



DETERMINATION OF MERGER NOTIFICATION M/17/027 - DALATA/CLARION LIFFEY VALLEY/CLAYTON CARDIFF LANE

Section 21 of the Competition Act 2002

Proposed acquisition by Dalata Hotel Group p.l.c. of the business and certain parts of the Clarion Hotel, Liffey Valley and certain parts of the Clayton Hotel, Cardiff Lane

Dated 29 August 2017

Determination

Pursuant to section 20(3) of the Competition Act 2002, as amended (“the Act”), Dalata Hotel Group p.l.c. (“Dalata”) has submitted to the Competition and Consumer Protection Commission (“the Commission”) the proposals set out below relating to the proposed acquisition by Dalata of the business and certain parts of the Clarion Hotel, Liffey Valley, Dublin 22 and certain parts of the Clayton Hotel, Cardiff Lane, Dublin 2, for the purpose of ameliorating any effects on competition in markets for goods or services, with a view to the proposals becoming binding on Dalata.

The Commission has taken the proposals into account and in light of the said proposals (which form part of the basis of its determination) has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby Dalata would acquire the business and certain parts of the Clarion Hotel, Liffey Valley, Dublin 22 and certain parts of the Clayton Hotel, Cardiff Lane, Dublin 2 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

Patrick Kenny
Member
Competition and Consumer Protection Commission



PROPOSALS BY DALATA HOTEL GROUP P.L.C. TO THE COMPETITION AND CONSUMER PROTECTION COMMISSION RELATING TO THE PROPOSED ACQUISITION OF THE BUSINESS AND CERTAIN PARTS OF THE CLARION HOTEL LIFFEY VALLEY AND CERTAIN PARTS OF THE CLAYTON HOTEL CARDIFF LANE (“Proposals”)

RECITALS

- a) On 17 May 2017, the proposed acquisition by Dalata of the business and certain parts of the Clarion Hotel, Liffey Valley, Dublin 22 and certain parts of the Clayton Hotel, Cardiff Lane, Dublin 2 was notified to the Commission under Part 3 of the Act.
- b) Pursuant to section 20(3) of the Act, Dalata has submitted to the Commission these Proposals relating to the Proposed Transaction for the purpose of ameliorating any possible effect of the Proposed Transaction on competition in markets for goods or services, with a view to the Proposals becoming binding on Dalata.
- c) The Proposals submitted by Dalata are intended to:
 - a) prevent the exchange of competitively sensitive information, which would constitute a breach of section 4(1) of the Act, between a Managed Hotel and any hotel owned, controlled, leased or operated by Dalata which competes with such Managed Hotel in the State; and
 - b) require Dalata to inform the Commission of any proposal by Dalata to begin operating a hotel in the State on behalf of a third party where this would not otherwise be notifiable compulsorily to the Commission, and if required to do so by the Commission, to notify voluntarily any such proposal (constituting a merger or acquisition under Part 3 of the Act) to the Commission if such proposal would not otherwise be notifiable compulsorily to the Commission or to the European Commission.

A. Definitions

1. For the purpose of the Proposals, the following terms shall have the following meaning:

“**Act**” means the Competition Act 2002, as amended;

“**Commencement Date**” means the date of the Commission's Determination;

“**Commission**” means the Competition and Consumer Protection Commission and its successors;

“**Confidentiality Commitment**” means the commitments outlined at paragraphs 2 to 5 of these Proposals;

“**Dalata**” means Dalata Hotel Group p.l.c., a public limited company, incorporated under the laws of Ireland (Registration No. 534888), which has its registered address at 4th floor, Burton Court, Burton Hall Drive, Sandyford Industrial Estate, Dublin 18.



