

DETERMINATION OF MERGER NOTIFICATION M/18/053 – PANDAGREEN / KNOCKHARLEY LANDFILL AND NATUREFORD

Section 21 of the Competition Act 2002

Proposed acquisition by Sretaw 2 Limited, through Pandagreen Limited, of sole control of Knockharley Landfill Limited, and the proposed acquisition by Sretaw Unlimited Company, through ST Cloud Limited, of sole control of Natureford Limited

Dated 06 February 2019

Determination

Pursuant to section 20(3) of the Competition Act 2002, as amended (“the Act”), Pandagreen Limited (“Pandagreen”) and ST Cloud Limited (“ST Cloud”) have submitted to the Competition and Consumer Protection Commission (the “Commission”) the proposals set out below relating to the proposed acquisition for the purpose of ameliorating any effects on competition in markets for goods or services, with a view to the proposals becoming binding on Pandagreen, ST Cloud, their respective parents and their parents’ subsidiaries (together the “Purchaser Group”).

The Commission has taken the proposals into account and, in light of the said proposals (which form part of the basis of its determination), has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby (i) Sretaw 2 Limited (“Sretaw 2”), through its wholly owned subsidiary Pandagreen, would acquire the entire issued share capital of Knockharley Landfill Limited, and (ii) subject to the completion of that transaction, Sretaw Unlimited Company (“Sretaw”), through its wholly owned subsidiary ST Cloud would acquire the entire issued share capital of Natureford Limited¹ 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

¹ Sretaw and Sretaw 2 are both owned and controlled by two individuals, Mr Eamon Waters and Mr Robert Waters, and as such are both members of the Purchaser Group



PROPOSALS BY PANDAGREEN LIMITED AND ST CLOUD LIMITED TO THE COMPETITION AND CONSUMER PROTECTION COMMISSION RELATING TO THE PROPOSED ACQUISITION OF KNOCKHARLEY LANDFILL LIMITED AND NATUREFORD LIMITED (“Proposals”)

A. Recitals

- a) On 9 July 2018, the Commission received a notification of a proposed acquisition whereby (i) Sretaw 2, through its wholly owned subsidiary Pandagreen, would acquire the entire issued share capital of Knockharley Landfill Limited, and (ii) subject to the completion of that transaction, Sretaw, through its wholly owned subsidiary ST Cloud would acquire the entire issued share capital of Natureford Limited. Sretaw 2 and Sretaw are both ultimately owned and controlled by Eamon Waters and Robert Waters.
- b) In the State, Knockharley Landfill Limited has activities upstream of Pandagreen as it is active in the supply of disposal and recovery services of non-hazardous waste materials to waste collectors and waste treaters/processors, while Pandagreen is active in the collection, transfer, and treatment/processing of waste taken from commercial and domestic premises. Pandagreen is currently Knockharley Landfill Limited’s largest customer.
- c) Pursuant to Section 20(3) of the Act, the Parties have submitted these Proposals to the Commission relating to the Proposed Transaction for the purpose of ameliorating any possible effect of the Proposed Transaction on competition in markets for goods or services, with a view to the Proposals becoming binding on the Parties.
- d) The Proposals submitted by the Parties are intended to alleviate the Commission’s concerns in relation to the potential foreclosure of Pandagreen’s competitors from access to Knockharley Landfill and Ballynagran Landfill following completion of the Proposed Transaction.
- e) The Proposals are also intended to ensure that, following completion of the Proposed Transaction, the Purchaser Group will not in the next [●] acquire Ballynagran Landfill without first making a notification under either section 18(1) or 18(3) of the Act to the Commission.

B. Definitions

In these Proposals, unless the context otherwise requires, the following terms shall have the following meanings:

“**Act**” means the Competition Act 2002, as amended;

“**Ballynagran Landfill**” means the landfill site owned by Ballynagran Landfill Limited located at Ballynagran, Coolbeg and Kilcandra, County Wicklow;

“**Calendar Month**” means the period from a specified day in one month to the day numerically corresponding to that day in the following month, less one (for example: 4 April to 3 May (inclusive));

“**Commencement Date**” means the date of completion of the Proposed Transaction;



“**Commission**” means the Competition and Consumer Protection Commission and its successors;

“**Knockharley**” means Knockharley Landfill Limited, a private company limited by shares and incorporated in Ireland under registered number 529325;

