



DETERMINATION OF MERGER NOTIFICATION M/16/032 - DUBLIN CITY UNIVERSITY / CERTAIN ASSETS OF ST. PATRICK'S COLLEGE DRUMCONDRA, MATER DEI INSTITUTE OF EDUCATION AND THE CHURCH OF IRELAND COLLEGE OF EDUCATION

Section 21 of the Competition Act 2002

Proposed acquisition by Dublin City University of Certain Assets of St. Patrick's College Drumcondra, Mater Dei Institute of Education and The Church of Ireland College of Education

Dated 09 August 2016

Introduction

1. On 29 June 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 Dublin City University ("DCU") would acquire sole control of certain assets, principally constituting third-level teacher education facilities, of St. Patrick's College Drumcondra ("SPD"), Mater Dei Institute of Education ("MDI") and The Church of Ireland College of Education ("CICE") (collectively "the Target Assets").

The Transaction

Background

2. The proposed transaction is to be entered into on foot of a recommendation by an International Review Panel established by the Department of Education and Skills for the purpose of examining the structure of the initial teacher education system in the State.¹
3. The proposed transaction is referred to in the notification to the Commission as the 'DCU Incorporation Programme'. It is envisaged that DCU, SPD, MDI and CICE will enter into an incorporation agreement in connection with the proposed transaction by 30 September 2016² and that the proposed transaction will be completed by October 2016, with the following outcomes:

¹ "Report of the International Review Panel on the Structure of Initial Teacher Education Provision in Ireland: Review conducted on behalf of the Department of Education and Skills" –dated July 2012.

² Notwithstanding the fact that a formal written agreement had not yet been executed at the time of the notification, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii) of the Act.



- i. All staff and students of the Target Assets will become staff and students of DCU;
- ii. The DCU Institute of Education will be established as Ireland's first university-based faculty of education. Two centres for denominational education shall be established within the DCU Institute of Education, namely, a Centre for Catholic Education and a Church of Ireland Centre;
- iii. The humanities departments of each of SPD, MDI and CICE will become part of an expanded Faculty of Humanities and Social Sciences at DCU.

The Undertakings Involved

The Acquirer – DCU

4. DCU is a university established under the Dublin City University Act 1989³ and is located in Glasnevin, to the north of Dublin city. DCU delivers more than 150 programmes to over 12,000 students across its four faculties, namely, Humanities and Social Sciences, Science and Health, Engineering and Computing and DCU Business School.
5. Postgraduate research supervision is also provided by DCU over a broad range of subject areas and across all disciplines, including technology, engineering, business, communications, humanities, science and health.
6. Beyond specific disciplinary research, DCU is involved in the creation of new knowledge and technologies to enhance capabilities in four key areas: health technologies, information technology, sustainability and social resilience.
7. Ancillary activities by DCU include letting of facilities and student accommodation and the provision of conferences and services, including student administration and support, catering, IT and library services.
8. The turnover of DCU in the most recent financial year ending 30 September 2014 was approximately €183 million, which was predominantly generated in the State.⁴

The Target Assets

9. The Target Assets include [certain] assets, liabilities, employees and obligations of each of SPD, MDI and CICE, which will be fully incorporated into DCU upon implementation of the proposed transaction. Currently, each of SPD, MDI and CICE is linked with DCU pursuant to agreements for institutional linkage (the "Linkage Agreements")⁵. Such agreements provide for each of SPD, MID and CICE to function in a manner analogous to a faculty of DCU while remaining as autonomous entities. The Linkage Agreements

³ DCU's functions, powers and purposes are determined and specified in the Dublin City University Act 1989, as well as the National Institute for Higher Education Dublin Act 1980 and the Universities Act 1997, as amended.

⁴ DCU delivers some of its programmes to the Princess Nora Bint Abdulrahman University in the Kingdom of Saudi Arabia.

