



# DETERMINATION OF MERGER NOTIFICATION M/19/007 - SWIFT SPRAOI HOLDINGS LIMITED (CARLYLE)/ SPORTS SURGERY CLINIC SANTRY

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## Section 21 of the Competition Act 2002

**Proposed acquisition by Swift Spraoi Holdings Limited (part of the Carlyle Group L.P.) of control of Sports Surgery Clinic Limited, Macradi Limited, Macradi Development Limited and Sanway Properties Limited.**

**Dated 14 May 2019**

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### Introduction

1. On 4 April 2018, 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 Swift Spraoi Holdings Limited (“Swift Spraoi”) would acquire control of Sports Surgery Clinic Limited (“SSCL”), Macradi Limited (“ML”), Macradi Development Limited (“MDL”) and Sanway Properties Limited (“SPL”) (collectively the “Target”) (the “Proposed Transaction”).
2. Swift Spraoi is a newly incorporated company, in which both CCIF Sport S.à.r.l. (“CCIF Sport”) and Joseph Keaveny<sup>1</sup> currently each have 50% shareholdings. CCIF Sport is owned by a fund managed by Carlyle Cardinal Ireland Fund L.P. (“CCIF”), which is a fund managed by affiliates of Carlyle Group L.P. (“Carlyle”).

### The Proposed Transaction

3. The Proposed Transaction is to be implemented by means of a number of agreements<sup>2</sup>, as follows:

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<sup>1</sup> Joseph Keaveny is a pain management specialist and CEO of the Sports Surgery Clinic, Santry.

<sup>2</sup> As these agreements are interconditional and as all pursue the objective of conferring ultimate control over the Target on funds managed by affiliates of Carlyle, they are regarded as one unitary transaction for the purpose of this determination.





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interest held by CCIF Sport and the [...] % legal interest held by Raymond Moran in the shares of MDL.<sup>6</sup>

- A Shareholders' Agreement [...] dated 29 March 2019, which will regulate the operation of Swift Spraoi. Pursuant to the Shareholder's Agreement, [...] <sup>7</sup>[...] <sup>8</sup>, [...].
- A [...] dated 29 March 2019 pursuant to which [...] <sup>9</sup>[...] <sup>10</sup>.

4. The Proposed Transaction will ultimately result in the acquisition of control of the business and property of the Target by funds managed by affiliates of Carlyle.

### The Undertakings Involved

#### *The Acquirer -Carlyle – Swift Spraoi*

5. Swift Spraoi was incorporated in March 2019 solely for the purpose of the Proposed Transaction. CCIF Sport and Joseph Keaveny currently each have 50% shareholdings in Swift Spraoi. Swift Spraoi does not currently supply any goods or services and therefore does not have any turnover.

6. CCIF Sport is a private limited liability company incorporated and existing under the laws of the Grand Duchy of Luxembourg, in the process of registration with the Luxembourg Trade and Companies Register. CCIF Sport is owned by a fund managed by CCIF. CCIF is a private equity fund managed by a 50:50 joint venture between Carlyle and Cardinal Capital Group Unlimited Company, which is solely focused on private equity investments in Ireland.

7. Carlyle, headquartered in the United States, is a publicly traded limited partnership listed on the NASDAQ stock exchange. Carlyle is a global alternative asset manager which manages funds that invest globally across the following four investment categories:

- Corporate private equity (e.g., buyouts and growth capital);

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<sup>6</sup> For the avoidance of doubt [...]

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

<sup>8</sup> [...]

<sup>9</sup> [...]

<sup>10</sup> This flows from the fact that [...]



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- Real assets (e.g., real estate, infrastructure energy and renewable resources);
  - Global Credit (e.g., distressed & special situations, direct lending, energy credit, loans & structured credit and opportunistic credit); and
  - Investment solutions (e.g., private equity and related activities).
8. [...] portfolio companies currently controlled by funds managed by Carlyle generated turnover in the State in the most recent financial year, 2017. A number of companies owned by CCIF and managed by affiliates of Carlyle are headquartered and generated turnover in the State in the most recent financial year:
- Sam McCauley Chemists Limited;
  - Payzone Ireland Limited;
  - Carroll Cuisine Unlimited Company;
  - Abtran Unlimited Company; and
  - AA Ireland Limited.
9. For the financial year ended 31 December 2017, Carlyle's worldwide revenue was approximately €[...], of which approximately €[...] was generated in the State.

