



# DETERMINATION OF MERGER NOTIFICATION M/18/095 – NAVAN SHOPPING CENTRE/DAVY TARGET INVESTMENTS

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## Section 21 of the Competition Act 2002

### Proposed acquisition by Davy Target Investments ICAV of joint control of Navan Shopping Centre

Dated 29 January 2019

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#### Introduction

1. On 17 December 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 funds managed by Davy Target Investments ICAV (“DTI”) would acquire the leasehold interest in Navan Shopping Centre<sup>1</sup>, Co. Meath and the freehold and leasehold interests in certain other ancillary assets (the “Target Assets”) from Eamonn Duignan and Cathal McCarthy (collectively the “Developers”), Michael Murphy (deceased) and Michael O’Sullivan (acting by their receiver Ken Fennell of Deloitte Ireland) and Callington Propco DAC (collectively “the Vendors”) (the “Proposed Transaction”). The Proposed Transaction will confer joint control of Navan Shopping Centre on DTI and on Irish Life Assurance plc and Canada Life Assurance (Ireland) DAC (acting in unison and together referred to as “Irish Life”), being the owners of the freehold interest in Navan Shopping Centre.

#### The Proposed Transaction

2. The freehold interest in Navan Shopping Centre is owned by Irish Life and the leasehold interest in Navan Shopping Centre is currently held by the Developers, pursuant to [...]
3. Navan Shopping Centre is currently jointly controlled by Irish Life and the Developers pursuant to a Management Agreement between Irish Life and the Developers dated

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<sup>1</sup> Also known as Navan Town Centre.



[...](the “Management Agreement”). Under the Management Agreement, both Irish Life and the Developers have joint input into how the centre is managed<sup>2</sup>.

4. The Proposed Transaction is to be implemented pursuant to a contract of sale (“the Agreement”) dated 14 December 2018 between DTI and the Vendors. Therefore following implementation of the Proposed Transaction, DTI will acquire the Vendors’ interests in, and obligations (including those obligations under the Management Agreement) relating to, the Target Assets. Consequently, DTI and Irish Life will exercise joint control over Navan Shopping Centre following implementation of the Proposed Transaction.

### The Undertakings Involved

#### *The Purchaser – DTI*

5. DTI is an Irish collective asset-management vehicle (“ICAV”) established under the Irish Collective Asset-Management Vehicles Act 2015. DTI is comprised of two sub-funds, namely Davy Dublin Office Fund (“DDOF”) and Select Properties Opportunities Fund (“SPOF”), with segregated ownership and segregated liability. DTI is entering the Proposed Transaction for and on behalf of DDOF. As such, DTI is a corporate fund vehicle which invests in commercial property throughout the State. DTI has no activities outside the State.
6. DTI has an ownership interest in a number of commercial, residential and retail properties in the State. Tables 1 and 2 below outline DTI’s investments in real estate in the State<sup>3</sup>.

**Table 1: Commercial, residential and retail property owned by DTI within the State through DDOF**

Property	Sector
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]

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<sup>2</sup> [...]

<sup>3</sup> [...]





### *Irish Life*

8. Irish Life is a wholly-owned indirect subsidiary of Great-West Lifeco Inc (“Great-West Lifeco”) which in turn is owned by The Power Corporation of Canada a diversified international management and holding company listed on the Toronto Stock Exchange. Great-West Lifeco is a financial services company with interests in life insurance, health insurance, retirement savings and investment management and reinsurance. Great-West Lifeco has operations in Canada, the United States, Europe and Asia through Great-West Life, London Life, Canada Life, Irish Life, Great-West Financial and Putnam Investments.

### *The Target Assets*

9. The principal asset within the Target Assets is Navan Shopping Centre which is a 23,200 square metre (“sqm”) shopping centre located on Kennedy Road, Navan Co. Meath. First opened in 1980, Navan Shopping Centre currently comprises over 70 retail units with tenants such as Marks & Spencer, New Look, Sports Direct and Boots.
10. In 2017, the annual contracted gross rent for Navan Shopping Centre was approximately €[...], all of which was generated in the State.

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

11. The notification states:

*“As a property investor, DTI is interested in income-producing assets which are well-let to strong tenants. Navan Town Centre fits DTI's strategy as it is well-located in the centre of Navan; is well-let, with a strong tenant roster; and has a strong weighted average unexpired lease term.”*

### **Third Party Submissions**

12. No submission was received.

### **Competitive Analysis**

#### *Horizontal overlap*

13. There is a horizontal overlap between the activities of DTI and the Target Assets in the State with respect to the supply of rentable retail property.



