



DETERMINATION OF MERGER NOTIFICATION M/14/008 -

Fitzwilliam/Wittington Canada/Arnotts

Section 21 of the Competition Act 2002

Proposed acquisition by Fitzwilliam Finance Partners Limited/Wittington Investments, Limited of joint control (with investment funds managed by affiliates of Apollo Management, L.P.) of Arnotts Holdings Limited

Dated 27 May 2014

Introduction

1. On 19 March 2014, the Authority received a notification concerning a proposed acquisition whereby Fitzwilliam Finance Partners Limited ("Fitzwilliam")/Wittington Investments, Limited ("Wittington Canada") would acquire joint control, with investment funds managed by affiliates of Apollo Management, L.P. ("Apollo"), of Arnotts Holdings Limited ("Arnotts").

The Proposed Transaction and Referral to the Authority

2. As a result of the restructuring of Arnotts' debt in 2010, Anglo Irish Bank, now the Irish Bank Resolution Corporation in Special Liquidation ("IBRC"), and The Royal Bank of Scotland plc ("RBS") acquired joint control of Arnotts. That acquisition was cleared by the European Commission on 9 August 2010.
3. By decision dated 27 February 2014, the European Commission cleared the acquisition by Apollo of certain debts, warrants and a call option for 50% of Arnotts' share capital from IBRC.¹ By acquiring all of IBRC's interests in Arnotts, Apollo assumed joint control (with RBS) of Arnotts.
4. The proposed transaction involves Fitzwilliam/Wittington Canada acquiring from RBS certain debts, warrants and a call option for 50% of Arnotts' share capital. By acquiring all of RBS' interests in Arnotts, Fitzwilliam/Wittington Canada will assume joint control (with Apollo) of Arnotts.
5. The proposed transaction falls within the jurisdiction of Council Regulation (EC) No 139/2004 (the EU Merger Regulation or "ECMR"). Following discussions among the European Commission, the Authority, Apollo, Fitzwilliam and Wittington Canada, it was agreed that (i) Apollo would notify its acquisition of joint control of Arnotts with RBS to the European Commission under the ECMR in the first instance², and that subsequently, (ii) Fitzwilliam/Wittington Canada would seek a referral from the European Commission to the Authority under Article 4(4) of the ECMR of

¹ Case No COMP/M.7150 - Apollo/Ulster Bank/Arnotts, Commission decision pursuant to Article 6(1)(b) of Council Regulation (EC) No 139/2004.

² See Case No. COMP/M.7150 referred to in paragraph 3 above.

Fitzwilliam/Wittington Canada's acquisition, with Apollo, of joint control of Arnotts.

6. The Authority informed the European Commission on 10 March 2014 of its willingness to accept the referral of the case to Ireland as requested by the parties under Article 4(4) of the ECMR. The European Commission issued its referral decision on 18 March 2014. The proposed transaction was notified by Fitzwilliam/Wittington Canada to the Authority on 19 March 2014.

The Undertakings Involved

Acquirers

Wittington Canada

7. Wittington Canada is the holding company for the Weston Group, Wittington Properties and the Selfridges Group.³ The Weston Group owns a number of public and private entities, including George Weston Limited, in North America. Wittington Properties has a number of commercial real estate holdings and investment positions in Canada and the United States.
8. The Selfridges Group owns and operates the following luxury multi-category retailers: Holt Renfrew (nine stores and two outlets in Canada), De Bijenkorf (ten stores in the Netherlands), Selfridges & Co. (four stores in the United Kingdom), and Brown Thomas (four Brown Thomas stores and four BT2 stores in the State).
9. Brown Thomas is a luxury department store in the State offering beauty, womenswear, menswear, childrenswear, footwear, accessories and homewares. BT2 is also a premium department store but carries a more limited range and targets a younger market than the main Brown Thomas stores. The four Brown Thomas stores are located in Dublin, Galway, Cork and Limerick. The four BT2 stores are located in County Dublin.
10. With regard to online retailing, Brown Thomas currently sells only beauty products through its website. The parties state in the notification that Brown Thomas intends that by late 2014, [...] will be available for sale through its website. It is envisaged that such trading by Brown Thomas [...] for the foreseeable future.
11. Brown Thomas offers a Brown Thomas branded MasterCard as a non-core activity. This operates in the same way as any other MasterCard but in addition offers customers rewards.
12. For the financial year ending 31 January 2013, Wittington Canada's worldwide turnover was in excess of €[...]. Wittington Canada's turnover in the State for the same period was €[...].

Fitzwilliam

³ A separate Wittington group also exists. The Garfield Weston Foundation owns Wittington Investments Ltd (England), which in turn has a controlling interest in Associated British Foods PLC ("ABF"). A subsidiary of ABF, Primark, operates as a multi-category non-food retailer in the State under the name of Penneys. Although Wittington Canada and Wittington Investments Ltd (England) have two common directors (W. Galen Weston and Guy Weston), [Wittington Canada] informed the Authority that both companies "should not be considered to form part of the same group for the purposes of competition law".

13. Fitzwilliam is a property company founded for the sole purpose of acquiring the debt/equity in Arnotts, with a view to [...]. Fitzwilliam is a limited company registered in the State. All of its share capital is held by Noel Smyth, Fitzwilliam's Managing Director. Following the proposed transaction, Fitzwilliam will hold warrants and a call option for 50% of the equity in Arnotts.
14. [...].
15. For the year ending 31 December 2013, Fitzwilliam generated no turnover.

