



DETERMINATION OF MERGER NOTIFICATION M/19/017 - DUKE STREET / DCC VITAL (UK) & KENT PHARMA UK

Section 21 of the Competition Act 2002

Proposed acquisition by Duke Street LPP of DCC Vital (UK) Limited and Kent Pharma UK Limited

Dated 02 August 2019

Introduction

1. On 25 June 2019, in accordance with section 18(3) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification on a voluntary basis of a proposed transaction whereby Duke Street LLP (“Duke Street”), via DS Spring Bidco Limited which it ultimately controls, would acquire sole control of DCC Vital (UK) Limited (“DCC Vital UK”) and Kent Pharma UK Limited (“Kent Pharma UK”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a Share Purchase Agreement (“SPA”) between DCC Vital Ireland Limited (“DCC Vital Ireland”), Fannin (UK) Limited (“Fannin (UK)”) (together the “Sellers”), Fairywing Bidco Limited¹, and DCC Vital Limited², dated 19 May 2019.
3. Pursuant to the SPA, Duke Street will acquire the entire issued share capital of each of DCC Vital UK and Kent Pharma UK (together, the “Target Undertakings”) from DCC Vital

¹ The name of Fairywing Bidco Limited was changed to DS Spring Bidco Limited subsequent to the execution of the SPA.

² DCC Vital Limited is the parent company of DCC Vital Ireland and has agreed to guarantee certain of the obligations of the Sellers.



Ireland and Fannin (UK), respectively. Duke Street will thus acquire sole control of the Target Undertakings.

The Undertakings Involved

The Acquirer – Duke Street

4. Duke Street is a private equity firm registered in England as a limited liability partnership. Duke Street specialises in investing in mature, mid-market western European businesses in four main sectors: Consumer, Healthcare, Industrials and Engineering, and Services. Duke Street's portfolio is currently composed of seven companies, of which [...] is engaged in healthcare, Medi-Globe GmbH ("Medi-Globe").
5. Voyage Care is a UK provider of support for people with learning difficulties and associated physical disabilities, autistic spectrum disorders, acquired brain injury and other complex needs. Voyage Care is not active in the State.
6. Medi-Globe is a manufacturer and distributor of medical devices based in Germany, specialising in the supply of endoscopic instruments for gastroenterology and pulmonology to hospitals, clinics and specialists globally. In Ireland, Medi-Globe does not sell through its own distribution network, but instead sells medical devices [...] Fleetwood Healthcare Ltd and [...], that specialise in the distribution of medical devices to hospitals and healthcare professionals.
7. For the financial year ending 31 March 2019, Duke Street's worldwide turnover for all its portfolio companies was approximately €[...]. Duke Street's turnover in the State is derived [...]. For the financial year ending 31 December 2018, Medi-Globe generated turnover of approximately €[...] in the State.

The Target Undertakings – DCC Vital UK and Kent Pharma UK

8. DCC Vital UK is ultimately owned and controlled by DCC Vital Ireland, while Kent Pharma UK is owned and controlled by Fannin UK. Ultimately, both DCC Vital Ireland and Fannin UK are owned and controlled by DCC plc. DCC Vital UK owns Linnum Holdings Limited and its direct subsidiaries Athlone Laboratories Limited and Athlone Pharmaceuticals Limited, as well as Kent Pharmaceuticals Limited and its direct subsidiary Beacon Pharmaceuticals Limited.



9. Together, the Target Undertakings make up the business trading as “Kent Pharmaceuticals”, which specialises in the manufacture and supply of generic medicines, with a focus on respiratory, analgesic and anti-infective medicines. The Target Undertakings’ product portfolio comprises injections, inhalers, and oral and solid dose medicines, and covers a variety of therapy areas including antibiotics, neurology, anaesthesia, pain management and respiratory illnesses. Generic medicines manufactured by the Target Undertakings are distributed to hospitals and primary and second care facilities throughout the UK.
10. The Target Undertakings are part of the DCC Vital group (“DCC Vital Group”), which is the healthcare- and pharmaceutical-focused division of DCC plc, an international sales, marketing and support services group. DCC plc is a public limited company, listed on the London Stock Exchange.
11. DCC Vital Group supplies pharmaceuticals and medical devices in the United Kingdom (“UK”) and Ireland. DCC Vital Group has a large portfolio in the areas of both pharmaceuticals and medical devices, and distributes its own as well as third party products to facilities such as hospitals, retail pharmacies, General Practitioner practices and community care centres.
12. In the State, the Target Undertakings own a plant in Ballymurray, Co. Roscommon, which manufactures beta-lactam antibiotics (i.e. antibiotics such as penicillin). This plant operates on a contract manufacturing organisation (“CMO”) basis, manufacturing pharmaceutical products on behalf of a number of third party pharmaceutical companies based in Ireland and internationally. The plant in Ballymurray, Co. Roscommon is the only asset of the Target Undertakings in Ireland.
13. The Target Undertakings’ customers in the State include [...].
14. For the financial year ending 31 March 2018, the combined worldwide turnover of the Target Undertakings was €[...], of which approximately €[...] was generated in the State.

Rationale for the Proposed Transaction

15. The parties state the following in the notification:



“The Proposed Transaction fits within Duke Street’s investment strategy of targeting mature, mid-market western European businesses with an enterprise value of between Stg £50m and Stg £350m. Duke Street believes its business knowledge can add significant value to the Target Entities.”

Third Party Submissions

16. No submission was received.

Competitive Assessment

Horizontal Overlap

17. There is no horizontal overlap in the State between the activities of the parties. None of the companies in Duke Street’s portfolio that generate turnover in the State is engaged in the same business activities as the Target Undertakings.
18. The [...] company controlled by Duke Street [...] engaged in healthcare is Medi-Globe, which is active in the manufacture and distribution of medical devices. Medi-Globe customers in Ireland are distributors of medical devices, whereas the Target Undertakings’ customers in Ireland are pharmaceuticals companies. Therefore, the activities of Medi-Globe do not overlap horizontally with those of the Target Undertakings. Therefore, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

19. The parties informed the Commission that there is no vertical relationship between the Target Undertakings and Duke Street in the State, as Medi-Globe does not supply the Target Undertakings, and the Target Undertakings do not supply Medi-Globe. The Commission has not identified any vertical relationship between the parties.³

³The Commission notes that, following completion of the Proposed Transaction, a vertical link will exist between the parties as Fannin Limited is a customer of the Target Undertakings.



20. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

21. 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

22. Clause 14.1 of the SPA contains non-compete and non-solicitation obligations on the Sellers' Group⁴. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission.⁵ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction, insofar as they relate to the State and insofar as they do not prevent the Sellers' Group from purchasing or holding shares in a competing company purely for financial investment purposes, without granting them, directly or indirectly, management functions or any material influence in the competing company.

Determination

23. 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,

⁴ The Sellers' group is composed of the Sellers and any subsidiary or parent of the Sellers, as well as any company which is a subsidiary of any parent company of the Sellers.

⁵ In this respect, the Commission follows the approach adopted by the European Commission in its Notice on restrictions directly related and necessary to concentrations (OJ 2005 C56/03). 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)



the result of the proposed transaction whereby Duke Street LLP, via DS Spring Bidco Limited which it ultimately controls, would acquire sole control of DCC Vital (UK) Limited and Kent Pharma UK 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