



## DETERMINATION OF MERGER NOTIFICATION M/15/036 FITZWILLIAM/WITTINGTON CANADA/ARNOTTS

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### Section 21 of the Competition Act 2002

#### Proposed acquisition by Fitzwilliam Finance Partners Limited and Wittington Investments Limited of control of Arnotts Holdings Limited

Dated 21 August 2015

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#### Introduction

1. On 13 July 2015, in accordance with section 18(1) of the Competition Act 2002, as amended<sup>1</sup> (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of the proposed acquisition by Fitzwilliam Finance Partners Limited (“Fitzwilliam”) and Wittington Investments, Limited (“Wittington Canada”) of control of Arnotts Holdings Limited (“Arnotts”).

#### The Transaction

2. In 2014, during an extended Phase 1 investigation, the Commission’s predecessor, the Competition Authority (“Authority”), investigated the proposed acquisition of joint control of Arnotts by Apollo Management L.P. (a subsidiary of Apollo Global Management LLC – together “Apollo”), Fitzwilliam and Wittington Canada. On 27 May 2014, the Authority issued its determination clearing that transaction (see Merger Notification M/14/008). The determination issued by the Authority in that case set out the historical context to that transaction and is available at <http://www.ccpic.ie/enforcement/mergers/merger-notices/m14008-fitzwilliam-wittington-canada-arnotts>.
3. [...] The transaction notified to the Authority in M/14/008 ultimately resulted in Fitzwilliam/Wittington Canada holding certain debts, warrants and a call option for 50% of Arnotts’ share capital and Apollo holding certain debts, warrants and a call option for the remaining 50% of Arnotts’ share capital. In effect, as a result of that transaction, Fitzwilliam/Wittington Canada assumed joint control rights over Arnotts along with Apollo.
4. In the current proposed transaction, Fitzwilliam and Wittington Canada are seeking to acquire from Apollo the debts, warrants and call option for 50% of Arnotts’ share capital

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<sup>1</sup> It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.



which Apollo currently holds. [...] Post-acquisition Fitzwilliam will hold warrants and a call option for 100% of the equity in Arnotts.

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

### The Acquirers

#### *Fitzwilliam*

6. Fitzwilliam is a property company incorporated in 2011 for the sole purpose of acquiring the debt/equity in Arnotts, with a view to securing an operator for the main Arnotts store and developing the peripheral properties owned by Arnotts. Fitzwilliam is a limited company registered in the State. All of its share capital is held by Noel Smyth, Fitzwilliam's Managing Director. Fitzwilliam generated no turnover in 2014.

#### *Wittington Canada*

7. Wittington Canada is the holding company for the Weston Group, Wittington Properties and the Selfridges Group<sup>3</sup>:

- 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.
- 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).

8. For the financial year ending 1 February 2014, Wittington Canada's worldwide turnover was in excess of €[...]. Wittington Canada's turnover in the State for the same period was €[...].<sup>4</sup>

### Arnotts

9. 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.

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

<sup>3</sup> 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 in M/14/008 that both companies "should not be considered to form part of the same group for the purposes of competition law".

<sup>4</sup> See M/14/008 - Fitzwilliam/Wittington Canada/Arnotts for a more detailed discussion of the activities of Wittington Canada.



10. 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 commercial properties surrounding its Henry Street outlet.
11. For the financial year ending 26 January 2014, Arnotts' worldwide turnover was €120 million, all of which was generated in the State.<sup>5</sup>

#### The Vendor

12. Apollo is a leading global alternative investment manager which specialises in investments in distressed private equity, credit and real estate assets. For more information on Apollo and its portfolio of investment see <http://www.agm.com/Home.aspx>.

#### Rationale for the Proposed Acquisition

13. The notification states:

*“Wittington Canada/Fitzwilliam intend that ultimately, Wittington Canada will operate the main Arnotts store and that Fitzwilliam will develop the peripheral assets.*

[...]

