



DETERMINATION OF MERGER NOTIFICATION M/13/023 - RBSPTL UTA / Phoenix

Section 21 of the Competition Act 2002

Proposed acquisition of joint control by RBS Pension Trustee Limited and Utilities Trust of Australia of Phoenix Energy Holdings Limited

Dated 30 August 2013

Introduction

1. On 6 August 2013, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed acquisition of joint control of Phoenix Energy Holdings Limited (together with its subsidiaries "Phoenix") by a UK special purpose vehicle equally owned and controlled by: (i) RBS Pension Trustee Limited ("RBSPTL"); and (ii) Utilities Trust of Australia ("UTA") (collectively "the Acquirers").

The Undertakings Involved

The First Acquirer – The RBS Group

2. RBSPTL is the corporate trustee of the Royal Bank of Scotland Group Pension Fund ("RBSGPF") which is a UK pension scheme.¹ The Royal Bank of Scotland Group plc ("the RBS Group") [...].²
3. The RBS Group is a UK-based banking and financial services company. The RBS Group operates in the United Kingdom, Europe, the Middle East, the Americas and Asia. The RBS Group provides products and services to personal, commercial and large corporate and institutional customers through its two principal subsidiaries, The Royal Bank of Scotland plc and National Westminster Bank plc.
4. Within the State, the RBS Group is active in the provision of financial services to corporate and retail customers through Ulster Bank Ireland Limited (including its First Active subsidiaries), Royal Bank of Scotland and Lombard Ireland.
5. For the financial year ending 31 December 2012, the RBS Group had a worldwide turnover of approximately €33,629 million and a turnover in the State of approximately €[...].
6. As stated above RBSPTL is the corporate trustee of RBSGPF which is a UK pension scheme. The assets held by RBSPTL are held in trust for the benefit of the members of the pension scheme and do not form part of the assets of the RBS Group.³ Neither RBSPTL nor RBSGPF

¹ The RBSGPF has over 200,000 members and assets of approximately €25 billion.

² The parties submit that [...].

³ The parties submit that RBSPTL owes its fiduciary duties to the members of RBSGPF, not to the RBS Group, and must therefore act independently of the RBS Group.

have any activities or control any entities with activities within the State.

7. Hastings Fund Management Ltd ("Hastings") is engaged as an investment manager for RBSGPF although it does not control RBSGPF or RBSPTL. Hastings manages a portion of the assets of RBSGPF on behalf of RBSPTL. RBSPTL's investment in the proposed transaction will be managed by Hastings.
8. Hastings, according to its website, is a specialist fund manager of *"infrastructure equity and debt dedicated to delivering reliable and consistent investment returns to a wide range of institutional and retail investors."* Hastings was established in 1994 and was one of Australia's first infrastructure fund managers.

The Second Acquirer – UTA

9. UTA is an open-ended unlisted unit trust, controlled by the UTA Trustee and managed by Hastings.⁴ According to its website UTA focuses on "investing in infrastructure assets globally".⁵ UTA has invested in companies in areas such as airports, electricity transmission networks, power generation, ports, provision of water and roads across Australia, the UK, continental Europe and the USA.⁶
10. Globally, UTA is active in the gas sector only through partial ownership of (1) Southwest Generation and (2) Freeport LNG Development L.P. ("Freeport LNG"). Southwest Generation operates seven power generation facilities in the US. Freeport LNG owns and operates a liquefied natural gas receiving and regasification terminal on the Gulf Coast of Texas in the US. Neither entity is involved in the supply or distribution of gas in Ireland.
11. UTA has no direct activities in the State, nor has UTA control over any entities with activities within the State or on the Island of Ireland.
12. For the financial year ending 30 June 2012, UTA had a worldwide turnover of approximately €[...] and a turnover in the State of nil.⁷

⁴ The parties confirmed to the Authority that the UTA Trustee has an independent Board which provides governance oversight to the activities of Hastings as manager and must approve all transactions. For information on the UTA please see: <https://www.hastingsinfra.com/equity/uta/>.

⁵ The parties have confirmed that Hastings (and its parent corporation Westpac Banking Corporation) do not control UTA and are not undertakings involved in this transaction. The Authority has not reached any conclusion concerning the extent to which Hastings/Westpac might exercise any control over UTA. This is not an issue since the statements about UTA in the Authority's competitive analysis are equally true of Hastings/Westpac. For information on Hastings see: <https://www.hastingsinfra.com/> and for information on Westpac Banking Corporation see: <http://www.westpac.com.au/>.

⁶ UTA has interests in the following entities: Perth Airport, APAC (which owns and operates Melbourne Airport), ElectraNet (which operates and manages the regulated electricity transmission network throughout South Australia), Freeport LNG Development L.P. (described in paragraph 10), HOCHT IEF Airport Capital (which has holdings in four airports namely: Athens, Greece; Hamburg and Düsseldorf, Germany; and Sydney, Australia), Interlink Roads (which manages the M5 South West Motorway in Sydney, Australia), Port of Portland (a deep-water seaport located in Portland in south-western Victoria, Australia), South East Water (a regulated utility company providing water in England and Wales), Southwest Generation (described in paragraph 10) and The Sydney Desalination Plant (which desalinates sea water to transform it into drinking water).

