



## **DETERMINATION OF MERGER NOTIFICATION M/18/063 - BERENDSEN (ELIS) / KINGS LAUNDRY**

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### **Section 22 of the Competition Act 2002**

**Proposed acquisition by Berendsen Ireland Limited of sole control of Kings Laundry Limited.**

**Dated 8 July 2019**

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### **Determination**

Pursuant to section 20(3) of the Competition Act 2002, as amended (the “Act”), Berendsen Ireland Limited (“Berendsen”) has submitted to the Competition and Consumer Protection Commission (the “Commission”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services in the State, with a view to the said proposals becoming binding on Berendsen.

The Commission has taken the proposals into account and, in light of the said proposals (which form part of the basis of its determination), has determined, in accordance with section 22(3)(a) of the Act, that the result of the proposed acquisition, whereby Berendsen would acquire sole control of Kings Laundry 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. Before making a determination in this matter, the Commission, in accordance with section 22(8) of the Act, had regard to any relevant international obligations of the State, and concluded that there were none.

For the Competition and Consumer Protection Commission

**Isolde Goggin  
Chairperson  
Competition and Consumer Protection Commission**



## M/18/063 – Berendsen (Elis)/Kings Laundry

### Proposals by Berendsen to the Commission (the “Proposals”)

8 July 2019

#### Recitals

- A. The Proposed Transaction, as defined below, was notified to the Commission on 7 August 2018.
- B. Berendsen and Kings Laundry are both active in the supply of outsourced rental and maintenance of flat linen in the healthcare sector in the State.
- C. Pursuant to Section 20(3) of the Act, Berendsen, has submitted the Proposals to the Commission for the purpose of ameliorating the Commission’s competition concerns in respect of the effect of the Proposed Transaction on competition in markets for goods or services in the State, with a view to the Proposals becoming binding on Berendsen on the date of the Determination.
- D. It is understood that Completion will only occur on condition that Berendsen has satisfied its obligations under paragraphs 6 or 7 below in relation to the Healthcare Contracts (as defined below) (and healthcare contracts, as the case may be). Therefore, in practical terms Completion and the satisfaction by Berendsen of its obligations to deal with the Healthcare Contracts in compliance with paragraph 6 or Healthcare Contracts (and healthcare contracts, as the case may be) in compliance with paragraph 7 of these Proposals are inter-conditional. Accordingly, it is the intention of Berendsen to arrange for Completion to happen contemporaneously with the satisfaction by it of its obligations to deal with the Healthcare Contracts (and healthcare contracts, as the case may be) in accordance with paragraphs 6 or 7 below. In any event, for the avoidance of doubt, Completion will not take place before Berendsen has fulfilled its obligations regarding the Healthcare Contracts (and healthcare contracts, as the case may be) in accordance with paragraphs 6 or 7 below.
- E. In its discussions with Berendsen, the Commission has confirmed that in the event that the provisions of paragraph 17 are invoked, the Commission will act reasonably in the context of assessing alternative package(s) which Berendsen may be required to put to the Commission to dispose of Healthcare Contracts (and healthcare contracts, as the case may be) and in particular as regards how those alternative package(s) to dispose of such contracts can be packaged together and as regards the number of Third Party Purchasers (as defined below) to whom the relevant contracts can be offered in order to address the Commission’s competition concerns.

#### Definitions

For the purpose of these Proposals, the following terms shall have the following meaning:

“**Act**” means the Competition Act 2002, as amended;



“**Berendsen**” means Berendsen Ireland Limited, a wholly-owned subsidiary of Berendsen Limited (UK) and an indirect wholly-owned subsidiary of Elis;

“**Berendsen Manager**” has the meaning ascribed to it in paragraph 27;

“**Commission**” means the Competition and Consumer Protection Commission and its successors;

“**Commission Monitoring Trustee**” has the meaning ascribed to it in paragraph 20;

“**Completion**” means completion of the Proposed Transaction in accordance with the terms of the Share Purchase Agreement;