⁵ SPD entered into an agreement for institutional linkage with DCU in 1993 and a revised agreement for institutional linkage between SPD and DCU was signed on 4 February 2008; MDI entered into an agreement for institutional linkage with DCU in 1999 and a revised agreement for institutional linkage between MDI and DCU was signed on 4 February 2008; and CICE and DCU entered into an agreement for institutional linkage on 27 January 2015.



also provide for the provision of certain ancillary services by DCU to each of SPD, MDI and CICE.

i. SPD

SPD is a teacher education institute with a campus in Drumcondra, Dublin 9. It is one of the oldest third-level educational institutions in the State and has specialised in the area of primary teacher education since its foundation in 1875. It has been a linked college of DCU since 1993. The turnover of SPD in the most recent financial year ending 30 September 2014 was approximately €30 million, the entirety of which was generated in the State.

ii. MDI

MDI runs a campus at Clonliffe Road, Dublin 3 and was established in 1966 as an institute for the training of teachers for secondary schools. MDI became a linked college of DCU in 1999. The turnover of MDI in the most recent financial year ending 30 June 2015 was approximately €[...], the entirety of which was generated in the State.⁶

iii. CICE

CICE operates a campus at 96 Upper Rathmines Road, Dublin 6. It is a publicly-funded teacher education facility and was established in 1811. It became a linked college of DCU in 2015. The turnover of CICE in the most recent financial year ending 31 December 2014 was approximately €4 million, the entirety of which was generated in the State.

Rationale for the Proposed Acquisition

10. The notification states:

“By way of background, in April 2012, following a request from the Minister for Education and Skills (the “Minister”), an International Review Panel was established to advise on the structure of initial teacher education provision in the State. The Higher Education Authority (“HEA”) was requested to manage the review process on behalf of the Department of Education and Skills [...].

The purpose of the review was to consider the structure of initial teacher education provision in Ireland and to identify possible new structures based on a reconfiguration of existing programmes in order to strengthen the quality of teacher education. The review had its genesis in the Government-approved ‘National Strategy for Higher Education to 2030’ (January 2011) and a subsequent document issued by the HEA entitled ‘Towards a Future Higher Education Landscape’ (February 2012), together with a Ministerial request to the HEA to manage such a review and “envison innovative strategies so that Ireland can provide a teacher education regime that is comparable with the world’s best.”

⁶ [...] = claimed as being confidential to MDI.



“...Subsequently, a HEA Report to the Minister on ‘system reconfiguration, inter-institutional collaboration and system governance in Irish higher education’ (dated 17 April 2013) [...] provided:

‘The integration of St Patrick’s College Drumcondra and Mater Dei Institute of Education with Dublin City University to form a new Institute of Education as a fifth faculty of Dublin City University is proceeding and will conclude with CICE being fully incorporated into the university. The rationalisation of programmes not related to teacher education will occur through the development of an enhanced Faculty of Humanities and Social Sciences in Dublin City University.’”

Third Party Submissions

11. No submission was received.

Competitive Analysis

Background

12. Higher education in the State is predominantly provided by 7 universities⁷, 14 institutes of technology and 7 colleges of education. In addition, a number of other third-level institutions provide specialist education in fields such as art and design, medicine, business studies, rural development, theology, music and law.
13. The HEA is the statutory planning and development body for higher education and research in the State. The HEA has wide advisory powers throughout the whole of the third-level education sector. In addition, it is the funding authority for the universities, institutes of technology and other designated higher education institutions.

Overlapping activities of the parties

14. DCU is active in the State, primarily in third-level education and, as such, delivers more than 150 programmes to over 12,000 students across its four faculties, divided almost equally between undergraduate and postgraduate courses.
15. DCU provides the following teacher education programmes in the State:
 - a) Post-primary:
 - Bachelor of Science in Science Education,
 - Bachelor of Science in Physical Education with Biology or Mathematics,
 - Bachelor of Science in Education and Training),
 - Professional Master of Education (Taught Master’s),
 - b) Research Master’s,
 - c) PhD:

⁷ Trinity College Dublin, University College Dublin, Dublin City University, Maynooth University, University College Cork, University of Limerick and NUI Galway (<http://www.iaa.ie/the-irish-universities/university-profiles/>).



Ed.D (jointly with SPD and MDI respectively), and
Research.

16. DCU is also involved in other ancillary activities, such as the letting of facilities and student accommodation and the provision of academic conferences.
17. The Target Assets are mainly active in the State in the delivery of teacher education programmes. Table 1 below sets out the teacher education programmes offered by the Target Assets.

