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THE HIGH COURT

COMMERICIAL

[2013 591 COS]

[2014 No. 3 COM]

IN THE MATTER OF ELST LIMITED AND IN THE MATTER OF SECTION 205 OF THE COMPANIES ACT 1963 AND IN THE MATTER OF SECTION 213(F) OF THE COMPANIES ACT 1963 AND IN THE MATTER OF THE COMPANIES ACTS 1963 TO 2012

BETWEEN

DONEGAL INVESTMENT GROUP PLC.

PETITIONER

AND

DANBYWISKE, RONALD WILSON, THE GENERAL PARTNERS OF THE WILSON LIMITED PARTNERSHIP 1, MONAGHAN MUSHROOMS IRELAND AND ELST

RESPONDENTS

JUDGMENT of Mr. Justice Brian J. McGovern delivered on the 5th day of December 2014

1. The petitioner is a minority shareholder in ELST ("the Company") and claims various forms of relief under the Companies Acts arising out of alleged oppression of it by the majority shareholders including an order that the first, second, third and fourth named respondents purchase the petitioner's shares at their true value and without any discount to reflect the minority interest and valued on the basis that the alleged acts of oppression had not occurred. By order made on 11th April 2014, the Court directed the trial of a discrete issue to determine the price at which the respondents might purchase the petitioner's shares and it is on that matter that this judgment is handed down.

2. For the purpose of the discrete issue, the first, second, third and fourth named respondents (hereinafter referred to as "the Wilson shareholders") admitted a non-specified ground of oppression so as to give the Court jurisdiction to make an order that the Wilson shareholders purchase the petitioner's shares at a valuation to be determined by the Court.

3. The petitioner is a plc. registered in the State and is a minority shareholder in the fifth named respondent ("the Company"). There is a dispute as to whether it holds 30% or 35% of the issued shares and that is a matter to be decided at a later date. However, it is agreed for the purpose of determining this issue, the Court may proceed on the basis of the petitioner holding a 35% shareholding and any necessary adjustment can be made in due course, depending on the outcome of any further hearings. In the course of this judgment the fourth and fifth named respondents may, from time to time, be referred to as "Monaghan" as witnesses used that term interchangeably with "the Company" in evidence.

4. The first named respondent ("Danbywiske") is an unlimited company owned and controlled by Mr. Ronald Wilson and the remaining Wilson shareholders are either owned by or associated with Ronald Wilson and/or Danbywiske.

5. Prior to 2004, the petitioner and Connacht Gold were the sole shareholders in a company called Carbury Mushrooms. The Wilson shareholders owned the majority of shares in Monaghan Middlebrook Mushrooms Ltd. ("MMM") a competitor of Carbury. In 2004, it was agreed that the two companies would merge and that the Carbury shareholders would be entitled to 40% and Danbywiske to 60% of the merged business. A Share Exchange and Shareholder's Agreement ("SESA") was entered into on 1st June 2004, which affected both the allotment of shares in MMM and set out a Shareholder's Agreement with regard to the future governance and management of MMM. In 2010, as part of a group reorganisation, the Company was incorporated, effectively in place of MMM, as the top level corporate vehicle of the merged business with shares being issued and allotted in the Company in accordance with the party's previous shareholding in MMM.

6. Clause 10 of the SESA provides:

> *"The Company and each of the Shareholders and the Management Team hereby covenant with and undertake to each of the Major Shareholders to use their reasonable endeavours to promote, enhance and improve the business of the Group with a view to obtaining a realisation within six years following Completion, including without limitation, the bona fide consideration of any proposal to appoint a corporate finance adviser to procure a purchaser for the entire share capital of the Company."*

The petitioner claims that this should inform any decision as to how its shares are to be valued.

7. A number of issues arise in valuing the shares. The principal area of disagreement between the valuers is whether a minority discount should be applied to the shares. There are also variations in the methods used to value the shares by the three experts who gave evidence before the Court. Those experts were Mr. Tom Lindsay of Spayne Lindsay for the petitioner and Mr. David Tynan of PricewaterhouseCoopers ("PwC") and David O'Flanagan of Deloitte & Touche ("Deloitte") on behalf of the respondents.

