



## DETERMINATION OF MERGER NOTIFICATION M/17/062 - DEKABANK/GIBSON

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### Section 21 of the Competition Act 2002

**Proposed acquisition by DekaBank Deutsche Girozentrale of certain assets comprising a long-term leasehold over the property located at Point Square, Dublin 1 in which The Gibson Hotel is currently trading.**

**Dated 15 December 2017**

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### Introduction

1. On 7 November 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 WestInvest Gesellschaft für Investmentfonds mbH (“WestInvest”), a wholly-owned subsidiary of DekaBank Deutsche Girozentrale (“DekaBank”),<sup>1</sup> would acquire certain assets comprising a long-term leasehold over the property located at Point Square, Dublin 1 (the “Target Assets”) in which The Gibson Hotel is currently trading.

### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a Heads of Terms dated 18 October 2017 between Deka Immobilien GmbH,<sup>2</sup> a wholly-owned subsidiary of DekaBank, and Harry Crosbie (the “Vendor”), acting through his joint statutory receivers Stephen Tennant and Paul McCann of Grant Thornton.

### The Undertakings Involved

#### *The Acquirer - DekaBank*

3. DekaBank is a ‘Wertpapierhaus’, which is a provider of asset management and capital market solutions to savings banks in Germany. DekaBank’s services comprise investments, asset management and support for savings banks throughout the entire investment and advisory process for securities-related business. DekaBank also offers advice to savings banks and other institutional customers on their investment, liquidity, funding and risk management requirements.

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<sup>1</sup> DekaBank and its subsidiaries constitute the Deka Group.

<sup>2</sup> DekaBank informed the Commission that “While the Memorandum of Understanding was concluded by Deka Immobilien Investment GmbH..., it is not intended that Deka Immobilien GmbH itself will acquire the Long Lease. ... In any event, regardless of the specific Deka Group entity which acquires the Long Lease, the Long Lease will, upon completion of the Proposed Transaction, be under the sole control of DekaBank for merger control purposes and will form part of the Deka Group.”



4. DekaBank provides finance to a small number of borrowers based in the State, which represent approximately 0.3% of the total value of DekaBank's outstanding loans in the Eurozone.<sup>3</sup>
5. In the State, DekaBank is also active in the provision of commercial property for rent, where it currently owns the following four property assets in the State:
  - Mahon Point Shopping Centre in Mahon, Link Road, Co. Cork;
  - Whitewater Shopping Centre in Newbridge, Co. Kildare;<sup>4</sup>
  - Clayton Hotel Burlington Road on Upper Leeson Street, Dublin 4;<sup>5</sup> and
  - Maldron Hotel Smithfield, Smithfield Square, Dublin 7.<sup>6</sup>
6. For the financial year ending 31 December 2016, the Deka Group had a worldwide turnover of approximately €3.3 billion. In the notification, DekaBank states that it is difficult to determine the Deka Group's precise turnover in the State because of the basis on which turnover is allocated by reference to customer location rather than branch. DekaBank estimates that the Deka Group's turnover in the State is no more than 1.5% of its worldwide turnover, which amounts to approximately €50 million.

#### *The Target Assets*

7. The assets to be acquired by DekaBank, through WestInvest, comprise a long-term leasehold over the property in which The Gibson Hotel<sup>7</sup> is currently trading. Dalata Hotel Group p.l.c. ("Dalata"), through Galsay Limited, currently operates The Gibson Hotel under an occupational lease dated 28 June 2010 which has 18 years to run. The Proposed Transaction does not affect the occupational lease. Following completion of the Proposed Transaction, DekaBank will act as landlord of the Target Assets and will not be involved in the operation of the Gibson Hotel.
8. The long-term lease in the Target Assets is currently owned by the Vendor who is selling it through his joint statutory receivers Stephen Tennant and Paul McCann of Grant Thornton.

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<sup>3</sup> According to the Deka Group Annual Report 2016, DekaBank had €20 million in loans to the Irish Government and €505 million in loans to Irish corporate borrowers.

