



## DETERMINATION OF MERGER NOTIFICATION M/16/058 - OTPP & USS/WESTERLEIGH GROUP

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### Section 21 of the Competition Act 2002

### Proposed acquisition by Ontario Teachers' Pension Plan Board and Universities Superannuation Scheme Limited of joint control of Antin Infrastructure WGH Limited

Dated 14 December 2016

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#### Introduction

1. On 9 November 2016, 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 transaction whereby Ontario Teachers' Pension Plan Board ("OTPP") and Universities Superannuation Scheme Limited ("USS") (collectively "the Acquirers"), would acquire joint control of Antin Infrastructure WGH Limited and all of its subsidiaries<sup>1</sup> (collectively "Westerleigh Group").

#### *The Proposed Transaction*

2. The proposed transaction is to be implemented pursuant to a share purchase agreement ("SPA")<sup>2</sup> entered into on 8 November 2016 in relation to the joint acquisition by the Acquirers of the entire issued share capital of Westerleigh Group, which is a developer and operator of crematoria and cemeteries in the United Kingdom ("the UK").

#### The Undertakings Involved

##### **OTPP**

3. OTPP is a corporation, without a share capital, incorporated under the Teachers' Pension Act (Ontario), which has its principal office and business address in Toronto, Ontario, Canada.<sup>3</sup> OTPP is the largest single-profession pension plan in Canada and is concerned with the administration of pension benefits and the investment of pension plan assets on behalf of approximately 316,000 active and retired teachers in the Canadian province of Ontario.
4. In the State, OTPP is mainly active through its control of Premier Lotteries Ireland Designated Activity Company, the operator of the National Lottery in the State and [...]

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<sup>1</sup> Antin Infrastructure WGH Limited's subsidiaries include [...].

<sup>2</sup> The SPA was entered into by [...], a special purpose vehicle which is jointly controlled by the Acquirers.

<sup>3</sup> Further information on OTPP can be found at: <http://www.otpp.com/>.



in environmentally friendly energy. OTPP also generates income in the State through a number of portfolio companies controlled by OTPP, most of which are based in the UK, which are active in various sectors including lottery services, manufacturing, insurance, sports equipment and marketing. Neither OTPP, nor any of the portfolio companies controlled by OTPP, currently own or <sup>4</sup>control any crematoria and cemeteries in the State or in the UK.

5. For the financial year ending 31 December 2015, OTPP (including the portfolio companies over which OTPP exercises control) had a worldwide turnover of approximately €[...], of which approximately €[...] was generated in the State.

### **USS**

6. USS is headquartered in Liverpool in the UK and is the sole corporate trustee of the Universities Superannuation Scheme, which is one of the largest private sector pension funds in the UK.<sup>5</sup> USS is regulated by the UK Pensions Regulator and administers the principal pension scheme for employees of universities, colleges and higher education institutions in the UK. Its investments include fixed income, currency, property investments, alternative investments and equities.
7. In the State, USS is active exclusively through an indirect subsidiary which jointly controls [...], involved in the operation of toll motorway concessions, [...]<sup>67</sup>.
8. For the 2015 calendar year, USS (including the investments over which USS exercises joint control) had a worldwide turnover of approximately €[...], of which approximately €[...] was generated in the State.<sup>8</sup>

### **Westerleigh Group**

9. Westerleigh Group has its registered office in Bristol in the UK and is a developer and operator of crematoria and cemeteries in the UK.<sup>9</sup> Westerleigh Group provides planning and design services, construction and refurbishment services, facilities management services and customer services. As of June 2016, Westerleigh Group operated 22 sites offering cremation and burial services across the UK, catering for over 30,000 funerals each year.
10. For the financial year ending 31 December 2015, Westerleigh Group had a worldwide turnover of approximately €[...] <sup>10</sup>. Westerleigh Group does not currently have any

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<sup>4</sup> The portfolio companies controlled by OTPP which generated income in the State in 2015 include: Premier Lotteries Ireland Designated Activity Company (National Lottery operator in the State), [...](biscuit manufacturer), Camelot UK Lotteries Limited (National Lottery operator in the UK), [...](insurance), [...](software), [...](wire rope), [...](sport equipment), [...](storage systems), [...](wastewater), [...](infant toddler products), [...](advisory services) and [...](payment processing).

<sup>5</sup> Further information on USS can also be found at: <https://www.uss.co.uk/>.

<sup>6</sup> [...].

<sup>7</sup> [...].

<sup>8</sup> GBP turnover figures of £[...] and £[...] respectively converted to EUR based on the European Central Bank's annual average exchange rate for the financial year (2015): GBP 0.72584 = EUR 1.

<sup>9</sup> <http://www.westerleighgroup.co.uk/>

<sup>10</sup> GBP turnover figure of £[...] converted to EUR based on the European Central Bank's annual average exchange rate for the financial year (2015): GBP 0.72584 = EUR 1.



activities in the State and therefore it generated no turnover in the State in the financial year ending 31 December 2015.<sup>11</sup>

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

11. The parties state in the notification:

*“For USS, there are a number of important drivers behind the Proposed Transaction, which include diversification of its portfolio and securing long-term, asset backed cash flows. Investing in the Target provides USS with long-term, predictable income generation and the opportunity to deploy capital into the existing portfolio with a view to growing the business over the long-term.*

*For OTPP, investing in the Target is part of its wider strategy to identify and actively manage investments in order to meet the group's long term funding needs.”*

### **Third Party Submissions**

12. No submission was received.

### **Competitive Analysis**

13. 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 precise relevant product and geographic markets since there is no overlap between the parties' activities in the State. As described above, Westerleigh Group is a developer and operator of crematoria and cemeteries in the UK and does not currently have any activities in the State. In addition, neither of the Acquirers, nor any of the portfolio companies controlled by OTPP or USS, have any interests or activities in the crematoria and cemetery sector in the State. As a result, there is no overlap between the activities of the Acquirers and Westerleigh Group in the State.

14. The proposed transaction does not give rise to any vertical competition concerns.

15. 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**

16. No ancillary restraints were notified.

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<sup>11</sup> The proposed transaction triggers the merger notification requirements under the Act due to the turnover of each of OTPP and USS in the State.



### **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 transaction whereby Ontario Teachers' Pension Plan Board and Universities Superannuation Scheme Limited would acquire joint control of Antin Infrastructure WGH Limited and all of its subsidiaries 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**