8. These experts approached the valuation of the Company in two ways, namely:

(a) Group valuation (Spayne Lindsay and PwC) and

(b) Sum of the Parts (Deloitte).

9. The methodologies adopted by the experts in approaching the valuation of the Company can be summarised as:

(a) Market Approach (Spayne Lindsay);

(b) Hybrid Approach - 60% Market Approach, 40% Discounted Cash Flow ("DCF") (PwC) and

(c) Hybrid Approach - 50% Market Approach, 50% DCF (Deloitte).

10. As between the experts, there was general consensus that Mr. Lindsay had the most particular expertise in mergers and acquisitions relating to businesses in the food sector. However, both Mr. Tynan and Mr. O'Flanagan were partners in their respective offices with extensive valuation experience which cannot be lightly overlooked.

11. In considering the correct approach to valuation of the petitioner's shareholding, there are a number of legal issues which arise. The first is whether or not, as a matter of law, a minority discount should be applied to the value of the petitioner's shareholding in the Company. The second issue is whether the use of the DCF as a method of valuation is an appropriate method. A third legal issue arises from the shareholders agreement between Monaghan and its minority partner, Walkro, and the fourth concerns the issue of marketability discount and whether, as a matter of law, it is appropriate to apply such a discount to the value of the petitioner's shares.

12. The valuation put on petitioner's shares by Spayne Lindsay is dramatically different from the value postulated by PwC and Deloitte. Mr. Tom Lindsay values the petitioner's shares on the basis of a 35% interest in the Company with no minority interest applied at €63.5m. The PwC valuation, based on a 30% interest in Monaghan and a 17% discount for minority interest is €18.8m which should be rounded up to €26.4m based on a 35% shareholding with no minority discount. The Deloitte figure, based on a 30% shareholding and applying a 35% minority discount is €14.5m to be rounded up to €26m in respect of a 35% shareholding with no minority discount. In summary, therefore, by applying the same criteria, the Spayne Lindsay valuation is €63.5m, the PwC valuation is €26.4m and the Deloitte valuation is €26m.

13. From the evidence given to the Court and the expert reports furnished by the valuers, it is possible to establish the following matters as relevant:

(a) The comparables chosen and the selection of the appropriate multiple;

(b) Capital expenditure;

(c) Net debt and debt-like items;

(d) EBITDA adjustments and

(e) Acts of oppression affecting valuation.

14. On the issue of transaction comparables, Mr. Lindsay was criticised for not including Walkro as a comparable. Walkro was acquired by Monaghan and a private equity partner known as GIMV in January 2012 for a price of €82m. The multiple used to value Walkro for the purposes of that transaction was 4.75. The private equity partner has an option to exit and sell its interest in Walkro in 2017, and the price for its equity stake will be calculated by applying a multiple of 4.75 to Walkro's then EBITDA. Mr. Lindsay ignored Walkro as a comparator because he said "*. . . we tend not to include self-acquired businesses in our comparables*". He said the reason for this was because it influences the independent approach. However, the respondents argue that Walkro should have been included as a comparable and is significant for the following reasons:

(i) The purchase of Walkro was a relevant transaction completed recently in a relevant business;

(ii) Walkro was bought by Monaghan and formed approximately 50% of Monaghan's profitability;

(iii) of all the comparable transactions considered by the valuers (or excluded in the case of Mr. Lindsay), the most relevant and comprehensive information is provided by the Walkro transaction.

15. The respondents argue that Mr. Lindsay's multiple of 7.25 is called into question because he ignored Walkro as a comparable transaction. Applying a multiple of 4.75 to Walkro's EBITDA in 2014 of €20.9m gives a value of approximately €99m to Walkro and that part of the Monaghan business. The respondents argue that applying Mr. Lindsay's multiple of 7.25 to Walkro's EBITDA of €20.9m would give rise to a value of approximately €152m equating to an 86% uplift in value in two years. Furthermore, the respondents argue that Walkro should not have been ignored because it produces compost, as does Monaghan and the majority of Monaghan's profits are derived from compost production. The purchase was a recent transaction which took place after an extensive marketing campaign, and had Mr. Lindsay included Walkro in his comparable fruit and vegetable transactions, it would have reduced his average multiple to 5.9x and the median multiple to 6.1x.