<sup>4</sup> The acquisition by DekaBank of the Whitewater Shopping Centre and associated residential accommodation units and car park was approved by the Commission on 3 March 2016. The Commission's decision in *M/16/004 - DekaBank/Whitewater Development* can be accessed at

<https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m16004-deka-immobilien-dekabank-whitewater-development/>

<sup>5</sup> The Clayton Hotel Burlington Road is a 4 star hotel with 502 bedrooms. The acquisition by DekaBank of the fee simple in the hotel known as the DoubleTree by Hilton Hotel Dublin-Burlington Road (now known as the Clayton Hotel Burlington Road) was approved by the Commission on 2 November 2016. The Commission's decision in *M/16/046 - DekaBank/Assets: DoubleTree by Hilton Hotel Dublin-Burlington* can be accessed at

<https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m16046-deka-immobilien-dekabank-assets-doubletree-hilton-hotel-dublin-burlington-road/>

<sup>6</sup> The Maldron Hotel Smithfield is a 3 star hotel with 92 bedrooms.

<sup>7</sup> The Gibson Hotel is a 4 star hotel with 252 bedrooms. The facilities offered by the hotel include a bar, restaurant, fitness centre and conference rooms.



9. For the year ending 31 December 2016, the Target Assets generated turnover in the State of approximately €4.5 million, consisting of rental charges in relation to the current long-term occupational lease of the Target Assets to Dalata.

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

10. The parties state the following in the notification:

*“From the perspective of the broader Deka Group and WestInvest, it wishes to invest in the [Target Assets] as an income-producing asset for the benefit of the investors in the Fund. More specifically, it is intended through this investment, to: generate a sustainable income with a long-term perspective, hold and administer the [Target Assets], and; to improve the rental income resulting from this investment and maintain or enhance its value.”*

#### **Third Party Submissions**

11. No submission was received.

#### **Competitive Analysis**

##### *The Supply of Rentable Commercial Space for use as Hotel Accommodation in Co. Dublin*

12. There is a horizontal overlap between DekaBank and the Target Assets since DekaBank currently owns and generates rental income from four commercial properties in the State.
13. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.
14. In this instance, it is not necessary for the Commission to reach a definitive view on the precise scope of the relevant product market. The Commission’s conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is narrow (e.g., separate potential markets for each category of rentable commercial space such as the supply of rentable commercial space for use as hotel accommodation) or broader (e.g., the potential market for the supply of all categories of rentable commercial space).
15. For the purposes of this determination, the Commission has followed its approach in *M/16/046 - DekaBank/Assets: DoubleTree by Hilton Hotel Dublin-Burlington*<sup>8</sup> and has assessed the likely competitive impact of the Proposed Transaction in the potential market for the supply of rentable commercial space for use as hotel accommodation.
16. It is also not necessary for the Commission to reach a definitive view on the precise scope of the relevant geographic market. The Commission’s conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise

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<sup>8</sup> See paragraph 14 of the Commission’s merger determination which can be accessed at <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m16046-deka-immobilien-dekaban-assets-doubletree-hilton-hotel-dublin-burlington-road/>



relevant geographic market is narrow (e.g., Co. Dublin) or broader (e.g., the State). However, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition in the State, the Commission has assessed its likely competitive impact by reference to Co. Dublin since this is where the Target Assets are located.

