



DETERMINATION OF MERGER NOTIFICATION M/16/023 - MURPHY/AECOM IRELAND

Section 21 of the Competition Act 2002

Proposed acquisition by J. Murphy & Sons Limited of AECOM Design Build Ireland Limited and its related companies

Dated 28 June 2016

Introduction

1. On 20 May 2016, in accordance with section 18(1) 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 J. Murphy & Sons Limited (“Murphy”), through its wholly-owned subsidiary Murphy International Limited (“MIL”) ¹, would acquire from Tyco Tech Holdings Ireland Limited (“the Vendor”) the entire issued share capital and thus sole control of Earth Tech Holdings Limited and its subsidiaries, including AECOM Design Build Ireland Limited (“AECOM Ireland”), (collectively “the Target Companies”) ².

The Proposed Transaction

2. On 27 April 2016, Murphy, on behalf of its wholly-owned subsidiary MIL, offered to the Vendor written proposed terms of agreement for the acquisition of the Target Companies, which include the trading subsidiary, AECOM Ireland ³, from their direct parent company, the Vendor. The proposed terms were accepted by the Vendor on 9 May 2016. The proposed transaction primarily involves the water and wastewater treatment sector in the State.
3. Notwithstanding the fact that a formal written share purchase agreement (“SPA”) had not been executed at the time of the notification, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii) of the Act.

¹ Murphy and MIL together constitute the Purchaser Group.

² The Target Companies consist of Earth Tech Holdings Limited together with its wholly-owned subsidiaries, Jones Environmental Limited, Jones Environmental (UK) Limited and AECOM Ireland.

³ The only company within the Target Companies which is actively trading is AECOM Ireland.



The Undertakings Involved

The Purchaser Group

4. Murphy is a multi-disciplinary engineering and construction company, providing a wide range of construction services to various infrastructure sectors including rail, water, power, natural resources and communications. Murphy and its subsidiaries operate mainly in the UK and Ireland.⁴
5. Murphy provides water and wastewater engineering services in the UK, dealing with treatment plants, lagoons, reservoirs, pumping stations, tunnelling, wastewater networks, and watermain construction and renovation. Murphy is involved in the design, construction and commissioning of water and wastewater facilities.
6. In the State, MIL is active in the following sectors:
 - Pipelines;
 - Rail;
 - Water and wastewater structures and pipelines;
 - Earthworks;
 - Tunnels;
 - Streetworks;
 - Building;
 - Utility connections;
 - Piling;
 - Pipeline testing; and
 - Fabrication and erection of structural steelwork.
7. With regard to water and wastewater structures and pipelines, MIL offers design and build services and, more specifically, civil engineering services. MIL often enters into joint ventures with process engineering firms for the design and build of water and wastewater plants.
8. MIL does not operate or maintain any water or wastewater assets in the State. MIL has been contracted by Irish Water to install water meters for domestic premises in the South and South West regions of the State.
9. For the financial year ending 31 December 2014, Murphy's worldwide turnover was approximately €968 million⁵, of which approximately €56 million was generated within the State.

The Vendor

10. The Vendor is Tyco Tech Holdings Ireland Limited, a single member private company limited by shares, which is incorporated in the State and has its registered offices at Unit 4054 Kingswood Drive, Citywest Business Campus, Dublin 24.

⁴ Murphy is also involved in joint venture businesses in Canada and Australia.

⁵ Euro figure converted from £780 million using the European Central Bank (ECB) conversion rate for 1 January 2014 – 31 December 2014.



11. The Vendor is part of the AECOM Group which is based in the United States of America.

The Target Companies

12. The Target Companies consist of Earth Tech Holdings Limited, Jones Environmental Limited, Jones Environmental (UK) Limited and AECOM Ireland. Except for AECOM Ireland, none of the companies constituting the Target Companies are actively trading.

13. AECOM Ireland is a private company limited by shares, which is incorporated in the State. It is involved in the water and wastewater treatment sector in the State and in Northern Ireland, with its main customers being Irish Water and Northern Ireland Water.⁶ AECOM Ireland predominantly operates through joint ventures with civil engineering partners to design, build and operate water and wastewater treatment products.

14. AECOM Ireland consists of two business segments:

Design and Build business segment - builds water treatment plants, wastewater treatment facilities and other water infrastructure assets. Services provided include:

- overall project design, project management and procurement of all ancillary equipment and services relating to the design and build of the facility;
- design, supply, construction, installation, testing and commissioning of new water and waste water treatment plants and sludge management facilities;
- expansion, upgrade and refurbishment of existing water, waste water and sludge treatment facilities;
- chemical storage, dosing and mixing and odour removal / abatement; and
- wastewater sludge thickening, dewatering transport and disposal and stormwater storage.

