



DETERMINATION OF MERGER NOTIFICATION M/15/070 - STARWOOD / ELM PARK

Section 21 of the Competition Act 2002

Proposed acquisition of sole control of the landholdings known as the Elm Park Campus and Llandaff Terrace by SOF-X International Holdings LP

Dated 18 January 2016

Introduction

1. On 7 December 2015, in accordance with section 18(1) of the Competition Act 2002, as amended¹ (“the 2002 Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby SOF-X International Holdings LP (“SOF-X”), a fund managed by Starwood Capital Group Global II L.P. (“Starwood Global II”), would, through its indirect wholly-owned subsidiary SOF-10 Elm Park Investments Lux Sarl, (“SOF Elm Park”), acquire sole control of the landholdings known as the Elm Park Campus and Llandaff Terrace (“Elm Park”).²
2. At present Elm Park is owned by the following parties: (i) Radora Developments Limited acting by its Receivers (Declan Taite and Anne O’Dwyer of Duff & Phelps); (ii) Bernard McNamara, Jerry O’Reilly and David Courtney acting by their Receiver (Declan Taite of Duff & Phelps); (iii) Catacove Limited acting by its Receiver (Declan Taite of Duff & Phelps); and (iv) Bernard McNamara acting by his Receiver (Declan Taite of Duff & Phelps) as receiver of Mr McNamara’s legal interest in 221 Merrion Road, Dublin 4 (collectively, the “Vendors”).

The Proposed Transaction

3. The proposed transaction is to be entered into pursuant to a contract for sale dated 27 November 2015 between SOF-10 Elm Park and the Vendors in respect of Elm Park (the “Contract for Sale”).³

¹ 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.

² Elm Park is in receivership, the Receivers having been appointed by the National Asset Management Agency (“NAMA”).

³ SOF Elm Park stated, in correspondence with the Commission dated 11 January 2016, that “Lot 2 – Llandaff Terrace” in the Contract for Sale refers to Nos. 207, 209, 211, 213, 215, 217, 219, 221 Merrion Road.



The Undertakings Involved

Starwood Capital Group and Affiliates

4. Starwood Capital Group (“Starwood”) is a private investment company headquartered in Greenwich, Connecticut, USA, and has seven other offices in the USA and one office in each of Germany, Hong Kong and the UK.⁴
5. Starwood, through Starwood Global II⁵ and other affiliates, manages a variety of funds⁶ that invest globally (including in the State) primarily in real estate, including commercial, residential and hotel properties as well as in property related assets.
6. SOF-X is a fund which is ultimately managed by Starwood Global II. SOF-X would acquire sole control of Elm Park through its indirect wholly-owned subsidiary SOF Elm Park, a company newly incorporated in Luxembourg and created for the purpose of implementing the proposed transaction.⁷
7. At the time of notifying the proposed transaction, Starwood was managing assets worth approximately €37 billion⁸ worldwide, including assets worth approximately €[...] million within the State.
8. Within the State, Starwood generates turnover from the following three entities which are controlled by entities ultimately managed by Starwood or its affiliates:
 - (a) Gangkhar plc (“Gangkhar”), majority owned by SOF-IX International Holdings, L.P., which invests in loans and property assets.⁹
 - (b) Cedar Real Estate Investment plc (“Cedar”), ultimately wholly owned by Starwood Property Trust, Inc., which invests in property assets.¹⁰
 - (c) Trinity River Developments Fund (“Trinity”), a unit trust sub-fund, wholly owned by SOF-IX International Holdings, L.P., which invests primarily in property and property related assets.

⁴ Starwood, and Starwood Global II, are majority-owned and ultimately controlled by [...]. For more information on Starwood and funds managed by Starwood, see <<http://starwoodcapital.com>> and <<http://starwoodcapital.com/funds>>.

⁵ SOF Elm Park stated, in correspondence with the Commission dated 11 January 2016, that references to Starwood include all entities that are majority-owned and controlled ultimately by [...] and which manage the funds ultimately controlled by Starwood and related entities such as Starwood Global II and SOF-X .