16. Mr. Tynan admitted that Mr. Ronnie Wilson strongly suggested that Walkro should be included in comparables and that he only became aware of that transaction following his discussion with management. Mr. Tynan gave evidence that he was of the view that it was too narrow an example to use in its entirety, so it was included as half of two comparable transaction multiples and a 20% rating was applied to the overall valuation. Having considered the evidence on this point, I have come to the view that it is a valid transaction comparable, and that if it had been included it would have reduced Mr. Lindsay's average multiple to 5.9x and the median multiple to 6.1x.

17. Having considered the evidence from the valuation experts, it seems to me that the Japanese mushroom producer, Hokuto, and also Adelaide Mushrooms, should have been considered by the respondents' experts as comparables.

18. Mr. Ronnie Wilson had a dominant role in the running of the business. This is hardly surprising. From a former career as a teacher, he went into the mushroom business and has developed that business into one of the major players in the world of mushroom growing and mushroom compost manufacturing. He has shown extraordinary business acumen and has been the main driver behind the Company. It is hardly surprising that he has more than merely a financial stake in the business. He was clearly quite passionate about the business and his role and the role of his family in building the business and keeping it going. Naturally, this resulted in an emotional

attachment to the business and a wish to see it kept in Wilson hands.

19. I am satisfied from the evidence that Mr. Ronnie Wilson did have strong views on the EBITDA multiples to be applied in comparable transaction and that he strongly suggested to Mr. Tynan that Walkro should be included in the comparables offered by him. Mr. O'Flanagan also acknowledged that he and his team would have discussed a range of comparables "*. . . with the people in Monaghan to see what their view on comparability was".* He acknowledged that his view on comparables may have changed at different points as a result of those discussions. It seems clear that he took those views into account.

20. The evidence points to the fact that Mr. Tynan and Mr. O'Flanagan allowed their views to be informed to some extent by the Wilsons. This was not the case with Mr. Lindsay.

21. In paras. 8 and 9 above, I outlined the various approaches to valuation taken by the experts and the methodologies adopted by them. It is common case that there are at least two methods of valuation. The first is the market approach which requires a determination of a company's EBITDA and the selection of a multiple which, when applied to the EBITDA, produces a value subject to some deductions. The multiplier selected by the valuer is based on an assessment of comparable transactions or multiples derived from the trading price of shares in the case of a public company. These are known as trading comparables. The second method of valuation is the DCF method which estimates the future income of a company in order to derive its value. In this case, all the valuers use the market approach and DCF in their valuation. Mr. Tynan used a blend of the market approach and the DCF approach. Mr. O'Flanagan used both methods separately and compared them to ensure that they corroborated each other. Although Mr. Lindsay was very critical of the approaches adopted by Mr. Tynan and Mr. O'Flanagan, he did use the DCF method in his own report and the respondents argue that respected commentators recommend the use of a DCF method in conjunction with a market approach. Mr. Tynan applied a marketability discount in reaching his valuation and Mr. O'Flanagan also recognised the validity of a marketability discount but off-set it against a control premium. For his part, Mr. Lindsay did not accept that a marketability discount should be applied to the sale of shares in a private company, notwithstanding the evidence contained in two publications put to him, both of which advocated the use of marketability discount when assessing the value of shares in a private company as opposed to a public company.

