



# DETERMINATION OF MERGER NOTIFICATION M/15/002 – ATLANTIC TROY/ CHARLEVILLE PARK HOTEL

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## Section 21 of the Competition Act 2002

### Proposed acquisition of Charleville Park Hotel by Atlantic Troy Limited

Dated 20 February 2015

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#### Introduction

1. On 27 January 2015, in accordance with section 18(1) of the Competition Act 2002 as amended<sup>1</sup> (“the 2002 Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Supermac’s (Holdings) Limited (“Supermac’s”), through its wholly owned subsidiary Atlantic Troy Limited (“Atlantic Troy”), would acquire the business and assets comprising the Charleville Park Hotel.

#### The Proposed Transaction

2. On 21 May 2012, Kieran Wallace of KPMG (the “Receiver”) was appointed as receiver over certain assets of Ambassador Court Limited (In Receivership), including the Charleville Park Hotel. The proposed transaction is pursuant to (i) a contract of sale (“Contract of Sale”) between the Receiver and Pat McDonagh (in Trust) in respect of the purchase of the lands and premises comprising the Charleville Park Hotel, and (ii) a business transfer agreement (“BTA”) between Ambassador Court Limited (in Receivership), the Receiver and Atlantic Troy Limited in respect of certain assets of Ambassador Court Limited (in Receivership).<sup>2</sup>

#### The Undertakings Involved

##### *Supermac’s and Atlantic Troy*

3. Supermac’s is a private company headquartered in Ballybrit, County Galway. Through its wholly owned subsidiaries, Supermac’s Ireland Limited and Supermac’s Franchising Limited, Supermac’s operates approximately 100

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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.

<sup>2</sup> The Contract of Sale is dated 29 May 2014 and covers the purchase of land and premises. Supermac’s stated, in correspondence dated 9 February 2015, that the terms of the BTA are agreed and that the BTA will be signed on the completion of the sale of the Charleville Park Hotel.



Supermac's branded fast food outlets<sup>3</sup> in Ireland (including outlets in Derry, Dundonald and Dungannon in Northern Ireland).<sup>4</sup> Approximately 50 Supermac's outlets also sell Papa John's branded pizzas.<sup>5</sup>

4. Supermac's, through its wholly owned subsidiary Atlantic Troy, owns and operates two hotels within the State: the Castletroy Park Hotel and Loughrea Hotel and Spa.
5. The Castletroy Park Hotel is a 4 star hotel<sup>6</sup> located in Castletroy, County Limerick. The Castletroy Hotel's facilities include 107 bedrooms, a restaurant, beauty rooms, an aqua club as well as personal training and fitness classes. The Castletroy Hotel also hosts private events, banquets, weddings as well as corporate conferences and meetings.<sup>7</sup>
6. The Loughrea Hotel and Spa is a four star hotel located in Loughrea, County Galway. The Loughrea Hotel and Spa's facilities include 91 bedrooms, a restaurant, bar and lounge, spa and hair salon. The Loughrea Hotel and Spa also hosts corporate conferences and meetings.<sup>8</sup>
7. Supermac's, through its wholly owned subsidiaries Supermac's Ireland Limited and Mac's Place Limited, also owns and operates the Barack Obama Plaza motorway service facility located near Moneygall on the M7 motorway between Dublin and Limerick.<sup>9</sup>
8. For the year ended 31 December 2013, Supermac's turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

#### *The Target – Charleville Park Hotel*

9. The business and assets to be acquired comprise the Charleville Park Hotel, located in Charleville, County Cork. The Charleville Park Hotel is a four star hotel and its facilities include 91 bedrooms, 5 executive suites, a leisure club, swimming

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<sup>3</sup> "Outlet" in this context refers to the variety of formats through which Supermac's products are sold. Supermac's states that "Supermac's outlets vary from drive-thru outlets, to dine-in fast food restaurants and Fresh Express shops." Notification page 2. Fresh Express in this context refers to locations in or adjacent to other businesses such as shops or service stations.

<sup>4</sup> Supermac's states, in correspondence dated 9 February 2015, that "Supermac's Ireland Limited operate the company restaurants as well as managing the Franchisees who run and control their own restaurants. The income from the Franchisees flows into Supermac's Franchising Limited." Supermac's also states that 40% of the total number of Supermac's outlets are owned and operated by Supermac's Ireland Limited and the remaining 60% of outlets are operated by franchisees.

