurance products in the state (intermediary services); and,
 - c) the distribution of non-life insurance products by risk insured (i.e. property, employers' liability, public liability, private car & van) and type of customers (i.e. commercial and private individual) in the state.
24. For the purpose of its competitive analysis of the vertical overlaps that exist between the parties, the Commission has assessed the competitive impact of the Proposed Transaction in the potential upstream market for the wholesale distribution of non-life insurance products in the State and the downstream market for the distribution of non-life insurance products in the State.

Competitive Assessment

Wholesale distribution of non-life insurance products

25. 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

⁷ See paragraph 16 of <https://www.cccp.ie/business/wp-content/uploads/sites/3/2017/04/M-17-010-Liberty-Ironshore-Public.pdf>.

⁸ See paragraphs 24 and 25 of Case No COMP/M.8010 Irish Life/Aviva Health/Glohealth, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016M8010> and paragraph 21 of IV/M.1307 - Marsh&McLennan/Segwick https://ec.europa.eu/competition/mergers/cases/decisions/m1307_en.pdf.



horizontal competition concerns in the potential market for the wholesale distribution of non-life insurance products in the State, for reasons set out below.

26. Firstly, the parties submit that Arachas has an estimated share of [10-20]% in the wholesale distribution of non-life insurance products. Glennon has less than [0-10]% share in the wholesale distribution of non-life insurance products in the State. The Proposed Transaction therefore results in minimal share accretion and, following implementation of the Proposed Transaction, Arachas will have less than [10-20]% combined share in the potential market for the wholesale distribution of non-life insurance products in the State.⁹
27. Secondly, there are a number of wholesale distributors of non-life insurance products to customers currently active in the State which will act as a competitive constraint on the parties following implementation of the Proposed Transaction. These competitors include Willis Towers Watson Public Limited Company ([10-20]% share) (“Willis Towers”), Wrightway Underwriting Limited ([10-20]%) (“Wrightway”), KennCo Underwriting Limited trading as KennCo Insurance ([10-20]%) (“KennCo”) and Ornella Underwriting Limited ([0-10]%) (“Ornella”).
28. In light of the above the Commission is of the view that the Proposed Transaction is unlikely to raise concerns in the potential market for the wholesale distribution of non-life insurance in the State.

Distribution of non-life insurance products (on both a broad and a narrow basis)

29. 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 either on the broad (i.e. distribution of all non-life insurance products to all customers) or any narrower (i.e. based on risk insured and customers) potential markets for the distribution of non-life insurance products in the State for the reasons set out below.
30. Firstly, Table 1 below sets out the estimated shares of the parties for the distribution of non-life insurance products based on Gross Written Premiums (“GWP”).¹⁰

⁹ Source: Commission analysis of market share information provided by the parties.

¹⁰ All share figures throughout this determination refer to Gross Written Premium (“GWP”). This is the total insurance premium that is payable by the customer and is distinct from turnover shown in each entity's accounts, which will include only the commission and fees payable to the broker on each policy.



Table 1: Estimated shares of the parties in the broad (i.e. all non-life insurance products to all customers) and narrow (i.e. based on risk insured and customers) potential markets for the distribution of non-life insurance products for 2021

Class of Business Analysis	Pre-merger share		Post-merger Share	Competitors	Total
	Arachas	Glennon			
Combined non-life insurance products	[0-10]%	[0-10]%	[10-20]%	[80-90]%	100%
Breakdown according to insured asset and customer					
Combined Commercial Lines (insurance according to risk insured to commercial customers)	[10-20]%	[0-10]%	[10-20]%	[80-90]%	100%
Property	[10-20]%	[0-10]%	[10-20]%	[80-90]%	100%
Employers' Liability	[10-20]%	[0-10]%	[20-30]%	[70-80]%	100%
Public Liability	[10-20]%	[0-10]%	[10-20]%	[80-90]%	100%
Motor	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Professional Indemnity	[20-30]%	[0-10]%	[20-30]%	[70-80]%	100%
Marine, Aviation and Transit	[10-20]%	[0-10]%	[10-20]%	[80-90]%	100%
Credit & Surety	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Combined personal lines (insurance according to risk insured to private individual customers)	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Home	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Private Car & Van	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%
Other Personal Lines	[0-10]%	[0-10]%	[0-10]%	[90-100]%	100%

