



# DETERMINATION OF MERGER NOTIFICATION M/16/004 DEKABANK / WHITEWATER DEVELOPMENT

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## Section 21 of the Competition Act 2002

### Proposed acquisition by DekaBank Deutsche Girozentrale, through Deka Immobilien Investment GmbH, of certain assets constituting the Whitewater Development

Dated 03 March 2016

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#### Introduction

1. On 26 January 2016, in accordance with section 18(1) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Deka Immobilien Investment GmbH (“Deka Immobilien” or “Acquirer”), a wholly-owned subsidiary of DekaBank Deutsche Girozentrale (“DekaBank”)<sup>1</sup>, would acquire certain assets, namely the Whitewater Shopping Centre and associated residential accommodation units and car park (collectively “the Whitewater Development” or “Target Assets”), situated in Newbridge, County Kildare.

#### The Transaction

2. The proposed transaction is the subject of an agreement for sale by private treaty of the Whitewater Development in Newbridge, County Kildare, entered into between two individuals<sup>2</sup> (“Vendors”) and Deka Immobilien on 26 January 2016.
3. As part of the proposed transaction, DekaBank, through Deka Immobilien, is to acquire ownership and thus sole control of the Whitewater Development<sup>3</sup>.

#### The Undertakings Involved

##### *The Acquirer – DekaBank*

4. Deka Immobilien, a company incorporated in Germany, is a wholly-owned subsidiary of DekaBank and, as such, is part of the Deka Group.<sup>4</sup> Deka Immobilien is an alternative investment fund manager, with expertise in real estate-related services, and is involved in the management of property investment funds. In the State, Deka Immobilien is active in the provision of commercial property for rent, where it currently holds a single

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<sup>1</sup> DekaBank and its subsidiaries and associated companies constitute the Deka Group.

<sup>2</sup> Sean Mulryan and Michael McAteer (as administrator of the estate of Liam Maye).

<sup>3</sup> Following completion of the proposed transaction, the Whitewater Development will be managed by Deka Immobilien for the benefit of Deka-ImmobilienEuropa, a property investment fund managed by Deka Immobilien.

<sup>4</sup> [https://www.deka-immobilien.de/index\\_en.html](https://www.deka-immobilien.de/index_en.html)



property asset, namely, the Mahon Point Shopping Centre in Cork, which generates total turnover of approximately €[...] per annum.<sup>5</sup>

5. DekaBank is a 'Wertpapierhaus', which is a provider of asset management and capital market solutions to savings banks in Germany. In the State, DekaBank provides finance to a small amount of borrowers based in the State, which represent approximately 0.3% of the total value of DekaBank's outstanding loans in the Eurozone.<sup>6</sup>
6. For the financial year ending 31 December 2014, the Deka Group had a worldwide turnover of approximately €3.4 billion. Although Deka Immobilien stated in the notification that it is difficult to determine exact turnover in the State because of the basis on which turnover is allocated by reference to customer location rather than branch, it is estimated that the Deka Group's turnover in the State would be no more than [...] % of its worldwide turnover, which amounts to approximately €[...].

#### **Target Assets - The Whitewater Development**

7. The assets to be acquired by DekaBank, through Deka Immobilien, pursuant to the proposed transaction consist of the property known as the Whitewater Development, located in Newbridge, County Kildare.
8. The Whitewater Development comprises a two storey shopping mall with approximately 30,000 square metres ("sq. m.") of retail accommodation and 84 adjacent residential units.<sup>7</sup> The Whitewater Shopping Centre is anchored by a number of large retail stores (namely, Marks & Spencer, Debenhams, H&M and Zara), and has an additional 63 retail units, 11 food court units with seating for 650 people, a six screen Odeon cinema and 1,700 car parking spaces.
9. For the financial year ending 31 December 2014, the Whitewater Development generated turnover in the State, consisting of rental income received, of €11.96 million.

#### **The Vendors**

10. The Whitewater Development is currently jointly owned by Sean Mulryan and Michael McAteer (as administrator of the estate of Liam Maye).

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

11. The notification states:

*"Deka Immobilien wishes to invest in the Whitewater Development as an income-producing asset for the benefit of the unit holders of the Deka-ImmobilienEuropa fund. More specifically, Deka Immobilien intends, through this investment, to: generate a sustainable income with a long-term perspective,*

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<sup>5</sup> Until 20 January 2016, Deka Immobilien owned a retail property at 14 Grafton Street, Dublin 4, which is currently leased out and operated under the Tommy Hilfiger Brand, and which generated turnover in the financial year prior to its disposal of approximately €[...]. The property was disposed of on 20 January 2016.

<sup>6</sup> According to the Deka Group Annual Report 2014, DekaBank had €33 million in loans to the Irish Government, €274 million in loans to Irish corporates and €30 million in Irish debt securities.

<sup>7</sup> In a prospectus that was produced for purposes of the sale of the Whitewater Development, it was referred to as 'Ireland's Largest Regional Shopping Centre'. See: <http://photos-a.propertyimages.ie/media/6/5/9/3374956/840e6d48-e10e-410c-8165-76df85a7d86c.pdf>.



