Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí

Competition and Consumer Protection Commission

Competition and Consumer Protection Commission clears proposed acquisition by Baxter Healthcare Limited of Fannin Compounding

21 October 2015 The Competition and Consumer Protection Commission ("the Commission") has today cleared the proposed acquisition whereby Baxter Healthcare Limited ("Baxter Healthcare") will acquire certain assets of Fannin Limited. The assets to be acquired are those used in the manufacture and supply of aseptically prepared compounded medicines ("Fannin Compounding").

Following notification on the 9th of June, the Commission undertook an extensive two phase investigation to determine whether the proposed transaction would substantially lessen competition in any markets for goods or services in the State. This investigation included economic analysis of the affected markets, evidence from competitors, customers (including public and private hospitals, and the Health Service Executive) and consultation with other interested third parties (including the National Cancer Control Programme and the Health Products Regulatory Authority).

In the course of its review of the merger, the Commission identified certain concerns regarding the likely competitive impact of the proposed acquisition. These concerns related principally to the significant reduction in competition for the commercial supply of compounded chemotherapy medicines to hospitals in the State following the acquisition. In accordance with the Commission's published Guidelines for Merger Analysis, the parties submitted evidence to the Commission to support their view that Fannin Compounding is a "failing division" of Fannin Limited and that the assets involved would exit the market if the transaction was prohibited. As set out in Chapter 9 of the Commission's Guidelines for Merger Analysis, the failing division test has four elements, all of which must be met [*see Notes below*].

The Commission undertook an in-depth review of the failing division argument submitted by the parties, including seeking evidence from relevant third parties and engaging the services of Grant Thornton to independently examine financial information pertaining to Fannin Compounding. The Commission has concluded that Fannin Compounding satisfies each of the four elements of the failing division test. The result of this analysis is that, in the Commission's view, the competitive structure of the relevant market would deteriorate to at least the same extent in the absence of the proposed acquisition.

The Commission has therefore formed the view that the proposed acquisition will not, of itself, substantially lessen competition in any market for goods or services in the State. The Commission will publish the reasons for its determination on its website no later than 60 working days after the date of the determination and after allowing the parties the opportunity to request that confidential information be removed from the published version.

Ends

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Notes to the Editor

The Parties Involved

Baxter

1. Baxter is incorporated in the United Kingdom and is ultimately controlled by Baxter International Inc. Baxter International Inc provides a broad portfolio of renal and hospital products, including home, acute and in-centre dialysis; sterile IV solutions; infusion systems and devices; parenteral nutrition; biosurgery products and anaesthetics; and pharmacy automation, software and services. The company is a global company with 50,000 employees worldwide. In the State, Baxter supplies medical products and compounded medicines to customers, mainly hospitals. Baxter manufactures compounded medicines in its manufacturing facility in Deansgrange Business Park, Co. Dublin. Baxter also manufactures compounded medicines in a facility in the United Kingdom.

The Vendor - Fannin

2. Fannin, incorporated in the State, is a provider of medical devices, medicines, diagnostic products and related services to the healthcare sector in the State. Fannin is a subsidiary of DCC Vital Limited ("DCC Vital").

3. DCC Vital supplies third party and own-branded pharmaceuticals, medical, surgical and laboratory products in the United Kingdom and in the State. DCC Vital is controlled by DCC plc ("DCC"), an international sales, marketing, distribution and business support services group.

The Target Assets

4. The target assets comprise the assets of Fannin which are used exclusively in the manufacture and supply of aseptically prepared compounded medicines ("Fannin Compounding"). Fannin Compounding supplies compounded medicines to hospitals in the State. Fannin Compounding has been trading since 2004 when it was first awarded a manufacturing licence by the Irish Medicines Board (now the Health Products Regulatory Authority). Fannin Compounding operates out of a manufacturing facility in Sandyford Industrial Estate in Co. Dublin which was built in 2004 and expanded in 2009.

5. As part of the proposed transaction, Baxter also plans to acquire Fannin Compounding's customer list, product price list, product specifications and details of its supplier arrangements.

The failing firm/division test

The "failing firm"/"failing division" test is set out in Chapter 9 of the Commission's Guidelines for Merger Analysis (see http://www.ccpc.ie/sites/default/files/CCPC%20Merger%20Guidelines_1.pdf). The failing firm argument is a defence based on a counterfactual where the target firm and its assets exit the market. It provides a defence to a merger that would otherwise lead to a substantial lessening of competition.
The Commission's failing firm/division test has four elements – all of which must be met:

(a) The firm must be unable to meet its financial obligations in the near future.

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(b) There must be no viable prospect of reorganising the business through the process of receivership, examinership or otherwise.

(c) The assets of the failing firm would exit the relevant market in the absence of a merger transaction.

(d) There is no credible less anti-competitive alternative outcome than the merger in question.

The onus rests with the merging parties to demonstrate that the firm/division meets the failing firm/division test.

The Competition and Consumer Protection Commission

The Competition and Consumer Protection Commission was formed on 31 October 2014 following the amalgamation of the Competition Authority and the National Consumer Agency. On that day the Competition and Consumer Protection Act 2014 came in to force. The Commission has a mandate to enforce competition and consumer protection law and we work to: protect and strengthen competition, empower consumers to make informed decisions and protect them from harmful business practices.

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