“**Determination**” means, for the purposes of these Proposals only, the determination of the Commission pursuant to Section 22(3)(a) of the Act that the Proposed Transaction may be put into effect taking into account the Proposals, which form part of the basis of the Determination;

“**Elis**” means Elis S.A.;

“**Healthcare Contracts**” means contracts in place between Berendsen and its [...] customers for the supply of rental and maintenance of flat linen, and “**Healthcare Contract**” shall be construed accordingly;

“**Kings Laundry**” means Kings Laundry Limited;

“**Kings Laundry Business**” means the outsourced flat linen laundry business acquired by Berendsen pursuant to the Share Purchase Agreement;

“**Long Stop Date**” means

(a) the period of [...] from the date of the Determination or (i) such later date as the Commission, acting reasonably, may agree in writing or (ii) such extended period as may result from the delays referred to in paragraphs 14, 18, 19 and 20 below; or

(b) in the case of where:

(i) a binding contract has been entered into for the sale of Healthcare Contracts; or

(ii) a binding contract has been entered into in respect of the sale of Healthcare Contracts (and healthcare contracts, as the case may be) pursuant to the review provisions herein,

it means, [...] from the date of entry into such binding contract (or such later date as may be agreed by the Commission acting reasonably following consultation with Berendsen or as extended under paragraph 10 below or such extended period as may result from the delays referred to in paragraphs 14, 18, 19 and 20); and

in any event, a date no later than [...] from the date of the Determination.



“**Monitoring Mandate**” has the meaning ascribed to it in paragraph 21;

“**Monitoring Trustee**” has the meaning ascribed to it in paragraph 21;

“**Monitoring Trustee Reports**” has the meaning ascribed to it in paragraph 23;

“**New Monitoring Trustee**” has the meaning ascribed to it in paragraph 19;

“**Package A**” and “**Package A Contract(s)**” have the meanings ascribed to them in paragraph 6;

“**Proposed Transaction**” means the proposed acquisition of sole control of Kings Laundry by Berendsen pursuant to the terms of the Share Purchase Agreement as notified to the Commission on 7 August 2018;

“**Proposed Monitoring Trustee**” has the meaning ascribed to it in paragraph 18;

“**Relevant Customer**” has the meaning ascribed to it in paragraph 8 and “**Relevant Customers**” shall be construed accordingly;

“**Share Purchase Agreement**” means the share purchase agreement, dated 25 July 2018, entered into between Berendsen and the owners of Kings Laundry for the purchase of the entire issued share capital of Kings Laundry;

“**Third Party Purchaser**” means an independent third party purchaser that is not connected to Elis, Berendsen or Kings Laundry within the meaning of section 220 of the Companies Act 2014 and “**Third Party Purchasers**” shall be construed accordingly;

“**Third Party Sale**” has the meaning ascribed to it in paragraph 8;

“**Working Day**” means a day (other than a Saturday or a Sunday or public holiday) on which banks are open for retail business in Dublin.

## Part I

### Proposals relating to the Healthcare Contracts

1. Berendsen hereby undertakes to the Commission to procure, in advance of Completion, to the extent it is within its powers of procurement to do so, in compliance with paragraph 6 or 7, the divestment of the Healthcare Contracts (and the healthcare contracts, as the case may be) by the Long Stop Date to a Third Party Purchaser approved by the Commission, having regard to the provisions of paragraph 4, (whose approval shall not be unreasonably withheld or delayed).
2. Berendsen recognises that the acquisition of the Healthcare Contracts (and the healthcare contracts, as the case may be) by a Third Party Purchaser must not be likely to create, in light of information available to the Commission, prima facie competition concerns.



