



DETERMINATION OF MERGER NOTIFICATION M/18/052 - SAM MCCAULEY (CARLYLE)/NOLAN'S PHARMACY

Section 21 of the Competition Act 2002

Proposed acquisition by Sam McCauley Chemists Limited of Nolan's Pharmacy Limited

Dated 14 August 2018

Introduction

1. On 05 July 2018, 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 transaction whereby Sam McCauley Chemists Limited ("Sam McCauley"), an Irish-incorporated entity owned by a fund managed by Carlyle Cardinal Ireland Fund ("CCIF") which is an affiliate of Carlyle Group L.P. ("Carlyle"), would acquire the entire issued share capital, and thus sole control, of Nolan's Pharmacy Limited ("Nolan's Pharmacy") from Conor Nolan ("the Proposed Transaction").

The Proposed Transaction

2. The Proposed Transaction involves the acquisition by Sam McCauley of the entire issued share capital of Nolan's Pharmacy¹ pursuant to a share purchase agreement dated 29 June 2018 between Conor Nolan ("the Vendor"), Claire Nolan ("the Covenantor") and Sam McCauley ("the SPA").

The Undertakings Involved

The Acquirers - Carlyle, CCIF, Sam McCauley

Carlyle

3. Carlyle, headquartered in the United States, is a publicly traded liability partnership listed on the NASDAQ stock exchange. Carlyle is a global alternative asset manager which manages funds that invest globally across four investment categories:

¹ Conor Nolan holds the entire issued share capital of Nolan's Pharmacy.



- Corporate private equity (e.g., buyouts and growth capital);
 - Real assets (e.g., real estate, infrastructure and renewable resources);
 - Global market strategies (e.g., structured credit, mezzanine, distressed, hedge funds and middle market debt); and
 - Investment solutions (e.g., private equity and related activities).
4. 35 portfolio companies currently controlled by funds managed by Carlyle generated turnover in the State in the most recent financial year.

CCIF

5. CCIF, headquartered in Dublin, is a private equity fund managed by a 50:50 joint venture between Carlyle and the Cardinal Capital Group. It is focused solely on private equity investments in the State.
6. A number of companies owned by CCIF and managed by affiliates of Carlyle are headquartered and generated turnover in the State in the most recent financial year:
- Sam McCauley;
 - Lily O'Briens Holdings Limited²;
 - Sonoma Valley Limited trading as *General Secure Logistics Services*³;
 - Payzone Ireland Limited;
 - Carroll Cuisine Unlimited Company;
 - Abtran Unlimited Company; and
 - AA Ireland Limited.
7. For the financial year ended 31 December 2016, Carlyle's worldwide revenue was approximately €[...], of which approximately €[...] was generated in the State.

Sam McCauley

² In January 2018, CCIF agreed the sale of Lily O'Brien's to Colian Holdings SA. For more information, please see: <https://www.cardinalcapitalgroup.com/investments/carlyle-cardinal-ireland-fund>

³ In March 2018, CCIF agreed the sale of its shareholding in *General Secure Logistics Services*. For more information, please see <https://www.cardinalcapitalgroup.com/investments/carlyle-cardinal-ireland-fund>



8. Sam McCauley is a private limited company which owns and operates 32 retail pharmacies in the State under the *Sam McCauley* brand.
9. Sam McCauley's core activities include the retail sale of prescription medicines and non-prescription medicines (i.e., over-the-counter medicines). In addition to its core business, Sam McCauley is also engaged in the retail sale of a range of products including, but not limited to, cosmetics⁴, fragrances, skincare, vitamins and supplements, hair and women's care, photography equipment, mother and baby accessories, electrical appliances, and beauty salon services. Seven of the Sam McCauley retail pharmacies also provide beauty treatment services to customers.
10. Sam McCauley also operates an online shop which sells to customers nationally and internationally via its website.⁵ The portfolio of products available via the online shop includes a wide range of branded medicines, vitamins, slimming aids, beauty products, photo apparatus, baby equipment, toiletries and electrical equipment.
11. For the financial year ending 30 September 2017, Sam McCauley's worldwide revenue was approximately €[...], all of which was generated in the State.

