



DETERMINATION OF MERGER NOTIFICATION M/12/003 - SEP/ESB/GI

Section 21 of the Competition Act 2002

Proposed transaction whereby Scottish Equity Partners LLP acquires joint control of Geothermal International Limited with ESB Novusmodus LP

Dated 20 April 2012

Introduction

1. On 22 March 2011, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Authority received a notification of a proposed transaction whereby Scottish Equity Partners LLP ("SEP") would acquire joint control of Geothermal International Limited ("GI") with ESB Novusmodus LP ("ESB NM").

The Proposed Transaction

2. Pre-transaction, ESB NM owns a 24.5% equity stake in GI. SEP owns a 17% equity stake in GI, which it acquired on 21 December 2011 in a transaction not reported to the Authority.¹ Brian Davidson currently owns a 35% equity stake in GI, with the remaining 23.5% of equity distributed among various individual shareholders. ESB NM has rights, which it acquired on 2 December 2011, to veto certain decisions made by GI, "including the adoption of (and any changes to) GI's business plan and the appointment of employees earning more than [...] per annum." Neither SEP nor Brian Davidson has any rights to veto decisions made by GI. On this basis, GI is currently solely controlled by ESB NM.²
3. The parties entered into a Deed of Amendment and Restatement agreement on 16 March 2012. Under this agreement, SEP will be given the same rights to veto decisions of GI as ESB NM currently has. As a result, SEP will therefore have joint control of GI (with ESB NM) post-transaction.

The Undertakings Involved

SEP

4. SEP is a growth equity and venture capital partner for companies with significant potential. According to SEP, it helps such companies exploit

¹ This stake had previously been held by SSE Venture Capital Limited ("SSE"). The parties informed the Authority that "at the time of the sale of SSE's shares to SEP, SEP did not acquire any rights conferring control (for the purposes of the merger control rules)."

² The parties state in the notification that the reason ESB NM's acquisition of sole control of GI was not notified to the Authority was due to GI's minimal annual turnover in the State. Whether or not this reasoning is correct, the Authority is satisfied that this transaction, looked at in isolation, was not notifiable under the Act.

their opportunities and long-term value. SEP is managed by its owners. SEP focuses on the following investments:

- Growth equity which is an investment to enable a company to expand. Growth equity investments by SEP are made in companies with substantial and growing revenues; that are at, or close to, profitability; that have low residual technology risk; that are targeting a large and attractive market; and that have a high calibre, entrepreneurial management team;
 - Venture capital which is an investment in a project where there is an element of risk, generally a new or expanding business.
5. SEP's income is derived from management fees paid by investors into the funds that are managed by SEP. SEP invests in companies in the IT, healthcare and energy sectors in the United Kingdom. SEP currently has investments in 30 companies. SEP states in the notification that it "...cannot definitively rule out that SEP might be said to exercise decisive influence over at least some of the entities in which it has invested."
 6. For the financial year ending 30 June 2010, SEP's worldwide turnover was €6.3 million. SEP states in the notification that "if the turnover of all investee companies was to be included, SEP's worldwide turnover in its last financial year was over €[...]."
 7. SEP generates no turnover in the State since it does not manage funds on behalf on any investors located in the State. However, SEP states in the notification that some of its investee companies did make sales in the State for the financial year ending 30 June 2010, with combined sales of less than €[...].

ESB NM

8. ESB NM is an investment fund established by Electricity Supply Board ("ESB"). ESB is currently the sole investor in the fund. ESB NM invests in the clean energy and energy efficiency sectors. Its specific areas of interest include renewable power generation (e.g., biomass, geothermal, hydro, solar, wind and waste heat recovery), technology solutions (e.g., biomass and heat recovery) and energy efficiency and low carbon energy generation (e.g., waste heat recovery, smart grids, efficient lighting, energy storage, electric vehicles and clean transportation). Its investments include Nualight, which manufactures efficient LED lighting fixtures for food retail displays, and Airvolution Energy, a developer and operator of on-site wind turbines.
9. ESB is majority owned by the Irish Government. ESB and its 75 subsidiaries comprise a vertically integrated electricity business. ESB is involved at all levels of the electricity sector in the State, namely: power generation, electricity transmission and distribution and the wholesale and retail supply of electricity. ESB, through its subsidiary ESB Networks, is the licensed owner of the electricity transmission and distribution systems in the State. Another subsidiary of ESB, Electric Ireland, supplies electricity to 1.4 million customers in the State. ESB accounted for 47% of total power generation in the island of Ireland in 2010.

10. For the financial year ending 31 December 2010, ESB's worldwide turnover was €2,706 million. ESB's turnover in the State for the same period was €2,508 million.