22. I am satisfied from the totality of the evidence given by the experts and from the numerous texts and commentaries produced in Court for their consideration, that there is no one particular way of valuing the petitioner's shares in this case. It seems to me that there are a number of different approaches which can be taken, each of which, in their own way have merit. The disparity between Mr. Lindsay's valuation at €63.5m, on the one hand and Mr. Tynan at €26.4m and Mr. O'Flanagan at €26m is so large as to be irreconcilable. In seeking to resolve this disparity, I must look to see if I can find any indicators which might tend to support one figure over the other. By that, I mean Mr. Lindsay's figure, on the one hand or the figures of Mr. Tynan and Mr. O'Flanagan, on the other because they are broadly in the same range.

23. The respondents point to four fundamental points which they claim undermine the petitioner's valuation. In the first place, both Mr. Tynan and Mr. O'Flanagan used different methods of valuation but reached their respective valuations of €26.4m and €26m wholly independently of each other and without consultation.

24. Secondly, Mr. Lindsay's valuation of the petitioner's 35% shareholding in the Company is greater than the market valuation for the entire issued share capital of the petitioner (being approximately €60.6m at the date of the hearing and €56m as of 3rd November 2014). In his evidence, Mr. Lindsay accepted that the market based approach to valuation which he adopted assumes that companies are correctly valued by the market.

25. Thirdly, quite apart from the disparity between Mr. Lindsay's valuation, on the one hand and those of Mr. Tynan and Mr. O'Flanagan on the other hand, there is a similar disparity between Mr. Lindsay's valuation and a number of published valuations from other independent analysts which were put to Mr. Lindsay in cross-examination. These included an Investec Report of February 2013; a Goodbody Report of 14th October 2013; Investec Process of 26th November 2013 and an Investec Report of June 2014. These show a consensus among a number of independent analysts as to the value of the petitioner's 35% stake in the Company as being within the range of €26.8m and €37.5m. With the exception of the latter figure, all the others in the group are within €4m of the valuations of Mr. Tynan and Mr. O'Flanagan. They are all very far removed from the valuation of Mr. Lindsay. While these valuations are somewhat larger than those of Mr. Tynan and Mr. O'Flanagan, they are very far removed from the valuation of Mr. Lindsay.

26. Fourthly, in December 2014, and immediately prior to the commencement of these proceedings, the petitioner demanded that the respondents purchased their 35% stake in Monaghan for €34m.

27. While these facts do not corroborate the valuations of Mr. Tynan and Mr. O'Flanagan in a precise way, they do establish a consensus on a valuation of the petitioner's stake in Monaghan at a figure which is significantly below that offered by Mr. Lindsay.

28. A number of legal issues arise for consideration in the valuation of the petitioner's shares. The principal issue is whether or not a discount should be applied to the petitioner's shareholding to reflect the fact that its holding is a minority interest. This petition is brought under s. 205 of the Companies Act 1963, and therefore the overriding objective for the Court is to determine a fair price in all the circumstances. See *Re Clubman Shirts Ltd.* [1991] ILRM 43, *Re Bird Precision Bellows Ltd.* [1986] Ch. 658, *and Re London School of Electronics* [1986] 1 Ch. 211.

29. In *Re Skytours Travel Ltd.: Doyle v. Bergin* [2011] 4 I.R. 651, Laffoy J. reviewed a number of decisions of the courts of England and Wales and said at p. 670:

> *"[35] I am persuaded by the decisions of the courts of the United Kingdom, to which I have referred above, that it is only in the case of a quasi-partnership company or where some other exceptional circumstance exists that a minority shareholding should be valued on a non-discounted basis where the court has directed that the petitioner's minority shareholding should be purchased by the respondent shareholder or by the company pursuant to s. 205(3) of the Act of 1963."*

30. It is worth noting that the case of *Skytours Travel Ltd*. had two notable differences to the present case. In the first place, the petitioner was not part of a joint venture leading to his shareholding in the company. Secondly, there was no shareholder agreement in place to regulate the rights and obligations of the petitioner and respondent *inter se*.

