



DETERMINATION OF MERGER NOTIFICATION M/17/044 – KENNEDY WILSON HOLDINGS, INC. / KENNEDY WILSON EUROPE REAL ESTATE PLC.

Section 21 of the Competition Act 2002

Proposed acquisition by Kennedy Wilson Holdings, Inc., of sole control of Kennedy Wilson Europe Real Estate PLC.

Dated 08 September 2017

Introduction

1. On 31 July 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 Kennedy Wilson Holdings, Inc. (“KWH”), would acquire sole control of Kennedy Wilson Europe Real Estate PLC. (“KWE”).

The Proposed Transaction

2. The Proposed Transaction is to be effected by means of a Court-sanctioned scheme of arrangement under Article 125 of the Companies Law of Jersey. The Proposed Transaction will be implemented according to a Transaction Agreement dated 24 April 2017 between KWH and KWE.
3. KWH currently owns 23.8% of the shares in KWE. The terms of KWH’s recommended offer for the remaining shares in KWE (the “**Original Offer**”) were announced on 24 April 2017
4. On 13 June 2017, the parties announced that KWH had agreed to make available a new alternative proposal (the “**New Offer**”). The New Offer will be available as an alternative to the Original Offer.



5. Accordingly, each KWE shareholder will have the option of choosing either of the following:
 - a. the Original Offer, whereby each KWE Share will be exchanged for 0.667 new KWH shares, or
 - b. the New Offer, whereby each KWE Share will be exchanged for 0.3854 new KWH shares plus 300 pence sterling in cash paid by KWH plus 250 pence sterling in cash paid by KWE by means of special dividend.
6. Following completion of the Proposed Transaction, KWH will acquire sole control of KWE.

The Undertakings Involved

KWH

7. KWH is a Delaware-incorporated corporation, whose common stock has been listed on the New York Stock Exchange since November 2009 under the ticker symbol “KW”. KWH has a diverse shareholder base, with no one shareholder having control at either board or shareholder level.¹
8. KWH is a global real estate investment company, which owns, operates, and invests in real estate focusing in particular on residential multifamily and commercial properties located in the Western United States, the United Kingdom, Ireland and to a lesser extent Spain, Italy and Japan.
9. KWH has an ownership interest in the following properties in the State, as presented in Table 1. All of these properties are located within the Dublin area:

¹ As at the date of this merger notification, KWH’s largest individual shareholders are [...] (with a shareholding of approximately [...])%, [...] (with a shareholding of approximately [...])%, [...] (with a shareholding of approximately [...])% and [...] (with a shareholding of approximately [...])%. No other individual shareholder holds more than [...] % of KWH stock in issue.



Table 1: KWH's Property Interests in the State

Use	Property/Location	Ownership Interest
Residential	Alto Vetro, Dublin 2	[...]%
	Alliance (part of the Gasworks Development in Dublin 4)	[...]%
	Clancy Quay (Phase 1), Dublin 8	[...]%
	Sandford Lodge, Ranelagh, Dublin 6	[...]%
Commercial/Office	Green Street	[...]%
	State Street Building, Dublin Docklands	[...]%
Hotels	Shelbourne Hotel	[...]%

Source: The Commission based on information provided by the parties in the notification

10. KWH is also currently involved in the development of three major property projects in the Dublin area, as presented in Table 2 below.

Table 2: Overview of KWH developments in the State

Project	Use	Description	Estimated completion date
Capital Dock	Commercial and residential (multifamily)	Mixed-use waterfront development comprising 690,000 ft ² in Dublin's Docklands	[...]
Clancy Quay	Residential (multifamily)	Additional development within existing 423-unit apartment community	[...]
Kildare Street	Commercial (office)	Multiple lots into modern class-A office scheme	[...]

Source: Information provided by the parties in the notification

11. In addition to its property interests, KWH is also active in the provision of investment management and advisory services to KWE under the terms of an Investment Management Agreement (“IMA”) and an Investment Advisory Agreement (“IAA”), respectively.



