



# DETERMINATION OF MERGER NOTIFICATION M/17/028 - PRL/CUSTODIAN

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## Section 21 of the Competition Act 2002

### Proposed acquisition by PRL Group Services Limited of Custodian Print Management Consultancy Limited

Dated 29 June 2017

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#### Introduction

1. On 23 May 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 transaction (“the Proposed Transaction”) whereby PRL Group Services Limited (“PRL”), a wholly-owned subsidiary of PRL Group Holdings Unlimited Company (collectively, “PRL Group”), would acquire sole control of Custodian Print Management Consultancy Limited (“Custodian”).

#### The Proposed Transaction

2. The entire issued share capital of Custodian is currently jointly owned and controlled by two individuals (collectively, “the Vendors”)<sup>1</sup>.
3. The Proposed Transaction is to be implemented pursuant to a share purchase agreement (“SPA”)<sup>2</sup>, whereby PRL would acquire 70% of the issued share capital of Custodian from the Vendors. PRL will be afforded the opportunity of acquiring the remaining 30% of the issued share capital of Custodian at a later date pursuant to a put and call option agreement between PRL and the Vendors. The Vendors, who will retain 30% of the issued share capital of Custodian until such time as the put and call option is exercised, will not have any control rights, negative or otherwise, over Custodian following completion of the Proposed Transaction. Pursuant to the Proposed Transaction, PRL Group, through PRL, will thus acquire sole control of Custodian.

#### The Undertakings Involved

##### PRL Group

4. PRL Group is ultimately controlled by two individuals<sup>3</sup> and provides logistics and retail sales services to customers worldwide, including in the State, in the following sectors:

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<sup>1</sup> Bernard Lyons currently holds 70% and Ciaran Reilly currently holds 30% of Custodian’s issued share capital.

<sup>2</sup> As part of the notification to the Commission, the parties provided a copy of a non-binding heads of terms between PRL and the Vendors dated 20 December 2016. The parties subsequently provided the Commission with a signed copy of the SPA between PRL and the Vendors dated 23 May 2017.

<sup>3</sup> Michael Brannigan and Owen O’Riordan.



- Ambient food and beverages;
  - Chilled and frozen food; and
  - Pharmaceutical and healthcare products.
5. PRL Group's logistics services involve the provision of the following services to customers: bonded alcohol solutions; multi-temperature warehousing; multi-temperature nationwide distribution; storage for medicinal products<sup>4</sup>; medicinal product repacking under HPRA guidelines; product repacking and co-packing; quality management and regulatory approvals; and inventory management.
  6. PRL Group's retail sales services involve PRL Group acting as an agent or distributor on behalf of clients and providing the following services: order capture; credit control; field sales management; van selling; taking title of product; merchandising of product in-store; infield audit and planogram maintenance; and financial management.
  7. PRL Group is headquartered in Dublin and operates four distribution facilities in the State. Two of these distribution facilities are located in close proximity to each other in Rathcoole, Co. Dublin and the other two are located in Cork and Kilkenny. In addition, PRL Group has three partner-operated distribution facilities located in counties Sligo, Limerick and Donegal.
  8. PRL Group acts as a distributor of [...] *HB*-branded ice cream products along the eastern seaboard in the State, whereby PRL Group purchases such products from [...] and resells them to the retail sector and to other customers. PRL Group also takes title over *Birds Eye*-branded frozen food products and a limited range of frozen pizzas and chips and distributes these products along the eastern seaboard in the State.
  9. PRL Group also owns Moran Freight Services Unlimited Company and Moran Freight Services (UK) Limited (collectively, "MFS") which provide international freight forwarding services in the State, the United Kingdom and Europe, and have a small presence in the United States<sup>5</sup>. Freight forwarding services provided by MFS include international and domestic transport services, bonded warehousing and customs clearance, contract logistics, retail distribution and out of gauge transport. MFS is engaged in the provision of international freight forwarding services in the following sectors: electronics; plastics; automotive; pharmaceutical; and healthcare and chemicals.
  10. PRL Group also owns Contract People Unlimited Company, Shelfwatch Unlimited Company, Sales Placement Contract People (NI) Limited, Shelfwatch Limited (NI) and Sales Placement Limited (all of which are collectively referred to hereafter as "CP")<sup>6</sup>. CP is engaged in the provision of field sales and marketing outsourcing services to clients in the FMCG (fast-moving consumer goods), drinks, food service, telecommunications, pharmaceutical, hardware and cosmetic industries. The services provided by CP include outsourced sales

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<sup>4</sup> This is authorised by the Health Products Regulatory Authority ("HPRA").

<sup>5</sup> PRL's acquisition of MFS was cleared by the Commission on 11 May 2015. For more details, see <http://www.ccpc.ie/enforcement/mergers/merger-notices/m15016-prl-mfs>

<sup>6</sup> PRL's acquisition of CP was cleared by the Commission on 31 December 2015. For more details, see <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m15067-prl-cp/>



operations, the provision of relief and temporary sales staff, pay-roll services, door to door sales services and sales training and technical services.

11. For the financial year ending 31 December 2016, PRL Group's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

#### Custodian

12. Custodian is currently owned and controlled by the Vendors and its headquarters and warehousing facilities are located in Dublin 15.

13. Custodian is engaged in the provision of design, digital, print, procurement and associated warehousing and logistics services in the telecoms, retail, financial, alcohol and beverages, educational, charities, insurance consumer goods and food sectors.

14. Custodian does not print materials. However, Custodian provides a number of services relating to the printing of materials, including:

- procurement;
- quality control;
- reporting;
- project management; and
- packaging consultancy.