“**Knockharley Landfill**” means the landfill site owned by Knockharley located at Knockharley, Navan, County Meath;

“**Pandagreen**” means Pandagreen Limited, a private company limited by shares and incorporated in Ireland under registered number 550340;

“**Parties**” means Pandagreen and ST Cloud;

“**Proposed Transaction**” means the proposed acquisition whereby (i) Sretaw 2, through its wholly owned subsidiary Pandagreen, would acquire the entire issued share capital of Knockharley, and (ii) subject to the completion of that transaction, Sretaw, through its wholly owned subsidiary ST Cloud would acquire the entire issued share capital of Natureford Limited, as notified to the Commission on 9 July 2018;

“**Purchaser Group**” means Pandagreen, its parent Sretaw 2 and Sretaw 2’s subsidiaries, and ST Cloud, its parent Sretaw and Sretaw’s subsidiaries;

“**Sretaw**” means Sretaw Unlimited Company, a private unlimited company incorporated in Ireland under registered number 513910;

“**Sretaw 2**” means Sretaw 2 Limited, a private company limited by shares and incorporated in Ireland under registered number 611261;

“**State**” means Ireland;

“**ST Cloud**” means ST Cloud Limited, a private company limited by shares and incorporated in Ireland under registered number 623673, which is ultimately owned and controlled by Sretaw;

“**Third Party Operators**” means persons involved in waste management activities in the State and disposing of Waste within the State, excluding members of the Purchaser Group;

“**Year**” means a period of 12 consecutive Calendar Months;

“**Waste**” means residual non-hazardous household, commercial and industrial waste sent to landfill for disposal or recovery, including but not limited to: incinerator bottom ash, soils and stones and other construction and demolition wastes, residual municipal solid waste (including municipal bulky waste), street sweepings and cleansing wastes, non-hazardous industrial wastes, and stable non-reactive waste;

“**Waste for Disposal**” means any Waste which is disposed of at EPA-licenced non-hazardous landfills in the State;

“**Waste for Recovery**” means any Waste which is used for recovery or engineering purposes at EPA-licenced non-hazardous landfills in the State; and



“**working days**” means a day on which banks are generally open for business in Dublin, Ireland, excluding Saturdays, Sundays and public holidays in Ireland.

C. Ballynagran Usage Undertaking

1. Pandagreen, on behalf of the Purchaser Group, undertakes to restrict the quantity of Waste the Purchaser Group delivers for landfill to Ballynagran Landfill, subject to the provisions herein (the “**Ballynagran Usage Undertaking**”).
2. The Ballynagran Usage Undertaking will come into effect on the Commencement Date and is subject to the following terms and conditions:
 - a. subject to paragraphs 5, 6 and 18, the Purchaser Group will [●] (the “**Ballynagran Restriction**”).
 - b. subject to paragraphs 3, 4 and 18, the Ballynagran Usage Undertaking will come into force on the Commencement Date for a period of [●] from the Commencement Date.
3. Notwithstanding paragraph 2.b, the Commission may, at its sole discretion, by notice in writing to Pandagreen, on behalf of the Purchaser Group, served prior to [●], extend the period of the Ballynagran Usage Undertaking for an additional period of no more than [●], having regard to the prevailing market conditions and any written submission made by Pandagreen, on behalf of the Purchaser Group, pursuant to paragraph 4 below. In any event, the Ballynagran Usage Undertaking shall cease not more than [●] from the Commencement Date.
4. If the Commission proposes to extend the period of the Ballynagran Usage Undertaking pursuant to paragraph 3 above then the Commission will, at least twenty (20) working days prior to [●] of the Commencement Date advise Pandagreen, on behalf of the Purchaser Group, of this in writing (a “**Proposed Ballynagran Extension Notice**”). Within ten (10) working days following its receipt of a Proposed Ballynagran Extension Notice, Pandagreen, on behalf of the Purchaser Group, will be entitled to make a written submission to the Commission on whether the term of the Ballynagran Usage Undertaking should be extended. If Pandagreen makes such a written submission, Pandagreen, on behalf of the Purchaser Group, may also request a meeting with the Commission in advance of [●].
5. The Ballynagran Restriction shall not include any Waste delivered to Ballynagran Landfill by the Purchaser Group as a result of a short-term capacity increase which may arise following the decision of a local authority to adopt a measure pursuant to section 56(1) of the Waste Management Act 1996. Any such additional capacity is excluded from the Ballynagran Usage Undertaking.
6. Notwithstanding paragraph 4, the Commission may, at its sole discretion, at any time in response to a reasoned request from Pandagreen, (on behalf of the Purchaser Group) waive, modify or substitute any provision of these Proposals, provided always that any such waiver, modification or substitution is necessary, proportionate and objectively justifiable having regard to the prevailing market conditions. In particular, the Commission may, at its sole discretion, in response to a reasoned request from Pandagreen (on behalf of the Purchaser



Group), waive or modify the Ballynagran Restriction having regard to the prevailing market conditions.