⁶ Including SOF-X (and also SOF-IX International Holdings, L.P. and Starwood Property Trust, Inc. which are mentioned in paragraph 8).

⁷ The parties state that SOF Elm Park anticipates assigning the benefit of the Contract for Sale to an Irish collective asset-management vehicle which will be ultimately owned by SOF-X, which is ultimately managed by Starwood. Notification page 5.

⁸ Calculated using the annual ECB exchange rate for 2014 of €1= \$1.214.

⁹ Gangkhar is an umbrella investment fund with one currently active sub-fund, Gangkhar Fund I.

¹⁰ Cedar is an umbrella investment fund and currently has one active sub-fund, Cedar Real Estate Fund I. Starwood Property Trust, Inc. is managed by SPT Management LLC, which is an affiliate of Starwood.



9. Starwood, through the entities listed above, holds¹¹ the following properties in the State:
- (i) Lucan Shopping Centre, Co. Dublin.
 - (ii) Waterford Shopping Centre, County Waterford.
 - (iii) SuperValu / Flyfit Gym, Ranelagh, Dublin.
 - (iv) SuperValu, Rathgar, Dublin.
 - (v) Commercial office premises at 23 Shelbourne Road, Ballsbridge, Dublin.¹²
 - (vi) Commercial office premises at the Watermarque Building, Ringsend, Dublin.
 - (vii) Commercial office premises at Iveagh Court, Dublin City.
 - (viii) Commercial office premises at 72 Charlemont Street, Dublin City.
 - (ix) Commercial office premises at 29-31 Adelaide Road, Dublin City.
 - (x) Commercial office premises at Marsh House, 25-28 Adelaide Road, Dublin City.
 - (xi) Commercial office premises at Parkgate Business Park, Dublin City.
 - (xii) Commercial office premises, a cinema and 2 apartments at 13 Merrion Square, Dublin City.
 - (xiii) Commercial office premises at 75 St. Stephen's Green, Dublin City.
10. For the financial year ended 30 June 2015, Starwood's worldwide turnover was in excess of €1 billion¹³ of which approximately €[...] million¹⁴ was generated within the State.

Elm Park

11. Elm Park, located at Merrion Road, Dublin, is situated on a campus of approximately 7 hectares with a commercial and residential floor area of approximately 53,000 square metres. Elm Park comprises three commercial

¹¹ SOF Elm Park stated, in correspondence with the Commission dated 11 January 2016, that it holds the long term economic interest in these properties either through freehold ownership or long term leases.

¹² These premises are currently vacant and undergoing refurbishment.

¹³ SOF Elm Park stated, in correspondence with the Commission dated 11 January 2016, that "It is extremely difficult to calculate the global turnover of funds managed by [Starwood] given the diversity of geography, accounting principles and status of those funds managed but it is estimated that global turnover exceeds €1billion."

¹⁴ This figure is a composite estimate of turnover generated by Gangkhar, Cedar and Trinity.



office blocks, a café, a creche, a leisure centre and a conference centre, 226 residential apartment properties and 641 car parking spaces.

12. One office block is currently vacant while the other two are currently occupied by Allianz plc and Novartis Ireland Limited. In addition, Giraffe Childcare occupies a unit and Lennon Food Solutions occupies a café premises on the campus.
13. For the financial year ended 14 October 2015, Elm Park's worldwide turnover was approximately €9.6 million, all of which was generated within the State.¹⁵

Rationale for the Proposed Acquisition

14. In the notification, the parties state that:

"The Proposed Acquisition is consistent with the investment strategy of [Starwood] managed funds to acquire property assets with a view to earning ongoing returns, improving their value and eventually profiting from their sale."¹⁶

Third Party Submissions

15. No submission was received.

Competitive Analysis

16. 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:
 - (a) the market for the supply of rentable property is distinguished into separate markets for rentable commercial property and rentable residential property,¹⁷ or
 - (b) the market for the supply of rentable commercial property is further distinguished into separate markets for commercial office premises and other commercial premises (i.e., commercial retail premises).
17. Similarly, it is also not necessary for the Commission to define precise relevant geographic markets in this instance since the choice of geographic market will not materially alter the competitive impact of the proposed transaction in the State.