The Target – Nolan's Pharmacy

12. Nolan's Pharmacy operates two retail pharmacies trading as *Haven Pharmacy Nolans* located at: (i) Units 3&4, Navan Shopping Centre, Navan, Co. Meath; and (ii) Bedford Medical Centre, Convent Road, Navan, Co. Meath (each "the Target Pharmacy" and collectively, "the Target Pharmacies").⁶
13. The Target Pharmacies core business activities include the retail sale of prescription medicines and non-prescription medicines (i.e., over-the-counter medicines). In addition to its core services, the Target Pharmacies also provide a range of services

⁴ The Commission notes that Sam McCauley's pharmacy in Navan, Co. Meath supplies a number of prestige colour cosmetics.

⁵ For more information, please see www.sammccauley.com.

⁶ Following an informal information request issued by the CCPC the parties provided the following information in relation to the *Haven* pharmacy brand. "*Haven Pharmacy ('Haven')* is a brand created by *Indepharm Co-Operative Group ('Indepharm')* which was founded in 2008 by John Rafferty and Neil Rafferty... Each independent retail pharmacy which operates under the *Haven* brand (a '*Haven Pharmacy*') is a legally and financially separate and independent undertaking. Each *Haven Pharmacy* has a franchise agreement with *Indepharm Limited* whereby the *Haven Pharmacy* pays a membership fee and administration costs to *Indepharm* in return for use of the *Haven* trade name, trade mark and ability to benefit from the *Indepharm* economies of scale." For more information, please see <https://www.indepharm.ie/>. The parties informed the Commission that the Target Pharmacies will operate under the '*Sam McCauley*' brand following implementation of the proposed Transaction.



including photographic film developing, skin analysis and treatments, health testing (e.g., blood pressure check, BMI check, emergency contraception services, weight management services, etc.). Additionally, the Target Pharmacy located at Navan Shopping Centre currently supplies a range of prestige colour cosmetics.

14. For the financial year ending 30 June 2017, Nolan's Pharmacy's worldwide revenue was approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

15. The parties state in the notification:

"The commercial objective of the Purchaser is to expand its network of retail pharmacy businesses in the State. Conor Nolan is the sole shareholder in the Target. The business was established by Conor Nolan's father, Mr. John Nolan, in 1957. Conor Nolan became a Director of the company in 1993 and has been engaged in the operation of the business since that time, and wishes to realise the value of the business. Conor Nolan also wishes to dispose the business to a reputable organisation which has proven excellence in the development of a chain of quality retail pharmacies in Ireland."

Preliminary Investigation

16. As part of the Commission preliminary Phase 1 investigation, a member of the Commission's investigation team conducted site visits in Navan, with a view of experiencing the situation on the ground first hand.
17. During its investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the notifying parties.

Third Party Submissions

18. No submission was received.

Competitive Analysis

Horizontal Overlap

19. There is a horizontal overlap between the parties' business activities in the State. Both Sam McCauley and Nolan's Pharmacy are active in the operation of retail pharmacies in the State.



Retail pharmacies

20. In the Commission's determination in M/18/024 – Lloyds Pharmacy/McSweeney Group, the Commission assessed the competitive impact of the proposed transaction by reference to the narrowest potential relevant market (being the potential market for the supply of prescription and non-prescription medicines in retail pharmacies in each of the geographic areas in which the Target Pharmacies are located). The Commission analysed each such local geographic area by reference to a “*geographic market comprising a catchment area of within a radius of 2km*” from the pharmacy to be acquired.⁷
21. The Commission has not, in the course of its assessment of the competitive effects of the Proposed Transaction, found reasons to depart from the approach previously adopted by the Commission in relation to retail pharmacies.
22. For the reasons set out below, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in the potential relevant market for the operation of retail pharmacies within the local area (i.e., within a two kilometre radius) of the Target Pharmacies.

