EUROPEAN COMMISSION

Brussels, 29.03.2019
C(2019) 2619 final

PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Subject: **Case M.9195 — Lifeco/Hammerson/Swords Pavilions**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 22 February 2019, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Hammerson (United Kingdom), Irish Life and Clyde Property Fund (both of Ireland and both belonging to Great-West Lifeco ("Lifeco", Canada)), acquire within the meaning of article 3(1)(b) and 3(4) of the Merger Regulation joint control of Swords Pavilions (Ireland) by way of purchase of shares (the "Transaction").[3]

(2) Lifeco, Hammerson and Swords Pavilions are collectively referred to as the "Parties".

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

3 Publication in the Official Journal of the European Union No C 76, 1.3.2019, p. 15.

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1. THE PARTIES

(3) Irish Life and Clyde Property Fund are subsidiaries of Great-West Lifeco. These subsidiaries are active in retail real estate services in Ireland. Great-West Lifeco is an international financial services holding company operating in Canada, the United States and Europe.

(4) Hammerson is active in commercial real estate. Its portfolio includes investments in prime shopping centres in the United Kingdom, Ireland and France.

(5) Swords Pavilions is a shopping centre located in Dublin's northern suburbs, close to Dublin airport, with a lettable area of approximately 37 780 sqm. Swords Pavilions has over 80 shops, restaurants, cafes, as well as an 11-screen cinema.

2. THE CONCENTRATION

(6) Pre-Transaction, Hammerson owns a 50% sole-controlling interest in Swords Pavilions, while each of Irish Life and IPUT plc ("IPUT") hold a 25% non-controlling interest in Swords Pavilions.

(7) Pursuant to the share purchase agreements dated 7 January 2019 entered between IPUT and Irish Life and IPUT and Clyde Property Fund, Irish Life will acquire 5% of IPUT's 25% interest in Swords Pavilions[4] and Clyde Property Fund will acquire IPUT's remaining 20% interest in Swords Pavilions.[5] Therefore, post-Transaction, Hammerson will continue owning a 50% interest in Swords Pavilions, while Lifeco will own a 50% interest (through its subsidiaries Irish Life and Clyde Property Fund).

(8) Following this Transaction, on the basis of the 2006 Co-Ownership Agreement and the Deed of Variation, each of Hammerson and Lifeco will have a 50% voting interest in votes of the Management Committee. Each of Hammerson and Lifeco will have a veto right over strategic commercial decisions relating to Swords Pavilions. These strategic commercial decisions relate, *inter alia*, to the appointment, removal and replacement of the Asset Manager, the approval of the annual budget, the granting and renewal of leases and any capital expenditure relating to Swords Pavilions. In case of disagreement between Hammerson and Lifeco on these matters, none of the parties will have a casting vote.

(9) Lifeco and Hammerson will therefore acquire joint control over Swords Pavilions, within the meaning of articles 3(1)(b) and 3(4) of the Merger Regulation.

(10) Swords Pavilions is active in the market for retail real estate rental and derives revenue from rents paid by third party tenants. Post-Transaction, Sword Pavilions will continue to have a market presence to which a turnover can be attributed. In addition, the joint venture will have sufficient financing, staffing and assets resources to operate on the market for retail real estate services. In particular, Swords Pavilions will continue to have a management team dedicated to its day-

4 Form CO, Annex 6 "Irish Life Agreement" and reply to RFI 1 of 23 February 2019.

5 Form CO, Annex 7 "Clyde Property Fund Agreement" and reply to RFI 1 of 23 February 2019.

to-day operations and will be free to recruit its own employees. The joint venture will continue to deal with its parents at arm's length and is intended to operate on a lasting basis. Swords Pavilions is therefore a full-function joint venture, within the meaning of article 3(4) of the Merger Regulation.

(11) In light of the above, the Transaction constitutes a concentration within the meaning of the Merger Regulation.

3. EU DIMENSION

(12) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Great-West Lifeco: EUR […]; Hammerson (including Swords Pavilions): EUR […]).[6] Each of them has an EU-wide turnover in excess of EUR 250 million (Great-West Lifeco: EUR […]; Hammerson: EUR […]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

(13) The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. MARKET DEFINITIONS

(14) The target, Swords Pavilions, is active on the market for the rental of retail real estate properties in Ireland. Lifeco and Hammerson are also active on this market.

4.1. Product market definition

(15) The Commission has previously considered that the market for the rental of real estate properties was distinct from the market for the development of real estate properties and the market for the management of real estate properties on behalf of third parties.[7] In addition, the Commission has considered, but ultimately left open, that real estate services could be segmented according to the use made of the real estate property (i.e. between residential and commercial real estate property).[8]

(16) With regard to commercial properties, the Commission has also considered the following segmentations, while ultimately leaving the product market definition open: (i) office properties, (ii) retail properties and (iii) industrial properties.[9]

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6 Turnover calculated in accordance with Article 5 of the Merger Regulation.