3. Berendsen recognises that for a Third Party Purchaser to meet with the Commission's approval, such purchaser shall be independent of and unconnected to Berendsen, Elis and Kings Laundry and is one that is reasonably likely to obtain all authorisations and regulatory consents (if legally required) in relation to the acquisition of the Healthcare Contracts (and the healthcare contracts, as the case may be).
4. In assessing the suitability of a Third Party Purchaser, the Commission may have regard to factors such as its financial resources, expertise in the rental and maintenance of flat linen, contingency planning and whether such Third Party Purchaser is committed to maintaining and developing the Healthcare Contracts (and the healthcare contracts, as the case may be) and being an active competitive force in the healthcare market.
5. In assessing the suitability of a Third Party Purchaser, the Commission shall accept the decision of a Relevant Customer that its Healthcare Contract can be divested by Berendsen to the relevant Third Party Purchaser, subject to the provisions of paragraph 15 below.
6. Berendsen hereby undertakes to the Commission to procure, to the extent it is within its powers of procurement to do so, the divestment to a Third Party Purchaser by the Long Stop Date all of its rights, title and interests in respect of:
  - (i) three (3) Healthcare Contracts, [...]; and
  - (ii) such additional Healthcare Contracts of an aggregate value (by reference to 2018 revenue figures), which, when aggregated with the value of the Healthcare Contracts referred to in (i) above, have a total value of [...]. Berendsen also undertakes to the Commission to procure, to the extent it is within its powers of procurement to do so, the divestment of the rights and title in ancillary items such as linen stock (but excluding, for the avoidance of doubt, any facilities or fixed assets (e.g., washers, dryers, or trucks)) as required by a Third Party Purchaser and to otherwise assist the Third Party Purchaser to enable it to provide the services in respect of the relevant Healthcare Contracts ("**Package A**" and the relevant contract(s) therein being each a "**Package A Contract(s)**").
7. In circumstances where it becomes apparent to Berendsen (acting reasonably and in good faith) and to the Monitoring Trustee (who will confirm this to the Commission in writing) at any time prior to the Long Stop Date that it will not be possible to complete the divestment of Package A by the Long Stop Date, both Berendsen and the Commission undertake to consider, in good faith (and for this purpose the Commission further undertakes to invoke the review provisions in paragraph 17) an alternative package of Healthcare Contracts (and healthcare contracts, as the case may be) which could be divested by Berendsen in a form which would address the Commission's concerns. In this regard, the Commission shall have due regard to:
  - (i) the combination of Healthcare Contracts and Berendsen's other healthcare contracts available at that time for the purposes of putting an alternative



package(s) together to achieve the aggregate value of [...] (by reference to 2018 revenue figures); and

- (ii) the circumstances pertaining at the time and, in particular, to the status and standing of any Third Party Purchaser (in the relevant market(s)) who may be prepared to acquire the relevant contracts.
8. For the purposes of paragraphs 6 and 7, Berendsen acknowledges and agrees that it shall not actively solicit healthcare flat linen business from a customer who was party to a Healthcare Contract or to another of its healthcare contracts which has been divested pursuant to these Proposals (each a **“Relevant Customer”**) for a period of [...] from the date of completion of a sale to a Third Party Purchaser (each a **“Third Party Sale”**).

9. For the purposes of:

- (i) Package A, if Berendsen enters into a binding contract (which for the avoidance of doubt may contain pre-conditions to its completion) with a Third Party Purchaser approved by the Commission for the sale of such Healthcare Contracts and such transaction completes within [...] of the date of entry into the relevant binding contract (or such longer period as may be agreed by the Commission acting reasonably following consultation with Berendsen or as extended under paragraph 10), and/or
- (ii) any alternative package(s) agreed under paragraph 7 and/or 17 below, if Berendsen enters into a binding contract (which for the avoidance of doubt may contain pre-conditions to its completion) with a Third Party Purchaser approved by the Commission for the sale of such Healthcare Contracts (and healthcare contracts, as the case may be) and such transaction completes within [...] of the date of entry into the relevant binding contract (or such longer period as may be agreed by the Commission acting reasonably following consultation with Berendsen or as extended under paragraph 10),

this shall constitute evidence that Berendsen has complied with Part I of these Proposals, provided that (for the avoidance of doubt) Completion has not taken place in advance of (i) or (ii) and the Commission has confirmed in writing that Berendsen has complied with Part I of these Proposals and may proceed to Completion. In this regard, the Commission agrees to provide this written confirmation promptly to facilitate near simultaneous completion of the divestment of the Healthcare Contracts (and healthcare contracts, as the case may be) and Completion.

