



DETERMINATION OF MERGER NOTIFICATION M/10/041 -

Pilgrim/McInerney Homes/McInerney Contracting

Section 21 of the Competition Act 2002

Proposed acquisition by Pilgrim S.à.r.l. of sole control of McInerney Homes Limited and McInerney Contracting Limited

Dated 03 December 2010

Introduction

1. On 24 November 2010, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority (the "Authority") received a notification of a proposed acquisition whereby Pilgrim S.à.r.l. ("Pilgrim"), a subsidiary of Oaktree Capital Management Limited ("Oaktree"), would acquire sole control of McInerney Homes Limited ("MHL") and McInerney Contracting Limited ("MCL").
2. MHL and MCL are currently in examinership following a petition to the High Court on 26 August 2010. An interim examiner was appointed on 13 September 2010. Under the Companies (Amendment) Act 1990, the interim examiner has 100 days from his date of appointment to put in place a scheme of arrangement, that must be approved by the court, "...to facilitate the survival of the company as a going concern".¹ The parties submit that the proposed acquisition forms a key part of the interim examiner's planned scheme of arrangement which will enable MHL and MCL to continue in business.

The Undertakings Involved

Oaktree

3. Oaktree is an investment management firm which invests in specialised private equity, distressed debt, high yield and convertible bonds, emerging market and Japanese securities, real estate, and mezzanine finance. Oaktree's investments are in a variety of industries including packaging, manufacturing, healthcare, clothing, travel, real estate, exploration and mining, food, telecommunications, media and entertainment. Eight of Oaktree's portfolio companies are active in the State.²

¹ Section 2, Companies (Amendment) Act 1990.

² The eight portfolio companies are engaged in the following activities: the manufacture of flexible packaging; the production of ice cream; the supply of cartons, labels and leaflets; the manufacture and distribution of products used in concrete construction and masonry construction; the design, manufacture and marketing of three commercial carpet brands; the design, manufacture, distribution, marketing and installation of complete lines of consoles, enclosures and furniture for data centers, control rooms, and network operation centers; the production and sale of aluminum rolled and extruded products, recycled aluminum, and specification alloys; and, the manufacture of packaging and tubing products serving primarily the food, healthcare and consumer markets.

4. Pilgrim is a subsidiary of Oaktree and it holds a number of debt participations and interests unrelated to MHL or MCL.
5. For the year ending 31 December 2009, Oaktree's worldwide turnover was €[...]. Oaktree's turnover in the State for the same period was €[...].

MHL and MHC

6. MHL and MHC are subsidiaries of McInerney Holdings plc. MHL provides private housing in the State. MCL is a contractor which provides various services in the public and private sectors, including private housing, commercial, retail, industrial, office, leisure and educational developments. Services offered by MCL to clients include general contracting, design and build, full turnkey and project management.
7. For the year ending 31 December 2009, MHL's turnover was €[...], all of which was generated in the State. MCL's turnover for the same period was €[...], all of which was generated in the State.

Rationale for the Proposed Acquisition

8. The parties submit that as a consequence of the dramatic downturn in the property market in the State, McInerney Holdings plc has suffered extensive losses due to a downgrade in the value of its assets and the lack of available working capital from banks over the last two years. As noted above, MHL and MHC were placed under court protection following a petition to the High Court on 26 August 2010, which resulted in the appointment of an interim examiner on 13 September 2010. The parties submit that the proposed acquisition will fund the interim examiner's proposed scheme of arrangement, which will enable MHL and MHC to continue in business.

Waiving Third Party Submission Deadline

9. Under section 20 of the Act, the Authority is required to publish a notice when a merger notification is received within 7 days of the date of receipt. The practice of the Authority, as set out in its *Merger Procedures*, is to initially give third parties 10 days from the date of the notice to make their submission. The Authority can, however, change this time limit if circumstances so require.³
10. In the notification, the parties requested that the Authority shorten the period for third party comments. The parties submitted that the interim examiner's report to the High Court under Section 18 of the Companies (Amendment) Act 1990, due by 3 December 2010, would be strengthened if the merger approval pre-condition had been met in advance of this deadline.
11. While the Authority did not consider that a complete waiver of the notice period was appropriate, it reduced to 5 days the period required for third party submissions. The Authority considered that such a reduction was justified in light of the specific circumstances of the notification outlined above.

³ See Competition Authority's *Mergers and Acquisitions Procedure*, paragraph 2.6, available at: <http://www.tca.ie/MergersAcquisitions/MergersAcquisitions.aspx>

Third Party Submissions

12. No submissions were received.

Analysis

13. There is no horizontal overlap between Oaktree (and its portfolio companies) and either MHL or MLC in the State. Neither Oaktree nor any of its portfolio companies are active, either directly or indirectly, in the construction industry.
14. The proposed acquisition does not raise any vertical competition issues.
15. The Authority therefore considers that the proposed acquisition will not raise any competition concerns in the State.

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby Pilgrim S.à.r.l. would acquire sole control of McInerney Homes Limited and McInerney Contracting Limited will not be to substantially lessen competition in markets for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition Authority

Dr. Stanley Wong

Member of the Competition Authority