*hold and administer the Whitewater Development, and; to improve the income resulting from this investment and maintain or enhance its value.”*

### Third Party Submissions

12. No submission was received.

### Competitive Analysis

13. 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 product markets. The Commission’s conclusion concerning the competitive effects of the proposed transaction would be unaffected whether the market for the supply of rentable property is distinguished into separate markets for rentable commercial property and rentable residential property.
14. Similarly, it is also not necessary for the Commission to define precise relevant geographic markets in this instance since the choice of geographic market will not materially alter the competitive impact of the proposed transaction in the State.
15. However, for the purposes of its review of the proposed transaction the Commission has focused its analysis on the effects of the proposed transaction on the market for the supply of rentable commercial property (i.e., retail premises).<sup>8</sup> The Commission has also examined the competitive impact of the proposed transaction by reference to the narrowest possible relevant geographic market, namely regionally in Cork and County Kildare.
16. The Whitewater Development consists of the Whitewater Shopping Centre and adjacent residential units, located in Newbridge, County Kildare, details of which are set out at paragraph 8 above. The commercial units within the Whitewater Shopping Centre and the adjacent residential units are leased to tenants. The Whitewater Development generates total turnover of €11.96 million per annum. According to the prospectus for the Whitewater Development<sup>9</sup>, the core catchment area of the Whitewater Shopping Centre is within a 40 minute drive, including areas such as Newbridge, Kildare, Edenderry, Portarlinton, Portlaoise, Athy, Carlow, Balthinglass and Naas. The M50 is a 28 minute drive away, so areas of Dublin are also included. The geographic area or catchment area, within a drive time of 40 minutes from the shopping centre, contains a population of approximately 311,000 people.
17. Currently, DekaBank’s only commercial real estate interest in the State (through Deka Immobilien) comprises the Mahon Point Shopping Centre, situated in Mahon Link Road in Cork. The shopping centre is approximately 40,000 sq. m. in size and has approximately 1,600 car park spaces. Its anchor tenants are Debenhams, Tesco and an Omniplex Cinema. Approximately €[...] of DekaBank’s turnover in the State is attributable to rental income received from tenants at the Mahon Point Shopping

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<sup>8</sup> According to the prospectus for the Whitewater Development referred to in footnote 7, the annual turnover from the residential units (i.e. supply of rentable residential property) in the Whitewater Development is approximately €543,000 or approximately 5% of Whitewater Development’s annual turnover. Given this relatively low turnover, the impact of the proposed transaction on the supply of rentable residential property is not significant and is not discussed further in this Determination.

<sup>9</sup> See page 11 of the prospectus: <http://photos-a.propertyimages.ie/media/6/5/9/3374956/840e6d48-e10e-410c-8165-76df85a7d86c.pdf>.



Centre. According to the prospectus for the Mahon Shopping Centre<sup>10</sup>, the core catchment area of the shopping centre is Cork City and Suburbs, which accounts for 62% of shoppers, 28% visit from Cork County with the remaining 10% coming from the general Munster Area. The geographic area or catchment area, within a drive time of 30 minutes from the shopping centre, contains a population of approximately 252,000 people.

18. Although the two shopping centres are similar in size and in annual turnover and they also share common tenants (e.g. Debenhams, Next, Boots and Zara), they are located approximately 210 kilometres apart<sup>11</sup> and operate in two different regions, with two very different catchment areas, as noted in footnotes 9 and 10. Therefore, if the relevant geographic market were defined as regional, there is no overlap between the parties' activities in the State. Furthermore, there are a number of other large shopping centres active in Cork and County Kildare which compete with Mahon Point Shopping Centre and the Whitewater Development, respectively. Table 1 below sets out the five largest shopping centres which, according to the parties, compete with each of the parties' shopping centres.

**Table 1 – Regional Shopping Centres which compete with Mahon Point Shopping Centre and the Whitewater Development, 2016**

<b>Mahon Point Shopping Centre, Co. Cork</b>	<b>Whitewater Shopping Centre, Co. Kildare</b>
Wilton Shopping Centre, Co. Cork	Kildare Village, Co. Kildare
Douglas Court Shopping Centre, Co. Cork	Liffey Valley, Dublin 22
Blackpool Shopping Centre, Co. Cork	Dundrum Town Centre, Dublin 16
Ballincollig Shopping Centre, Co. Cork	Blanchardstown Centre, Dublin 15

SOURCE: Commission based on information supplied by the parties.

19. The proposed transaction does not raise any vertical competition concerns.
20. 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**

21. No ancillary restraints were notified.

<sup>10</sup> See pages 3 and 5 of the prospectus: <http://www.mahonpointsc.ie/files/mp-rate-card.pdf>.

<sup>11</sup> See: <https://www.google.ie/maps/dir/Whitewater+Shopping+Centre/+Mahon+Point+Shopping+Centre,+Machain,+Co.+Cork/>



## **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Deka Immobilien Investment GmbH, a wholly-owned subsidiary of DekaBank Deutsche Girozentrale, would acquire certain assets, namely the Whitewater Shopping Centre and associated residential accommodation units and car park, situated in Newbridge, County Kildare, 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**