10. The Commission acknowledges that it is the intention of Berendsen to complete a Third Party Sale contemporaneously with Completion and accordingly the Commission agrees to extend any relevant deadlines (subject to the Long Stop Date) set out herein in accordance with any reasonable request received from Berendsen in order for Completion and the completion of a Third Party Sale to happen contemporaneously.



11. Berendsen shall:
  - a. as soon as practicable, inform the Monitoring Trustee and the Commission in writing, with a fully documented and reasoned proposal, of any Third Party Purchaser who indicates a genuine intention to purchase the Healthcare Contracts (and the healthcare contracts, as the case may be), enabling the Monitoring Trustee and the Commission to verify the suitability of the Third Party Purchaser; and
  - b. when Berendsen and the Third Party Purchaser have entered into a binding contract for the sale of any Healthcare Contract, submit to the Monitoring Trustee and the Commission a copy of a binding contract(s) and a fully documented and reasoned report enabling the Monitoring Trustee and the Commission to verify that the requirements set out in these Proposals are fulfilled and that there has been no material change in the status of the Third Party Purchaser not reasonably foreseeable at the time the Commission assessed that purchaser's suitability, subject to the Commission agreeing to keep confidential all such information received.
12. Within [...] of receipt of a fully documented and reasoned proposal from Berendsen in accordance with paragraph 11(a), the Monitoring Trustee shall provide a written report to the Commission verifying the suitability of the Third Party Purchaser(s). The Commission shall communicate in writing its approval or non-approval of a Third Party Purchaser within [...] of receipt of a fully documented and reasoned proposal from Berendsen identifying that purchaser in accordance with paragraph 11(a).
13. Within [...] of receipt of a copy of a binding contract(s) and a fully documented and reasoned report from Berendsen in accordance with paragraph 11(b), the Monitoring Trustee shall provide a report to the Commission verifying whether the requirements set out in these Proposals have been fulfilled and that there has been no material change in the status of the Third Party Purchaser. Within [...] of receipt of a copy of a binding contract(s) and accompanying fully documented and reasoned report in accordance with paragraph 11(b), the Commission shall communicate in writing its view as to whether there has been any material change in the status of the Third Party Purchaser and whether the requirements set out in these Proposals have been fulfilled as provided for in paragraph 11(b).
14. Failure of the Commission to communicate its approval or non-approval of a Third Party Purchaser within ten (10) Working Days of receipt of a fully documented and reasoned proposal identifying such a purchaser in accordance with paragraph 11(a) shall postpone the running of the relevant periods in the definition of Long Stop Date until such date as the Commission communicates to Berendsen its approval or non-approval. However, if the Commission does not communicate its approval or non-approval within twenty (20) Working Days of receipt of a fully documented and reasoned proposal, such approval shall be deemed to have been given unconditionally.



15. It is acknowledged and agreed by Berendsen, for the purposes of divesting Package A, that the relevant Healthcare Contracts shall be divested to a single Third Party Purchaser. It is acknowledged and agreed by the Commission for the purposes of paragraph 7 above, that it will consider in good faith the possibility of Berendsen divesting the Healthcare Contracts (and healthcare contracts, as the case may be) to more than one (1) Third Party Purchaser so as to afford Berendsen the best opportunity to divest such contracts. In the case of a plurality of offers from Third Party Purchasers to whom the Commission does not object, Berendsen shall be free to accept any offer or offers, or to select the offer or offers it considers best, provided that the Commission has confirmed in writing that its competition concerns would be addressed.
16. In circumstances where it has not been possible to complete the divestment of Package A, or the divestment of any alternative package of Healthcare Contracts (and healthcare contracts, as the case may be) agreed by Berendsen and the Commission under the review provisions in paragraph 17 by the Long Stop Date, Berendsen will terminate the Share Purchase Agreement.