12. For the financial year ended 31 December 2016, KWH generated turnover in the State of approximately €[...], with a worldwide turnover of approximately €639.2 million.

KWE

13. KWE is a closed-end investment fund incorporated in Jersey. KWE has been listed on the London Stock Exchange under the ticker symbol “KWE” since February 2014. As a public company, KWE has a diverse shareholder base, with no one shareholder holding a majority of shares in issue or board representation.² Accordingly, no undertaking currently exercises control over KWE within the meaning of section 16(2) of the Act. The result of the Proposed Transaction is that KWH would acquire sole control of KWE.
14. KWE’s primary activities involve investing in real estate in Europe, specifically in the United Kingdom, Ireland, Spain and Italy. KWE has granted authority, via the IMA, to KW Investment Management Limited, a wholly owned subsidiary of KWH, for the day-to-day management of the assets of KWE. Under the terms of the IMA, subject to certain exceptions, KWE is provided priority access to all real estate or real estate loan opportunities sourced by KW Investment Management Limited in Europe that are within the parameters of KWE’s investment policy.³
15. KW Investment Management Limited has appointed Kennedy Wilson Europe Limited (“KWEL”), an Irish-headquartered company and a wholly-owned subsidiary of KWH, to provide investment management and advisory services to KW Investment Management Limited for the KWE’s investments in the State.
16. An overview of KWE’s property portfolio in the State is presented in Table 3 below.

² As at the date of this merger notification, KWE had more than 200 individual shareholders. KWH is KWE’s largest single shareholder, with a holding of 23.8%, while two other individual shareholders had holdings of greater than 10%.

³ In particular: Neither the KW Investment Management Limited, nor KWH, will invest in assets in Europe without first presenting those opportunities KWE, which has the right to first refusal on those opportunities; Where KW Investment Management Limited (on behalf of KWE) decided not to pursue a particular investment opportunity, and KWH expresses an interest in that opportunity, KW Investment Management Limited will first present the opportunity to the independent directors of KWE for determination as to whether to pursue the opportunity.



Table 3: Overview of KWE's property portfolio in the State

Use	Property	Location
Commercial (Office)	40-42 Mespil Road	Mespil Road, Dublin
	Baggot Plaza, Dublin	Baggot Street, Dublin
	Gardner House	Wilton Place, Dublin
	South Bank House	Barrow Street, Dublin
	The Chase	Sandyford, Dublin
	Charlemont House	Charlemont Place, Dublin
	Beaver House, Dublin 4	Clonskeagh Road, Dublin
	Russell Court	St Stephen's Green, Dublin
	Dundrum Business Park	Dundrum, Dublin
	The Warehouse, Dublin	35 Barrow St, Dublin
	14-15 Sir John Rogerson's Quay	Dublin Docklands
	16 Sir John Rogerson's Quay	Dublin Docklands
	Blocks 3,4, 5 Blackrock Bus Park	Blackrock, Co. Dublin
Commercial (Retail)	Marshes Shopping Centre	Dundalk, Louth
	Merchants Quay Shopping Centre (M&S Unit)	Patrick's Street, Cork City
	Stillorgan Shopping Centre	Stillorgan, Dublin
	Westmoreland Street	Westmoreland Street, Dublin
Commercial (Other)	The Residence Social Club	St Stephen's Green, Dublin
Residential	Liffey Trust	Sheriff St., Dublin
	Vantage, Central Park	Central Park, Dublin
Hotel	Portmarnock Hotel and Golf Links	Portmarnock, Co. Dublin

Source: information provided by the parties in the notification

17. For the financial year ended 31 December 2016, KWE generated turnover in the State of approximately €[...], with a worldwide turnover of approximately €265.1 million⁴.

⁴ Turnover before fair value movements and gains on disposal.



Rationale for the Proposed Transaction

18. The parties state in the notification that:

“The combination of the two complementary businesses will create a global real estate investment and asset management platform, with diversified interests and a strong track record of investments. The combined group will have greater scale and improved liquidity, enhancing its appeal to potential investors. Moreover, the Proposed Transaction will make permanent the existing investment management arrangement, creating a more efficient, internalised management structure and providing KWE with continuing access to KWH’s management expertise.”