31. Mr. Lindsay stated that the shareholder agreement was fundamental to his approach in valuing the shares. In making his valuation, he had regard to the SESA, and in particular, Article 10 which provides for rights of pre-emption and provided, *inter alia*, that if a shareholder wishes to sell his shares in the company, that he should first offer the same for transfer to the remaining

shareholders, and if the transfer does not specify a price, that the deemed price shall be the "Market Value" as defined in Article 2. The parties expressly agreed, both in adopting the articles of Monaghan Mushrooms in 2004, and again on the restructuring in 2010, that on a disposal there was to be no minority discount applied. The petitioner argues that it would be extraordinary if it was placed in a worse position on an involuntary sale arising out of acts of oppression and would be the case if the sale was voluntary and the shareholding was valued in accordance with the pre-emption provision.

32. It is true that there is nothing in the nature of a personal relationship between Donegal and Monaghan and between the Donegal directors and Mr. Wilson or any of the Wilsons. It is also true that the petitioner has not had a significant role in the running of the business, although it has nominees on the Board of the Company, but while that is so, I am satisfied that the Company is the result of a merger between Carbury (as it then was) and Monaghan. Both companies were in difficulty and had similar interests. When they merged and ultimately became the Company, the business venture was very successful. The fact that the petitioner is a minority shareholder does not, in my view, alter the fact that it ultimately became a shareholder in the company as a result of a merger, and the company which arose out of that merger acquired a range of operations which were referred to in evidence, including Tunnel Tech North and South, Cambellville, Monaghan Champignons and Walkro.

33. I accept the submission of the petitioner that the relationship between the petitioner and the respondents was one involving a joint venture and a quasi-partnership. It is undoubtedly the case that for some time, the relationship between the Wilsons and the officers and senior executives of the petitioner has been poor. But that is almost always the case where a petition is brought under s. 205 of the Act. What is clear is that there was a shareholders agreement which did not envisage shares being bought out on the basis of a minority discount, and when the relevant businesses merged to form the Company, it was based on a relationship involving equality, mutuality, trust and confidence which are among the hallmarks of a quasi-partnership.

34. In any event, "exceptional circumstances", as alluded to by Laffoy J. in the *Skytours Travel* case, exist in this case and can be found in the following:

(a) The non-application of discount in the Articles;

(b) the intention to realise the Company as reflected in clause 10 of SESA;

(c) the effect of SESA and the 2007 Heads of Agreement ("HOA") on control of the Company, and

(d) the size of the shareholding and size and nature of the Company.

35. While it is true that clause 10 provided for a realisation to occur within six years of completion and that realisation is defined in the SESA as "*an Asset Sale, a Share Sale or a Listing*", it seems to me that the shareholder agreement when looked at in its totality reflects a relationship involving equality, mutuality, trust and confidence. Therefore, as a matter of law, the shares should be valued without applying a minority discount.

36. The next legal issue concerns whether the use of Discounted Cash Flow ("DCF") as a method of valuation is appropriate. In *Taylor v. Cobham & Lifemarque* [2009] EWHC 2650 (Ch). Newey Q.C. (sitting as a Deputy High Court Judge) at para. 34:-

> *"The discounted cash flow method focuses on future earnings: cash flow is for a number of years into the future, the resulting sums are capitalised by applying a discount rate and there is added a terminal value representing an estimate of the present value of the future cash flows beyond the explicit forecast period."*

37. He went to refer to a number of texts on the subject of the share valuation. The 'International Private Equity and Venture Capital Valuation Guidelines' state:-

> *"The Discounted Cash Flows (DCF) technique is flexible in the sense that it can be applied to any stream of cash flows (or earnings). In the context of private equity valuation, this flexibility enables the methodology to be applied in situations that other methodologies may be incapable of addressing. While this methodology may be applied to businesses going through a period of great change, such as a rescue refinancing, turnaround, strategic repositioning, loss making or is in its start-up phase, there is a significant risk in utilising this methodology.*
>
> *The disadvantages of the DCF methodology centre around its requirement for detailed cash flow forecasts and the need to estimate the 'terminal value' and an appropriate risk-adjusted discount rate. All of these inputs require substantial subjective judgements to be made, and the derived present value amount is often sensitive to small changes in these inputs."*