#### **Proposals review clause**

17. The Commission may at its sole discretion, either in response to a reasoned request from Berendsen or the Monitoring Trustee or, in appropriate cases on its own initiative, extend any of the time periods provided for in these Proposals, with the exception of the time periods applying to the Commission mentioned in paragraphs 18, 19 and 20 below unless with the agreement of Berendsen (and such agreement not to be unreasonably withheld). The Commission may further, at its sole discretion, either in response to a reasoned request from Berendsen or the Monitoring Trustee showing good cause or, in appropriate cases on its own initiative (with the agreement of Berendsen and such agreement not to be unreasonably withheld) waive, modify or substitute any provision in these Proposals.

## **Part II**

### **Appointment of a Trustee in respect of the Proposals in Part I**

#### **Appointment of a Monitoring Trustee**

18. Within [...] of the date of the Determination, Berendsen will propose to the Commission a trustee, who is independent of Berendsen, Elis and Kings Laundry (the “**Proposed Monitoring Trustee**”). The appointment of the Proposed Monitoring Trustee is subject to the approval of the Commission (such approval not to be unreasonably withheld or delayed). If the Commission does not reject the Proposed Monitoring Trustee by notice in writing within [...] of the date of the proposal by Berendsen, the Proposed Monitoring Trustee shall be deemed to have been approved.
19. If the Proposed Monitoring Trustee is rejected by the Commission, Berendsen will propose the name of a new trustee (the “**New Monitoring Trustee**”) within [...] of being informed by the Commission of the rejection. If the Commission does not reject the





New Monitoring Trustee by notice in writing to Berendsen within [...] of the new proposal, the New Monitoring Trustee shall be deemed to have been approved.

20. If the New Monitoring Trustee is rejected by the Commission, the Commission shall nominate a suitable trustee (the “**Commission Monitoring Trustee**”) within [...], whom Berendsen will appoint or cause to be appointed.
21. Within [...] of the date on which the Commission has approved or is deemed to have approved either the Proposed Monitoring Trustee, the New Monitoring Trustee or the Commission Monitoring Trustee, Berendsen shall enter into a mandate agreement (the “**Monitoring Mandate**”) with the approved trustee (the “**Monitoring Trustee**”), the terms of which shall have previously been agreed with the Commission, which confers on the Monitoring Trustee all the rights and powers necessary to permit the Monitoring Trustee to monitor compliance with the Proposals.
22. The Monitoring Trustee shall be independent of Berendsen, Elis and Kings Laundry, possess the necessary qualifications and experience to carry out its mandate and shall neither have nor become exposed to a conflict of interest.

#### **Monitoring Trustee’s Mandate**

23. Pursuant to the Monitoring Mandate, throughout the duration of the Monitoring Trustee’s appointment, the Monitoring Trustee shall, in respect of the Proposals:
  - a. Provide written reports (the “**Monitoring Trustee Reports**”) to the Commission on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Monitoring Trustee has been unable to discharge such duties. The Monitoring Trustee Reports shall be provided at monthly intervals, commencing one (1) month after the date of the appointment of the Monitoring Trustee, or at such other times or time periods as the Commission may specify and are notified in writing to Berendsen. Berendsen shall receive a non-confidential copy of such Monitoring Trustee Reports;
  - b. Monitor and advise the Commission as to the developments in selecting a Third Party Purchaser and as to the conduct of the negotiations;
  - c. Monitor and advise the Commission on whether a Third Party Purchaser with whom Berendsen intends to negotiate is likely to satisfy the Commission’s requirements as to suitability, including providing a written report (pursuant to paragraph 12 above); and
  - d. Provide a written report verifying whether the requirements set out in these Proposals have been fulfilled and that there has been no material change in the status of the Third Party Purchaser (pursuant to paragraph 13 above).