Apollo

16. Apollo Credit Opportunities Fund III, L.P., Apollo European Credit Master Fund, L.P., Apollo Centre Street Partnership, L.P., Apollo European Strategic Investments L.P., Apollo Zeus Strategic Investments, L.P., Apollo Special Opportunities Management Account, L.P., Apollo Franklin Partnership, and Apollo SK Strategic Investments, L.P. (collectively, "Apollo Entities") hold Arnotts' debts, warrants and a call option for 50% of Arnotts' capital. The Apollo Entities are investment funds managed by affiliates of Apollo Management, L.P. (the Apollo investment funds are referred to collectively as "Apollo Funds" and the Apollo affiliates that manage those funds are referred to as "Apollo Fund Managers").
17. Apollo Funds invest in companies and debt issued by companies involved in various businesses throughout the world. Examples of current investments include companies in the chemical, cruise line, logistics, paper, packaging, and metals businesses. The notifying parties have indicated that the European Commission considers Apollo Funds and Apollo Fund Managers to be a single undertaking for merger control purposes, collectively referred to as "Apollo".
18. Apollo Funds owns Claire's, a specialty retailer of value-priced costume jewellery, fashion accessories, hair accessories and beauty products and provider of ear piercing services. Claire's has 33 stores in the State and 10 stores located in County Dublin.

Target

Arnotts

19. Arnotts is a multi-category retailer with a mix of own-label and branded products. It operates two stores in Dublin city centre under the names Arnotts and Boyers. Arnotts provides online retailing through its website. Most of its online retailing is in the homewares and electrical categories.
20. Arnotts has a number of non-core activities. It operates an Arnotts store card which can be used for payment or credit in Arnotts outlets only. It also operates a car park beside its outlet on Henry Street. Finally, it owns a number of rental properties surrounding its Henry Street outlet.
21. For the financial year ending 27 January 2013, Arnotts' worldwide turnover was €118 million, all of which was generated in the State.

Rationale for the Proposed Acquisition

22. The parties state in the notification:

“Upon completion of the proposed transaction, Wittington/Fitzwilliam intend that Wittington Canada will operate Arnotts. Wittington Canada’s objectives in making the acquisition are [...]. Wittington Canada believes that Arnotts provides a different offering than Brown Thomas. [...] Wittington Canada believes that by improving Arnotts’ offering to the customer, it would be possible to grow sales and profits.”

The Procedure

23. On 17 April 2014, the Authority served a Requirement for Further Information on each of Wittington Canada and Arnotts pursuant to section 20(2) of the Act. This automatically suspended the procedure for the Authority’s Phase 1 assessment.
24. Upon receipt of the responses to the Requirements for Further Information, the “appropriate date” (as defined in section 19(6) of the Act) became 29 April 2014.⁴
25. During the investigation, the Authority contacted various third parties, including:
 - A survey of 500 customers of Arnotts in County Dublin carried out by Millward Brown on behalf of the Authority;
 - circulation of a questionnaire to nine competitors of Wittington Canada and/or Arnotts identified from lists provided to the Authority by both Wittington Canada and Arnotts of their top 5 competitors in the State;
 - circulation of a questionnaire to 35 concessionaires identified from lists provided to the Authority by both Wittington Canada and Arnotts of their top 8 concessionaires in each of nine overlapping product categories (womenswear, menswear, accessories, women’s footwear, men’s footwear, beauty, childrenswear, jewellery, and homewares); and,
 - circulation of a questionnaire to 35 suppliers taken from lists provided to the Authority by both Wittington Canada and Arnotts of their top 10 suppliers in each of the nine overlapping product categories.
26. The Authority requested and received, on an on-going basis, further information and clarifications from the notifying parties.

Third Party Submissions

27. One third party submission was received by the Authority. Issues raised in the third party submission were investigated as part of the review process.
28. [...] expressed the following concern:

“[...].”

⁴ The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.

Industry Background

29. Non-food retailing is carried out through a variety of channels including multi-category retailing, specialist retailing and online retailing. Multi-category non-food retailers range from the largest department stores (stocking a wide range of products including beauty, womenswear, women's footwear, menswear, men's footwear, accessories, childrenswear, jewellery, homewares, haberdashery, furniture, television/audio equipment, etc) to smaller stores that stock only two or three product categories. Specialist retailers focus only on one or two product categories.
30. Many multi-category non-food retailers operate concessions within their stores. Concessions are retail outlets operated independently by retail brands (e.g. Gap, Tommy Hilfiger, Levis, etc.) that lease commercial space on the premises of the multi-category retail outlet, manage day-to-day operations (staffing, stock, pricing, etc.), and typically pay a percentage commission rate based on the annual turnover of the concession. The level of the commission rate varies according to commercial factors including the brand strength of the concession and the location and floor space occupied within the store. Strong retail brands will be able to negotiate lower commission rates with multi-category retailers for concession space.

