



DETERMINATION OF MERGER NOTIFICATION M/15/026 - BAXTER HEALTHCARE/FANNIN COMPOUNDING

Section 21 of the Competition Act 2002

Proposed acquisition by Baxter Healthcare Limited of certain assets of Fannin Limited

Dated 03 September 2015

Introduction

1. On 9 June 2015, in accordance with section 18(1) 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 Baxter Healthcare Limited (“Baxter”) would acquire sole control of certain assets pertaining to the medical aseptic compounding business (“The Target Assets”) of Fannin Limited (“Fannin”). The proposed transaction is an asset acquisition under section 16(1)(c) of the Act.

The Undertakings Involved

Baxter

2. Baxter is incorporated in the United Kingdom and is ultimately controlled by Baxter International Inc. Baxter manufactures and supplies healthcare products and devices used to treat patients with haemophilia, immune deficiencies, infectious diseases, cancer, kidney disease, trauma and other chronic medical conditions. The healthcare products and devices that Baxter supplies are used in the following therapies: anaesthesia; antibody therapy; bio surgery; critical care; vaccines; intravenous solutions and medication delivery systems; nutrition; oncology; renal therapies; haemophilia; and coagulation.

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.



3. Baxter provides e-commerce services to customers to facilitate the conducting of business transactions or communications over computer networks and the internet. These e-commerce services include electronic data interchange and automated supply chain processes. Baxter also supplies support services to customers in relation to infusion pumps and renal devices, as well as some credit and leasing services.
4. In the State, Baxter supplies medical products and compounded medicines to customers, mainly hospitals. Baxter manufactures compounded medicines in its manufacturing facility in Deansgrange Business Park, Co. Dublin. Baxter also manufactures compounded medicines in a facility in the United Kingdom.

The Vendor - Fannin

5. Fannin, incorporated in the State, is a provider of medical devices, medicines, diagnostic products and related services to the healthcare sector in the State. Fannin is a subsidiary of DCC Vital Limited (“DCC Vital”).
6. DCC Vital supplies third party and own-branded pharmaceuticals, medical, surgical and laboratory products in the United Kingdom and in the State. DCC Vital is controlled by DCC plc (“DCC”), an international sales, marketing, distribution and business support services group which has four divisions:
 - DCC Energy – sales of oil and liquefied petroleum gas;
 - DCC Technology – sales of technology products;
 - DCC Environmental – sales of waste management and resource recovery services; and
 - DCC Healthcare – sales of pharmaceuticals, medical devices and outsourced services.
7. Each of DCC's four divisions is active in the State. DCC Vital and its subsidiary Fannin are part of the DCC Healthcare division.



The Target Assets

8. The Target Assets comprise the assets of Fannin which are used exclusively in the manufacture and supply of aseptically prepared compounded medicines (“Fannin Compounding”). Fannin Compounding supplies compounded medicines to hospitals in the State. Fannin Compounding has been trading since 2004 when it was first awarded a manufacturing licence by the Irish Medicines Board (now the Health Products Regulatory Authority). Fannin Compounding operates out of a manufacturing facility in Sandyford Industrial Estate in Co. Dublin which was built in 2004 and expanded in 2009. This facility incorporates the following:

- Warehousing space, including a temperature controlled stock area;
- Preparation areas;
- Operational cleanrooms (one each for the product categories of chemotherapy, nutrition and antibiotics) with ten isolators;
- Final check and packing area;
- Quality control area;
- Dispatch area;
- An unused cleanroom; and
- Two unused laminar air flow rooms.

9. As part of the proposed transaction, Baxter also plans to acquire Fannin Compounding's customer list, product price list, product specifications and details of its supplier arrangements.

Investigation

10. On 17 July 2015, the Commission served a Requirement for Further Information on each of Baxter and DCC pursuant to section 20(2) of the Act. This automatically suspended the procedure for the Commission's Phase 1 assessment.



11. Upon receipt of the responses to the Requirements for Further Information on 24 July 2015, the “appropriate date” (as defined in section 19(b) of the Act) became 4 September 2015.²
12. During the Phase 1 investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the notifying parties. During the Phase 1 investigation, the Commission also contacted customers and competitors of the merging parties

Analysis

13. The Commission is unable, at this stage, to reach a determination that the proposed acquisition will not lead to a substantial lessening of competition in any market for goods or services in the State. Accordingly, it intends to carry out a full investigation under section 22 of the Act.

² The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(b) of the Competition Act 2002, as amended (“the Act”), has determined that it intends to carry out a full investigation under section 22 of the Act in relation to the proposed transaction whereby Baxter Healthcare Limited would acquire sole control of certain assets pertaining to the medical aseptic compounding business of Fannin Limited.

For the Competition and Consumer Protection Commission

Gerald FitzGerald
Member
Competition and Consumer Protection Commission