38. The texts referred to in his judgment seem to suggest that a DCF valuation is likely to depend on subjectivity to a greater extent than other methods. At para. 37.2 he said:-

> *"I can also see the merit of using DCF methodology where 'returns can be predicted with reasonable certainty' (to use the words from Eastway's Practical Share Valuation). Where, however, that is not the case, a DCF valuation would involve, as the International Private Equity and Venture Capital Valuation Guidelines, point out a 'high level of subjectivity in selecting inputs'. It was doubted that the other valuation and techniques also involve matters of judgment or subjective elements, where a DCF valuation is likely to depend on subjectivity to a greater extent."*

39. The petitioner argues that the Company does not fit into the categories described in the Guidelines quoted above. In *Doft & Co. v. Travelocity.com, Inc* ([2004] Del. Ch. Lexis 75, [2004] WL 1152338 and [2004] WL 1366994, 20th May, 2004) where the experts of both parties made their valuation utilising the DCF analysis approach and a comparable company approach similar to that used by Mr. O'Flanagan, the court "*. . . rejected the DCF because the most fundamental input used by the experts, the projections of future revenues, expenses and cash flows were not shown to be reasonably reliable*". In this case, Mr. Lindsay used the market approach to valuation whereas Mr. Tynan and Mr. O'Flanagan used market approach and Discounted Cash Flow. Mr. Tynan and Mr. O'Flanagan acknowledged that the DCF approach is sensitive to small changes in assumptions. Insofar as it has been used as the fundamental, or a primary methodology for valuation of the company, it is unsafe and should only be used as a cross check to support the market approach.

40. For the DCF to work, the terminal value of capital expenditure ("CAPEX") is critical. Mr. Lindsay expressed the clear view, based on his considerable experience, that in the Mergers and Acquisition world (M&A), it is the multiple of EBITDA which is the most common approach taken by valuers. They look at comparable companies. I accept his evidence that, in looking at terminal value, it

was possible to get a good forecast for the following year, but thereafter, assumptions would have to be made so far as the Company is concerned. The commercial business plan which he saw had been prepared by Monaghan, and essentially by the Wilsons. In his view, it was a conservative plan but it was important because it involves looking into the future and is highly significant if one adopts a DCF approach of valuation. So far as the use of Weighted Average Cost of Capital ("WACC") was concerned, he said this involved estimating the cost of capital for the Company based on a combination of the cost of its debt and the cost of equity, and even a modest change in WACC would have a significant change for the enterprise value.

41. Mr. Lindsay expressed the firm view that the Wilsons had presented a conservative business plan which, to some extent, informed the views of Mr. Tynan and Mr. O'Flanagan. Having considered the evidence of the valuers, I have come to the conclusion that there was an over-reliance on DCF by Mr. Tynan and Mr. O'Flanagan. I prefer the evidence of Mr. Lindsay as to the appropriateness of the market approach in a case such as this.

42. This brings me to the issue of marketability discount.

43. Mr. Lindsay did not apply a marketability discount. Mr. Tynan applied a marketability discount of 20% to his valuation and Mr. O'Flanagan applied a marketability discount as a factor of his trading multiple calculations. The petitioner argues that the issue of marketability discount should not arise in this case as the Court is being asked to determine the price at which the respondents might purchase the petitioner's shares. Mr. Lindsay says that the reason he did not refer to a marketability discount is because it is irrelevant in the context of M&A transactions, which involves the buyout by a major shareholder of a minority shareholder. While the respondent drew the Court's attention to a number of authorities in support of its position of applying a marketability discount, the facts of these cases are different and they did not involve a situation which was analogous to a Merger and Acquisition or the assuming of 100% control on the purchase of the relevant shares. Mr. Lindsay had extensive market experience and he said that the market, when considering the acquisition of the entire shareholding of a company of this scale and nature would simply not apply a marketability discount. I accept his evidence. I also take the view that it is not applicable because of the discrete issue which is before the Court, namely, a determination of the price at which the respondents might purchase the petitioner's shares.