Analysis

Overlap in the Activities of the Parties

31. Wittington Canada, through its subsidiary Brown Thomas, and Arnotts are both active in multi-category retailing in the non-food sector in the State. Specifically, Brown Thomas and Arnotts overlap in the sale of the following product categories:
 - beauty;
 - womenswear and women's footwear;
 - menswear and men's footwear;
 - accessories;
 - childrenswear;
 - jewellery;
 - homewares; and,
 - restaurants.
32. Brown Thomas and Arnotts are both also active in the provision of concession space to concessionaires in the State.

Relevant Product Market

Views of the Undertakings Involved

33. The notification states the following:

"Fitzwilliam/Wittington Canada consider that the impact of the proposed transaction should be considered on the following non-food retailing sectors, across all channels, in the Greater Dublin Area: beauty, womenswear and women's footwear, menswear and men's footwear, accessories, childrenswear, jewellery, homewares, and restaurants."

34. With respect to the provision of concession space by multi-category retailers, the notification states the following:

"From the consumers' perspective, the shopping experience is the same whether the product is sold directly by an employee of the store or that of a third party. As such, it is not necessary to define a separate relevant product market for products sold in the stores by way of concession or consignment."

Views of the Competition Authority

35. The Authority defines markets to the extent necessary depending on the particular circumstances of a given case. Accordingly, caution is advised when drawing any inference from findings in previous cases.⁵
36. Multi-category non-food retailers offer a shopping experience to customers which is quite different to that experienced when shopping in a specialist retailer. Multi-category non-food retailers sell a broad range of both own-bought⁶ and concession products across multiple product categories (e.g. menswear, womenswear, beauty, accessories, jewellery, etc.). Some multi-category non-food retailers attempt to differentiate themselves from their rivals by investing in their staff to ensure a high standard of customer service.⁷ The wide range of products sold across multiple product categories and the level of customer service offered to customers distinguishes multi-category non-food retailers from specialist retailers who generally sell products in only one or two product categories.
37. For the purpose of its competitive assessment, the Authority will examine the competitive impact of the proposed transaction in the market for multi-category non-food retailing. The Authority also considered the proposed transaction with respect to individual product categories (e.g. menswear, womenswear, etc.) and by reference to a potential market encompassing specialist retailers (in which event the parties' respective market shares would be smaller), but the Authority considers that for the purpose of its assessment in the present case it is not necessary to come to a definitive view on the precise relevant product market because its

⁵ For example, in M/06/052 – *Debenhams/Roches*, the Authority stated in paragraph 11 that "without taking a view as to what the product market is, it is likely to be broader than just multi-category retailers. There may be a relevant product market for each product category sold at multi-category retailers within which multi-category retailers would compete with each other and with specialist retailers."

⁶ Products sold by the multi-category retail outlet itself as opposed to products sold through concessionaires.

⁷ For example, Brown Thomas informed the Authority that it [...]

conclusions concerning the competitive impact of the proposed transaction, outlined below, would be unchanged regardless of the manner in which the relevant product market is defined.

38. The Authority will also examine the competitive impact of the proposed transaction in the market for the provision of concession space by multi-category non-food retailers. Concessions are unique to multi-category retailers and form a significant proportion of the total turnover generated by both Brown Thomas and Arnotts.⁸

Relevant Geographic Market

Views of the Undertakings Involved

39. The notification states the following:

“Fitzwilliam/Wittington Canada consider that, in line with the [Authority’s] decision in Debenham/Roches and taking a cautious approach, the appropriate relevant geographic market for the product categories identified above is the Greater Dublin Area, including Dublin City Centre, Dublin Airport and out of town shopping centres with transport links to the City Centre such as Dundrum Town Centre, Blanchardstown, Liffey Valley, Carrickmines, Pavilions, The Square in Tallaght, Kildare Village and the Whitewater Centre in Newbridge.”

Views of the Competition Authority

40. As noted above, the Authority defines markets to the extent necessary depending on the particular circumstances of a given case. Accordingly, caution is advised when drawing any inference from findings in previous cases.⁹
41. Arnotts operates two multi-category retail outlets in Dublin city centre under the names Arnotts and Boyers. Brown Thomas has one multi-

⁸ Approximately [...] % and [...] % of the total revenue generated in Brown Thomas and Arnotts, respectively, comes via concession sales.

⁹ For example, in a previous merger determination involving retailers of sports clothing and sports footwear located in County Dublin (M/11/005 – *JD Sports/Champion Sports*), the Authority stated the following in paragraph 38 in relation to the relevant geographic market: “The Authority considers that the narrowest possible geographic markets where the proposed transaction is likely to raise competitive concerns are the areas where the parties’ stores are in close proximity to include a catchment area with a radius of approximately a 20 minute drive-time. This implies two catchment areas are relevant for the purpose of assessing this transaction: Catchment Area 1 – Greater Dublin Area consisting of Dublin city centre, Liffey Valley Shopping Centre, and Blanchardstown Centre. Catchment Area 2 – Newbridge Area consisting of White Water Centre and shopping outlets within approximately a 20 minutes drive-time radius from it.”

In M/06/052 – *Debenhams/Roches*, the Authority stated the following in paragraph 14: “The only area where the parties’ retail outlets are located in close proximity to each other in Dublin is in the city centre. Within this area the parties face competition from a number of well-known multi-category retailers such as Arnotts, Clerys and Brown Thomas and also from a large number of specialist stores. The parties also face competition from multi-category retailers and specialist stores located in out of town shopping centres that have transport links to the city centre such as the Dundrum Shopping Centre.”

category retail outlet located in Dublin city centre. The four BT2 retail outlets are all located in County Dublin – two in Dublin city centre, one in Dundrum Town Centre, and one in Blanchardstown Centre.