¹⁵ Approximately €5.7 million was attributable to rent from commercial properties, and approximately €3.8 million was attributable to rent from residential units.

¹⁶ Notification page 6.

¹⁷ SOF Elm Park stated, in correspondence with the Commission dated 11 January 2016, that Starwood's annual turnover from the supply of rentable residential property in the State is approximately €[...]. Elm Park generates turnover from the supply of rentable residential property of approximately €3.8 million. Given these respective turnovers, the impact of the proposed transaction on the supply of rentable residential property in Dublin is not significant and is not discussed further in the Determination.



18. However, for the purposes of its review of the proposed transaction the Commission has focused its analysis on the effects of the proposed transaction on the market for the supply of rentable commercial property (i.e., office and retail premises).¹⁸ The Commission has also examined the competitive impact of the proposed transaction by reference to the narrowest possible relevant geographic market, namely Dublin City and surrounding areas.
19. The parties estimate that Starwood supplies approximately 1.4% of the total floor space for rentable commercial property in Dublin City and surrounding areas.¹⁹ The parties estimate that Elm Park comprises approximately 0.6% of the total floor space for rentable commercial property in Dublin City and surrounding areas. Consequently, the market share of Starwood for the supply of rentable commercial property in Dublin City and surrounding areas subsequent to the completion of the proposed transaction would be less than 5% (with an increment in market share of less than 1% arising from the proposed transaction).
20. Also, within a narrower product market for the supply of commercial office premises, the parties estimate that Starwood supplies approximately 1.7% of the total floor space for commercial office premises for rent in Dublin City and surrounding areas. The parties estimate that Elm Park comprises approximately 0.9% of the total floor space for commercial office premises for rent in Dublin City and surrounding areas. Consequently, the market share of Starwood for the supply of rentable commercial office premises in Dublin City and surrounding areas subsequent to the completion of the proposed transaction would be less than 5% (with an increment in market share of less than 1% arising from the proposed transaction).
21. The market shares listed above do not indicate that the proposed transaction would lead to a substantial lessening of competition in either a broad market for the supply of rentable commercial property in Dublin City and surrounding areas or a narrower market for the supply of rentable commercial office premises in Dublin City and surrounding areas.
22. In addition, there are currently (and there would remain after the proposed transaction is put into effect) a number of other suppliers of rentable commercial property (including offices and retail premises) in Dublin City and surrounding areas which act as a competitive constraint on Starwood and would continue to do so post-transaction. Competitors include, for example, Blackstone, Green REIT, IPUT, Kennedy Wilson, Hibernian REIT, Irish Life, Pimco and others.

¹⁸ There is also a minor overlap in the market for the supply of rentable commercial retail property in Dublin City and surrounding areas. However, since the retail element of Elm Park comprises approximately 1% of the total floor area of Elm Park, the increment as a result of the proposed acquisition will have no material impact on competition in relation to the supply of rentable commercial retail property in Dublin City and surrounding areas.

¹⁹ SOF Elm Park stated, in correspondence with the Commission dated 11 January 2016, that its market share estimates for the supply of rentable commercial property (i.e. offices and retail premises) are based on estimates of (i) total office space in Dublin and surrounding areas of approximately 4.5 million square metres as presented in DTZ Sherry Fitzgerald's *Irish Office Market Q3 Review 2015* and (ii) total shopping centre space in Dublin and surrounding areas of approximately 2 million square metres, as presented in DTZ Sherry Fitzgerald's *"Irish Shopping Centres and Retail Parks: A Stock Analysis" – Spring, 2013*.



23. The proposed transaction does not raise any vertical competition concerns.

Conclusion

24. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

25. No ancillary restraints were notified.



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 SOF-X International Holdings LP, would, through its indirect wholly-owned subsidiary SOF-10 Elm Park Investments Lux Sarl, acquire sole control of the landholdings known as the Elm Park Campus and Llandaff Terrace 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

Gerald FitzGerald
Member
Competition and Consumer Protection Commission