17. As noted above, DekaBank currently owns and generates rental income from two commercial properties in Co. Dublin: Clayton Hotel Burlington Road on Upper Leeson Street, Dublin 4 and Maldron Hotel Smithfield, Smithfield Square, Dublin 7.<sup>9</sup> The Target Assets are located at Point Square, Dublin 1.
18. DekaBank states in the notification that it *“has no means of reliably estimating [DekaBank’s] share (or the respective shares of its competitors)”* in the potential market for the supply of rentable commercial space for use as hotel accommodation in Co. Dublin. In the notification, as a proxy for DekaBank’s and the Target Assets’ share of the potential market for the supply of rentable commercial space for use as hotel accommodation in Co. Dublin, DekaBank uses the shares of the Clayton Hotel Burlington Road and The Gibson Hotel in the potential market for the supply of 4 star hotel accommodation in Co. Dublin.<sup>10</sup>
19. The Commission has, in previous merger determinations<sup>11</sup> in the hotel sector, left open the precise product market while recognising the possibility of separate product markets for the supply of 3 star and 4 star hotel accommodation or, alternatively, a combined product market for the supply of 3 star and 4 star hotel accommodation.
20. According to the Fáilte Ireland Hotel Register for 2017, there are 10,706 4 star hotel bedrooms in fifty-five 4 star hotels in Co. Dublin.<sup>12</sup> The Clayton Hotel Burlington Road (502 bedrooms) and The Gibson Hotel (252 bedrooms) account for 4.7% and 2.4%, respectively, of the total number of 4 star hotel bedrooms in Co. Dublin.<sup>13</sup> As a proxy, these figures indicate that, following implementation of the Proposed Transaction, DekaBank will have a relatively small share of the total potential market for the supply of rentable commercial space for use as hotel accommodation in Co. Dublin.
21. In the wider potential market for the supply of 3 star and 4 star hotel accommodation in Co. Dublin, the Clayton Hotel Burlington Road, The Gibson Hotel and Maldron Hotel Smithfield (a 3 star hotel comprising 92 bedrooms) together account for an even smaller share of the total number of 3 star and 4 star hotel bedrooms in Co. Dublin.

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<sup>9</sup> Both the Clayton Hotel Burlington Road and the Maldron Hotel Smithfield are currently leased and operated by Dalata. As noted above, Dalata also currently operates The Gibson Hotel under an occupational lease.

<sup>10</sup> Both the Clayton Hotel Burlington Road and The Gibson Hotel are 4 star hotels located in Co. Dublin. The Maldron Hotel Smithfield is a 3 star hotel located in Co. Dublin.

<sup>11</sup> See paragraph 25 of the Commission’s merger determination in *M/17/027 – Dalata/Clarion Liffey Valley/Clayton Cardiff Lane*. This merger determination can be accessed at

<https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m17027-dalataclarion-liffey-valleyclayton-cardiff-lane/>

<sup>12</sup> The Fáilte Ireland Hotel Register for 2017 can be accessed at [http://www.failteireland.ie/FailteIreland/media/WebsiteStructure/Documents/2\\_Develop\\_Your\\_Business/4\\_Quality\\_Assurance/2\\_017-Hotel-Register.pdf](http://www.failteireland.ie/FailteIreland/media/WebsiteStructure/Documents/2_Develop_Your_Business/4_Quality_Assurance/2_017-Hotel-Register.pdf)

<sup>13</sup> In the wider potential market for the supply of 3 star and 4 star hotel accommodation in Co. Dublin, the Clayton Hotel Burlington Road, The Gibson Hotel and Maldron Hotel Smithfield (a 3 star hotel comprising 92 bedrooms) together account for an even smaller share of the total number of 3 star and 4 star hotel bedrooms in Co. Dublin.



22. Following implementation of the Proposed Transaction, DekaBank will face competition from a number of suppliers currently active in the supply of rentable commercial space for use as hotel accommodation in Co. Dublin. These include Green Reit plc, Abu Dhabi Investment Authority and Davy.
23. In conclusion, the Commission considers that the Proposed Transaction does not raise any competition concerns in the potential market for the supply of rentable commercial space for use as hotel accommodation in Co. Dublin.
24. There is no vertical relationship between DekaBank and the Target Assets in the State. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

#### **Conclusion**

25. 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**

26. No ancillary restraints were notified.



### **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 WestInvest Gesellschaft für Investmentfonds mbH, a wholly-owned subsidiary of DekaBank Deutsche Girozentrale, would acquire certain assets comprising a long-term leasehold over the property located at Point Square, Dublin 1 in which The Gibson Hotel is currently trading 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

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**