42. For the purpose of its competitive assessment, the Authority will examine the competitive impact of the proposed transaction in the Greater Dublin Area (“GDA”) which the Authority defines as the geographic area comprising County Dublin. The Authority has considered the proposed transaction with respect to a number of possible geographic markets, but is of the view that for the purpose of its assessment in the present case it is not necessary to come to a definitive view on the precise relevant geographic market because its conclusions concerning the competitive impact of the proposed transaction, outlined below, would be unchanged regardless of the manner in which the relevant geographic market is defined.
43. In conclusion, for the purpose of examining the competitive effects of the proposed transaction, the Authority will examine the following two markets:
 - multi-category non-food retailing in the GDA; and,
 - the provision of concession space by multi-category non-food retailers in the GDA.

Market Structure

44. In the notification, the parties provided share data for the following three individual product categories in the GDA in 2012: beauty, clothing (including footwear), and homewares. The parties define the GDA as the counties of Dublin, Kildare, Meath and Wicklow.
45. In the beauty product category, the parties estimate that Brown Thomas and Arnotts had a combined share of [5-15]% in 2012.¹⁰ With respect to clothing (including footwear), the parties estimate that Brown Thomas and Arnotts had a combined share of [0-10]% in 2012.¹¹ With respect to the homewares product category, the parties estimate that Brown Thomas and Arnotts had a combined share of [0-10]% in 2012.¹²
46. In order to present an accurate picture of market shares in the market for multi-category non-food retailing in the GDA, the Authority requested turnover information from a number of multi-category retailers active in the GDA.
47. Table 1 below presents market share data based on each multi-category retailers’ annual turnover in the GDA generated from sales across the following nine product categories: womenswear, menswear, accessories, women’s footwear, men’s footwear, beauty, childrenswear, jewellery, and homewares. It is important to note that Table 1 excludes two substantial multi-category retailers currently active in the GDA for which information

¹⁰ The parties state in the notification that these estimated market shares are based on information contained in *Cosmetics Europe*, the EU trade association for the cosmetics industry.

¹¹ The parties state in the notification that these estimated market shares are based on information contained in The Verdict Report, *How Ireland Shops 2012, Clothing*, which covers all clothing and footwear.

¹² The parties state in the notification that these estimated market shares are based on information contained in The Euromonitor report, *Furniture and Homewares Stores in Ireland*, April 2012.

was unavailable: Penneys and Dunnes Stores.¹³ The market shares of each multi-category non-food retailer in Table 1 are therefore inflated and the market is less concentrated than the figures in Table 1 suggest.

Table 1: Multi-Category Retailing in the GDA, by Turnover (€) %, 20011-2013

	2011	2012	2013
Brown Thomas	[20-30]%	[20-30]%	[20-30]%
Arnotts	[10-20]%	[10-20]%	[10-20]%
Marks and Spencer	[25-35]%	[25-35]%	[25-35]%
Debenhams	[10-20]%	[10-20]%	[10-20]%
House of Fraser	[5-15]%	[5-15]%	[5-15]%
Clerys	[0-10]%	[0-10]%	[0-10]%
Harvey Nichols	[0-10]%	[0-10]%	0-10)%
Total	100%	100%	100%

Source: The Competition Authority based on information provided by the Parties, Marks and Spencer, Debenhams, House of Fraser, Clerys and Harvey Nichols.

Note: Combined turnover figures across the following nine product categories: womenswear, menswear, accessories, women's footwear, men's footwear, beauty, childrenswear, jewellery, and homewares.

48. On the basis of these (inflated) market share figures, Brown Thomas and Arnotts would have a combined market share of [35-45]% post-transaction.

Competitive Assessment

The market for multi-category non-food retailing in the Greater Dublin Area

Views of the Undertakings Involved

49. The notification states the following:

"Fitzwilliam/Wittington Canada believe that the proposed transaction does not give rise to

¹³ Dunnes Stores claims that it is "Ireland's largest and leading retailer". See <http://www.dunnesstores.com/about-us/content/fcp-content>

competition concern because of the strength of rivalry among retailers in the Greater Dublin Area, the fact that Brown Thomas and Arnotts are not each other's closest rivals, low customer switching costs, low barriers to entry and finally, the fact that since even on the narrowest possible market definition, the increase in concentration caused by the proposed transaction is minimal."

Views of the Competition Authority

50. For the purpose of assessing the competitive impact of the proposed transaction in the market for multi-category non-food retailing in the GDA, the Authority identified two relevant theories of harm to be evaluated: (a) unilateral effects causing increased prices to consumers, and (b) unilateral effects causing harm to suppliers and competitors.

Unilateral Effects causing Increased Prices to Consumers

51. Unilateral effects arise when, as a result of a merger, the merged entity would find it profitable to raise prices, irrespective of the reactions of its competitors, to the detriment of consumers. In this instance, the question is whether, post-acquisition, Wittington Canada, through either or both of Brown Thomas and Arnotts, would be in a position to unilaterally raise the price charged to consumers (or otherwise harm competition).
52. The Authority considers that the proposed transaction will not give Wittington Canada the ability to unilaterally exercise market power or lessen competition in the market for multi-category non-food retailing in the GDA for the reasons described below.