Retail sale of colour cosmetics

23. In addition to the horizontal overlap in relation to the operation of retail pharmacies, the Commission defined a specific horizontal overlap between the activities of the parties as far as it relates to the retail sale of colour cosmetics.
24. In its decision in Case M.7726 *Coty/Procter & Gamble Beauty Business*⁸, the European Commission described its previous relevant product market assessments in relation to prestige colour cosmetics and mass colour cosmetics:

“The [European] Commission has distinguished in its previous decisions between mass and prestige colour cosmetics.⁴³ This distinction was justified by the fact that prestige cosmetics are typically sold through selective distribution channels and its products prices are generally set independently from prices for mass cosmetics. Moreover, even if some retailers belonging to the selective distribution channel do

⁷ Please see paragraph 22 in merger determination M/18/024 – Lloyds Pharmacy/McSweeney Group which can be accessed at: https://www.cpc.ie/business/M.18.024- Lloyds-Pharmacy.McSweeney-Group_public-determination.pdf

⁸ Please see European Commission decision in Case M.7726 *Coty/Procter & Gamble Beauty Business* which can be accessed at: http://ec.europa.eu/competition/mergers/cases/decisions/m7726_1808_3.pdf



offer mass products, these are always sold in separate areas and that customers of prestige colour cosmetics often enjoy extra services or special promotions.”⁹

25. Ultimately, the European Commission did not reach a definitive conclusion¹⁰ in relation to the segmentation of prestige colour cosmetics and mass colour cosmetics:

“However, for the purpose of this Decision it is not necessary to come to a conclusion on the precise definition of the product market in relation to mass and prestige colour cosmetics because the assessment of the Transaction would not differ under any plausible market definition.”¹¹

26. In the European Commission’s decision in Case M.8406 *Kesko/Oriola/JV*, the European Commission noted the following in relation to the geographic scope of the retail market of daily consumer goods including beauty, health and well-being products:

“In previous decisions, the [European] Commission considered that the geographic scope of the retail market of daily consumer goods including beauty, health and well-being products, is local or regional because it is likely that local market conditions are taken into account for pricing purposes and are relevant for individual consumers. However there are some indications to conclude that the relevant geographic market could also be national in scope.²³ As regards the local markets, the [European] Commission defined in previous cases a catchment area of a retail outlet, which can be based on the distance a consumer is willing to travel to reach it (radius of approximately 10 to 30 minutes driving time).^{24”¹²}

27. The Commission does not need to come to a definitive view on the precise relevant product market in relation to the supply of colour cosmetics since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is narrow (e.g., (i) retail supply of prestige colour cosmetics and (ii) the retail supply of mass colour cosmetics, respectively) or broader (e.g., the retail supply of colour cosmetics). However, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the

⁹ Please see paragraph 48 in the European Commission decision in Case M.7726 *Coty/Procter & Gamble Beauty Business* which can be accessed at:

http://ec.europa.eu/competition/mergers/cases/decisions/m7726_1808_3.pdf

¹⁰ In addition, the European Commission discussed the precise definition of the product market in relation to possible segmentation of nail, lip, face and eye colour cosmetics. The European Commission ultimately left the precise definition of the product market open as the assessment of the Transaction would not differ under any plausible market definition. Please see paragraph 69 in the European Commission decision in Case M.7726 *Coty/Procter & Gamble Beauty Business* which can be accessed at:

http://ec.europa.eu/competition/mergers/cases/decisions/m7726_1808_3.pdf

¹¹ Please see paragraph 61 in the European Commission decision in Case M.7726 *Coty/Procter & Gamble Beauty Business* which can be accessed at:

http://ec.europa.eu/competition/mergers/cases/decisions/m7726_1808_3.pdf

¹² Please see paragraph 22 and 23 in the European Commission decision Case M.8406 -*Kesko/Oriola/JV* in which can be accessed at: http://ec.europa.eu/competition/mergers/cases/decisions/m8406_58_3.pdf



Commission analysed its impact by reference to the narrowest potential product market, i.e., (i) retail supply of prestige colour cosmetics and (ii) the retail supply of mass colour cosmetics.¹³

28. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant geographic market is local, regional or national. However, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition in the retail supply of prestige colour cosmetics, the Commission analysed its impact by reference to a 30 minute drive time from the Target Pharmacies.

Conclusion of market definition

29. For the purposes of its competitive analysis, the Commission has assessed the competitive impact of the Proposed Transaction in the following potential markets: (i) the supply of prescription and non-prescription medicines in retail pharmacies within a catchment area of a 2km from the Target Pharmacies; (ii) the supply of prescription and non-prescription medicines in retail pharmacies in the State; and (iii) the retail supply of prestige colour cosmetics within a 30 minute drive time from the Target Pharmacies.

