



DETERMINATION OF MERGER NOTIFICATION M/15/062 - ELVERYS / MAHERS

Section 21 of the Competition Act 2002

Proposed acquisition by Staunton Sports trading as Elverys Sports of certain assets of Maher Sports Limited

Dated 1 December 2015

Introduction

1. On 13 November 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 Staunton Sports, a private company trading as Elverys Sports (“Elverys”), would acquire the assets and business known as Maher Sports (“Mahers”) from Mahers Sports Limited.
2. The proposed transaction is pursuant to a Business and Asset Purchase Agreement dated 12 November 2015 between Elverys, Tommy Maher, Yvonne Maher and Mahers Sports Limited for the acquisition of Mahers, which is located in Cork City.²

The Undertakings Involved

The Acquirer – Elverys

3. Elverys, a private unlimited company headquartered in Castlebar, Mayo is involved in the retail sale of branded leisurewear, footwear, sports goods and sports equipment including brands such as Adidas, Canterbury, Nike, O’Neills and Intersport. Elverys is a member of the Intersport Group (“Intersport”),³ an international purchasing group which operates in 44 countries.⁴

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 The proposed transaction does not include Mahers Golf Emporium located at Penrose Wharf, Penrose Quay, Cork which is currently owned and operated by Mahers Sports Limited.

³ [...].

⁴ No other sporting goods stores in Cork City and surrounding areas that are members of Intersport. Within the State there are four non-Elverys members of Intersport: Alfie Hale Sports located in Waterford City, Brian McCormick Sports located in Letterkenny, Co. Donegal, George Bannon Roscommon CO. Roscommon and Gannon Sports located in Clifden Co. Galway. For more information on Intersport see <<http://www.intersport.com>>.



4. Elverys owns and operates over 50 retail stores in the State⁵ which are supplied from its central distribution centre located in Castlebar, Co. Mayo. In addition to operating its retail stores, Elverys also sells products online.⁶
5. For the financial year ending 31 December 2014, Elverys' worldwide turnover was approximately €[...] million, all of which was generated within the State.

The Target – Mahers

6. Mahers, a retail sports shop located in Oliver Plunkett St, Cork City, is involved in the retail sale of branded leisurewear, footwear, sports goods and sports equipment including brands such as Adidas, Canterbury, Nike, O'Neills and UnderArmour.⁷ Mahers also sells products on-line [...].⁸
7. For the financial year ending 31 December 2014, Maher's worldwide turnover was €[...] million, all of which was generated in the State.

The Vendor – Mahers Sports Limited

8. Mahers Sports Limited is a private limited company headquartered in Cork City. The shareholders of Mahers Sports Limited are Tommy Maher and Yvonne Maher.⁹

Rationale for the Proposed Transaction

9. The parties state that

"[Elverys] do not currently have any presence in the Cork city catchment area. The Proposed Transaction will allow [Elverys] to enter the market for the retail sale of for branded leisurewear and footwear and sports goods and equipment in the Cork city catchment area. The enlarged group will have the means to unlock the significant commercial opportunities offered by a retail presence in Cork city."¹⁰

Third Party Submissions

10. No submission was received.

⁵ Elverys owns and operates stores in all counties in the State apart from Counties Cavan, Longford and Roscommon. [...].

⁶ Elverys, in correspondence to the Commission dated 23 November 2015, states that for the financial year ending 31 December 2014, its turnover from on-line sales was [...].

⁷ For more information on Mahers see <mahersports.ie>.

⁸ For the financial year ending 31 December 2014, Mahers' turnover from on-line sales was [...]. Notification page 6.

⁹ [...].

¹⁰ Notification page 5.



Competitive Analysis

11. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. For the reasons explained in paragraphs 12 – 15, in this instance, it is not necessary for the Commission to define precise relevant markets. However, since there is a horizontal overlap in the activities of the parties in the retail sale of branded leisurewear, footwear, sports goods and sports equipment,¹¹ the Commission has considered the competitive effects of the transaction on this possible product market segment. Similarly, the choice of geographic market (e.g., a national market or a local market such as County Cork, or Cork City and surrounding areas) will not materially alter the competitive impact of the notified transaction in the State. Consequently, the Commission is of the view that the scope of the geographic market can be left open in this instance.

Competitive Effects

12. Elverys and Mahers are active in the retail sale of branded leisurewear, footwear, sports goods and sports equipment. While some branded products are stocked by both Elverys and Mahers this does not imply in and of itself that the Elverys and Mahers are necessarily close competitors. Other factors, including the location of Elverys, Mahers and competing stores, will affect the extent of competition between Elverys and Mahers. On-line competition can reduce the significance of geographical location on competition between retailers. [...] ¹² [...] ¹³. Therefore the Commission has focussed its analysis of the competitive effects of the transaction on the sale of branded leisurewear, footwear, sports goods and sports equipment via retail shops in the State.
13. The parties identify approximately 20 competing stores located within Cork City that specialise in selling branded leisurewear, footwear, sports goods and sports equipment. These stores include, for example, Champion, Edge Sports, Lifestyle Sports, Sports Direct and Welch Sports.¹⁴ These stores will continue to compete with the merged entity following the implementation of the proposed transaction. There will also continue to be a further competitive constraint on the merged entity from other retailers (i.e., retailers that do not specialise in leisurewear and sports products) to the extent that they sell some of the products sold by Elverys and Mahers.
14. Furthermore, as noted above in paragraph 6, Mahers is a single store¹⁵ located in Cork City and Elverys currently has no stores in Cork City. Consequently, if the geographic scope of the market is considered to be limited to Cork City or to Cork City and surrounding areas, there would be no horizontal overlap in the activities of the parties and Elverys would be considered a new entrant.¹⁶

¹¹ [...].

¹² See paragraph 6 and footnote 8.

¹³ The parties estimate that Mahers' online sales represent [...] % of the total online market for branded leisurewear, footwear, sports goods and sports equipment in Ireland and that Elverys has [...] % of the total online market for branded leisurewear, footwear, sports goods and sports equipment in Ireland.

¹⁴ These include 5 Lifestyle Sports stores and 2 stores for each of Champion, Edge Sports, Sports Direct and Welch Sports.

¹⁵ As stated in footnote 2, Mahers Golf Emporium located at Penrose Wharf, Penrose Quay, Cork is not included in the proposed transaction.

¹⁶ The three Elverys stores nearest to Mahers are located in: Charleville, County Cork (approximately 60 kilometres away); Killarney, County Kerry (approximately 90 kilometres away); and, Clonmel, County Tipperary (approximately 100 kilometres away). These distances do not indicate that Elverys and Mahers are currently likely to be close competitors in a wider geographic market.



Vertical Issues

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

Conclusion

16. 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.

Ancillary Restraints

17. The Business and Asset Purchase Agreement between Elverys, Tommy Maher, Yvonne Maher and Mahers Sports Limited contains a number of restrictive obligations on Maher Sports Limited, Tommy Maher and Yvonne Mayer. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.¹⁷ Given the particular nature of the proposed transaction, the Commission considers that these obligations are directly related to and necessary for the implementation of the proposed transaction.

¹⁷ In this respect, the Commission follows the approach adopted by the EU Commission in paragraph 20 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 Staunton Sports, a private company trading as Elverys Sports, would acquire the assets and business known as Maher Sports from Mahers Sports 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