Competitors to Brown Thomas/Arnotts

53. Post-transaction, the merged entity will face competition from a number of rival multi-category non-food retailers active in the GDA. These include:
- Clerys which was bought by Gordon Brothers Europe¹⁴ in 2012 and is located on O'Connell Street in close proximity to Arnotts. Clerys is active across all overlapping product categories (womenswear, menswear, beauty, etc);
 - Debenhams which has four multi-category non-food retail outlets located in the GDA (Henry Street in Dublin city centre, Blackrock, Tallaght, and Blanchardstown Centre). Debenhams is a major international retail chain operating 240 retail stores across 28 countries. Debenhams is active across all overlapping product categories;
 - Marks and Spencer, a major international retail chain, which has five multi-category retail outlets located in the GDA (two in Dublin city centre, one of which is located on Mary Street in close

¹⁴ According to its website, Gordon Brothers Europe "is the European advisory, restructuring and investment affiliate of Gordon Brothers Group. Utilising its international presence, industry knowledge and financial resources, Gordon Brothers Europe provides asset valuation and due diligence services, as well as restructuring and disposition solutions, supported with capital, to the retail, wholesale, commercial & industrial, brand and property sectors."

proximity to Arnotts, Liffey Valley, Dundrum Town Centre, and Blanchardstown Centre);¹⁵

- House of Fraser, a major international retail chain, which has one multi-category non-food retail outlet located in Dundrum Town Centre. House of Fraser is active across all overlapping product categories and it informed the Authority that it considers Brown Thomas to be its main competitor in the GDA;
- Harvey Nichols, a major international retail chain, which has one multi-category non-food retail outlet located in Dundrum Town Centre. Harvey Nichols is a luxury multi-category non-food retailer similar to Brown Thomas and active across all overlapping product categories;
- Penneys which has nine multi-category non-food retail outlets located in the GDA (O'Connell Street and Mary Street in Dublin city centre, Artane, Santry, Blanchardstown, Dun Laoghaire, Dundrum, Nutgrove, and Rathfarnham); and,
- Dunnes Stores which has a number of multi-category retail outlets located in the GDA which sell, in addition to food products, womenswear and women's footwear, menswear and men's footwear, childrenswear, accessories, and homewares.

Brown Thomas and Arnotts are not especially close competitors

54. In order for Wittington Canada to have the ability to unilaterally raise prices (or otherwise harm competition) as a result of the proposed transaction, Brown Thomas and Arnotts must be close competitors. Internal documents provided to the Authority by the parties and consumer surveys carried out by Brown Thomas and Millward Brown (on behalf of the Authority) indicate that this is not the case. This is described in more detail below.

Internal Documentation

55. The Authority requested and received extensive internal documentation from both Brown Thomas and Arnotts. The internal documents provided by the parties raise no concerns that the proposed transaction might lead to Wittington Canada having the ability to unilaterally raise prices (or otherwise harm competition).

56. The internal documents provided by Brown Thomas indicate that Brown Thomas perceives itself to be a unique multi-category non-food retailer compared to its rivals in the State. For example, an internal document provided to the Authority by Brown Thomas entitled [...] ¹⁶: "[...]" Later in the same internal document, the following statement appears: "[...]"

57. Similarly, an internal document provided by Brown Thomas entitled "[...]" contains the following statement: "[...]"

58. The difference in brand positioning between Brown Thomas and Arnotts is further illustrated in the following internal document provided by Brown

¹⁵ All five Marks and Spencer stores in the GDA sell food products in addition to womenswear, menswear, beauty, etc.

¹⁶ [...]

Thomas entitled [...]. In a discussion of the risks associated with the proposed transaction, the following statement about Arnotts appears: "[...]"

59. The same Brown Thomas internal document also contains the following statement about Arnotts: "[...]".
60. In conclusion, the internal documentation provided to the Authority by Brown Thomas indicates that Brown Thomas perceives itself to be quite different to Arnotts in terms of its offering to consumers. Furthermore, there is no evidence in the internal documentation provided to the Authority by Arnotts that Arnotts and Brown Thomas are especially close competitors.