Third Party Submissions

19. No submission was received.

Competitive Analysis

20. 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 relevant markets because doing so will not alter the Commission’s assessment of the likely competitive effects of the Proposed Transaction in the State. However, for the purposes of this determination, the Commission has considered the activities of the parties on the following potential markets in the Dublin area:

- i. commercial development,
- ii. commercial office rental,
- iii. residential property rental, and
- iv. four and five star hotel bedrooms.

21. Notwithstanding the current ownership and management links between KWH and KWE, they currently operate as independent entities.

22. For the reasons set out below, the Commission is of the view that the Proposed Transaction is unlikely to result in a substantial lessening of competition.



Horizontal Overlap

23. Table 4 below illustrates the areas of overlap between the business activities of KWH and KWE in the Dublin Area.

Table 4: Summary of overlaps between KWH and KWE as at 31 Dec 2016

Activity	KWH	KWE
Development		
-- Commercial	✓	✓
-- Residential	✓	
Rental		
-- Commercial	✓	✓
-- Residential	✓	✓
Management ^[1]	✓	
Hotels		
-- Ownership	✓	✓
-- Operation		✓
Real estate loans		✓

Source: information provided by the parties in the notification

24. In relation to commercial development, KWH has [...] m² of office real estate development in Dublin⁵, equating to approximately [...] % market share, whereas KWE has [...] m² or [...] % market share. Therefore, following completion of the Proposed Transaction the combined market share of the parties is less than [...] % with an increment of less than [...] % market share.
25. In relation to commercial office rental in the Dublin area, the estimated⁶ combined share of the parties in relation to rentable office property in Dublin is less than [...] % with KWH and KWE having an estimated market share of [...] % and [...] %, respectively.

⁵ Parties estimates, based on CBRE statistics on commercial office supply in Dublin (March 2017).

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26. In 2016, the parties owned approximately [...] units of rentable residential properties in the Dublin area. According to Central Statistics Office data, this translates into less than [...] % the overall rentable residential units in the Dublin area.⁷
27. In relation to the supply of hotel bedrooms, KWH owns the Shelbourne Hotel⁸ in Dublin city centre and KWE owns the Portmarnock Hotel and Golf Links⁹ in Portmarnock Co. Dublin. The parties have a combined total of [...] hotel bedrooms in the Dublin area. This represents less than [...] %¹⁰ of available four and five star hotel bedrooms in the Dublin area.
28. In addition, there are currently a number of other national and international property companies active in the real estate sector in Dublin which act as a competitive constraint on KWH and would continue to do so following completion of the Proposed Transaction. Competitors include, for example, Green REIT Public Limited Company, IPUT Public Limited Company, Hibernia REIT Public Limited Company, Irish Life, Starwood and others.
29. In the light of the above, the Commission is of the view that the Proposed Transaction does not raise any horizontal competition concerns in respect of any of the areas of overlap in the business activities of the parties considered above.

Vertical Overlap

30. There is a potential vertical relationship between the parties as KWH, through its directly owned subsidiary, KW Investment Management Limited, provides management and advisory services to KWE. However KWH only provides these services in the State to KWE and to KWH's joint venture equity investments in Ireland. As these services are only provided to KWE and to undertakings owned, controlled by or affiliated to KWH, the Commission considers that the Proposed Transaction is not likely to result in any vertical foreclosure concerns.

⁷ Parties estimates, based on CSO statistics on the number of rented households in Dublin City, Dun Laoghaire, Fingal and South Dublin in 2016.

⁸ 266 bedrooms

⁹ 131 bedrooms

¹⁰ Parties estimates, based on *Fáilte Ireland statistics for four and five star hotels in Dublin*.



Conclusion

31. 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

32. No ancillary restraints were notified.



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 Kennedy Wilson Holdings, Inc. would acquire sole control of Kennedy Wilson Europe Real Estate PLC. 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

Brian McHugh
Member
Competition and Consumer Protection Commission