Retail Pharmacies

Local Market Analysis

30. The Target Pharmacies are located in (i) Units 3&4, Navan Shopping Centre, Navan, Co. Meath; and (ii) Bedford Medical Centre, Convent Road, Navan, Co. Meath, respectively, and both trade as *Haven Pharmacy Nolans*. Sam McCauley currently operates one pharmacy¹⁴ in Navan, Co. Meath located a distance of approximately 140 metres from *Haven Pharmacy Nolans* in Navan Shopping Centre and 750 metres from *Haven Pharmacy Nolans* in Bedford Medical Centre.¹⁵ Thus, on the basis of a potential geographic market comprising a catchment area of a 2km (“the Local

¹³ The Commission notes that the Proposed Transaction is unlikely to raise competition concerns in the retail supply of mass colour cosmetics given the wide variety of retail outlets (the parties submitted at least 58) which currently supply such products within a 30 minute drive time of the Target Pharmacies, e.g., *Boots, Hickeys pharmacies, Tesco, Christine’s pharmacy, Staunton’s pharmacy, Commons road pharmacy, O’Driscolls Pharmacy*, among others. Accordingly, the Commission has not considered this potential product segment any further in its competitive assessment.

¹⁴ Sam McCauley provided the following information to the Commission in relation to this pharmacy, “*The Sam McCauley pharmacy in Navan is not a continuation of a previously existing pharmacy, but is an entirely new business established as a start-up and did not replace any previously existing book of business.*”

¹⁵ The Commission calculated distances between Sam McCauley’s pharmacy in Navan, Co. Meath and the Target Pharmacies using the walking distances provided by the online application *Google Maps*.



Catchment Area”) from the Target Pharmacies, there is a horizontal overlap between the parties.

Table 1: Analysis of the pharmacies which are located within a 2km radius from the Target Pharmacies.

Brand	Pharmacy location	Distance from Target Pharmacy Navan Shopping Centre	Distance from Target Pharmacy Bedford Medical Centre
<i>Haven Pharmacy Nolans</i>	Units 3&4, Navan Shopping Centre	-	0.8km
	Bedford Medical Centre, Convent Road	0.8km	-
<i>Sam McCauley</i>	Kennedy Rd, Dillonsland, Co. Meath	0.14km	0.75km
<i>Hickeys Pharmacy</i>	Navan Shopping Centre, Abbey Rd, Abbeyland South	0.18km	0.9km
	7 Watergate St, Dillonsland, Navan, Co. Meath, C15 P653	0.35km	0.55km
	Navan Medical Abbey Road Medical Centre, Navan, Co. Meath	0.26km	1km
<i>Boots Pharmacy</i>	1 Kennedy Rd, Dillonsland, Navan, Co. Meath	0.12km	0.9km
<i>Christine’s Pharmacy</i>	33 Brews Hill, Dillonsland, Navan, Co. Meath	0.750km	1.1km
<i>Stauntons Pharmacy</i>	Belfry View, Church Hill, Dillonsland, Navan, Co. Meath	0.400km	0.650km
<i>Commons Road Pharmacy</i>	2 McDermott Villas, Clogherboy, Navan, Co. Meath	1.2km	1.6km
<i>O’Driscolls Pharmacy</i>	Beechmount Shopping Centre, Trim Rd, Dillonsland, Navan, Co. Meath	1.6km	1.8km
<i>O’Connor’s Pharmacy</i>	Blackcastle, Co. Meath	1.6km	1.6km

Source: The Commission based on Commission information and information provided by the parties.

31. Information provided by the parties estimated that Sam McCauley held an estimated 8% share of the total number of retail pharmacies in the Local Catchment Area in 2017 and that the Target Pharmacies held an estimated 17% share of the total number of retail pharmacies in the Local Catchment Area in 2017. Thus, on a local level, following



implementation of the Proposed Transaction, Sam McCauley will hold approximately 25% of the total number of retail pharmacies in the Local Catchment Area.¹⁶

32. Following implementation of the Proposed Transaction, *Hickey's* brand will also have an estimated 25% share by reference to number of sites, with three pharmacies.
33. Following completion of the Proposed Transaction, there will remain at least 7 fascia of retail pharmacies active within a radius of 2km from the Target Pharmacies which will continue to exert a competitive constraint on Sam McCauley. Therefore, the Commission considers that the Proposed Transaction will not substantially lessen competition in the supply of prescription and non-prescription medicines in retail pharmacies in the potential local market comprising a catchment area of within a radius of 2km from the Target Pharmacies.