Survey of Brown Thomas Customers

61. Brown Thomas carried out an ordinary-course-of-business online survey of its loyalty card customers in December 2013, the results of which were provided to the Authority. Wittington Canada informed the Authority that "the survey was taken by a sample of customers drawn from the Brown Thomas loyalty database and an external customer panel [...]. The Brown Thomas loyalty customers received an email with the link to the online survey and the external panel also took the survey online. [...]"
62. In total, [...] loyalty customers were contacted online by Brown Thomas, of which [...] responded to the survey, a response rate of around [...]%. In addition, [...] individuals who are not Brown Thomas loyalty customers were also surveyed online and these were taken from "[...]".
63. One of the questions posed in the survey was: "At Brown Thomas, do you feel you are spending more, less or the same as you used to?" In total, [a minority] of respondents stated that they are spending less at Brown Thomas. This group of respondents were then asked: "You said you are shopping less at Brown Thomas, where are you spending now instead?"
64. The results are presented for [...] categories of Brown Thomas shoppers: [...].
65. [Of this minority spending less at Brown Thomas,] across each of the [...] categories of lapsed Brown Thomas shoppers, Debenhams, Marks and Spencer, Dunnes Stores, and Boots are all gaining more Brown Thomas shoppers than Arnotts. For example, amongst the [...] category of Brown Thomas shoppers who are shopping less at BT, the [...] winners are Dunnes Stores ([...]), Marks and Spencer ([...]), Debenhams ([...]) and Boots ([...]). Arnotts ([...]) is also gaining Brown Thomas shoppers in this category but [less than] other multi-category retailers such as Dunnes Stores, Marks and Spencer and Debenhams.
66. [Of the minority spending less at Brown Thomas,] the pattern is quite similar amongst active Brown Thomas shoppers although Arnotts is gaining a bigger percentage of Brown Thomas shoppers in each of these four categories (i.e., [...]) than in the three [...] categories. For example, amongst the [...] category of Brown Thomas shoppers who are shopping less at Brown Thomas, Arnotts gained [...]. However, Dunnes Stores ([...]), Debenhams ([...]), Marks and Spencer ([...]) and Boots ([...]) all gained a [...] percentage of Brown Thomas shoppers.

67. In response to the question "At Brown Thomas, do you feel you are spending more, less or the same as you used to?", [...] of respondents stated that they are spending more at Brown Thomas. This group of respondents were then asked: "You said you are shopping more at Brown Thomas, where are you spending less?"
68. Results are only presented for [...] categories for "[...]" ([...]). The big loser is "Online Fashion Retailer" which lost at least [...] across all four categories.
69. For those [...] Brown Thomas shoppers who are spending more at Brown Thomas, the big losers are online fashion retailer ([...]), Marks and Spencer ([...]), Clerys ([...]), and Harvey Nichols ([...]). Arnotts lost [...]. In all four categories with the exception of [...], although Arnotts has lost shoppers to Brown Thomas, it has not lost as much as other retailers. Even in the [...] category, although Arnotts is the biggest loser ([...]), Clerys, Debenhams, House of Fraser, and Harvey Nichols have all lost at least [...].
70. These results suggest that multi-category retailers such as Marks and Spencer, Dunnes Stores, Clerys, Debenhams, House of Fraser, and Harvey Nichols are at least as close, if not closer, competitors to Brown Thomas than Arnotts.
71. The results of the Brown Thomas survey also illustrate the difference in brand positioning between Brown Thomas and Arnotts. One of the questions posed in the survey was: "What words come to mind to describe the following shops?" Brown Thomas is associated with "Luxury", "Expensive" and "Quality". Arnotts is associated with "Variety" and "Quality". As described below, Arnotts customers surveyed by Millward Brown expressed similar views about the differences between Arnotts and Brown Thomas.

Millward Brown Survey of Arnotts Customers

72. A qualitative and quantitative survey of Arnotts customers located in the GDA was carried out by Millward Brown on behalf of the Authority. For the qualitative survey, three consumer group discussions (each consisting of eight participants) lasting one hour each were carried out by Millward Brown in April 2014.¹⁷ For the quantitative survey, 500 Arnotts customers in total completed a questionnaire in April 2014 by telephone interview.¹⁸
73. In the qualitative part of the survey carried out by Millward Brown, participants were asked to describe any differences between Arnotts and Brown Thomas. Participants described Brown Thomas as being significantly more expensive and having more of a sense of luxury than Arnotts. The vast majority of participants in the qualitative part of the survey expressed the view that the proposed transaction would have no impact on competition in the GDA.
74. In the quantitative survey, 56% of the 500 respondents to the telephone interview expressed no competition concerns about the proposed transaction while 44% (220) expressed the view that the proposed

¹⁷ To be eligible to participate in the group discussion, participants must have shopped in Arnotts at least once over the past 12 months. Half of the participants were regular Arnotts shoppers.

¹⁸ To qualify as an Arnotts customer, the respondent must have shopped at least once in Arnotts in the past 12 months.

transaction would have a negative impact on competition in the market for multi-category non-food retailing in the GDA. When asked to explain this response, the two most common reasons provided by respondents was that there will be less competition and higher prices post-transaction.

75. In order to assess the credibility and robustness of these views, the Authority examined the responses of the 220 customers who expressed a competition concern to a number of other questions posed in the telephone interview.
76. Respondents were asked how they would react if "Arnotts increased their prices significantly (for example, by 10%) whilst at the same time the price charged by all other stores remained the same." Across all nine product categories¹⁹, on average 70% of the 220 respondents who expressed a competition concern stated that they "would switch to another store". On average, 20% of the 220 respondents across all nine product categories stated that they "would continue to buy from Arnotts". The remaining 10% stated that they "would not buy the product at all".
77. Of the 70% of the 220 respondents who stated that they "would switch to another store" if Arnotts increased its prices significantly, by far the most frequently cited stores across all nine product categories were Clerys, Debenhams, and/or Marks and Spencer.²⁰ Brown Thomas is infrequently cited by respondents across all nine product categories (with the exception of beauty products) and even in this category it is cited less than Debenhams and the same number of times as Clerys and Others.
78. This result raises doubts about the credibility of the responses of 70% of the 220 customers who believe that the proposed transaction will lead to less competition or higher prices. Since these customers believe that the proposed transaction will lead to less competition or higher prices, one would have expected them to respond to the question about how they react to a 10% price rise by Arnotts by stating that they would switch to Brown Thomas.²¹ The fact that around 70% of these customers state that they are prepared to switch to Clerys, Debenhams, and/or Marks and Spencer in response to a price rise by Arnotts raises doubts about the ability of Wittington Canada to raise prices (or otherwise harm competition) post-transaction.
79. In conclusion, a majority of Arnotts' customers surveyed by Millward Brown in the quantitative survey expressed no competition concerns about the proposed transaction and the competition concerns raised by a significant minority of customers lack credibility given the stated willingness of around 70% of these customers to switch to other multi-category retailers in the GDA such as Clerys, Debenhams, and/or Marks and Spencer in response to a hypothetical price rise by Arnotts. It is also significant that the vast majority of participants in the qualitative part of