#### Third Party Submissions

14. One third party submission was received by the Commission.
15. [...] expressed concern that the transaction will:
  - a) enable Brown Thomas and Arnotts to exercise a dominant position in the luxury Perfumery & Cosmetics (“P&C”) channel;
  - b) enable Brown Thomas and Arnotts to reduce ARI’s and other competitors’ ability to compete in P&C through exclusivity arrangements, delayed access to premium brands and higher prices; and,
  - c) reduce availability of Irish buying talent and adversely impact Irish jobs.
16. Issue c) above was not considered by the Commission during its review of the present transaction since it is outside the merger review remit of the Commission. Issues a) and b) were considered during the Authority’s review of M/14/008 and during the Commission’s review of the present transaction and were found in both instances not to be merger-specific concerns.

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<sup>5</sup> The turnover was generated as follows: [...].



## Competitive Analysis

17. The Commission considers that there are two areas of horizontal overlap that require analysis in the present case: (i) multi-category non-food retailing and the related activity concerning the provision of concession space by multi-category non-food retailers which arises as a result of Wittington Canada's control of Brown Thomas; (ii) commercial property (retail and commercial space) which arises as a result of Fitzwilliam/Noel Smyth's interests in commercial properties in the Greater Dublin Area ("GDA").

### *Multi-category Non-food Retailing*

18. In M/14/008 - Fitzwilliam/Wittington Canada/Arnotts the Authority carried out an extensive investigation of the transaction which included:
- 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 (i.e. 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.
19. Without coming to a definitive view on the relevant product and geographic markets, the Authority's investigation focussed on the markets for: (i) multi-category non-food retailing in the GDA; and (ii) the provision of concession space by multi-category non-food retailers in the GDA. After having reviewed all of the evidence collected and analysed both the structure and operation of these two potential markets, the Authority concluded that the transaction would not lead to a substantial lessening of competition.
20. It is the view of the Commission that in the intervening period since the Authority issued its determination in M/14/008 on 27 May 2014 there has been no significant change in the market (with the exception of the departure of Clerys from the market – see below) that would lead the Commission to alter the findings of the Authority in M/14/008 - Fitzwilliam/Wittington Canada/Arnotts.
21. The Commission considers that the exit of Clerys from the market will have no appreciable effect on competition and does not alter the conclusion reached by the Authority in M/14/008 for the following reasons:



- Clerys was only one of a number of multi-category non-food retailing competitors of Brown Thomas and Arnotts in the GDA. The other competitors identified remain active in the market:
  - Debenhams has four multi-category non-food retail outlets located in the GDA (Henry Street in Dublin city centre, Blackrock, Tallaght, and Blanchardstown Centre) and is a major international retail chain operating 240 retail stores across 28 countries.
  - Marks and Spencer is 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 proximity to Arnotts, and the other outlets located at Liffey Valley, Dundrum Town Centre, and Blanchardstown Centre);
  - House of Fraser, another major international retail chain, has one multi-category non-food retail outlet located in Dundrum Town Centre and is active across all overlapping product categories of the merging parties.
  - Harvey Nichols is 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 has nine multi-category non-food retail outlets located in the GDA; 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.
- Clerys held a small and declining market share in the market for multi-category non-food retailing of approximately 4% in the GDA.
- The remaining multi-category non-food retailers in the market offer sufficient provision of concession space as an alternative to the merged entity while concessionaires retain the possibility of having their own retail outlets in the GDA.

#### *Rentable Commercial Property*

22. There is a minor horizontal overlap between the parties in the market for rentable commercial property in the State. Post-transaction, Fitzwilliam, will acquire the property assets of Arnotts as described in paragraph 5 above. Noel Smyth the sole shareholder in Fitzwilliam already has interests in the following commercial properties:
- [...]



23. The Commission notes that there is a large supply of commercial property (both retail and commercial office space) in the GDA (see M/15/032 for more detail). In addition, the Irish commercial property sector is highly fragmented, with a large number of international and domestic players. Thus large international property investors who are active in the market for rentable commercial property hold large property portfolios and local competitors, such as IPUT, Kennedy Wilson, Green Property and Irish Life, have significant interests in commercial property.
24. In light of the above, the Commission concludes that the proposed transaction will not lead to a substantial lessening of competition in any market for goods or services in the State.



### **Determination**

The Competition and Consumer Protection Commission, 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 and Wittington Investments Limited would acquire control 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 and Consumer Protection Commission

**Gerald FitzGerald**  
**Member**  
**Competition and Consumer Protection Commission**