



DETERMINATION OF MERGER NOTIFICATION M/07/046 – SMART TELECOM/E-NVI

Section 21 of the Competition Act 2002

Proposed acquisition by Smart Telecom Holdings Limited of E-nvi Communications Limited

Dated 17/09/07

Introduction

1. On 20 August 2007 the Competition Authority (“the Authority”), in accordance with section 18(1) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposal whereby Smart Telecom Holdings Limited (“Smart Telecom”) would acquire the business and assets of E-nvi Communications Limited (“E-nvi”).
2. The Authority, in accordance with section 23(1) of the Act, forwarded a copy of the notification to the Minister and notified the undertakings involved that it considers the acquisition to be a media merger.

The Undertakings Involved

3. Smart Telecom, the acquirer, is a wholly owned subsidiary of Smart YuRoE Broadband Limited (“SYBL”). In June 2007 SYBL acquired the assets of Smart Telecom plc, including Smart Telecom. Smart Telecom provides a range of electronic communications services (either collectively or separately) to both residential and business customers including:
 - Voice communications services;
 - Broadband access services;
 - Digital television services; and,
 - The operation of payphone and internet kiosks.
4. The parties submit that the accounts of SYBL have not yet undergone an audit and that it would not be appropriate to submit the accounts from the last annual report of Smart Telecom plc since this data, following the restructuring in June 2007, is now incorrect. However the parties have submitted management accounts of July 2007 which indicate revenues of SYBL of approximately €[.].
5. E-nvi¹, the target, provides electronic communications services specifically in the form of triple play² services to a small number of residential housing developments located in the Leinster region. By the time of notification E-nvi had approximately 300 customers.

¹ At the time of notification E-nvi was in provisional liquidation. The proposed transaction received High Court approval on 17 August 2007. On 21 August 2007 the company went into liquidation following a meeting of the creditors at which a liquidator was appointed.

² This refers to the provision of telephony, broadband and digital television services as one integrated package. However E-nvi also provides the individual services separately.

Analysis

6. There is a horizontal overlap between the parties in the provision of electronic communications services and more specifically in the provision of triple play and the individual services that comprise triple play.
7. The extent of this overlap is, however, minimal given the targets geographical scope and its concentration on residential customers only. In addition as noted the target is now in liquidation.
8. Furthermore, there are a large number of strong competitors providing either triple play or the individual services of triple play to both residential and business customers in the State. These include, among others, eircom, BT Ireland, Irish Broadband, Digiweb, MCI, UPC (formerly NTL/Chorus) and Magnet Networks.
9. The Authority, therefore, considers that the proposed transaction does not raise competition concerns in the State.³

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 by Smart Telecom Holdings Limited of E-nvi Communications Limited will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect subject to the provisions of section 23(9)(a).

For the Competition Authority

Dr. Paul K Gorecki
Member of the Competition Authority

³ The parties, as part of the submission, also put forward a failing firm argument in accordance with the Authority's *Notice in Respect of Guidelines for Merger Analysis* (Decision No. N/02/004). Given the lack of competition concerns as a result of the proposed transaction the Authority did not consider in detail the merits of the arguments put forward for the failing firm argument.