Operate and Maintain business segment - provides 24/7 services to operate and maintain water and wastewater assets. Services provided include:

- on-site engineer solution at each facility with a remote national mobile engineer support infrastructure;
- analysis of site output and reporting capability; and
- process methodology with supporting technology to drive efficiencies over the contract life and maximise profitability.

15. For the financial year ending 31 December 2015, the worldwide turnover of the Target Companies was approximately €43 million, of which approximately €[...] was generated in the State. The only entity within the Target Companies that generates turnover in the State, and elsewhere, is AECOM Ireland.

⁶ Approximately [...] % of AECOM Ireland's revenues stems from Irish Water, with the vast majority of the remainder of its revenue (approximately [...] %) coming from Northern Ireland Water. [...].



Rationale for the Proposed Transaction

16. The parties state in the notification:

“The Purchaser Group considers the business carried on by AECOM [Ireland] as a natural fit and extension of their business in Ireland, and will provide it with an opportunity to widen its offering and capabilities within the Irish market.

Under new ownership, AECOM [Ireland] will have the ability to capitalise on the significant growth opportunities that being part of the Purchaser Group will present.”

Third Party Submissions

17. No submission was received.

Competitive Analysis

18. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this case it is not necessary for the Commission to define precise relevant product and geographic markets since there is no horizontal overlap between the parties’ activities in the State. The Purchaser Group does not operate or maintain any water or wastewater facilities in the State. Although both AECOM Ireland and the Purchaser Group are technically involved in the design and build of water and wastewater facilities, the services that they provide are complementary rather than directly substitutable.

19. The parties state in the notification that the design and build of water and wastewater facilities can be broken down into: (i) ‘process engineering’ (essentially, planning); and (ii) ‘civil engineering’ (essentially, construction).

20. A ‘process engineering firm’, such as AECOM Ireland, is responsible for the design of the overall process to treat water and wastewater depending on the plant requirements. This will include designing the stages of treatment and flow and loads through the plant. The process engineering firm will also specify the size of the various elements of the plant and design the mechanical, electrical and control equipment to ultimately manage the works. The Purchaser Group does not provide process engineering services in the State.

21. The ‘civil engineering contractor’, such as the Purchaser Group, on the other hand, is responsible for the physical build of the plant components many of which are large concrete structures. AECOM Ireland does not provide civil engineering services in the State.

22. While the process engineering firm and civil engineering contractor need to work together closely to build a water or wastewater treatment plant, the activities performed by each firm complement each other and require different skillsets. In this regard, AECOM Ireland and the Purchaser Group regularly submit joint tenders in the marketplace, but as yet have not worked together because they have been unsuccessful in such tenders.



23. There is a vertical overlap between the parties' activities in the State as AECOM Ireland provides process engineering services and the Purchaser Group provides civil engineering services. Over the past 24 months, AECOM Ireland and the Purchaser Group have on at least five occasions submitted joint bids in the marketplace and appear to consider each other as preferred bidding partners. It is, however, open to both parties to have other joint venture bidding partners and they have not actually worked together yet because they have been unsuccessful to date in all of their joint tenders. The Purchaser Group has not previously submitted a joint bid with any other partner in the water/wastewater sector in the State and, accordingly, while the proposed acquisition brings about a proposed increase in the level of vertical integration, it does not alter the current market dynamics.
24. In addition, there are a large and varied (in size) number of competitors active in process engineering (such as Celtic Anglian Water, EPS Group and Veolia) and in civil engineering (such as BAM, SIAC⁷, Bennett Construction and Sisk) in the State whose presence will constrain the activities of the merged entity post-transaction. Consequently, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.
25. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

26. At the request of the Commission, the parties provided the Commission with a draft of the SPA to be entered into between the Vendor and the Purchaser Group in the proposed transaction, which contains a number of restrictive obligations on the Vendor. These include non-compete and non-solicitation covenants restricting the Vendor for a specified period from competing with the businesses of the Target Companies and from soliciting existing customers and employees of the Target Companies.
27. The parties state that the covenants are appropriately limited in both time and geographic scope and are directly related and necessary to the acquisition of the entire shareholding of the Target Companies for the purpose of assuring to the Purchaser Group the full benefit of the business and goodwill of the Target Companies.
28. The duration of the ancillary restraints does not exceed the maximum duration acceptable to the Commission⁸ and the Commission considers the restrictions to be directly related and necessary to the implementation of the proposed transaction.

⁷ SIAC is a previous bidding partner of AECOM Ireland.

⁸ In this respect, the Commission follows the approach adopted by the EU Commission in paragraph 20 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN).



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 J. Murphy & Sons Limited, through its wholly owned subsidiary Murphy International Limited, would acquire from Tyco Tech Holdings Ireland Limited the entire issued share capital and thus sole control of Earth Tech Holdings Limited and its subsidiaries, including AECOM Design Build Ireland 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

Gerald FitzGerald
Member
Competition and Consumer Protection Commission