The Target Business - GI

11. GI is active in the design and installation of heating and cooling systems (including geothermal/ground source heat pumps, air source heat pumps, dry air cooler and air handling units) and process and building controls (systems which manage the environment within a building by controlling and adjusting heating and cooling systems and air quality and distribution). GI describes itself on its website as "Europe's largest designer and installer of Ground Source Heat Pumps."³ GI has only one direct customer in the State, Alternative Heating & Cooling Limited, which is based in Co. Cork and is a distributor of heating and cooling products.
12. GI recently acquired Endurant Energy ("Endurant") which is involved in the development and maintenance of sustainable energy and power generation assets. The parties state in the notification that Endurant only makes sales in the United States although Endurant's website states that it has the "potential for international expansion."⁴
13. For the financial year ending 30 June 2010, GI's worldwide turnover was approximately €9 million. GI's turnover in the State for the same period was €[...]. For the financial year ending 31 December 2010, Endurant's worldwide turnover was approximately €[...], all of which was generated in the United States.

Rationale for the Proposed Acquisition

14. SEP states in the notification that "the proposed transaction presents SEP with an opportunity to invest in a United Kingdom based ground source heat pump installer. The transactions (i.e., the initial investment plus SEP's involvement) will provide GI with capital for expansion, principally in the United Kingdom, [...]." This could be the motivation behind SEP's acquisition of an equity stake in GI [...]. [...]

Third Party Submissions

15. No submission was received.

Analysis

16. The proposed transaction, pursuant to which is SEP is being given veto rights over certain GI decisions, does not raise any substantial competition concerns for the following reasons.
17. First, there is no horizontal or vertical overlap between SEP and GI in the State. SEP is not active (either directly or via any of its 30 investee companies) in the design and installation of heating and cooling systems and process and building controls in the State.

³ <http://www.geothermalint.co.uk/news-article/ESB-Novusmodus-leads-pound-12m-investment-round-in-Geothermal-International/10>

⁴ <http://www.endurantenergy.com/>

18. One of SEP's investee companies, Anesco, develops and installs services to improve energy efficiency and reduce carbon emissions for clients in the United Kingdom. One of the services offered by Anesco is the installation of ground source heat pumps and air source heat pumps. However, Anesco made no sales in the State in the most recent financial year. Another of SEP's investee companies, Vital Energi, designs, installs and operates a variety of efficient energy services for the commercial and public sector in the United Kingdom. One of the services offered by Vital Energi is the design and installation of heating and cooling systems. However, Vital Energi made no sales in the State in the most recent financial year. Nor is the Authority aware of any reason to regard SEP or any of its investee companies as likely to initiate sales in the State that would create an overlap with GI.
19. Second, GI has only one customer in the State to whom it made minimal sales in the most recent financial year. There are a number of competitors of GI in the State including Mitsubishi Electric, Unipipe Ireland Limited, Panasonic, Daikin, and Danfoss Ireland Limited. All of these competitors sell heating and cooling systems (including geothermal heat pumps and air handling units) and process and building controls in the State.
20. Finally, the proposed transaction will reduce ESB NM's influence over GI, by changing it from sole to joint control. Although there is a horizontal overlap between ESB and GI which pre-exists the proposed transaction, it is negligible. In 2011, Electric Ireland (the energy supply division of ESB and the business service centre for internal ESB services) contracted with ESB Networks (also an operating division of ESB engaged in electricity distribution and transmission) to design and install heating systems and controls in a small number of ESB Networks' premises. The total value of the work was [...]. The parties estimate that this figure represents less than [0-5]% of the total value of installation in the State in 2011.⁵
21. ESB's activities in the design and installation of heating systems and controls are directed at the internal provision of such systems to other parts of ESB. ESB does not sell these systems to third parties. Thus, ESB's influence over GI would not directly impact the options available to customers in the State who purchase heating systems and controls. In any event, the reported transaction would reduce rather than increase any such influence.
22. Finally, the Authority notes that joint control situations may create opportunities for independent undertakings to engage in discussions that could lead to agreements prohibited by the Act. The parties are aware of this risk. The Authority sees no reason why the proposed transaction is especially likely to give rise to the possibility of unlawful coordination in the independent activities of SEP and ESB NM since there is no horizontal or vertical overlap between SEP (or any of its investee companies) and ESB NM in the State. In any event, the Authority has the power under Section 4 of the Act to investigate any allegation of anti-competitive behaviour.

⁵ This is the parties' best estimate. The parties did not provide third party statistics for the total value of heating systems and controls installation in the State in 2011.

23. In light of the above, the Authority considers that the proposed transaction will not raise any substantial competition concerns in the State.

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby Scottish Equity Partners LLP will acquire joint control of Geothermal International Limited with ESB Novusmodus LP will not be to substantially lessen competition in markets for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Stephen Calkins

Member of the Competition Authority

Director, Mergers Division