Source: The Commission based on its market enquiries and information provided by the parties

31. In respect of distribution of non-life insurance products in the State, Table 1 shows that Arachas and Glennon have [0-10]% and [0-10]%, estimated share, respectively. Therefore, the Proposed Transaction results in a minimal share accretion to Arachas in the broad potential market for the distribution of non-life insurance products in the State.
32. In respect of the narrow potential market for the distribution of non-life insurance products to commercial customers, Table 1 shows that, overall, the parties have a combined share of [10-20]%. From a narrow perspective, which is the distribution of non-life insurance by risk insured (i.e., (i) property insurance, (ii) employer's liability insurance, (iii) public liability insurance, (iv) motor insurance, (v) Professional indemnity, (vi) Marine, Aviation and Transit and (vii) Credit and Surety, Arachas has a share of less than [20-30]% in each potential market. Glennon have minimal shares of less than [0-10]% in the distribution of non-life insurance products by risk insured except in the provision of professional indemnity insurance where they have [0-10]% share. Following



- implementation of the Proposed Transaction, Arachas will have a share of approximately [20-30]% in the provision of professional indemnity insurance, however, Arachas will continue to face competitive pressure in the distribution of professional indemnity insurance from well-established competitors such as Marsh Limited (“Marsh”), ([30-40]% share) Willis Towers ([0-10]%), Aon Ireland Limited (“Aon”), ([0-10]%) and Aston Lark Europe LIMITED (“Aston Lark”) ([10-20]%).¹¹
33. In respect of the narrow potential market for the distribution of non-life insurance products to individual customers, Table 1 shows that, overall, the parties will have a combined share of [0-10]% following implementation of the Proposed Transaction. Even on the distribution of non-life insurance products by risk insured, namely, (i) home, (ii) private car and van and (iii) other personal lines, Table 1 shows that the parties’ combined share is less than [0-10]% in each narrow potential market. Overall the Proposed Transaction results in minimal market share accretion regardless of the potential market adopted.
34. Lastly, there are a number of insurance distributors which will continue to exert a competitive constraint on the merged entity following implementation of the Proposed Transaction, such as Aon, Marsh, Willis Towers, Campion Insurances Limited, Innovu Group Holding Company Limited, and Aston Lark.¹²
35. In light of the above, the Commission is of the view that the Proposed Transaction is unlikely to raise competitive concerns in respect of the horizontal overlaps in the State.

Vertical overlap

36. There is an existing vertical relationship between the parties in the State as Arachas is a wholesale distributor of non-life insurance products to Glennon. On the basis of the information available to the Commission during its review of the Proposed Transaction, the Commission considers that the Proposed Transaction is unlikely to lead to input and/or customer foreclosure concerns for the reasons discussed below.
37. With regard to input foreclosure, as indicated in paragraph 26, the parties submit that Arachas’ estimated market share is [10-20]% in the wholesale distribution of non-life insurance products in the State. The Commission notes that there are other competitors active in the wholesale distribution of non-life insurance in the State. These competitors, listed in paragraph 27, include Willis Towers, Wrightway, KennCo and Ornella.¹³ Following implementation of the Proposed Transaction, customers in the downstream market will continue to be able to source wholesale non-life insurance products from these competitors.
38. Concerning customer foreclosure, as shown in Table 1 above, Glennon has minimal market share in the potential market for the distribution of non-life insurance products in the State. Even on the basis of a narrow potential product market for the distribution

¹¹ Source: The Commission’s analysis of GWP information submitted by competitors of Arachas.

¹² This is a sample of a list of competitors provided to the Commission by the parties. The parties submit that there are approximately 400 distributors active in the State.

¹³ See paragraph 27 of this Determination for market shares in respect of each of these competitors.



of non-life insurance by risk insured and customers, Glennon has minimal market share of less than [0-10]% in each narrow potential market. The parties submit in the notification that Glennon accounts for less than [0-10]% of Arachas' total GWP. There are a number of alternative customers who are likely to procure insurance products from the competitors of the parties following implementation of the Proposed Transaction.