Local Market Conclusion

34. For the reasons set out above, the Commission considers that the Proposed Transaction will not substantially lessen competition in the operation of retail pharmacies in the Local Catchment Area.

National Basis

35. On a national level, the Proposed Transaction raises no competition concerns in the potential market for the operation of retail pharmacies. Information provided by the parties estimated that Sam McCauley held an estimated 2% share of the total number of retail pharmacies in the State in 2017 and that the Target pharmacies held an estimated 0.1%.¹⁷ Thus, on a national level, the increase in Sam McCauley's share of the total number of retail pharmacies in the State as a result of the Proposed Transaction will be minimal.

¹⁶ In addition, the parties estimated, using market share estimates by reference to volume of sales, applying payment information under the Primary Care Reimbursement Service of the Health Service Executive (products supplied to medical card holders) to pharmacies in the Local Catchment Area in 2016 as a proxy, that following implementation of the Proposed Transaction, Sam McCauley will hold approximately [20-25]% in the potential market for the operation of retail pharmacies in the Local Catchment Area.

¹⁷ The parties calculated market share estimates by total number of pharmacies in the State with reference to information obtained from the "Register of Pharmacies" located on the website of the Pharmaceutical Society of Ireland on 01 June 2018, available at <http://thepsi.ie/gns/Search-the-Registers.aspx> and also data from the following sources: <http://www.allcarepharmacy.ie/>; <http://www.lifepharmacy.ie/locations>; <http://havenpharmacy.ie/find-your-haven/>; <https://hickeys-pharmacy.herokuapp.com/stores/#alldata>; <https://mccabespharmacy.com/data>; http://www.mulliganschemist.com/store_locator.html; <https://www.stacksparmacy.ie/>; <http://www.allcarepharmacy.ie/>; <http://www.osullivanpharmacy.ie/osullivans-pharmacy-stores.255.html>; <https://horganpharmacygroup.ie/branch-details.html>; and <http://deasyspharmacy.ie/about-us/>.



National Market Conclusion

36. The Commission considers that the Proposed Transaction will not substantially lessen competition in the operation of retail pharmacies in the State.

The Retail Supply of Prestige Colour Cosmetics

37. The Target Pharmacies and Sam McCauley are currently active in the retail supply of prestige colour cosmetics.
38. Information provided by the Target Pharmacies to the Commission noted that the Target Pharmacies currently supplies the following prestige colour cosmetic brands: *Chanel; Clarins; Lancôme; and Elizabeth Arden*. For the financial year ending, 30 June 2017, the Target Pharmacies generated €[...], approximately, [...] % of its total turnover from the retail supply of prestige colour cosmetics in the State.
39. Information provided by Sam McCauley to the Commission noted that the Sam McCauley Pharmacy in Navan, Co. Meath currently supplies the following prestige colour cosmetic brands: *Bare Minerals; Benefit; Clarins; Lancome; and, Stila*. For the financial year ending 30 September 2017, Sam McCauley's pharmacy in Navan, Co Meath generated approximately €[...], approximately [...] % of its total turnover from the retail supply of prestige colour cosmetics.
40. The Commission notes that there are a variety of competing retailers currently active in the retail supply of prestige colour cosmetics within a 30 minute drive time from the Target Pharmacies which will continue to exert a competitive contract on Sam McCauley following implementation of the Proposed Transaction. The parties informed the Commission that there are at least 23 retail outlets selling prestige colour cosmetics within a 30 minute drive time from the Target Pharmacies.
41. The Commission considers that the Proposed Transaction will not substantially lessen competition in the retail supply of prestige colour cosmetics within a 30 minute drive time from the Target Pharmacies.

Vertical Overlap

42. The parties have informed the Commission that there is no vertical relationship between Nolan's Pharmacy and Carlyle (including any of the portfolio companies owned by Carlyle), CCIF, or Sam McCauley. The Commission has not identified any vertical relationship between the parties. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.



Conclusion

43. 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

44. The SPA contains a number of restrictive obligations on the Vendor and the Covenantor. These include non-compete, non-solicitation and confidentiality clauses. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.¹⁸ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction.

¹⁸ 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 [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://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 acquisition whereby Sam McCauley Chemists Limited would acquire the entire issued share capital, and thus sole control, of Nolan's Pharmacy 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