For the avoidance of doubt, this definition of “Dalata” includes all its subsidiaries, including without limitation Dalata Management Services Limited;

"Dalata Competitively Sensitive Information" means any specific disaggregated information concerning a hotel owned, controlled, leased or operated by Dalata in the State which competes with the Managed Hotel where the disclosure of such information (in particular information relating to the current and future strategic intentions in relation to the room rates at such a Dalata hotel) would constitute a breach of section 4(1) of the Act. For the avoidance of doubt, information that is available in any form to the public by lawful means, other than as a result of a breach of the Proposals, shall not be considered to constitute "Dalata Competitively Sensitive Information";

"Determination" means the Determination of the Commission pursuant to section 21(2)(a) of the Act that the Proposed Transaction may be put into effect;

"Managed Hotel" means a hotel in the State, and in particular in Cork City, Dublin City, Dun Laoghaire-Rathdown, Fingal, Galway City, Limerick City or South County Dublin, which Dalata would be appointed to manage for the first time, under a management contract, by a party who is independent of Dalata (i.e., a third party) during the Term;

"Managed Hotel Competitively Sensitive Information" means any specific disaggregated information concerning the Managed Hotel where the disclosure of such information would constitute a breach of section 4(1) of the Act, in particular information relating to the current and future strategic intentions of the owner of the Managed Hotel in relation to the room rates at such Managed Hotel. For the avoidance of doubt, information that is available in any form to the public by lawful means, other than as a result of a breach of the Proposals, shall not be considered to constitute "Managed Hotel Competitively Sensitive Information";

"Merger Notification Commitment" means the commitment outlined at paragraph 6 of these Proposals;

"Proposed Transaction" means the proposed acquisition by which Dalata will acquire the business and certain parts of the Clarion Hotel, Liffey Valley, Dublin 22 and certain parts of the Clayton Hotel, Cardiff Lane, Dublin 2 and which was notified to the Commission pursuant to Part 3 of the Act on 17 May 2017;

"Term" means the period beginning on the Commencement Date and ending five years after the Commencement Date.

B. Undertakings by Dalata

Confidentiality Commitment

2. In respect of a Managed Hotel, Dalata shall take all reasonable steps to ensure that the general manager and the revenue manager of such Managed Hotel (or persons holding



equivalent functions) (and all persons of whatever title and role acting on their behalf) shall not provide Managed Hotel Competitively Sensitive Information to Dalata or to any employee, representative or agent of Dalata. Dalata undertakes to inform the general manager and the revenue manager of each Managed Hotel of their responsibilities pursuant to this paragraph 2 of the Proposals and shall provide training to them in that regard. Dalata shall not request (and shall not permit its employees, agents or representatives to request) from the Managed Hotel's general manager or revenue manager (or any other employee, representative or agent of such Managed Hotel) any Managed Hotel Competitively Sensitive Information.

3. These Proposals shall not prevent any disclosure of Managed Hotel Competitively Sensitive Information to Dalata (or to any employee, representative or agent of Dalata) which is required in order for Dalata to comply lawfully with its duties or good commercial practices bearing in mind in particular, but without limitation, that the shares of Dalata are quoted publicly and Dalata is subject to various stock exchange and securities obligations. These Proposals are without prejudice to any disclosure required by applicable law or regulation, judicial or arbitral process of competent jurisdiction, or by a competent authority.
4. Notwithstanding the provisions of paragraph 2 of these Proposals, Dalata shall not disclose (and Dalata undertakes that it shall not permit any of its employees, representatives or agents to disclose) to any hotel business owned, controlled, leased or operated by Dalata in the State which competes with a Managed Hotel any Managed Hotel Competitively Sensitive Information that is provided to Dalata or to any employee, representative or agent of Dalata by any employee, representative or agent of a Managed Hotel.
5. Dalata hereby undertakes that it shall not discuss with the owner of or with any employee, representative or agent of the Managed Hotel any Dalata Competitively Sensitive Information. Dalata also hereby undertakes that it shall prohibit any of its employees, representatives or agents from discussing any Dalata Competitively Sensitive Information with the owner of or with any employee, representative or agent of the Managed Hotel.