7 See e.g. Cases M.8229 – *Hammerson/Irish Life/ILAC Shopping Centre*, paragraph 13; M.6020 – *ACS/Hochtief*, paragraphs 12-14; M.6400 – *ECE/Metro/MEC JV*, paragraph 26; M.2825 – *Fortis AG SA/Bernheim-Comofi SA*, paragraph 7.

8 See e.g. Cases M.8229 – *Hammerson/Irish Life/ILAC Shopping Centre*, paragraph 14; M.6400 – *ECE/Metro/MEC JV*, paragraph 25; M.2825 – *Fortis AG SA/Bernheim-Comofi SA*, paragraph 7.

9 See e.g. Cases M.8229 – *Hammerson/Irish Life/ILAC Shopping Centre*, paragraph 15, M.6400 – *ECE/Metro/MEC JV*, paragraphs 25-26.

(17) More specifically, with respect to the market for the rental of retail spaces, the Commission has considered, but ultimately left open, a plausible market for (i) the rental of retail spaces in real estate properties (including shopping centres and retail parks) of at least 8 000 sqm and 10 000 sqm respectively, as well as a distinct market for (ii) the rental of retail spaces in shopping centres of at least 8 000 sqm and 10 000 sqm respectively.[10]

(18) The Parties consider that the relevant product market for the assessment of the Transaction is the market for the rental of retail real estate property, without any further distinction.[11] However, in line with the Commission's decisional practice, the Parties have provided data on narrower plausible product markets.

(19) In the present case, the Commission will assess the effects of the Transaction on the market for the rental of retail spaces as well as on the plausible narrower markets for the rental of retail spaces in real estate properties (including shopping centres and retail parks) of at least 8 000 sqm and 10 000 sqm respectively and the rental of retail spaces in shopping centres of at least 8 000 sqm and 10 000 sqm respectively.[12]

(20) Given that the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition, the exact product market definition can be left open.

4.2. Geographic market definition

(21) In its prior decisional practice, the Commission has considered that the geographic scope for the rental of retail real estate properties (and its plausible segmentations) was national or regional, while ultimately leaving the question open.[13]

(22) The Parties do not object to the Commission's approach.[14]

(23) In the present case, the Commission will assess the effects of the Transaction in both its broadest scope (national) and its narrowest plausible scope (regional).

(24) Given that the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition, the exact geographic market definition can be left open.

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10 See e.g. Cases M.8229 – *Hammerson/Irish Life/ILAC Shopping Centre*, paragraph 16; M.6400 – *ECE/Metro/MEC JV*, paragraph 38.

11 Form CO, paragraph 6.38.

12 See e.g. Cases M.8229 – *Hammerson/Irish Life/ILAC Shopping Centre*, paragraph 16; M.6400 – *ECE/Metro/MEC JV*, paragraph 38.

13 See e.g. Cases M.8229 – *Hammerson/Irish Life/ILAC Shopping Centre*, paragraph 20; M.6400 – *ECE/Metro/MEC JV*, paragraph 44.

14 Form CO, paragraph 6.41.

4.3. Conclusion

(25) For the purpose of this decision, the precise market definition of the rental of retail real estate can be left open, as the Transaction does not give rise to serious doubts even under the narrowest plausible market definitions.

5. COMPETITIVE ASSESSMENT

5.1. Overview of the affected markets

(26) Pavilions Swords is active in the rental of retail real estate properties in Ireland, and more specifically, in the Great Dublin Area ("GDA"). Lifeco is also active in the rental of retail real estate properties in Ireland and the GDA.

(27) Therefore, the Transaction gives rise to horizontal overlaps in the market for the rental of retail real estate properties (and its plausible segmentations) at both national (i.e. Ireland) and regional (i.e. GDA) levels.

(28) The table below shows the Parties' market shares on the overlap markets.

Rental of retail spaces in Ireland			
Lifeco	Hammerson	Swords Pavilions	Combined
[0-5]%	[5-10]%	[0-5]%	[10-20]%
Rental of retail spaces in the GDA			
Lifeco	Hammerson	Swords Pavilions	Combined
[5-10]%	[10-20]%	[0-5]%	[10-20]%
Rental of retail spaces in properties >8 000 sqm in Ireland			
Lifeco	Hammerson	Swords Pavilions	Combined
[0-5]%	[0-5]%	[0-5]%	[5-10]%
Rental of retail spaces in properties >8 000 sqm in the GDA			
Lifeco	Hammerson	Swords Pavilions	Combined
[5-10]%	[10-20]%	[0-5]%	[10-20]%
Rental of retail spaces in properties >10 000 sqm in Ireland			
Lifeco	Hammerson	Swords Pavilions	Combined
[0-5]%	[5-10]%	[0-5]%	[10-20]%
Rental of retail spaces in properties >10 000 sqm in the GDA			
Lifeco	Hammerson	Swords Pavilions	Combined
[5-10]%	[10-20]%	[0-5]%	[20-30]%

Rental of retail spaces in shopping centres >8 000 sqm in Ireland			
Lifeco	Hammerson	Swords Pavilions	Combined
[0-5]%	[5-10]%	[0-5]%	[10-20]%
Rental of retail spaces in shopping centres >8 000 sqm in the GDA			
Lifeco	Hammerson	Swords Pavilions	Combined
[5-10]%	[10-20]%	[0-5]%	[20-30]%
Rental of retail spaces in shopping centres >10 000 sqm in Ireland			
Lifeco	Hammerson	Swords Pavilions	Combined
[0-5]%	[5-10]%	[0-5]%	[10-20]%
Rental of retail spaces in shopping centres >10 000 sqm in the GDA			
Lifeco	Hammerson	Swords Pavilions	Combined
[5-10]%	[10-20]%	[0-5]%	[20-30]%

Source: Form CO, annex 12 and QP1, annex 1.

