

DETERMINATION OF MERGER NOTIFICATION M/22/035 – DFDS/LUCEY TRANSPORT

Section 21 of the Competition Act 2002

Proposed acquisition by DFDS A/S of the entire issued share capital, and thus sole control, of Lucey Transport Logistics Limited

Dated: 6 September 2022

Introduction

1. On 29 July 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 DFDS A/S (“DFDS”) would acquire the entire issued share capital, and thus sole control, of Lucey Transport Logistics Limited (“Lucey Transport”) (“the Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be effected by means of a Share Purchase Agreement dated 22 July 2022 between (i) DFDS and (ii) four private individuals, namely [...] (the “Sellers”), pursuant to which DFDS will acquire the entire issued share capital of Lucey Transport from the Sellers, thereby acquiring sole control of Lucey Transport (the “SPA”).

The Undertakings Involved

The Purchaser – DFDS

3. DFDS is an international shipping and logistics company headquartered in Copenhagen, Denmark and listed on the Nasdaq Copenhagen stock exchange. DFDS operates through two divisions:
 - the ferry division, which operates ferry routes across Europe and provides freight and passenger transport services and port terminal services; and

- the logistics division, which provides full-load and part-load freight transportation services, warehousing services, and logistics services.
4. DFDS is active in approximately twenty countries across Europe, including Ireland. In the State, DFDS provides ferry services, freight forwarding services,¹ inland transportation² services (which it sub-contracts) and warehousing services, in addition to supply chain management and customs clearance services. DFDS operates ferry and shipping routes between several Irish ports and the Netherlands, France and the UK³ and has warehouses located in counties Cavan⁴ and Tipperary⁵ as well as a warehouse in Belfast⁶.
 5. For the financial year ending 31 December 2021, DFDS's turnover was approximately €2.4 billion, of which approximately €[...] was generated in the State.

The Target – Lucey Transport

6. Lucey Transport is a private company limited by shares incorporated in Ireland, and is a provider of transport and logistics services. Lucey Transport provides domestic transport and warehousing services to customers in the beverage, confectionery, fast-moving consumer goods and packaging sectors. Lucey Transport also provides freight forwarding services. Further, Lucey Transport provides some services in Northern Ireland and does a relatively small amount of business in Great Britain.⁷
7. Lucey Transport's inland transport services comprise both trunking⁸ and transport of containers. This includes both direct customer deliveries, i.e. collecting products from customers' manufacturing plants and delivering same to their desired locations without warehousing those products, and also collecting goods from customers' manufacturing plants and delivering them to warehouses for future onward delivery.

¹ The term 'freight forwarding' is generally used to mean the domestic or international transportation of goods on behalf of customers. This can overlap with inland transportation services

² That is to say, the inland transportation of goods on behalf of customers.

³ DFDS also indirectly provides a shipping service from Dublin to Bilbao, Spain, as agent for a third-party logistics operator, Suardiaz Group, which operates that route.

⁴ Used for storing of finished product for [...].

⁵ Primarily for storage of products for customers in [...].

⁶ For the distribution of cargo throughout Northern Ireland for various customers.

⁷ Approximately [...] of Lucey Transport's turnover can be attributed to sales in Northern Ireland with approximately [...] attributable to sales in Great Britain.

⁸ "Trunking" is the movement of trailers from one location in Ireland to another.

8. Lucey Transport operates primarily from three warehouse locations⁹, namely its national distribution centre [...] at Greenogue Business Park, Dublin and regional transport hubs in Little Island, Cork [...] and Millstreet, Co. Cork [...]. The Little Island warehouse is leased by [...] to [...] but is used by Lucey Transport for parking/fuelling of its relevant vehicles. Lucey Transport also has third-party sub-contractor relationships for the provision of warehousing and inland transport with third-party sub-contractors based in Counties Limerick, Cork, Kerry, Roscommon and Donegal. Lucey Transport provides on-site shunting¹⁰ and inland transport services [...] at its manufacturing site in Clonmel, Co. Tipperary.
9. Lucey Transport's warehousing services are what is commonly referred to as "pick-and-pack" and inventory control. "Pick-and-pack" means that goods are collected from customers and delivered to Lucey Transport's warehouses. The inventory is then controlled and stored for customers at these warehouses where Lucey Transport manages the customer's stock. In time, stock is picked by Lucey Transport staff and "last-mile" delivery is made to regional distribution hubs (i.e. stock is delivered to fulfil orders received by warehousing customers from third parties: for example, for the delivery of food and beverage products).
10. For the financial year ending 31 September 2021, Lucey Transport's turnover was €[...], of which approximately €[...] was generated in the State.