15. Custodian provides the services mentioned in paragraph 14 above for a range of print products, including:

- outdoor;
- marketing;
- annual reports;
- direct mail;
- in-store graphics; and
- signage.

16. Custodian's logistics services involve the warehousing and distribution of print products. Custodian outsources all logistics requirements to third parties for deliveries in the State and does not have any delivery or logistics vehicles.

17. For the financial year ending 31 December 2016, Custodian's combined worldwide turnover was €[...], of which €[...] was generated in the State.

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

18. The parties state in the notification:

*"PRL Group has identified a commercial need to expand by offering more services, including developing and expanding its sales related*



*services, logistics services and recruitment services so that PRL Group can provide more expansive services to its customers. The shareholders of Custodian are seeking to dispose their shareholding interest in Custodian with an intention to remain with the business operations on a contract basis for a certain period post-completion.”*

### **Third Party Submissions**

19. No submission was received.

### **Competitive Analysis**

#### Horizontal Overlap

20. PRL Group is engaged in the provision of logistics and retail sales services. Custodian is involved primarily in providing design, digital, print and procurement services but also provides warehousing and logistics services as an add-on service for the purposes of storing and delivering finished print products to customers.

#### *Views of the Undertakings Involved*

21. The parties state in the notification that:

*“Whilst there is a minor overlap between the parties with respect to logistics services, the list of PRL competitors and Custodian competitors varies greatly”; and*

*“The fact that the parties’ businesses are largely focused on different economic sectors indicates that their services are not close substitutes for one another”.*

22. PRL Group provides a range of logistics services to customers in a number of sectors in the State, such as the ambient food and beverages, chilled and frozen foods and pharmacy and healthcare sectors. Custodian provides logistics services only to a number of its clients for design, print and digital services in the State.

23. The parties submit that the presence of a large number of alternative suppliers of logistics services allow customers to exert countervailing buyer power. The parties identified 48 undertakings, excluding PRL Group and Custodian, which are currently active in the provision of logistics services in the State. Furthermore, the parties identified 11 undertakings, excluding Custodian, which are currently active in the provision of print management and digital services in the State.

#### *View of the Commission*

24. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The narrowest potential product market affected by the Proposed Transaction is the provision of logistics services for print products. The narrowest potential geographic market affected by the Proposed Transaction is the State. The Commission, however, does not need to come to a definitive view on the precise relevant market definition in this instance since its conclusion on the competitive impact of the



Proposed Transaction will be unaffected whether the relevant market is defined narrowly (e.g., the provision of logistics services for print products in the State) or more broadly to encompass the provision of logistics services for all types of products in the State. For the reasons set out below, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

25. There is no horizontal overlap between the activities of the parties with respect to the provision of logistics services for print products in the State as indicated by the parties. Thus, for the purposes of its competitive analysis, the Commission will examine the supply of logistics services for all types of products in the State.

#### *Supply of logistics services for all types of products in the State*

26. There is a minor horizontal overlap between the activities of the parties with respect to the provision of logistics services, albeit to customers operating in different sectors, in the State.
27. Following implementation of the Proposed Transaction, there will remain a large number of undertakings active in the provision of logistics services in the State, which will continue to act as a competitive constraint on the merged entity post-transaction. Furthermore, the supply of logistics services in the State has previously been described as fragmented, such that the largest 5 providers of logistics services in the State have a combined share of less than 10% of the potential market for the supply of logistics services in the State<sup>7</sup>.
28. The Commission contacted a number of customers of each of PRL Group and Custodian to further examine the supply of logistics services in the State. The customers contacted by the Commission raised no competition concerns regarding the supply of logistics services in the State post-transaction. Certain customers indicated that the Proposed Transaction may lead to a “quicker turnaround time for POS” and, in general, an “added value service”<sup>8</sup>. Furthermore, the Commission understands that logistics service providers tend to be secured through competitive tenders. Information obtained by the Commission indicates that it is also not uncommon for customers to provide in-house logistics services and/or to source logistics services from more than one logistics services provider.
29. For the reasons set out above, the Commission considers that the Proposed Transaction will not substantially lessen competition in the supply of logistics services in the State.

#### Vertical Relationship

30. Implementation of the Proposed Transaction will result in PRL Group becoming vertically integrated by entering into the provision of design, print and digital services, which are activities upstream of its activities in the supply of logistics services. Therefore, the Commission considers that there is a vertical relationship between the activities of the parties. The parties state in the notification that:

*“PRL may well deliver print solutions as a more comprehensive solution to customers but the parties do not think that a vertical overlap exists because the constituent parts of*

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<sup>7</sup> This information was reported in a March 2012 briefing note prepared for PRL by [...], March 2012, p.3.) which was provided to the Commission by the parties.

<sup>8</sup> POS is also known as point of sale.



*the service solution are different in nature, will be priced separately and will be delivered independently”.*

31. The Commission’s market enquiries indicated that the Proposed Transaction does not raise any vertical competition concerns, such as input or customer foreclosure. The responses to the Commission’s market enquiries indicated that there will remain a sufficient number of competitors and consumers in all markets in which both PRL Group and Custodian compete. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns.

### **Conclusion**

32. 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**

33. In the notification, the parties provided the Commission with a copy of the signed SPA between PRL and the Vendors, which contains a number of restrictive obligations on the Vendors. These include non-compete and non-solicitation clauses. The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction.



### **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 PRL Group Services Limited, a wholly-owned subsidiary of PRL Group Holdings Unlimited Company, would acquire sole control of Custodian Print Management Consultancy 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.

For the Competition and Consumer Protection Commission

**Patrick Kenny**  
**Member**  
**Competition and Consumer Protection Commission**