44. Evidence as given on a number of matters alleged to amount to oppression. These included:-

(a) the acquisition of the trade and assets of Tyholland Mushrooms Limited for €1.4m in 2009 without Board approval;

(b) the participation and investment of €775,000 in a Film Tax Relief scheme in 2012 without Board approval;

(c) the entry into derivative interest rate instruments without Board approval; and

(d) the payment of an annual dividend in lieu of rent due to Mr. Ronnie Wilson in relation to the Fenton Barnes & Langford Farms which deprived the company of a tax deductible expense (and thereby used up tax losses) and, therefore, was not cash neutral as indicated to the Board.

Since non-specified oppression is conceded by the respondents for the purpose of the case and to enable the Court to carry out the share valuation exercised, I do not propose to deal with the controversy which arises under each of these points, except insofar as it may be said to have had a material and financial impact on the value of the Company.

45. Mr. Lindsay made some net debt and debt-like adjustments which are items to be taken off the enterprise value of the Company. The adjustments made by him under that heading came to a figure of €114.3m. It seems to me, however, that he did not make a sufficient deduction for CAPEX. The capital expenditure is divided by the Company into normal income-enhancing CAPEX (approximately €64.6m) and environmental or non-earning enhancing CAPEX (approximately €42.4m). Mr. Tynan and Mr. O'Flanagan made no adjustments in their valuation for income-enhancing CAPEX, but did make adjustments for environmental and non-income enhancing CAPEX by treating them as debt-like items. They adopted this approach independently of one another and without consultation. Mr. Lindsay made no adjustment at all for CAPEX in his valuation. The evidence established that the Company has had to spend an ever-increasing sum on dealing with environmental issues such as odour abatement measures. Historically, the Company has spent more on CAPEX than its peers, and I think this is likely to continue in view of ongoing requirements to meet environmental standards and dealing with objectors.

46. Having heard the evidence on this issue, I conclude that it is appropriate to treat environmental or non-earning enhancing CAPEX as a debt-like item, and accordingly, the figure of €42.2m should be added to the figure of €114.3m of debt in Mr. Lindsay's calculations. That gives a figure of €156.5m. A further adjustment of €26.2m must be made to provide for the buyback of the Walkro minority interest, and a figure of €3.5m for the buyout of the minority equity interest in Tunnel Tech. Mr. Lindsay has assumed that the minority shareholder in Walkro will exercise his put option in 2016, and that the buyout of Tunnel Tech will occur in 2014. His view on this point concerning Walkro seems reasonable, but it is unlikely that the Tunnel Tech buyout will take place in the current year. I am not sure how much turns on this. But in the absence of any evidence to the contrary, I am assuming that this figure is unlikely to alter significantly.

47. Evidence was given on a number of peripheral issues including the value of land at Tyholland in County Cavan. While there were significant differences expressed as to the value of the lands, this topic really went to the issue of oppression. Most of the other issues became subsumed, either in the oppression issue or in the overall valuations expressed by the three valuers in this case.

48. Valuation of a shareholder's interest in a case such as this is not an exact science. There is a discrete issue before the Court, namely, a determination of the price at which the respondents might purchase the petitioner's shares. Having regard to what I have said in paras. 45 and 46 above, my determination on the valuation is as follows:-

Normalised 2014 EBITDA €44.9m

Applying a Median Multiplier of 6.1 (see para. 15) €273.9m

Net Cash (Debt Adjustments) €114.3m

CAPEX Debt-Like Adjustment €42.4m

Buyout of Minority Shareholders:

GIMV 45% in Walkro €26.2m

David Johnson 40% in Tunnel Tech €3.5m

Equity Value of Monaghan Mushrooms €87.5m

Equity Value of Petitioner Shareholding 35% €30.6m

49. Therefore, on the discrete issue fixed for determination by the Order of 11 April, 2014, I fix the price at which the Respondents should purchase the Petitioner's shares at €30.6m. This figure is based on an assumed 35% stake in the Company and may be subject to adjustment depending on whether the interest of the petitioner is ultimately found to be 35% or 30%.