39. In light of the above the Proposed Transaction is unlikely to raise any vertical foreclosure concerns in the State.

Conclusion on competitive analysis

40. In light of the above, the Commission considers that the Proposed Transaction is unlikely to substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

41. The parties state in the notification that Clause 12 of the SPA contains restrictive covenants including non-compete and non-solicitation obligations on the "Sellers Group" (Seller's Group means [redacted], [redacted] and any company controlled by [redacted] which the parties consider to be directly related and necessary to the implementation of the Proposed Transaction.¹⁴

42. The Commission notes that Clause 12.1(a) of the SPA contains a [redacted] year non-compete obligation on the Sellers Group, [redacted] and any company controlled by [redacted]. The duration of this restrictive covenant does not exceed the maximum duration acceptable to the Commission¹⁵. The Commission considers the restrictive obligations contained in Clause 12.1(a) of the SPA to be directly related to and necessary for the implementation of the Proposed Transaction, insofar as they relate to the State.

43. Clause 12.1(b) restricts the Sellers Group, [redacted] and any company controlled by [redacted] for a period of [redacted] years from the date of completion from either seeking to [redacted].

44. Clause 12.1(c) restricts the Sellers Group, [redacted] and any company controlled by [redacted] for a period of [redacted] years from the date of completion from engaging, employing, soliciting, or contacting with a view to the engagement or employment by any person [redacted].

¹⁴ Seller's Group means [redacted].

¹⁵ 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 [2005] OJ C56/24 (the "European Commission Notice"), available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XC0305%2802%29>.



45. Clause 12.1(e) restricts the Sellers Group, [✂ ✂] and any company controlled by [✂ ✂] for a period of [✂ ✂] years from the date of completion from seeking to [✂ ✂]
[✂]
[✂]
[✂ ✂ ✂ ✂ ✂ ✂ ✂ ✂ ✂]

46. The Commission notes that the restrictions contained in Clauses 12.1(b), 12.1(c) and 12.1(e) of the SPA go beyond the scope of what is considered acceptable to the Commission. The Commission is therefore of the view that Clauses 12.1(b), 12.1(c) and 12.1(e) of the SPA are not directly related and necessary to the implementation of the Proposed Transaction and will not benefit from the protections offered by sections 4(8) and 5(3) of the Act.

47. Clause 12.1(d) of the SPA restricts the Sellers Group, [✂ ✂] and any company controlled by [✂ ✂] from the date of completion from doing or saying [✂ ✂]. The Commission is of the view that, when read in the context of Clause 12 of the SPA as a whole, Clause 12.1(d) of the SPA appears to function as a ‘non-disparagement’ clause rather than a ‘non-compete’ clause. Furthermore, the Commission notes that Clause 12.1(d) of the SPA is not limited in time. For these reasons, the Commission considers that Clause 12.1(d) of the SPA is not directly related and necessary to the implementation of the Proposed Transaction and will not therefore benefit from the protections offered by sections 4(8) and 5(3) of the Act.

48. The Commission notes that Clause 12.3 imposes an obligation upon the [✂ ✂], [✂ ✂] or any body corporate controlled by them not to

[✂]
[✂]
[✂]
[✂]

49. The Commission notes that the restriction contained in Clause 12.3 of the SPA is not limited in time. The Commission is of the view that, when read in the context of Clause 12 of the SPA as a whole, Clause 12.3 of the SPA appears to function as a ‘copyright’ clause rather than a ‘non-compete’ or ‘non-solicitation’ clause. The Commission has not reached a view as to whether or not Clause 12.3 of the SPA is directly related and necessary to the implementation of the Proposed Transaction. Therefore, the Commission considers that Clause 12.3 of the SPA will not benefit from the protections offered by section 4(8) and 5(3) of the Act.



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 Arachas Bidco Designated Activity Company would acquire 100% of the issued share capital, and thus sole control, of (i) Frank Glennon Limited, and (ii) Administration & Management Services Limited, together with their 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