⁷ Based on AUS [...] calculated using the ECB average exchange rate for the year up to 30 June 2012 of €1 = AUS\$1.297.

The Vendor – Terra Firma

13. Terra Firma is a private equity firm based in the United Kingdom which raises funds from large institutional investors such as insurance companies, endowments, charitable foundations, and public and private pension funds. Terra Firma, amongst other things, owns and controls Carmel Capital II S.à r.l. which, through its subsidiary Kellen Investments Limited, owns and controls Phoenix Energy Holdings Limited ("Phoenix").

The Target - Phoenix

14. Phoenix is the parent company of Phoenix Natural Gas Limited ("PNGL"), Phoenix Energy Holdings Limited ("PEHL"), Phoenix Distribution Holdings Limited ("PDHL") and Phoenix Energy Services Limited ("PESL"). Both PEHL and PDHL are holding companies while PNGL and PESL are the only entities that are active.
15. Phoenix is a natural gas distribution and gas services business operating in Northern Ireland. Phoenix operates under a license to convey and supply gas in Northern Ireland granted by the Department of Enterprise, Trade and Investment under the Gas (Northern Ireland) Order 1996. Phoenix is subject to the supervision and regulation of the Utility Regulator (the Northern Ireland regulator for gas, electricity and water).⁸
16. PNGL is active in Northern Ireland in gas distribution. PNGL owns and operates the licence for the distribution network in a licensed area, including the Greater Belfast area (comprising Belfast, Newtownabbey, Carrickfergus, Lisburn and North Down), Comber and Larne.⁹ PNGL's principal activities include: (1) building, owning, operating and maintaining the PNGL gas distribution system; (2) developing the natural gas market in the licensed area (through marketing and connecting new premises); and (3) providing an operational and transportation service platform to gas suppliers under the rules of the Phoenix Natural Gas Limited Distribution Network Code.¹⁰
17. PESL is active in the provision of ancillary home services in Northern Ireland including the provision of natural gas emergency response services, carbon monoxide detection and metering services, along with boiler and appliance servicing.
18. Phoenix does not have a physical presence in the State nor does it carry out any activities within the State. For the financial year ending 31 December 2012, Phoenix had a worldwide turnover of €56.6 million and a turnover in the State of nil.¹¹

⁸ For more information on the Utility Regulator please see: <http://www.uregni.gov.uk/>. Please note that the supply and transmission aspects of the Phoenix licence were revoked upon the separation and sale of those businesses in 2012 – see M/12/06 – Airtricity / Phoenix.

⁹ Phoenix's Licence entitles it to charge customers for access to, and use of, its pipeline network and to recover reasonable costs in the operation, maintenance and development of that network. The Licence also sets out the methodology for determining the amount of revenue that Phoenix may earn from its conveyance business as well as ensuring the safety and functionality of the network and the on-going viability of the conveyance business. [...].

¹⁰ A copy of the code can be downloaded here: <http://www.phoenixnaturalgas.com/help-and-advice/networks/network-code/>

¹¹ Based on GBP 45.9 million calculated using the ECB average exchange rate for the year up to 31 December 2012 of €1 = GBP 0.81087. With PNGL generating turnover of €55.6 million (GBP

Rationales for the Proposed Transaction

19. The parties state that it sees significant opportunities for growth in Northern Ireland and in particular are attracted by Phoenix's ambitions to increase gas availability in its existing licence area and to target opportunities for growth in areas that are new to Phoenix.

Third Party Submissions

20. No submissions were received.

Competitive Analysis

21. The Parties submit that the transaction concerns the distribution of natural gas as this is the principal activity undertaken by Phoenix. Furthermore the parties submit that the activities of the RBS Group either through RBSPTL or otherwise, UTA and Phoenix do not overlap horizontally within the State or on the Island of Ireland.
22. The RBS Group is active in the provision of financial services globally and in the State. UTA has investments globally in several industries but UTA has no activities in the gas distribution sector. Phoenix is active only in Northern Ireland in the distribution of natural gas and ancillary services carried out by PESL. Phoenix is not active in the State. There is thus no horizontal overlap between the activities of the RBS Group, UTA and Phoenix either globally or within the State.
23. In light of the above the Authority is of the view that this transaction will not result in a substantial lessening of competition in any market for goods or services in the State.

Ancillary Restraints

24. Terra Firma (including any member of the Terra Firma Group) has entered into a non-solicitation covenant with respect to [...] to apply for a period of [...] post completion. These restrictions are directly related to and necessary for the implementation of the proposed transaction and are consistent with past Authority guidance.

45.1 million) and PESL generated turnover of €1 million (GBP 0.8 million – excluding intra-group sales of GBP 2.8 million).

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 RBS Pension Trustee Limited and Utilities Trust of Australia would acquire joint control of Phoenix Energy Holdings Limited, together with its subsidiaries, 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