<sup>5</sup> Supermac's states, in correspondence dated 9 February 2015, that "Mac Sandwich Limited a subsidiary of Supermac's Holdings Limited is the Master Franchisee for Papa Johns in Ireland and [Supermac's]. We operate the shops as Brand in Brand Restaurants." See <<http://papajohns.ie>>.

<sup>6</sup> The 4 star rating identified by the parties corresponds to the Failte Ireland Hotel Classification Scheme ("Hotel Scheme") and ultimately the requirement that hotels operating in the State must be registered with Failte Ireland. The Hotel Scheme identifies types of facilities and services required to obtain different star ratings. See <[http://www.failteireland.ie/Failteireland/media/WebsiteStructure/Documents/2\\_Develop\\_Your\\_Business/4\\_Quality\\_Assurance/Hotel-Classification-Matrix.pdf](http://www.failteireland.ie/Failteireland/media/WebsiteStructure/Documents/2_Develop_Your_Business/4_Quality_Assurance/Hotel-Classification-Matrix.pdf)>. Refer to Failte Ireland criteria

<sup>7</sup> For further information on the Castletroy Hotel see <[www.castletroypark.ie](http://www.castletroypark.ie)>.

<sup>8</sup> For further information on the Loughrea Hotel and Spa see <[www.loughreahotelandspa.com](http://www.loughreahotelandspa.com)>.

<sup>9</sup> The Barack Obama Plaza facilities include meeting rooms, food and beverage providers and a museum commemorating Barack Obama's visit to Ireland. For more information on the Barack Obama Plaza see <<http://barackobamaplaza.ie>>.



pool, jacuzzi, steam room, sauna and gym facilities. The Charleville Park Hotel also hosts wedding functions and conferences.<sup>10</sup>

10. For the year ended 31 December 2013 the Charleville Park Hotel's turnover was approximately €[...] million, all of which was generated in the State.

### **Rationale for the Proposed Acquisition**

11. As stated by Atlantic Troy

*"Supermac's made a strategic decision in 2010 to enter the hotel industry and the Proposed Transaction is in fitting with Supermac's existing acquisition strategy."*<sup>11</sup>

### **Third Party Submissions**

12. No submission was received.

### **Competitive Analysis**

#### *Market Definition*

13. For the purposes of its analysis, the Commission has reviewed the impact of the transaction in two business sectors in which Supermac's currently operates, namely the hotel sector and the food sector, and in which there may be some overlap. However, 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 markets.
14. The Commission's conclusion concerning the competitive effects of the proposed transaction would be unaffected:
- whether the relevant product market in the hotel sector is defined broadly (e.g., the supply of all hotel accommodation and services) or narrowly (e.g., the supply of four star hotel accommodation).
  - whether the relevant product market in the food sector is defined broadly (e.g., all segments of the food service sector) or narrowly (e.g., separate fast food and restaurant food markets).
15. The choice of geographic market, e.g., a national market or a local market such as Charleville and surrounding areas,<sup>12</sup> will not materially alter the competitive impact of the notified transaction in the State. Consequently, the Commission is

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<sup>10</sup> For more information on the Charleville Park Hotel see <<http://www.charlevilleparkhotel.com>>.

<sup>11</sup> Atlantic Troy also states that, as part of its strategy to enter the hotel sector, it acquired the Casteltroy Park Hotel out of receivership in 2012 and also acquired the Loughrea Hotel and Spa also out of receivership in receivership in 2012. Notification page 7.

<sup>12</sup> For example, and for illustrative purposes only, a local or regional market could be defined by a distance of 50 kilometres or a drive time of one hour from Charleville.



of the view that the issue of the appropriate geographic market can be left open.<sup>13</sup>

### Hotel Accommodation

16. The Charleville Park Hotel and the two hotels owned and operated by Atlantic Troy (i.e., the Castletroy Park Hotel and the Loughrea Hotel and Spa) are all 4 star hotels of similar quality offering a broadly similar number of rooms and a broadly similar range of services. This does not, however, imply that the Charleville Park Hotel is necessarily a close competitor with either the Castletroy Park Hotel or the Hotel Loughrea Hotel and Spa, the two hotels currently owned and operated by Atlantic Troy. Atlantic Troy states that:

*“Supermac’s will own three (3) hotels in the State post the Proposed Transaction. All of these hotels are located in separate geographical locations in the State and, accordingly, there will be no increase in concentration.”<sup>14</sup>*