Table 1 – Teacher education programmes offered by the Target Assets

Category	SPD	MDI	CICE
Undergraduate Teacher education (Primary)	Bachelor of Education	Not applicable (“N.A.”)	Bachelor of Education (restricted to students from Church of Ireland and other reformed Christian faiths)
Undergraduate Teacher education (Post-primary)	N.A	Bachelor of Religious Education with English Bachelor of Religious Education with History Bachelor of Religious Education with Music	N.A
Other Education	N.A.	N.A	Certificate programme for Special Needs Assistants
Taught Master’s – Teacher education (Primary)	Professional Master of Education	N.A.	N.A
Taught Master’s – Teacher education (Post-primary)	N.A.	N.A.	N.A.
Taught - Other	N.A	N.A	Postgraduate Diploma (and/or Certificate) in Learning Support and Special Educational Needs M.A. Degree in Special Educational Needs
Research Master’s Teacher education	Research Master’s	Research Master’s	N.A
PhDs	PhD: 1. Ed.D (jointly with DCU) 2. Research	PhD: 1. Ed.D (jointly with DCU) 2. Research	N.A.



18. The Target Assets also provide undergraduate programmes in humanities⁸ and social sciences⁹. Subjects offered by the Target Assets include English, French, Gaeilge, geography, history, human development, maths, music and religion.
19. Research projects offered by the Target Assets in 2013/2014 included *inter alia* teacher education projects such as a national induction programme for teachers, a national strategic educational initiative and special education programmes and general higher education projects such as student assistance and other HEA projects.
20. The Target Assets are also involved in other ancillary activities, such as the letting of facilities and student accommodation and the provision of academic conferences.

Market definition

21. The Commission considered three areas of possible overlap between the activities of the parties within the State:
 - a) The provision of undergraduate and postgraduate programmes in teacher education;
 - b) The provision of undergraduate programmes in humanities and social sciences; and
 - c) The conduct of research and other ancillary activities.
22. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission does not need to come to a definitive view on the precise relevant product market in this instance since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant product market is defined narrowly (e.g., the delivery of undergraduate and postgraduate programmes in relation to a particular subject, such as teacher education or specific research areas) or more broadly (e.g., to encompass the delivery of undergraduate and postgraduate programmes in general or third level research in general).¹⁰ Similarly, in research areas and ancillary activities, the Commission's views will be unaffected by whether the product market is defined narrowly as specific research areas, or specific ancillary activities, or wider to include general research or ancillary activities by higher education institutions in general.

⁸ The humanities are those disciplines that investigate the human condition, using primarily analytical, critical, or speculative methods. The humanities include, but are not limited to, ancient and modern languages, literature, history, philosophy, religion, and visual and performing arts such as music and theatre.

⁹ Closely related to the humanities, the social sciences are fields of study that may involve more empirical methods to consider society and human behaviour. Social sciences include, but are not limited to, anthropology, archaeology, criminology, economics, political science, sociology, geography, law and psychology.

¹⁰ The UK Office of Fair Trading ("OFT") (now the Competition and Markets Authority) has previously, in the matter of *University of Manchester / Victoria University of Manchester and the University of Manchester Institute of Science and Technology* (OFT, 25 February 2005), considered that an undergraduate degree programme will not be a substitute for a postgraduate course of study for most students and vice versa. It also accepted that academic research was different in nature to the provision of a course of study in that fewer services are provided to students. Similarly postgraduate programmes could be segmented between taught courses and research courses.



23. For the purposes of its competitive analysis in the present case, the Commission reviewed the proposed transaction in relation to the narrowest possible relevant product markets i.e.:
- a) the delivery of undergraduate and postgraduate programmes in teacher education,
 - b) the delivery of undergraduate programmes in humanities and social sciences; and
 - c) the conduct of specific research activities and other activities.
24. The Commission does also not need to come to a definitive view on the precise relevant geographic market in this instance, since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the relevant geographic market is defined as national or broader than national (to take into account constraints from overseas institutions, especially those located in the UK).¹¹ However, in order to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to the narrowest possible geographic market, i.e. the State.¹²
25. While the Target Assets (and to a lesser extent DCU) are all involved in broad terms in the supply of **undergraduate teacher education programmes**, they provide different undergraduate programmes that are not substitutable with each other. In particular:
- i. *Primary teacher education*: While each of SPD and CICE is involved in the provision of primary teacher education programmes, such programmes are not substitutable as the CICE programmes prepare teachers to work in primary schools under Church of Ireland, Methodist, Presbyterian and Society of Friends patronage, whereas such programmes are not offered by SPD. Neither DCU nor MDI is involved in the provision of primary teacher education programmes.
 - ii. *Post-primary teacher education*: The programmes provided by DCU and MDI are not substitutable with one another as they cover different subjects, as set out in paragraph 15 and table 1 above. SPD and CICE are not involved in the provision of post-primary teacher education programmes.
 - iii. *Other education programmes*: Only DCU is involved in the provision of other education programmes such as 'further education' and 'pre-school' education.
26. In relation to the supply of **postgraduate teacher education programmes**, both the Target Assets and DCU offer research-based Master's programmes, as well as PhD programmes, which in teacher education include traditional research-based PhD programmes and a Doctorate in Education (Ed.D)¹³. Places on both the Master's and

¹¹ The OFT has also previously considered that the geographic market for the both the provision of undergraduate and postgraduate courses could be national with some constraints from both Europe and countries outside of Europe. See footnote 10 *supra*.

