

## DETERMINATION OF MERGER NOTIFICATION M/22/053 – DIF/TALBOT GROUP

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### Section 21 of the Competition Act 2002

#### Proposed acquisition by DIF Core-plus Infrastructure Fund III Coöperatief U.A. of sole control of MIF IE Unlimited Company, Care4U Alpha Unlimited Company and Care4U Beta Unlimited Company (“Talbot Group”)

Dated: 11 October 2022

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1. On 26 September 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 DIF Core-plus Infrastructure Fund III Coöperatief U.A. (“DIF”) would acquire sole control of MIF IE Unlimited Company, Care4U Alpha Unlimited Company and Care4U Beta Unlimited Company (together the “Talbot Group”) (the “Proposed Transaction”).
2. The Proposed Transaction is to be implemented pursuant to a Share Purchase Agreement (“SPA”), dated 23 September 2022, between the Sellers<sup>1</sup>, [...] [...] is a special purpose vehicle entity of DIF which is a private company limited by shares incorporated in the State. DIF will use [...] to acquire the entire issued share capital of: (i) MIF IE Unlimited Company; (ii) Care4U Alpha Unlimited Company; and, (iii) Care4U Beta Unlimited Company (along with the shares of its subsidiaries.)
3. The parties are involved in the following business activities:

#### *DIF*

- DIF is an institutional fund which gives investors – typically pension funds, insurances and funds of funds from Europe, North America and Asia - the opportunity to invest in digital infrastructure, energy transition, transportation and other sectors (including healthcare) in Europe, North America and Australia. Globally, DIF, through its DIF Core Infrastructure Fund III, focuses on small- and mid-sized core-plus infrastructure

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<sup>1</sup> As listed in Part 1 of Schedule 1 to the SPA, being [...].

investments in the telecom, transportation and energy transition sub-sectors. DIF's general partner, DIF Management BV, has the following activities in the State:

- DIF Management BV holds less than 50% interest in Dublin Waste to Energy Facility, also known as the Poolbeg Incinerator. However, it does hold board representation and voting rights such that it is deemed to have control for merger control purposes;
- DIF Management BV holds a controlling interest in several motorway infrastructures across Ireland; and
- DIF Management BV owns 100% of New Park Care Centre in The Ward, Dublin and Ashford House Nursing Home in Dun Laoghaire, Dublin.

#### *Talbot Group*

- The Talbot Group is a provider of services for children and adults with intellectual disabilities in Ireland. The Talbot Group, which is headquartered in Stamullen, Co. Meath, provides residential, respite and day services for children and adults with intellectual disabilities, autism, acquired brain injuries and other complex needs.
  - Excluding the head office, the Talbot Group operates through [...] properties in Ireland, of which [...] are in Meath, [...] are in Louth, [...] are in Dublin, [...] are in Cavan and [...] are in Kildare. In addition to these [...] units, the Talbot Group [...].
  - The Talbot Group is a group consisting of MIF IE, Care4U Alpha and Care4U Beta (together with their subsidiaries including [...]).
4. 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 the Proposed Transaction does not give rise to any horizontal overlaps or vertical relationships between DIF's investments in the State and Talbot Group's activities in the State.
  5. In the 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**

6. The parties state in the notification that Clause 10 of the SPA contains non-compete and non-solicitation obligations which are directly related to and necessary for the implementation of the Proposed Transaction.
7. The Commission notes that Clauses [...] of the SPA contain obligations on the Seller<sup>2</sup>, including a number of non-compete and non-solicitation provisions. The duration of these obligations does not exceed the maximum duration acceptable to the Commission.<sup>3</sup> The Commission considers the restrictive obligations contained in Clauses [...] of the SPA to be directly related and necessary for the implementation of the Proposed Transaction in so far as they relate to the State.
8. Clause [...], relating to non-solicitation provisions, and clause [...], relating to non-compete provisions, were withdrawn by the parties following engagement with the Commission. These clauses are therefore not addressed in this determination as ancillary restraints.

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<sup>2</sup> Seller is defined in the SPA as the legal and beneficial owners of the Companies. The Companies are defined in the SPA as MIF IE, Care4u Alpha and Care4u Beta.

<sup>3</sup> 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 C56/03. For more information see [http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.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 acquisition whereby DIF Core-plus Infrastructure Fund III Coöperatief U.A. would acquire sole control of MIF IE Unlimited Company, Care4U Alpha Unlimited Company and Care4U Beta Unlimited Company 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**