D. Knockharley Access Undertaking

7. Pandagreen, on behalf of the Purchaser Group, shall procure that Knockharley undertakes to accept waste delivered by Third Party Operators to Knockharley Landfill, subject to the provisions herein (the “**Knockharley Access Undertaking**”).
8. The Knockharley Access Undertaking will come into effect on the Commencement Date and is subject to the following terms and conditions:
 - a. subject to paragraphs 11, 12 and 18, no less than [●]% of the licensed capacity of Knockharley Landfill will be reserved for Waste delivered by Third Party Operators (“**Third Party Reserved Capacity**”);
 - b. subject to paragraphs 11, 12 and 18, [●]% of the Third Party Reserved Capacity will be reserved for Waste for Recovery;
 - c. subject to paragraphs 11, 12 and 18, [●]% of the Third Party Reserved Capacity will be reserved for Waste for Disposal; and
 - d. subject to paragraphs 9, 10 and 18, the Knockharley Access Undertaking will come into force on the Commencement Date for a period of [●] from the Commencement Date.
9. Notwithstanding paragraph 8.d, the Commission may, at its sole discretion, by notice in writing to Pandagreen, on behalf of the Purchaser Group, served prior to [●], extend the period of the Knockharley Access Undertaking for an additional period of no more than [●], having regard to the prevailing market conditions and any written submission made by Pandagreen, on behalf of the Purchaser Group, pursuant to paragraph 10 below. In any event, the Knockharley Access Undertaking shall cease not more than [●] from the Commencement Date.
10. If the Commission proposes to extend the period of the Knockharley Access Undertaking pursuant to paragraph 9 above then the Commission will, at least twenty (20) working days prior to [●] advise Pandagreen, on behalf of the Purchaser Group, of this in writing (a “**Proposed Knockharley Extension Notice**”). Within ten (10) working days following its receipt of a Proposed Knockharley Extension Notice, Pandagreen, on behalf of the Purchaser Group, will be entitled to make a written submission to the Commission on whether the term of the Knockharley Access Undertaking should be extended. If Pandagreen makes such a written submission, Pandagreen, on behalf of the Purchaser Group, may also request a meeting with the Commission in advance of [●].
11. Any additional short-term capacity increase granted in respect of Knockharley Landfill as a result of a decision of a local authority to adopt a measure pursuant to section 56(1) of the Waste Management Act 1996 is excluded from the Knockharley Access Undertaking.
12. Notwithstanding paragraph 10, the Commission may, at its sole discretion, at any time in response to a reasoned request from Pandagreen, on behalf of the Purchaser Group, waive,



modify or substitute any provision of these Proposals, provided always that any such waiver, modification or substitution is necessary, proportionate and objectively justifiable having regard to the prevailing market conditions. In particular, the Commission may, at its sole discretion, in response to a reasoned request from Pandagreen, on behalf of the Purchaser Group, waive or modify the Third Party Reserved Capacity having regard to the prevailing market conditions.

E. Notification of future acquisition of Ballynagran Landfill

13. The Parties agree that if at any time within [●] from the Commencement Date any member of the Purchaser Group at that time seeks to acquire the Ballynagran Landfill, such a transaction will (in the event that the relevant mandatory notification thresholds are not met at that time) be notified to the Commission on a voluntary basis pursuant to section 18(3) of the Act (or its successor provision, if applicable).

F. Reporting and compliance obligations

14. Pandagreen shall submit to the Commission within three (3) Calendar Months from the Commencement Date, and at intervals of three (3) Calendar Months thereafter, quarterly reports for information purposes. Such reports will set out, for the preceding three (3) Calendar Months:

[●].