¹⁹ Womenswear, menswear, accessories, women's footwear, men's footwear, beauty, childrenswear, jewellery, and homewares.

²⁰ The question was phrased as follows: "You said you would switch to another store, which of the following stores would you switch to: Brown Thomas, BT2, Clerys, Debenhams, Dunnes Stores, Harvey Nichols, House of Fraser, M&S, Penneys, Others (Specify)". Respondents thus had the option of listing more than one store.

²¹ If respondents would switch to Brown Thomas in response to a 10% price rise by Arnotts (whilst at the same time the price charged by all other stores remained the same), this indicates that consumers perceive Arnotts and Brown Thomas to be close competitors in the relevant market. This implies that if Wittington Canada were to increase prices in Arnotts post-transaction, sufficient consumers would switch to Brown Thomas in response thereto (if they switch at all), making such a price rise profitable for the merged entity and enabling it to unilaterally exert market power post-transaction.

the survey expressed the view that the proposed transaction would have no impact on competition in the GDA.

80. The results of both the Brown Thomas survey and the Millward Brown customer survey indicate that Arnotts and Brown Thomas are not especially close competitors.

Conclusion

81. The Authority considers that the proposed transaction will not give Wittington Canada the ability to unilaterally exercise market power or otherwise harm competition.
82. The internal documents provided by the parties and the results of both consumer surveys, described in detail above, indicate that Arnotts and Brown Thomas are not especially close competitors. Post-transaction, Wittington Canada will continue to face competition in the GDA from rival multi-category retailers such as Debenhams, Clerys, Marks and Spencer, House of Fraser, Dunnes Stores, and Harvey Nichols.

Unilateral Effects causing harm to Suppliers and Competitors

83. A number of multi-category retailers active in the GDA raised a concern with the Authority that post-transaction Wittington Canada would become a significant buyer across the various overlapping product categories (i.e. womenswear, menswear, beauty, etc) and, as a result, may have the ability to raise its rivals costs and/or harm suppliers by, for example, forcing suppliers not to do business with rival multi-category retailers.

Views of the Undertakings Involved

84. In a submission to the Authority dated 19 May 2014, Wittington Canada states the following:

“The majority of beauty brands stocked by Brown Thomas and/or Arnotts are powerful global brands with worldwide presence. These brands are unlikely to allow themselves to be foreclosed from desirable retail outlets.”

“Many of Brown Thomas and Arnotts’ competitors in the beauty sector are UK retailers which benefit from the buyer power of the affiliated UK entity (for example, Boots, Debenhams, Harvey Nichols and House of Fraser). [...] the four retail banners operated by the Selfridges Group (Brown Thomas, Selfridges & Co., Holt Renfrew and De Bijenkorf) [...]”

“Wittington Canada submits that Brown Thomas’ attractiveness as a platform for beauty brands derives from the unique brand association which Brown Thomas can provide. [...] As such, Wittington Canada does not consider that common ownership of Arnotts will have any impact in its ability (or the ability of its competitors) to attract these brands.”

Views of the Competition Authority

85. The internal documents provided by the parties raise no concerns that the proposed transaction might lead to Wittington Canada having the ability to raise its rivals costs and/or harm suppliers.
86. In order to assess the credibility and validity of the competition concerns raised by multi-category retailers active in the GDA, the Authority sent a detailed questionnaire to 35 suppliers taken from lists provided to the Authority by both Wittington Canada and Arnotts of their top 10 suppliers in each of the nine overlapping product categories (womenswear, menswear, accessories, women's footwear, men's footwear, beauty, childrenswear, jewellery, and homewares).
87. Four suppliers of Arnotts expressed competition concerns about the impact of the proposed transaction. All four expressed the view that the merged entity's bargaining power vis-à-vis suppliers would increase post-transaction with the result that the terms and conditions negotiated with the merged entity may deteriorate. All four suppliers stated that the alternative routes to market available to them are not as commercially attractive as selling their products through Arnotts.
88. However, the vast majority of suppliers who provided a written response to the questionnaire expressed no concerns about the impact of the proposed transaction for a variety of reasons. These include having alternative routes to market (the most frequently cited alternative is opening stand-alone retail outlet(s) followed by selling products through competing multi-category retail outlets (such as Clerys and Debenhams)) and being of the view that the proposed transaction will not affect their ability to negotiate competitive terms and conditions with the merged entity post-transaction. No supplier of Brown Thomas raised any competition concerns about the proposed transaction.