Rationale for the Proposed Transaction

11. The parties state the following in the notification:

"Through the Proposed Transaction, DFDS aims to develop and expand its transport and logistics network on the island of Ireland. Longer term, DFDS hopes to pursue further growth opportunities by growing business volumes across key business lines and offering international transport to [Lucey Transport's] customer base through the former's international network."

⁹[...].

¹⁰ "Shunting" is the internal movement of trailers in a customer's manufacturing facility.

and

“The Sellers’ commercial objective is to maximise the value of their long-term investment in building the business of [Lucey Transport].”

Third-Party Submissions

12. No third-party submission was received.

Competitive Analysis

Horizontal Overlap

13. There are three potential areas of horizontal overlap between the activities of the parties in the State:
 - a. the provision of freight forwarding services;
 - b. the provision of warehousing; and
 - c. the provision of inland transportation of goods on behalf of customers.
14. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product market(s) because the Commission’s assessment of the likely competitive effects of the Proposed Transaction would be the same however those markets were defined. Nonetheless, the Commission has assessed the likely impact of the Proposed Transaction in respect of the three product areas in which the activities of the parties overlap in the State as set out in paragraph 13 above.
15. Similarly, it is not necessary for the Commission to define the precise relevant geographic markets because the Commission’s assessment of the likely competitive effects of the Proposed Transaction in the State would be the same however those markets were defined. Both parties are active on an all-island of Ireland basis; however, the vast majority of Lucey Transport’s activities are attributable to sales made in the State. Moreover, the Commission has not identified any narrower local area issues in this case. Considering this, and following the

approach previously adopted by the Commission,¹¹ for the purpose of its assessment of the Proposed Transaction, the Commission has assessed the likely impact of the Proposed Transaction with respect to the State.

The provision of freight forwarding services in the State

16. There is a horizontal overlap between the activities of the parties in relation to the provision of freight forwarding services in the State. Both DFDS and Lucey Transport provide freight forwarding services in the State. The parties state in the notification that DFDS and Lucey Transport hold relatively small shares of [0-5]% and [0-5]%¹² (respectively) in the provision of freight forwarding services in the State. Following implementation of the Proposed Transaction, DFDS's estimated share of the provision of freight forwarding services in the State will be approximately [0-5]%, representing a relatively small increase of less than [0-5] percentage point.
17. Furthermore, following the implementation of the Proposed Transaction, there will remain a significant number of competitors which will continue to exert a competitive constraint on DFDS in the provision of freight forwarding services in the State, such as Unifeeder A/S, Samskip Ireland Limited, Eucon Shipping and Transport Limited, ECS European Containers Limited, CLdN Group, B.G. Freight Line Limited, Containerships Ireland Limited, Nolan Transport Holdings Limited, Perennial Freight Limited, McBurney Transport Group, LKW Walter Group, DSV Group, Schenker (Ireland) Limited and Kuehne + Nagel (Ireland) Limited.
18. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the provision of freight forwarding services in the State.

The provision of warehousing in the State

19. There is a horizontal overlap between the activities of the parties in relation to the provision of warehousing in the State. Both DFDS and Lucey Transport operate warehouses in the State. The

¹¹ See, for example, the Commission's determination in M/15/072 – *Schenker/Redhead*, available at <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m15072-schenker-redhead/> and the Commission's determination in M/18/065 – *Rhenus / Avant Air and Sea*, available at <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m18065-rhenus-avant-air-sea/>.

¹² Estimates of the parties based on the Department of Business, Enterprise and Innovation report "Focus on Transport and Logistics - August 2020", see <https://enterprise.gov.ie/en/publications/publication-files/focus-on-transport-and-logistics-2020.pdf>.

parties state in the notification that DFDS and Lucey Transport hold relatively small shares of [0-5]% and [0-5]%¹³ (respectively) in the provision of warehousing in the State. Following the implementation of the Proposed Transaction, DFDS's estimated share of the provision of warehousing in the State will be approximately [0-5]%, representing a relatively small increase of approximately [0-5] percentage points.