¹² According to the parties, approximately 10.5% of students at third-level institutions in the State have come from other EU Member States or other countries to study in the State.

¹³ An Ed. D is a hybrid between a taught and a research programme as it combines assessed taught courses, research-focused workshops and supervised original research.



PhD programmes are awarded on merit and/or are specific to an individual student's research interests. Based on student numbers for 2014/2015 provided by the HEA, DCU had a share of ongoing research-based Master's programmes in education of approximately [10-15]%¹⁴. While SPD and MDI offer research-based Master's programmes in education, there were no students of research-based Master's programmes in education in SPD or MDI in 2014/2015. In addition, a wide range of institutions in the State offer research-based Master's programmes in education, including National University of Ireland, Maynooth ("NUIM"), University College Cork ("UCC") and University Limerick ("UL"). In respect of the supply of PhD programmes in education, based on student numbers for 2014/2015 by the HEA, the parties have a combined share of ongoing PhD programmes in education of approximately [25-30]%. In addition, a wide range of institutions offer PhDs in education, including NUIM, Trinity College Dublin, UCC, University College Dublin and UL.

27. In relation to the supply of **undergraduate humanities and social sciences programmes**, DCU and SPD both provide courses in French and Gaeilge as part of their supply of undergraduate BA (Arts/Humanities) degrees. The total number of students involved across both institutions in French and Gaeilge undergraduate programmes is small ([...] for French and [...] for Gaeilge). While student numbers are not available for each institution in the State at the BA (Arts/Humanities) degree level, HEA figures at the Humanities and Social Sciences level (which includes BA (Arts/Humanities) degrees) showed that 28,166 fulltime students were studying for degrees in arts or humanities in the State in 2014/2015. The parties estimate that they have a combined share of less than [5-10]% of the supply of undergraduate arts or humanities programmes in the State. In addition, each of the seven universities in the State, as well as Mary Immaculate College and a number of the institutes of technology, offer courses in French and Gaeilge.
28. With respect to **research and other activities** there are no material overlaps between the activities of DCU and the Target Assets. Research contracts are won by competitive tender and DCU was not involved in most of the specific research areas in which the Target Assets were involved in 2013/2014. In those areas where there was some overlap, the research was funded by the State on the same basis for all higher education institutions (i.e., there was no competition between DCU and the Target Assets for such funding).
29. DCU and the Target Assets are involved in other **ancillary activities**, such as the letting of facilities and student accommodation and the provision of academic conferences. Such activities are institution-specific and are mainly offered to each institution's own students and staff.¹⁵

Vertical Issues

30. There is a minor vertical relationship between the parties in the State, whereby DCU supplies services to the Target Assets pursuant to the relevant Linkage Agreements, which include the provision of library, finance, student administration and support,

¹⁴ [...] = claimed as being confidential to DCU.

¹⁵ DCU also owns the Helix which engages in commercial activities, an activity in which the Target Assets are not involved.



computer and catering services. The services are either supplied [...], in each instance at less than €[...]¹⁶ in 2015. These type of services can be supplied by any number of consultancy firms. In addition, DCU already provides these services to the Target Assets pursuant to the Linkage Agreements and therefore the proposed transaction would not result in any change to the status quo in this regard.

Conclusion

31. In each of the areas referred to in paragraph 23, there is either no overlap or, where there is overlap, there is a large number of competitors whose presence will constrain the activities of the merged entity post-transaction. For the reasons explained in paragraph 30, the proposed transaction raises no issues of vertical foreclosure.
32. 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

33. No ancillary restraints were notified.

¹⁶ [...] = claimed as confidential to DCU, SPD and MDI.



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 Dublin City University would acquire sole control of certain assets, principally constituting third-level teacher education facilities, of St. Patrick's College Drumcondra, Mater Dei Institute of Education and The Church of Ireland College of Education, 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