Merger Notification Commitment

6. During the Term, Dalata undertakes to:
 - (a) inform the Commission in advance of any proposal by Dalata to begin operating on behalf of a third party, pursuant to a management agreement with such third party, a hotel in the State, and in particular in Cork City, Dublin City, Dun Laoghaire-Rathdown, Fingal, Galway City, Limerick City or South County Dublin, (such hotel would thereby become a Managed Hotel) (such arrangement is referred to hereafter as the "Proposed Management Arrangement") where the Proposed Management Arrangement would not otherwise be notifiable compulsorily to the Commission under Part 3 of the Act; and
 - (b) if required in writing to do so by the Commission, notify any such Proposed Management Arrangement to the Commission in accordance with section 18(3) of the Act (or its successor provision, if applicable) if such Proposed Management



Arrangement (constituting a merger or acquisition under Part 3 of the Act) is not required to be notified to the Commission under section 18(1) of the Act (or its successor provision, if applicable) by virtue of not meeting the turnover thresholds then applicable under the Act or to the European Commission under Council Regulation (EC) No 139/2004 on the Control of Concentrations between Undertakings.

C. Compliance

7. Dalata shall submit to the Commission within twelve (12) months of the Commencement Date, and, at intervals of one year thereafter during the Term, a written certificate in the form set out in the Schedule hereto (a “**Compliance Certificate**”), signed by the CEO of Dalata confirming that Dalata has complied with its obligations set out in these Proposals in the preceding period.
8. The Commission reserves the right to require Dalata to provide to the Commission, at any time and on reasonable notice, such additional information as the Commission requires which is necessary in order for the Commission to verify Dalata's compliance with its obligations set out in these Proposals. Dalata shall promptly provide to the Commission all such information in its possession.
9. The Commission may provide with reasonable notice and on reasonable terms such written directions to Dalata from time to time as needed to require compliance with these Proposals. Dalata shall comply promptly with any written direction issued by the Commission pursuant to these Proposals.
10. Dalata shall nominate an executive who will have responsibility for monitoring compliance by Dalata with these Proposals and for responding to any request for information received from the Commission in connection with these Proposals. Dalata shall provide the name and contact details of such executive to the Commission and shall promptly inform the Commission of any change of executive nominated pursuant to this paragraph 10 of the Proposals and shall promptly provide to the Commission the name and contact details of any executive who is to replace the prior nominated executive.
11. These Proposals will come into effect on the Commencement Date and will remain in force during the Term. For the avoidance of doubt, the Proposals shall have no retrospective effect.
12. In response to a reasoned request from Dalata, the Commission may at its sole discretion waive, modify, or substitute any provision in these Proposals. At any time, subject to providing Dalata 30 days' written notice (unless waived by the Commission at its discretion) and an opportunity for Dalata to provide a written submission to the Commission, the Commission may at its sole discretion waive, modify, or substitute any provision in these Proposals.



Dated __ August 2017

SIGNED for and on behalf of

DALATA HOTEL GROUP P.L.C., by its truly authorised representative

By: _____

SCHEDULE TO THE PROPOSALS

[Dalata Headed Paper]

[date]

Ibrahim Bah
Competition Enforcement and Mergers Division
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

Merger Notification M/17/027 Dalata/Clarion Liffey Valley/Clayton Cardiff Lane

Dear Mr. Bah,

I refer to Merger Notification M/17/027 in relation to the proposed acquisition by Dalata Hotel Group p.l.c. ("Dalata") of the business and certain parts of the Clarion Hotel, Liffey Valley, Dublin 22 and the Clayton Hotel, Cardiff Lane, Dublin 2 which was notified to the Competition and Consumer Protection Commission ("Commission") on 17 May 2017 ("the Proposed Transaction").

The Commission issued its Determination approving the Proposed Transaction on [] August 2017.

In accordance with the terms of the proposals given by Dalata to the Commission on [] August 2017 in relation to the Proposed Transaction which, in accordance with section 20(3), section 26(1) and section 26(4) of the Competition Act 2002, as amended, have become commitments binding upon Dalata ("the Commitments"), I hereby confirm Dalata's compliance with the terms of the Commitments during the period commencing on [the date of the Determination] / [date of the previous certificate issued by Dalata] and ending on the date hereof.

Yours faithfully,

[Name]

CEO

Dalata