20. Furthermore, following the implementation of the Proposed Transaction, there will remain a significant number of competitors which will continue to exert a competitive constraint on DFDS in the provision of warehousing in the State, such as DHL Supply Chain (Ireland) Limited, Store-All Logistics Limited, Wincanton Ireland Limited, Primeline Logistics Unlimited Company and Masterlink Logistics Limited.
21. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the provision of warehousing in the State.

The provision of inland transportation of goods on behalf of customers in the State

22. There is a horizontal overlap between the activities of the parties in the provision of inland transportation of goods on behalf of customers in the State. Both DFDS and Lucey Transport provide inland transportation of goods in the State. DFDS subcontracts the inland transportation of goods services which it provides to its customers to other providers including Lucey Transport. The parties state in the notification that DFDS and Lucey Transport hold relatively small shares of [0-5]% and [0-5]%¹⁴ (respectively) in the provision of inland transportation of goods on behalf of customers in the State. Following the implementation of the Proposed Transaction, DFDS's estimated share of the provision of inland transportation of goods on behalf of customers in the State will be approximately [0-5]%, representing a relatively small increase of less than [0-5] percentage point.
23. Furthermore, following the implementation of the Proposed Transaction, there will remain a significant number of competitors which will continue to exert a competitive constraint on DFDS in the provision of inland transportation of goods on behalf of customers in the State, such as

¹³ Estimates of the parties based on the IBISWorld report "Warehousing & Storage in Ireland" prepared by Yusuf Allinson dated June 2021.

¹⁴ Estimates of the parties based on the IBISWorld report "Freight Road Transport in Ireland" prepared by John Griffin dated May 2021.

Kuehne + Nagel (Ireland) Limited, Schenker (Ireland) Limited, DHL Supply Chain (Ireland) Limited, Wincanton Ireland Limited, Nolan Transport Holdings Limited, Perennial Freight Limited, McBurney Transport Group.

24. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the provision of inland transportation of goods on behalf of customers in the State.

Vertical Relationship

25. There is an existing vertical relationship between the activities of the parties in the State. Lucey Transport provides inland transportation of goods to DFDS as outlined at paragraph 22 above. Lucey Transport acts as a sub-contractor to DFDS, collecting loads in Ireland and delivering them to ports for DFDS to ship outside of Ireland on behalf of DFDS customers. Lucey Transport also collects loads at Dublin Port on DFDS's behalf and delivers them to Lucey Transport warehouses on behalf of customers of DFDS. After delivering DFDS's customers' goods to Lucey Transport warehouses, Lucey Transport takes charge of the customer relationship and provides warehousing services in respect of those loads and DFDS's role comes to an end.
26. The parties state in the notification that *"there would be no incentive for the combined entity to refuse to supply inland transport and warehousing to other freight forwarders or other potential customers, as this would substantially reduce the volume of its business"*. In light of the relatively low shares of the parties in each of the relevant sectors as outlined above and the existence of a significant number of competitors in those sectors, the Commission considers that there are unlikely to be any customer foreclosure concerns.
27. Lucey Transport could potentially also source international transport/shipping services from DFDS. Specifically, DFDS provides 'roll-on roll-off' or 'Ro-Ro' ferry services, which Lucey Transport could use. However, Lucey Transport's international transport activities constitute a relatively small amount of business¹⁵. Consequently, the likelihood of foreclosure is limited as there would be no incentive for DFDS to refuse to provide freight forwarding services to competitor inland transporters on any of its shipping routes as doing so would substantially reduce its business.

¹⁵ As indicated above in paragraph 6, footnote 7. Also, the only regular route Lucey Transport uses is from [...] to [...]. DFDS is not active on this route.

28. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

29. 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

30. The parties submitted that Clause 11.2(a) to (e) of the SPA contains restrictions which are directly related and necessary to the implementation of the Proposed Transaction.
31. Clause 11.2(a) to (e) of the SPA imposes certain non-compete and non-solicitation obligations on the Sellers. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission.¹⁶ The Commission considers the restrictive obligations contained in sub-clauses 11.2(a) to (e) of the SPA to be directly related and necessary to the implementation of the Proposed Transaction insofar as they relate to the State.

¹⁶ In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” [2005] OJ C56/24, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XC0305%2802%29>

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 DFDS A/S would acquire the entire issued share capital, and thus sole control, of Lucey Transport Logistics 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