17. The distance between the Charleville Park Hotel and the Castletroy Park Hotel is approximately 40 kilometres. If the Charleville Park Hotel and the Castletroy Park Hotel are within the same geographic market, then post-acquisition the merged entity would face competition from hotels within a similar distance of 40 kilometres from Charleville Park Hotel. These hotels include 4 star hotels such as Fitzgerald Woodland House Hotel in Adare, the Radisson Blu Hotel in Limerick, the Ballykisteen Hotel and Golf Resort in Limerick Junction, County Tipperary and also 3 star hotels such as the Maldron Hotel in Limerick City and the Hibernian Hotel in Mallow, County Cork.<sup>15</sup>
18. The distance between the Charleville Park Hotel and the Loughrea Hotel and Spa is approximately 125 kilometres, just over three times greater than the distance between the Charleville Park Hotel and the Castletroy Park Hotel. If the Charleville Park Hotel and the Loughrea Hotel and Spa are within the same geographic market, post-acquisition the merged entity would face competition from a significant number of hotels, including and in addition to the hotels mentioned in paragraph 17.
19. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in the supply of hotel accommodation within the State.

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<sup>13</sup> For the purposes of reviewing the proposed transaction, the Commission has examined competitive effects of the proposed transaction in the narrowest geographic market possible. The Commission has adopted this approach in this instance in relation to both the hotel accommodation sector and the food service sector. Even under this restrictive assumption, the proposed transaction, would not result in a substantial lessening of competition.

<sup>14</sup> Notification page 23.

<sup>15</sup> The Charleville Park Hotel is to the south of the Castletroy Park Hotel. There are also 3 and 4 star hotels within a similar distance - 40 kilometres - northeast and northwest of the Castletroy Park Hotel which offer an alternative to either the Castletroy Park Hotel or the Charleville Park Hotel.



### Food Service

20. Both Supermac's and the Charleville Park Hotel are food service operators.<sup>16</sup> However, the parties argue that

*".. the product offering and the associated customer base in each case is completely different. Supermac's customers are typically looking for convenient food served fast, at an affordable price, and to be consumed on the premises or for takeaway. Customers of the [Charleville Park Hotel] are typically looking for a full hotel service, one element of which is the provision of food. Further, hotel restaurant service usually ceases at, approximately, 2100 hours whereas a fast food outlet will accommodate customers at much later hours. Many of the customers of the Target are residents of the [Charleville Park Hotel] or businesses which have bookings and require the additional services of the [Charleville Park Hotel]'s Greenfinch Restaurant (in conjunction with their use of other services provided at the [Charleville Park Hotel])."*<sup>17</sup>

21. Alternatively, if the Charleville Park Hotel and Supermac's are in the same market, the merged entity would face competition from food service operators in Charleville such as Cascada Restaurant, the Chip Basket, the East Ocean Restaurant and also in surrounding areas such as Claire's Classic Chicken, Bruff, County Limerick and Sargeant Peppers, Killmallock. County Limerick.<sup>18</sup>
22. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in the food service sector within the State.

### *Vertical Issues*

23. There is no vertical overlap in the activities of the parties and the proposed transaction does not give rise to 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.

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<sup>16</sup> See footnote 15.

<sup>17</sup> Notification page 14. The parties cite two European Commission decisions, Case No. COMP/M.2940 – TPG Advisors II/Goldman Sachs/Bain Capital Investors/Burger King and Case No. COMP/M.4220 – Food Service Project / Tele Pizza. In those cases the European Commission identified possible product markets e.g., informal dining, quick service (i.e., fast food) and take away/home delivery. The European Commission in those cases left the precise product market definition open. See

<[http://ec.europa.eu/competition/mergers/cases/decisions/m2940\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m2940_en.pdf)>. and

<[http://ec.europa.eu/competition/mergers/cases/decisions/m4220\\_20060606\\_20310\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m4220_20060606_20310_en.pdf)>.

<sup>18</sup> The merged entity will also face competition from food service operators including and in addition to the food service operators mentioned in paragraph 21, to the extent that competition takes place in a larger geographical market (i.e., larger than Charleville and surrounding areas).



## **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 Supermac's (Holdings) Limited, through its wholly owned subsidiary Atlantic Troy Limited, would acquire the business and assets comprising the Charleville Park Hotel, will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

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