(29) The Transaction gives rise to three horizontally affected markets: (i) rental of retail space in retail real estate properties of at least 10 000 sqm in the GDA; (ii) rental of retail spaces in shopping centres of at least 8 000 sqm in the GDA; (iii) rental of retail spaces in shopping centres of at least 10 000 sqm in the GDA.

(30) The Transaction does not give rise to any other affected market. In particular, the Transaction does not give rise to affected market when the geographic scope of the rental of retail real estate properties is defined as national. The Commission's competitive assessment will therefore focus on the three affected markets.

5.2. Parties' views

(31) The Parties consider that the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market, under any plausible market definition.[15]

5.3. Commission's assessment

(32) As a general remark, the Commission notes that the market for the rental of retail spaces in Ireland and the GDA (and its plausible segmentation) is dynamic.

(33) Following a period of contraction because of the financial crisis, the Irish retail real estate sector has witnessed significant activity since the beginning of 2014. For instance, in the GDA, recent transactions involved the sales of the

[15] Form CO, paragraph 6.12.

Blanchardstown Centre for EUR 950 million and the Square Shopping Centre Tallaght for EUR 250 million.[16]

(34) In addition, over the last few years, there have been several new entrants (such as Varde, Deka, Deutsche Bank and Clarendon Group) in the rental of retail spaces in Ireland and in the GDA.[17] In contrast, there has been no significant exit over the last three years.[18]

(35) Besides, switching costs are moderate. As already noted in a prior decision relating to the rental of retail spaces in Ireland and the GDA, switching costs, for a tenant, are mostly composed of the cost of exiting the existing lease.[19] In the last few years, the volume of lettable properties have increased and rents have decreased. Therefore, the cost of exiting an existing lease may yield a cost benefit.[20]

5.3.1. Rental of retail spaces in real estate properties of at least 10 000 sqm in the GDA

(36) First, the Commission notes that, in the market for the rental of retail spaces in real estate properties of at least 10 000 sqm in the GDA, the Parties' combined market share post-Transaction is moderate ([20-30]%) and the increment brought about by the Transaction is low ([5-10]%).

(37) Second, the market for the rental of retail spaces in real estate properties of at least 10 000 sqm in the GDA is fragmented and well-established competitors, such as Blackstone and Oaktree Capital, exert a competitive constraint on the Parties.[21]

(38) Thus, in the event of a price increase post-Transaction, retailers could turn to the numerous competing owners of retail real estate properties.

(39) The Commission therefore considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market with respect to the market for the rental of retail spaces in real estate properties of at least 10 000 sqm in the GDA.

5.3.2. Rental of retail spaces in shopping centres of at least 8 000 sqm and 10 000 sqm in the GDA respectively

(40) The Commission notes that its assessment with respect to the market for the rental of retail spaces in real estate properties of at least 10 000 sqm is also valid for the

16 Form CO, paragraph 8.13.

17 Form CO, paragraph 7.15.

18 Form CO, paragraph 8.31.

19 See case M.8229 – *Hammerson/Irish Life/ILAC Shopping Centre*, paragraph 30.

20 Form CO, pararaph 8.16.

21 Form CO, paragraph 7.10 and annex 12.

markets for the rental of retail spaces in shopping centres of at least (i) 8 000 sqm and (ii) 10 000 sqm.

(41) First, the Commission notes that, in the market for the rental of retail spaces in shopping centres of at least 8 000 sqm in the GDA and the market for the rental of retail spaces in shopping centres of at least 10 000 sqm in the GDA, the Parties' combined market shares post-Transaction are moderate ([20-30]% and [20-30]% respectively) and the respective increments brought about by the Transaction are low ([5-10]% and [5-10]% respectively).

(42) Second, the markets for the rental of retail spaces in shopping centres of at least 8 000 sqm and 10 000 sqm respectively in the GDA are fragmented and well-established competitors (such as Blackstone and Hines & BVK) exert a competitive constraints on the Parties. [22]

(43) Thus, in the event of a price increase post-Transaction, retailers could turn to the numerous competing owners of retail real estate properties.

(44) The Commission therefore considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market with respect to the markets for (i) the rental of retail spaces in shopping centres of at least 8 000 sqm in the GDA and (ii) the rental of retail spaces in shopping centres of at least 10 000 sqm in the GDA.

5.4. Conclusion

(45) In light of the above and based on all available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market, with respect to the markets for the rental of retail real estate properties, under any plausible product and geographic market definition.

6. CONCLUSION

(46) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission

22 Form CO, paragraph 7.10 and annex 12.