#### **Miscellaneous**



24. The Monitoring Trustee's duties and functions as set out above shall not be extended or varied in any way by Berendsen save with the express written approval of the Commission (whose approval shall not be unreasonably withheld or delayed). Any instruction or request to the Monitoring Trustee from Berendsen which conflicts with the terms of the Monitoring Mandate and the duties and functions as set out above, will be considered null and void.
25. The Commission may, on its own initiative or at the request of the Monitoring Trustee, give any orders or instructions to the Monitoring Trustee that are required in order to ensure compliance with the Proposals so long as Berendsen is first given a reasonable opportunity to comment on any such orders or instructions in advance.
26. In respect of the Proposals, the Monitoring Mandate shall expire once the Healthcare Contracts have been dealt with in compliance with paragraph 6 or the Healthcare Contracts (and healthcare contracts, as the case may be) have been dealt with in compliance with paragraph 7 and the Commission has confirmed in writing to Berendsen that it is satisfied that there has been compliance with the Proposals (it being understood that such confirmation from the Commission shall not be unreasonably withheld or delayed).
27. Berendsen shall appoint an employee within Berendsen with responsibility for the management of the Healthcare Contracts (the "**Berendsen Manager**"). The Berendsen Manager shall continue to manage all operations relating to the Healthcare Contracts in the best interest of those contracts with a view to ensuring their continued economic viability, marketability, and competitiveness.
28. The Monitoring Trustee shall have full and complete access to the Berendsen Manager and any other employee of Berendsen, as required, in order to ensure compliance with the obligation to maintain and preserve the economic viability, marketability and competitiveness of the Healthcare Contracts.
29. Berendsen will provide the Monitoring Trustee with all reasonable assistance and will procure (to the extent it is in its powers of procurement to do so) that all relevant third parties provide such assistance required to ensure compliance with the Proposals. Berendsen will provide or cause to be provided to the Monitoring Trustee all such assistance and information, including copies of all relevant documents accessible by Berendsen as the Monitoring Trustee may require in carrying out its Monitoring Mandate and will pay reasonable remuneration for the Monitoring Trustee's services.
30. In addition, at the expense of Berendsen, the Monitoring Trustee may appoint an advisor, subject to Berendsen's approval (whose approval shall not be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisor is strictly necessary and appropriate for the performance of its duties and obligations under the Monitoring Mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should Berendsen refuse to approve the advisor proposed by the Monitoring Trustee, the Commission may approve



the appointment of such advisor, having first consulted with Berendsen. Only the Monitoring Trustee shall be entitled to issue instructions to any such advisor.

31. Notwithstanding the Monitoring Trustee's overall responsibility to discharge its functions and in particular notwithstanding the Monitoring Trustee's position as an independent unrelated third party, the Monitoring Trustee (who shall undertake in the Monitoring Mandate to do so) shall have to the extent possible, given the nature of its tasks, due regard to the commercial interests of Berendsen.
32. Berendsen shall indemnify the Monitoring Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby acknowledges and agrees that an Indemnified Party shall have no liability to Berendsen for, any liabilities arising out of the performance of the Monitoring Trustee's duties under the Monitoring Mandate, except to the extent that such liabilities result from the wilful default, recklessness, negligence and/or bad faith of the Monitoring Trustee, its employees, agents and/or advisor.
33. The Monitoring Mandate shall be deemed to be discharged and the Monitoring Trustee's appointment shall be deemed to be terminated if Berendsen announces and demonstrates to the Commission that the Proposed Transaction has been irrevocably abandoned.

#### **Monitoring Trustee review clause**

34. Subject to the provisions of paragraph 17 above, the Commission may, at its sole discretion, in response to a reasoned request from Berendsen or the Monitoring Trustee showing good cause or, in appropriate cases on its own initiative (with the agreement of Berendsen and such agreement not to be unreasonably withheld) waive, modify or substitute any provision in relation to the appointment of the Monitoring Trustee.

Signed by:

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Jack Byron

Director

Duly authorised for and on behalf of Berendsen

8 July 2019



**Confidential Annex I**

**Healthcare Contracts**

[...]