14. DTI owns one large shopping centre [...] which is [...] in size. It owns three other shopping centres which are on a smaller scale to Navan Shopping Centre. These are the [...]. DTI also owns a number of small size retail units in mixed use and standalone developments across the State.
15. The Commission previously assessed the competitive impact of transactions involving the acquisition of rentable retail space in M/17/046 – Hamerson/Teba<sup>4</sup>. In addition, the European Commission considered the Irish commercial real estate sector in COMP/M.8229 – Hammerson/Irish Life/ILAC Shopping Centre<sup>5</sup>.
16. In its determination in M/17/046 – Hamerson/Teba, the Commission assessed the competitive impact of the relevant transaction in the potential product market for the supply of rentable retail space.
17. In COMP/M.8229 – Hammerson/Irish Life/ILAC Shopping Centre, the European Commission considered, but ultimately left open, whether the commercial real estate sector should be segmented in accordance with the following categories of property: (i) office properties; (ii) retail properties; (iii) industrial properties. It also considered possible narrower markets for (a) the rental of shopping centres and retail parks of at least 8,000 or 10,000 sqm or (b) shopping centres only of at least 8,000 or 10,000 sqm.
18. The Competition and Markets Authority, United Kingdom, (the “CMA”) in a recent decision<sup>6</sup> regarding Hammerson’s acquisition of the Grand Central Shopping Centre in Birmingham in the UK, assessed the competitive impact of the transaction by reference to the supply of retail space, including shopping centres and the high street, stating the following:

*“The CMA notes that these offerings supply the same core service (i.e. retail space) and most retailers indicated that other retail*

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<sup>4</sup> M/17/046 – Hamerson/Teba <https://www.cccp.ie/business/mergers-acquisitions/merger-notifications/m17046-hammersonteba/>

<sup>5</sup> Case COMP/M.8229 – Hammerson/Irish Life/ILAC Shopping Centre which can be accessed at: [http://ec.europa.eu/competition/mergers/cases/decisions/m8229\\_100\\_4.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8229_100_4.pdf).

<sup>6</sup> Please see paragraph 33 of the CMA decision in ME/6597/16- Completed acquisition by Hammerson plc of the Grand Central Shopping Centre which can be accessed at: <https://assets.publishing.service.gov.uk/media/57babace40f0b61272000008/hammerson-gc-full-text-decision.pdf>



*space may offer an alternative in the context of their preferences across a range of factors, including location.”*

19. 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 markets. The Commission’s conclusion concerning the competitive effects of the Proposed Transaction would be unaffected whether the relevant product market in the present case is defined broadly (i.e. defined as all rentable commercial property) or narrowly (i.e., defined by individual categories of rentable commercial property).
20. In relation to the geographic market, the European Commission<sup>7</sup> in COMP/M.8229 – Hammerson/Irish Life/ILAC Shopping Centre considered, but ultimately left open, whether real estate markets can be regarded as national, regional or local, stating the following,

*“the [European] Commission considered in previous cases, but ultimately left open whether there is any scope for a regional market definition and examined the markets for rental of retail space in shopping centres of at least 8 000 or 10 000 sqm within a 50 km radius around the relevant city in the region. As far as the present case is concerned, the Parties note that, in the case of Dublin, a 50 km radius substantially encompasses the whole of the Great Dublin Area (“GDA”).”*
21. In this instance it is also not necessary to define a precise geographic market since the size of the geographic market will not materially alter the competitive impact of the Proposed Transaction whether the relevant market is defined broadly (i.e., encompassing the entire State) or narrowly (i.e., encompassing the area within a 50km radius around Navan Shopping Centre).
22. However, for the purposes of the review of the Proposed Transaction, the Commission has analysed the effects of the Proposed Transaction based on the narrowest possible relevant product and geographic market, namely the market for the supply of rentable

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<sup>7</sup> Please see paragraph 20 of the European Commission decision in Case COMP/M.8229 – Hammerson/Irish Life/ILAC Shopping Centre which can be accessed at:[http://ec.europa.eu/competition/mergers/cases/decisions/m8229\\_100\\_4.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8229_100_4.pdf).



retail space in shopping centres of at least 8,000 sqm within a 50km radius of Navan Shopping Centre.

23. DTI provided a list of all shopping centres of at least 8,000 sqm approximately 50km around Navan Shopping Centre, which amounts to 608,000 sqm of rentable retail property. Other shopping centres within this catchment are located in Drogheda (approximately 26km), Mullingar (approximately 48.3km), Dundalk (approximately 48.6km) and Dublin (approximately 50km). The only shopping centre that DTI owns within this catchment is the [...], which at [...] does not fall within the relevant product market.
24. Navan Shopping Centre comprises 23,200 sqm of retail space. On the basis of these figures, following the implementation of the Proposed Transaction, DTI's market share in the potential market for the supply of rentable retail space in shopping centres in a 50km catchment around Navan Shopping Centre will be approximately 3.82%. Therefore, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

#### *Vertical Relationship*

25. The notifying party states in the notification that there is no vertical relationship between DTI and the Target Assets. 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**

26. 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**

27. No ancillary restraints were notified.



## **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 Davy Target Investments ICAV would acquire the leasehold interest in Navan Shopping Centre, Co. Meath and the freehold and leasehold interests in certain other ancillary assets 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**