



DETERMINATION OF MERGER NOTIFICATION M/15/072 - SCHENKER/REDHEAD

Section 21 of the Competition Act 2002

Proposed acquisition by Schenker AG of sole control of Redhead Holdings Limited

Dated 21 January 2016

Introduction

1. On 11 December 2015, in accordance with section 18(1)(a) of the Competition Act 2002, as amended¹ (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby Schenker AG (“Schenker”) would acquire 75% of the issued share capital and, thus, sole control of Redhead Holdings Limited (“Redhead”).
2. The proposed transaction is to be implemented pursuant to a share sale and purchase agreement (“SPA”) dated 10 December 2015 between the sellers and Schenker whereby Schenker would acquire 75% of the issued share capital of Redhead.²

The Undertakings Involved

Schenker

3. Schenker is part of Deutsche Bahn AG, which is a stock corporation incorporated in Germany and is the parent company of the Deutsche Bahn group of companies (the “DB Group”). The DB Group’s core business activities are in Germany where it operates the railway infrastructure and provides passenger and freight rail services as well as bus services. The DB Group also provides passenger rail and bus services in the Czech Republic, Denmark, the Netherlands, Poland, Portugal, Sweden and the United Kingdom, as well as bus services in Croatia, Hungary, Italy, Serbia, Slovakia, Slovenia and Spain. The DB Group provides rail freight services in a number of European countries and freight forwarding and logistics services worldwide.
4. The DB Group’s business portfolio consists of nine business units. The mobility and logistics business units are grouped under the management of the DB Group’s wholly-owned subsidiary DB Mobility Logistics AG (“DB Mobility Logistics”), of which Schenker is a wholly-owned subsidiary.

¹ 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.

² Schenker has also entered into put and call option agreements in respect of the remaining 25% of the shares in Redhead which Schenker intends to acquire four years after completion of the proposed transaction.



5. In the State, Schenker provides freight forwarding and logistic services (in particular air and ocean freight) from eight facilities in Dublin, Shannon and Cork. Schenker also provides some limited domestic land transportation services in the State.
6. Two other DB Group entities also operate in the State, namely: DVA Reinsurance Limited and Schenker Re Limited. Both are involved in the provision of non-life insurance and only the former generated turnover in the State in 2014, amounting to approximately €[...].
7. For the financial year ending 31 December 2014, the DB Group's worldwide turnover was €39.8 billion, of which €[...] was generated in the State.

Redhead

8. Redhead, a private limited company incorporated in the United Kingdom, is currently owned by its working directors. Redhead provides freight forwarding services throughout Europe, Russia and North Africa from six depots located in the United Kingdom (including one in Belfast) and one located in the State (Dublin). Redhead's core business is freight transportation between the United Kingdom and the State.
9. For the financial year ending 31 March 2015, Redhead's worldwide turnover was €[...], of which €[...] was generated in the State.

Rationale for the Proposed Transaction

10. The parties state in the notification:

"The proposed transaction represents an opportunity for [the DB Group] to strengthen its land transportation business in the UK. [Redhead] is seen as an excellent fit within the DB Group as the company's activities are primarily focused on groupage land transport. Moreover, as a result of the proposed acquisition, [the DB Group] would obtain a strong local management team which is very familiar with the local (UK) market."

Third Party Submissions

11. No submission was received.

Competitive Analysis

12. There is a horizontal overlap between the parties' activities in the provision of freight forwarding and logistics services in the State. The parties, however, offer different types of freight forwarding and logistics services.
13. Schenker provides air and ocean freight forwarding services and contract logistics in the State and has some limited activity in land transportation between the State and Europe.³ Schenker also provides domestic land transportation services within the State

³ [...] % of the total revenue generated by Schenker in the State in 2014 was attributable to the provision of air and ocean freight forwarding services and contract logistics in the State.



but such services are provided on an ancillary basis [...] and are carried out through subcontractors. Schenker does not market domestic land transportation services to customers in the State.

14. Redhead primarily offers freight forwarding services, in particular the provision of pallet services within the United Kingdom and between the State, the United Kingdom, and Europe. The core aspect of Redhead's business is freight forwarding between the State and the United Kingdom. Redhead is a minor player in the provision of domestic freight forwarding services within the State and [...]. Redhead does not market domestic freight forwarding services within the State to customers. Redhead also provides some air and ocean freight forwarding services in the State but this is ancillary to its general freight forwarding business and is [...].⁴
15. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The narrowest potential product markets affected by the proposed transaction are (a) the provision of domestic freight forwarding services; and (b) the provision of international freight forwarding services. The narrowest potential geographic market affected by the proposed transaction is the State. The Commission, however, does not need to come to a definitive view on the precise relevant market definition in this instance since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the relevant market is defined narrowly (e.g., the provision of domestic freight forwarding services within the State) or more broadly to encompass the provision of domestic and international freight forwarding services in the State.
16. In order, however, to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission assessed its impact by reference to the narrowest possible relevant product and geographic markets, namely:
 - the provision of domestic freight forwarding services in the State; and
 - the provision of international freight forwarding services in the State.

The Provision of Domestic Freight Forwarding Services in the State

17. Both parties have a small presence in the provision of domestic freight forwarding services in the State. As mentioned above, these services are ancillary to the main business activities of both parties and are [...]. In the case of Schenker, these services are generally subcontracted to a third party [...]. In the case of Redhead, domestic freight forwarding services are generally provided [...].
18. The parties state in the notification that they do not have sufficient market information to provide meaningful market share estimates. Nevertheless, Schenker estimates its market share in respect of the provision of domestic freight forwarding services in the State to be less than 1%. Redhead estimates its market share in respect of the provision of domestic freight forwarding services in the State to be less than 5%.

⁴ [...] % of the total revenue generated by Redhead in the State in 2014 was attributable to the provision of air and ocean freight forwarding services.



19. There are a large number of undertakings currently active in the provision of domestic freight forwarding in the State (e.g., DHL, UPS Ireland, Irish Express Cargo, etc) which will act as a competitive constraint on Schenker post-transaction.⁵ In light of the parties' minimal estimated market shares and the large number of competing service providers, the Commission considers that the proposed transaction will not substantially lessen competition in the potential market for the provision of domestic freight forwarding services in the State.

The Provision of International Freight Forwarding Services in the State

20. The parties state in the notification that there is no publicly available information providing accurate market share estimates. Nevertheless, both parties estimate their respective market shares in respect of the provision of international freight forwarding services in the State to be less than 1%.
21. In light of the parties' minimal estimated segment shares and the large number of competing service providers who are active in the State (e.g., DHL, Kuehne + Nagel (Ireland) Limited, Expeditors Ireland, UPS Ireland, Irish Express Cargo, etc), the Commission considers that the proposed transaction will not substantially lessen competition in the potential market for the provision of international freight forwarding services in the State.
22. There is no vertical relationship between the parties and the proposed transaction does not raise vertical competition concerns.
23. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

24. In the notification, the parties provided a copy of the SPA between the parties to the proposed transaction, which contains a number of restrictive obligations on the sellers. These include non-compete and non-solicitation clauses. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.⁶ The Commission considers these restrictions to be directly related to and necessary for the implementation of the proposed transaction.

⁵ The parties state in the notification that the Irish International Freight Association listed 113 companies as members in 2015.

⁶ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



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 transaction whereby Schenker AG would acquire 75% of the issued share capital and, thus, sole control of Redhead Holdings Limited 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