



## DETERMINATION OF MERGER NOTIFICATION M/16/057 – UNIVERSAL INVESTMENT GMBH/LIFFEY VALLEY SHOPPING CENTRE

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### Section 21 of the Competition Act 2002

### Proposed acquisition by Universal-Investment-Gesellschaft mit beschränkter Haftung of Liffey Valley Shopping Centre

Dated 13 December 2016

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#### Introduction

1. On 4 November 2016, in accordance with section 18(1) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby Universal-Investment-Gesellschaft mit beschränkter Haftung (“Universal Investment GmbH”) would acquire Liffey Valley Shopping Centre and adjacent development land located in Dublin 22, on behalf of BVK Highstreet Retail, a German Special-Alternative Investment Fund (the “Fund”).

#### The Proposed Transaction

2. It is envisaged that the proposed acquisition of Liffey Valley Shopping Centre and adjacent development land (the “Target Asset”) by Universal Investment GmbH will be implemented pursuant to a contract for sale which will be entered into by Universal Investment GmbH and each of Liffey Valley Limited, LV Property Phase I Limited and LV Property Phase II Limited (collectively the “Vendors”).<sup>1</sup>
3. Pursuant to the proposed transaction, Universal Investment GmbH will acquire the legal title in the Target Asset, with beneficial ownership in the Target Asset to be acquired by

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<sup>1</sup> Notwithstanding the fact that a formal written agreement had not yet been executed at the time of the notification, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii) of the Act. In October 2016, the parties entered into heads of terms in relation to the proposed transaction and the parties intend to enter into the contract for sale prior to 31 December 2016.



the Fund. The parties state in the notification that Universal Investment GmbH will acquire control over the Target Asset for the purposes of the Act and that the Fund's interest in the Target Asset will be purely economic.

### **The Undertakings Involved**

#### *Universal Investment GmbH*

4. Universal Investment GmbH is an independent investment management company<sup>2</sup>, regulated under German law as a Capital Management Company (a "KVG"), and manages investments on behalf of a portfolio of large and small investors, including the Fund. Two private banks, Joh. Berenberg Gossler & Co. KG ("Berenberg")<sup>3</sup> and Bankhaus Lampe KG ("Lampe")<sup>4</sup>, [...] control [...] in Universal Investment GmbH.
5. For the financial year ending 30 September 2015, Universal Investment GmbH's worldwide turnover was approximately €[...] million. For the calendar year ending 31 December 2015<sup>5</sup>, Universal Investment GmbH's turnover in the State was approximately €[...] million.<sup>6</sup>

#### *The Fund*

6. Universal Investment GmbH intends to acquire the legal title in the Target Asset on behalf of the Fund. The Fund is a German Special-Alternative Investment Fund established under German law, which has no separate legal personality. The Fund is only permitted to act through Universal Investment GmbH, which acts as capital manager/investment manager of the Fund. The Fund's sole unit-holder is BVK

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<sup>2</sup> Fund administration and investment management services provided by Universal Investment GmbH consist of administration services for all major asset classes and investment vehicles across borders and from a single source. Universal Investment GmbH also offers fund structuring and consulting, global investment management and strategic consulting services to institutional investors.

<sup>3</sup> Berenberg holds [...]% of Universal Investment GmbH directly and holds [...]% of Universal Investment GmbH indirectly through Berenberg Beteiligungsholding GmbH. Berenberg does not control any real estate or real estate companies in the State.

<sup>4</sup> Lampe holds [...]% of Universal Investment GmbH directly and holds [...]% of Universal Investment GmbH indirectly through Lampe UI Beteiligungs GmbH. Lampe does not control any real estate or real estate companies in the State.

<sup>5</sup> The parties state in the notification that the turnover in the State of Universal Investment GmbH relates to funds administered by Universal Investment GmbH with different fiscal years. The parties used information for the calendar year 2015 to calculate the turnover generated by Universal Investment GmbH in the State.

<sup>6</sup> The parties provides that Berenberg and Lampe do not generate "turnover in the State" for the purposes of the Act.



Immobilien Masterfonds 1, which is ultimately owned/controlled by 13 German pension schemes (the “Investors”).<sup>7</sup>

#### *The Target Asset*

7. The Target Asset is a 767,000 square foot shopping centre (known as Liffey Valley Shopping Centre) with associated development land, which is located in Clondalkin in County Dublin. Liffey Valley Shopping Centre comprises approximately 103 retail units, approximately 18 restaurants/food kiosks and 3,500 parking spaces. The site of the proposed development land measures approximately 7 hectares. Planning permission has been sought for a new retail development on the site which would increase the retail scale of the Target Asset to over 1.2 million square feet.<sup>8</sup>

#### *The Vendors*

8. The Target Asset is currently owned by the Vendors. LV Property Phase I Limited and LV Property Phase II Limited are [...] % owned by the clients of the HSBC Group, while Grosvenor controls Liffey Valley Limited. LV Property Phase I Limited and LV Property Phase II Limited currently own [...] % of the Target Asset<sup>9</sup>, with Grosvenor owning [...] % of the Target Asset.

#### **Rationale for the Proposed Transaction**

9. The parties state in the notification:

*“The Purchaser [Universal Investment GmbH] intends to invest in the Target Asset as an income-producing revenue stream for the Fund, and ultimately the German Pension Schemes represented by BVK. The acquisition of the Target Asset forms a key part of the Purchaser’s / BVK’s strategy to buy more investments in the Irish market.*

*The Vendors wish to make a return on their investment in the Target Asset at this time.”<sup>10</sup>*

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<sup>7</sup> The Investors (represented by Bayerische Versorgungskammer (“BVK”)) are the ultimate investors in the Fund.

<sup>8</sup> Planning permission is expected to be granted by Q1 2017, enabling construction to commence in Q1 2018.

<sup>9</sup> HSBC’s interest in the Target Asset is subject to a shareholding of [...] % held by Hines Interests Limited Partnership in an entity that controls LV Property Phase I Limited and LV Property Phase II Limited.

<sup>10</sup> Page 5, section 2.7 of the Notification.



### **Third Party Submissions**

10. No submission was received.

### **Competitive Analysis**

11. 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 precise relevant product and geographic markets since there is no horizontal overlap between the parties' activities in the State.
12. The parties submit that post-transaction, Universal Investment GmbH will acquire control of the Target Asset for the purpose of the Act and that the Fund's interest in the Target Asset will be purely economic. Universal Investment GmbH does not currently have any activities in, and does not currently control any undertaking involved in, the supply of rentable commercial property in the State. As a result, there is no horizontal overlap between the activities of Universal Investment GmbH and the Target Asset in the State.
13. The proposed transaction does not raise any vertical competition concerns.

### **Conclusion**

14. 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**

15. No ancillary restraints were notified.



### **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby Universal-Investment-Gesellschaft mit beschränkter Haftung would acquire Liffey Valley Shopping Centre and adjacent development land located in Dublin 22, on behalf of BVK Highstreet Retail, a German Special-Alternative Investment Fund, 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

**Patrick Kenny**  
**Member**  
**Competition and Consumer Protection Commission**