



DETERMINATION OF MERGER NOTIFICATION M/16/053 - ANCHORAGE CAPITAL/EIRCOM

Section 21 of the Competition Act 2002

Proposed acquisition by Anchorage Capital Group L.L.C. of sole control of Eircom Holdco S.A.

Dated 11 November 2016

Introduction

1. On 26 October 2016, 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 Anchorage Capital Group L.L.C. (“Anchorage”), through entities managed by Anchorage, would acquire sole control of Eircom Holdco S.A. (“Eircom Holdco”).
2. [...] entities managed by Anchorage, [...], currently collectively hold [...]% of the securities in Eircom Holdco. If their [...]% holding is adjusted for voting purposes in accordance with the governance arrangements which apply to Eircom Holdco,¹ [entities managed by Anchorage] currently collectively hold [...]% of the securities in Eircom Holdco. The parties state in the notification that the current holding of Anchorage, through [entities managed by Anchorage], in Eircom Holdco is insufficient for Anchorage to exercise control over Eircom Holdco.
3. One of the other securityholders in Eircom Holdco, [...], has decided to sell its holding of [...]% of the securities in Eircom Holdco. On 18 October 2016, [...] agreed to sell [...]% of the securities in Eircom Holdco to [...].² The proposed transaction will be implemented pursuant to a trade confirmation agreement between [an entity managed by Anchorage] and [...] dated [...], whereby [an entity managed by Anchorage] would acquire [...]% of the securities in Eircom Holdco from [...]. When adjusted for voting purposes, these securities would amount to [...]% of the voting rights, giving [entities managed by Anchorage] a total combined stake of [...]% in Eircom Holdco for voting purposes. The parties state in the notification that this would confer on [entities managed by Anchorage], and thus Anchorage, sole control over Eircom Holdco.

The Undertakings Involved

Anchorage

¹ The governance arrangements of Eircom Holdco are contained in a securityholders’ deed between [...].

² The parties state in the notification that the identity of the purchaser of [...] remaining holding of [...]% of the securities in Eircom Holdco is unknown.



4. Anchorage, a New York based investment adviser founded in 2003, manages private investment funds across the credit, special situations and illiquid investment markets of North America and Europe, with a particular focus on defaulted and leveraged issuers.
5. In the State, Anchorage exercises joint control, together with Bain Capital L.L.C., over Ideal Standard International S.A., which is engaged in the manufacture and supply of kitchen and bathroom products worldwide and in the State. Anchorage also exercises joint control, together with funds managed by M&G Alternatives Investment Management Limited and M&G Investment Management Limited, over PHS Group Investments Limited, which is a workplace services provider of hygiene services and supplies. PHS Group Investments Limited is headquartered and active in the United Kingdom and is also active in the State and in Spain.
6. For the financial year ending 31 December 2015, Anchorage's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

Eircom Holdco

7. Eircom Holdco, a company incorporated and registered in Luxembourg, is the ultimate parent company of eir, a private limited company registered in Jersey which has its principal place of business in Heuston South Quarter, Dublin. eir is involved, primarily in the State³ and also in the UK,⁴ in the telecommunications sector as well as, since January 2014, in the television broadcasting sector in the State. eir is a wholly-owned subsidiary of Eircom Holdings (Ireland) Limited which, in turn, is part of the eir group of companies.
8. In the telecommunications sector, eir is a supplier of broadband, fixed line telephone and mobile telephone services to retail customers (i.e., individuals, households and businesses) through its eir, Meteor and eMobile brands. eir is also a wholesale supplier of fixed line voice and broadband networks to telecommunications and television companies (e.g., Vodafone Ireland Limited, Virgin Media Ireland Limited and Sky Ireland Limited) that supply services to retail customers.
9. eir is also involved in the broadcasting of television channels on its internet protocol television ("IPTV") broadcasting platform⁵ under its eir Vision brand. eir Vision television packages include a basic television package, which includes over 50 channels, and other packages, which offer additional channels such as sports or movies, or which include other features such as broadcasting to more than one viewing device, high definition channels or offering on demand services. eir supplies its eir Vision television service to its customers in conjunction with its other telecommunications products and services, in particular its broadband services. eir is also active in the television content

³ eir is subject to regulation by the Commission for Communications Regulation with respect to its activities in the telecommunications (in particular its fixed line voice and broadband networks) and television sectors.

⁴ eir is authorised by the Office of Communications (Ofcom) to provide electronic communications services in the United Kingdom including Northern Ireland. The services are outsourced telecommunications services such as the provision of virtual private networks and fixed and mobile broadband and voice services. The services are not related to the proposed transaction.

⁵ IPTV refers to internet protocol television content supplied via the internet.



sector, having acquired Setanta Sports Ireland Limited (now eircom Sport Limited) in April 2016, which has now been rebranded as eir Sport.⁶

10. For the financial year ending 30 June 2016, Eircom Holdco's [consolidated] worldwide turnover was approximately €1,294 million, of which approximately €1,256 million was generated in the State.

Rationale for the Proposed Transaction

11. The parties state in the notification:

"[an entity managed by Anchorage] is a company that holds diversified investments aimed at providing its ultimate beneficial owners with favourable risk-adjusted returns from the asset classes in which it invests. [an entity managed by Anchorage] believes that Eircom Holdco represents a sound investment opportunity that will deliver such returns."

Third Party Submissions

12. No submission was received.

Competitive Analysis

13. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, 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. As described above, Eircom Holdco is active, through eir, in the provision of retail and wholesale electronic communications services in the State as well as in the provision of television broadcasting services and TV content in the State. The companies controlled or jointly controlled by entities managed by Anchorage do not carry on business in these areas of activity on the island of Ireland. As a result, there is no horizontal overlap between the activities of Anchorage and Eircom Holdco in the State.
14. The proposed transaction does not raise any vertical competition concerns.
15. 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

16. No ancillary restraints were notified.

⁶ On 29 January 2016, the Commission approved the acquisition by eircom Limited of sole control of Setanta Sports Channel Ireland Limited and certain assets and the business of Setanta Sports Hibernia S.à.r.l from Setanta Sports Broadcasting Limited. The Commission's merger Determination in M/15/074 – eir/Setanta can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m15074-eir-setanta>.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby Anchorage Capital Group L.L.C., through entities managed by Anchorage Capital Group L.L.C., would acquire sole control of Eircom Holdco S.A. 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

Patrick Kenny
Member
Competition and Consumer Protection Commission