Conclusion

89. The Authority considers that Wittington Canada will not have the ability to raise its rivals' costs and/or harm suppliers post-transaction in the market for multi-category retailing. As described above, the vast majority of suppliers who responded to the Authority's questionnaire expressed no competition concerns about the proposed transaction. The Authority considers that suppliers across all the overlapping product categories will have credible alternative routes to market post-transaction in addition to the merged entity. These include competing multi-category retail outlets (such as Clerys and Debenhams) and the option of setting up a retail outlet(s).

The market for the provision of concession space by multi-category non-food retailers in the Greater Dublin Area

90. A number of competing multi-category retailers active in the GDA raised a concern with the Authority that post-transaction Wittington Canada would control a significant proportion of concession space in the GDA and, as a result, may have the ability to raise rivals' costs and/or harm concessionaires by, for example, forcing concessionaires not to do business with rival multi-category retailers.

Views of the Undertakings Involved

91. The parties do not provide any views in the notification as to the likely competitive impact of the proposed transaction in the market for the provision of concession space by multi-category non-food retailers in the GDA. As noted above, the parties state in the notification:

“From the consumers’ perspective, the shopping experience is the same whether the product is sold directly by an employee of the store or that of a third party. As such, it is not necessary to define a separate relevant product market for products sold in the stores by way of concession or consignment.”

Views of the Competition Authority

92. The internal documents provided by the parties raise no concerns that the proposed transaction might lead to Wittington Canada having the ability to foreclose its rivals or harm concessionaires.
93. In order to assess the credibility and validity of the competition concerns raised by multi-category retailers in the GDA, the Authority sent a detailed questionnaire to 35 concessionaires taken from lists provided to the Authority by both Wittington Canada and Arnotts of their top 8 concessionaires in each of nine overlapping product categories (womenswear, menswear, accessories, women’s footwear, men’s footwear, beauty, childrenswear, jewellery, and homewares).
94. Only two concessionaires expressed a competition concern. One concessionaire expressed the view that the number of alternative options for concession space in the GDA will be reduced post-transaction. However, this concessionaire informed the Authority that it operates eight retail outlets in the GDA and therefore Arnotts is not its sole route to market. This concessionaire also listed House of Fraser and Clerys as providers of concession space in the GDA, in addition to Arnotts and Brown Thomas. Finally, this concessionaire expressed the view that the proposed transaction may have a positive impact since it will remove the uncertainty that has surrounded Arnotts in recent times and represent a big vote of confidence in the Arnotts brand.
95. A second concessionaire expressed a concern that if the Arnotts’ brand was re-positioned post-transaction along the lines of the Selfridges’ brand in the United Kingdom, this concessionaire might as a result lose its concession space in Arnotts since the Selfridges’ business model is focused on designer international brands. This concessionaire expressed the view that there are no other opportunities for concession space in the GDA. The Authority has not seen any evidence to suggest that Wittington Canada intends to change the Arnotts business model by re-positioning the brand as a luxury multi-category retailer similar to Brown Thomas. [...] The following statement appears in an internal document provided to the Authority by Brown Thomas entitled [...].
96. The vast majority of concessionaires who provided a response to the questionnaire expressed no competition concerns about the proposed transaction for a variety of reasons.²² These included having their own

²² Five concessionaires expressed the view that the proposed transaction may have a positive impact. The most common reason provided was that Arnotts may benefit from Selfridges’ expertise in retailing worldwide.

retail outlets in the GDA²³, having the viable option of renting concession space in alternative multi-category retail outlets in the GDA such as Debenhams, Clerys and House of Fraser, and being of the view that the proposed transaction will not affect their ability to negotiate competitive terms and conditions (including commission rates) with the merged entity.

97. Finally, it is relevant to note that two concessionaires who responded to the Authority's questionnaire rent concession space in both Brown Thomas and Arnotts and neither concessionaire raised any competition concerns about the proposed transaction.

Conclusion

98. The Authority considers that Wittington Canada will not have the ability post-transaction to raise rivals' costs and/or harm concessionaires in the market for the provision of concession space by multi-category non-food retailers. As described above, the vast majority of concessionaires who responded to the Authority's questionnaire expressed no competition concerns about the proposed transaction. The Authority considers that concessionaires across all the overlapping product categories will have credible alternative routes to market post-transaction in addition to the merged entity. These include renting concession space in other multi-category retail outlets (such as Clerys and Debenhams) and the option of setting up a retail outlet(s). Furthermore, a significant number of concessionaires who responded to the Authority's questionnaire currently have their own retail outlet(s).
99. In light of the above, the Authority concludes that the proposed transaction will not lead to a substantial lessening of competition in the market for the provision of concession space by multi-category non-food retailers.

²³ It is significant that a majority of Arnotts concessionaires who responded to the Authority's questionnaire have their own retail outlet(s) in the GDA.

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 Fitzwilliam Finance Partners Limited/Wittington Investments, Limited would acquire joint control, with investment funds managed by affiliates of Apollo Management, L.P., of Arnotts Holdings 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

Stephen Calkins

Member of the Competition Authority

Director, Mergers Division