



# DETERMINATION OF MERGER NOTIFICATION M/17/029 – LIMESTONE (BAIN CAPITAL CREDIT)/GEMBIRA, BROADCAST, CIRCLESIDE

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## Section 21 of the Competition Act 2002

**Proposed acquisition by Bain Capital Credit Member, LLC, through Limestone Funding Holdings Designated Activity Company, of sole control of Gembira Limited, Broadcast Limited and Circleside Limited.**

**Dated 03 July 2017**

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### Introduction

1. On 23 May 2017, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed acquisition (“the Proposed Transaction”) whereby Bain Capital Credit Member, LLC (“Bain Capital Credit”), through Limestone Funding Holdings Designated Activity Company (“the Purchaser”), would acquire the entire issued share capital and thus sole control of each of Gembira Limited, Broadcast Limited and Circleside Limited (“the Target Companies”).

### The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share purchase agreement (“the Agreement”) dated 23 May 2017.<sup>1</sup> Pursuant to the Agreement, the Purchaser will acquire the entire issued share capital and thus sole control of the Target Companies from [...] (“the Vendor”).

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<sup>1</sup> The Agreement is between the Purchaser, [...].



## The Undertakings Involved

### The Purchaser

3. The Purchaser is an Irish-incorporated holding company ultimately controlled by funds, accounts and vehicles managed by Bain Capital Credit.<sup>2</sup> As such, funds, accounts and vehicles managed by Bain Capital Credit are the ultimate acquirers for the purposes of section 18(1) of the Act.

### Bain Capital Credit

4. Bain Capital Credit, an independently managed affiliate of Bain Capital, LP, is headquartered in Boston, Massachusetts, USA and is a leading global credit specialist with approximately \$33.5 billion in assets under management as of 1 January 2017. Bain Capital Credit is a global credit investment firm that invests, through its family of funds, accounts and vehicles, in companies on a worldwide basis across most industries<sup>3</sup>.
5. Bain Capital Credit controls a number of portfolio companies active in the State, as outlined below:
- [...]
6. Bain Capital Credit has property interests in the State through a number of portfolio companies under its control. Bain Capital Credit's primary residential real estate interests in Dublin are presented in Table 1 below<sup>4</sup>:

**Table 1: Bain Capital Credit - Primary Residential Real Estate Interests in Dublin**

Company	% Interest held by Bain Capital Credit -controlled companies	Name of Scheme	No. of Units Sold in 2016
[...]	[...]	Knockrabo, Mount Merrion	[...]
[...]	[...]	[...]	[...]

7. For the financial year ended 31 December 2016, Bain Capital Credit generated turnover in the State of approximately €[...], with a worldwide turnover of approximately €[...].

<sup>2</sup> For completeness, the Commission notes that the Purchaser is itself a wholly-owned subsidiary [...]

<sup>3</sup> See website <http://www.baincapitalcredit.com/>.

<sup>4</sup> For the sake of completeness, the Commission notes that Bain Capital Credit [...]



#### *The Vendor*

8. The Vendor is an Irish incorporated company having its registered office at 3rd Floor Kilmore House, Park Lane, Spencer Dock, Dublin 1. The Vendor is an investment company and operates in the residential property sector in the State.

#### *The Target Companies*

9. Each of the Target Companies owns and controls a residential development site (collectively, “the “Target Assets”). The Target Assets are in the residential real estate sector and are located in the Co. Dublin area. Details of the Target Assets are as follows:
- i. Scholarstown Wood, Rathfarnham, Co. Dublin with planning permission granted for 314 units (Broadcrest Limited);
  - ii. Station Manor, Portmarnock, Co. Dublin with planning permission granted for 112 units (Circleside Limited);; and
  - iii. Hollywoodrath, Hollystown, Dublin 15 with planning permission granted for 456 units (Gembira Limited).
10. The Target Assets are to be fully developed into residential units with construction having commenced in two of the three residential development sites (Scholarstown Wood and Hollywoodrath)<sup>5</sup>.
11. For the financial year ended 31 March 2016, the Target Companies’ collective worldwide turnover was approximately €[...] million, the entirety of which was generated in the State.

#### **Rationale for the Proposed Transaction**

12. The parties state in the notification that:

*“The Proposed Transaction represents an investment opportunity for the Purchaser which is consistent with its strategy of investing in attractive companies or assets*

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<sup>5</sup> With some units already completed and sold in 2016 i.e. [...] in Scholarstown Wood and [...] in Hollywoodrath.



*to increase their value through development and with the view to profiting from their eventual sale.”*

### **Third Party Submissions**

13. No submission was received.

### **Competitive Analysis**

14. 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 the precise markets because doing so will not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State. However, the Commission will assess the likely potential effects of the Proposed Transaction as regards the development and onward sale of residential properties in the Dublin area, as the Commission considers this to be the narrowest potential geographic area in which the Proposed Transaction is potentially likely to raise competition concerns.

### **Horizontal Overlap**

15. Both Bain Capital Credit, through its ultimate ownership of its portfolio companies and subsidiaries in the State, [...] and the Target Companies are active in the residential property sector in Dublin.
16. Considering the newly built residential property sector, the number of housing and apartment units for which planning permission was granted in 2016 for the Dublin area was 6,835 units<sup>6</sup>. The number of units for which the Target Companies received planning permission was 882 units. Bain Capital Credit, through its ultimate ownership of its portfolio companies and subsidiaries in the State ([...]), received planning permission for [...] and [...] units at Knockrabo, Mount Merrion, Co. Dublin and [...] respectively. The total sum of all of these figures (1,115 units) indicates that post transaction Bain Capital Credit will account for approximately 10-20% of the total

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<sup>6</sup> Source: <http://www.cso.ie/en/statistics/construction/>



number of residential property units for which planning permission has been granted in the Dublin area for 2016.

17. The Commission also considered the number of residential property transactions in the Dublin area in 2016. Approximately 15,500 residential property units were transacted in the Dublin area in 2016<sup>7</sup>. In 2016, Bain Capital Credit sold [...] units, through [...], in [...] and the Target Companies sold [...] units in Scholarstown Wood and Hollywoodrath, as set out above. With a combined number of [...] units sold in 2016, post transaction Bain Capital Credit will account for far less than one percent of all residential properties sold in the Dublin area in 2016<sup>8</sup>.
18. Bain Capital Credit accounts for a small share of residential properties transacted in Dublin and the Proposed Transaction will not result in Bain Capital Credit acquiring a significant market share such as would raise competition concerns. Additionally, there is a large and varied (in size) number of competitors<sup>9</sup> in the potential market for residential property in the Dublin area who will continue to provide a competitive constraint on Bain Capital Credit following the Proposed Transaction.
19. Accordingly, the Commission is of the view that the Proposed Transaction does not raise any substantial horizontal competition concerns in respect of the development and onward sale of residential properties in the Dublin area.

### **Vertical Overlap**

20. There is no vertical relationship between the parties.
21. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

### **Ancillary Restraints**

22. No ancillary restraints were notified.

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<sup>7</sup> <http://www.cso.ie/px/pxeirestat/Statire/SelectVarVal/saveselections.asp>.

<sup>8</sup> Based on information provided by the parties in the notification.

<sup>9</sup> Such as the Cosgrave Group, Park Developments Group, O'Flynn Group and Ballymore Group.



### **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 Bain Capital Credit Member, LLC, through Limestone Funding Holdings Designated Activity Company, would acquire the entire issued share capital and thus sole control of each of Gembira Limited, Broadcrest Limited and Circleside 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

**Patrick Kenny**  
**Member**  
**Competition and Consumer Protection Commission**