15. The Parties shall submit to the Commission within twelve (12) Calendar Months of the Commencement Date, and at intervals of one Year thereafter for the duration of the Proposals, written certificates in the form set out in Schedule A and Schedule B hereto (each a “**Compliance Certificate**”). Each Compliance Certificate shall be signed by an executive director from each of the Parties and will confirm that the Purchaser Group has complied with the obligations set out in these Proposals in the preceding period.
16. The Commission reserves the right to require the Parties to provide to the Commission, at any time and on reasonable notice, such additional information as the Commission reasonably requires in order for the Commission to verify compliance with the obligations set out in these Proposals. The Parties shall promptly comply with any written direction issued by the Commission pursuant to these Proposals.
17. The Parties shall each nominate an executive who will have responsibility for monitoring compliance with these Proposals and for responding to any request for information received from the Commission in connection with these Proposals. The Parties shall provide the name and contact details of such executive(s) to the Commission, and shall promptly inform the Commission of any change of executive(s) so nominated, including the name and contact details of the new executive(s).
18. These Proposals are subject to the completion of the Proposed Transaction and shall be deemed to be discharged if either of the Parties announces, and/or informs the Commission in writing, that the Proposed Transaction has been irrevocably abandoned. For the avoidance of doubt, the Proposals will have no retrospective effect.



19. The Parties shall, within two (2) working days of completion of the Proposed Transaction having occurred, notify the CCPC in writing of the date of completion.

SCHEDULE A

[To be drafted on Pandagreen headed paper]

[Date]

[Ibrahim Bah]
Director
Competition Enforcement and Mergers
Competition and Consumer Protection Commission
[Bloom House
Railway Street
Dublin 1]

Merger Notification M/18/053 Pandagreen/Knockharley Landfill and Natureford

Dear [Sir],

We refer to Merger Notification M/18/053 in relation to the proposed acquisition by Sretaw 2 Limited, through Pandagreen Limited ("Pandagreen"), of sole control of Knockharley Landfill Limited, and the proposed acquisition by Sretaw Unlimited Company, through ST Cloud Limited ("ST Cloud"), of sole control of Natureford Limited which was notified to the Competition and Consumer Protection Commission (the "Commission") on 9 July 2018 (the "Proposed Transaction").

The Commission issued its Determination approving the Proposed Transaction on 6 February 2019.

In accordance with the terms of the proposals given by Pandagreen and ST Cloud to the Commission on 6 February 2019 in relation to the Proposed Transaction which, in accordance with Section 20(3), Section 26(1) and Section 26(4) of the Competition Act 2002, as amended, have become commitments binding upon Pandagreen (the "Commitments"), Pandagreen hereby confirms, on behalf of the Purchaser Group, compliance with the terms of the Commitments during the period commencing on [the date of the Determination]/[the date of the previous certificate issued by Pandagreen] and ending on the date hereof.

Yours faithfully,

[Name]

Executive Director
Duly authorised for and on behalf of Pandagreen Limited

[Date]

SCHEDULE B

[To be drafted on ST Cloud headed paper]

[Date]

[Ibrahim Bah]
Director
Competition Enforcement and Mergers
Competition and Consumer Protection Commission
[Bloom House
Railway Street
Dublin 1]

Merger Notification M/18/053 Pandagreen/Knockharley Landfill and Natureford

Dear [Sir],

We refer to Merger Notification M/18/053 in relation to the proposed acquisition by Sretaw 2 Limited, through Pandagreen Limited ("Pandagreen"), of sole control of Knockharley Landfill Limited, and the proposed acquisition by Sretaw Unlimited Company, through ST Cloud Limited ("ST Cloud"), of sole control of Natureford Limited which was notified to the Competition and Consumer Protection Commission (the "Commission") on 9 July 2018 (the "Proposed Transaction").

The Commission issued its Determination approving the Proposed Transaction on 6 February 2019.

In accordance with the terms of the proposals given by Pandagreen and ST Cloud to the Commission on 6 February 2019 in relation to the Proposed Transaction which, in accordance with Section 20(3), Section 26(1) and Section 26(4) of the Competition Act 2002, as amended, have become commitments binding upon ST Cloud (the "Commitments"), ST Cloud hereby confirms, on behalf of the Purchaser Group, compliance with the terms of the Commitments during the period commencing on [the date of the Determination]/[the date of the previous certificate issued by ST Cloud] and ending on the date hereof.

Yours faithfully,

[Name]

Executive Director
Duly authorised for and on behalf of ST Cloud Limited
[Date]