***The Target – SSCL, ML, MDL, and SPL (Sports Surgery Clinic, Santry)***

10. SSCL is the operating company of the Sports Surgery Clinic, Santry, Dublin 9 (the "Clinic"). ML is the Clinic's property company and MDL is the Clinic's development company. SPL is a company holding land which the Clinic wishes to use for expansion.
11. The Clinic, located on Northwood Avenue, Santry, Dublin 9 is a private hospital dedicated to orthopaedics and sports medicine and was established in 2007. Services provided by the Clinic include:
- Assessment, diagnosis and treatment of orthopaedic conditions and sports injuries;
  - Shoulder, hip and knee joint replacement surgery;
  - Spinal assessment/spinal surgery;
  - Hand, foot and ankle surgery;
  - Sports and exercise medicine;
  - Physiotherapy and performance rehabilitation;



- Strength and conditioning; and
- MRI/X-Ray.

12. For the financial year ended 31 December 2017, SSCL's turnover was approximately €[...], all of which was generated in the State<sup>11</sup>; ML's turnover was approximately €[...], in the form of rental income, all of which was generated in the State<sup>12</sup>. MDL did not trade during the financial year ending 31 December 2017[...]. SPL was incorporated in February 2018 and on this basis, has not yet issued any annual or interim financial accounts.

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

13. The parties state the following in the notification:

*“The Proposed Transaction is a financial investment. It reflects CCIF's strategy to invest in companies with proven track records in their respective industries and stable prospects for mid-to-longer-term growth.”*

### **Third Party Submissions**

14. No submission was received.

### **Competitive Analysis**

#### *Horizontal Overlap*

15. There is no horizontal overlap between the business activities of the parties in the State. None of the companies owned and/or controlled by Carlyle that generated turnover in the State are engaged in the same business activities as the Clinic, namely the provision of health care services, and specifically sports medicine and orthopaedic surgery services in the State. Similarly, the Clinic is not currently involved in any of the business activities in which the companies owned and/or controlled by Carlyle are active and which generate turnover in the State.

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<sup>11</sup> Draft financial statements for SSCL indicate that for the financial year ending 31 December 2018, SSCL generated turnover of approximately €[...].

<sup>12</sup> Draft financial statements for ML indicate that for the financial year ending 31 December 2018, ML generated turnover of approximately €[...].



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16. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

### *Vertical Relationship*

17. There is a potential vertical relationship between the parties in the State. Portfolio companies controlled by funds managed by affiliates of Carlyle are active in relation to the operation of retail pharmacies in the State (i.e., Sam McCauley Chemists[...]). However, Sam McCauley Chemists Limited neither supplies to nor purchases goods or services from the Clinic. The Clinic currently purchases pharmaceutical products from [...]. Swift Spraoi [...].
18. In addition, two companies managed and/or controlled by Carlyle which generate turnover in the State, Albany Molecular Research Inc. and LPG Systems, are involved in the medical sector. Albany Molecular Research Inc. is a contract research and manufacturing organization that provides drug discovery, development, cGMP<sup>13</sup> manufacturing and aseptic fill and finish to the pharmaceutical and biotechnology industries. The activities of LPG Systems comprise the manufacturing and distribution of non-invasive medical devices for body shaping, facial rejuvenation and physiotherapy. However, neither Albany Molecular Research Inc. nor LPG Systems currently supplies the Clinic. In addition, the machines sold annually by LPG Systems in the State[...].
19. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

### **Conclusion**

20. 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**

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<sup>13</sup> CGMP - Current Good Manufacturing Practices



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21. Clause 5.1 of the SPA contains restrictive obligations on [...] including[...]. The duration [...] does not exceed the maximum duration acceptable to the Commission.<sup>14</sup> The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction.

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<sup>14</sup> In this respect, the CCPC follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see

[http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



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### **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 Swift Spraoi Holdings Limited would acquire control of Sports Surgery Clinic Limited, Macradi Limited, Macradi Development Limited and Sanway Properties 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

**Brian McHugh**

**Member**

**Competition and Consumer Protection Commission**