



DETERMINATION OF MERGER NOTIFICATION M/17/045 SPEED FIBRE DAC / GMC-D OH

Section 21 of the Competition Act 2002

Proposed acquisition by Speed Fibre DAC of joint control of GMC-D OH (Ireland) Holdings Limited.

Dated 12 September 2017

Introduction

1. On 3 August 2017, 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 acquisition (“the Proposed Transaction”) whereby the Irish Infrastructure Fund (“the IIF”), through Speed Fibre DAC, a special purpose company wholly-owned by the IIF, would acquire a majority shareholding and joint control of GMC-D OH (Ireland) Intermediate Holdings Limited (“GMC-D OH Intermediate”) from GMC-D OH (Ireland) Holdings Limited (“GMC-D OH Ireland”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share purchase agreement (“the Agreement”)¹ dated 18 July 2017. Following implementation of the Proposed Transaction, IIF will own [...] % of the issued share capital of GMC-D OH Intermediate and GMC-D OH Ireland will own the remaining [...] % of the issued voting share capital.

¹ The agreement is between ESCF Investment S.a.r.l., Granahan McCourt Dublin (Ireland) Limited, GMC-D OH (Ireland) Holdings Limited, GMC-D OH (Ireland) Intermediate Holdings Limited Speed Fibre DAC and Summit Asset Managers Limited (“SAM”). The parties state in the notification: “SAM, as manager of the Irish Infrastructure Trust, is entering into the Agreement solely for the purposes of complying with the Central Bank of Ireland’s requirements relating to Qualifying Investor Alternative Investment Funds (“QIAIFs”) that establish wholly owned subsidiaries for the purposes of making investments and acquiring assets.”



Post transaction, both the IIF and GMC-D OH Ireland will exercise joint control over GMC-D OH Intermediate.

The Undertakings Involved

The Acquirer - The IIF

3. The IIF is a sub-fund of the Irish Infrastructure Trust, a unit trust established in October 2011.² The IIF invests in publicly and privately owned infrastructure in the State. Investments may be made in infrastructure assets either through special purpose companies or wholly-owned subsidiaries whereby the IIF may acquire the economic interest in such companies through the acquisition of debt or equity securities. Speed Fibre DAC, the special purpose vehicle involved in the Proposed Transaction, is a wholly-owned subsidiary of the IIF.
4. SAM, a wholly-owned subsidiary of Irish Life Investment Managers (“ILIM”), is ultimately responsible for (i) managing the investments of the IIF, (ii) general administration, and (iii) the distribution of the IIF.
5. SAM has appointed ILIM to manage the assets and investments of the IIF, in accordance with IIF’s investment objectives and policies.
6. SAM has also appointed AMP Capital Investors (UK) Limited (“AMP”) to provide certain investment management services to the IIF. These services include identifying and evaluating potential acquisitions for the fund, managing the acquisition process, monitoring infrastructure assets held by the fund and proposing asset disposals if appropriate.
7. The IIF has twenty current investors, one of which is the Irish Strategic Investment Fund (“ISIF”) (previously the National Pensions Reserve Fund). Nineteen of the twenty investors are Irish pension funds, trusts and Irish asset managers.

² The Irish Infrastructure Trust was authorised by the Central Bank of Ireland as an open-ended with limited liquidity investment fund. The Irish Infrastructure Trust is organised in the form of an umbrella fund with each sub fund, such as the IIF, having a portfolio of investments. For more information, please see <http://registers.centralbank.ie/FundRegisterDataPage.aspx?fundReferenceNumber=C89502®ister=4&AspxAutoDetectCookieSupport=1>



8. The IIF currently controls the following three investments that generated turnover in the State in 2016: Towercom, the National Convention Centre Dublin and Cyclone Wind. The IIF also controls Valley Healthcare DAC which invests in primary healthcare facilities and was set up in January 2017.
9. The IIF, through its controlled investments, achieved a turnover in the financial year 2016 of €[...], all of which was generated in the State.

The Target

10. GMC-D OH Intermediate controls two businesses active in the State: Enet and Airspeed. The business activities of Enet and Airspeed relate to the telecommunications sector in the State.

Enet

11. Enet operates, manages and maintains 94 State-owned fibre optic networks (Metropolitan Area Networks or “MANs”) under a licence awarded by the Department of Communications, Climate Action and Environment, which is due to expire in 2030. Enet is also a wholesale provider of “managed services” to telecommunications clients by combining the MAN infrastructure with owned and third party infrastructure to provide end-to-end connectivity service for clients in the State.

Airspeed

12. Airspeed is primarily a retail provider of wireless and managed network services to business customers, including licensed wireless high bandwidth, uncontended, voice and data services, as well as licence applications, equipment procurement and installation and monitoring services.
13. Airspeed also provides wholesale services to telecommunications clients such as BT and eir by providing wireless services in areas where these clients may not have geographic coverage.



The Vendor

14. GMC-D OH (Ireland) Holdings Limited is a holding company and is currently jointly controlled by Granahan McCourt Dublin (Ireland) Limited and ESCF Investment S.a.r.l (approximately [...] % and [...] % shareholdings, respectively).
15. GMC-D OH (Ireland) Holdings Limited currently holds 100% of the voting share capital in GMC-D OH Intermediate.
16. For the financial year ending 2016, the Vendor's turnover was approximately €[...] million, all of which was generated in the State.

Rationale for the Proposed Transaction

17. The parties state in the notification that:

“In its capacity as infrastructure investment manager and advisor to the Fund, AMP³ considers the Proposed Transaction meets the investment objectives and policies of the Fund, which are to provide unit holders with a return generated from a combination of capital growth and income yield from its portfolio of assets.

The Seller considers that the Proposed Transaction will allow it to realise its investment whilst also remaining in joint control of key assets central to the GMC portfolio.”

Third Party Submissions

18. One third party submission was received by the Commission.
19. In assessing the competitive impact of the Proposed Transaction, the Commission can only consider issues that are merger specific. The Commission does not have any specific legislative role in relation to State Aid. The assessment of State Aid and the role

³ AMP Capital Investors (UK) Limited (“AMPCI”), a wholly owned subsidiary of AMP Capital, is the Infrastructure Investment Manager of the Fund (providing infrastructure investment management services and investment advice) pursuant to an agreement with Irish Life Investment Managers, acting under an appointment by Summit Asset Managers (“Summit”), dated 17 October 2011 (the “IIM Agreement”).



of publicly owned bodies in commercial activity is a matter for the EU Commission and any party with concerns in this regard should contact the EU Commission directly.

Competitive Analysis

20. 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 the precise relevant market because doing so will not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State. However, the Commission will assess the potential effects of the Proposed Transaction in relation to the potential market for the provision of telecommunications services in the State.

Horizontal overlap

21. The Target's two businesses active in the State - Enet and Airspeed - are both involved in the provision of fibre and wireless connectivity services (e.g., broadband) providing these both on a wholesale level to telecommunications as well as providing voice and data services in the B2B market on a retail level.
22. One of the IIF's investments, Towercom Limited, is involved in the telecommunications sector through its ownership of mobile network infrastructure (for which it provides passive tower infrastructure services) which it provides to wireless and fixed line operators in the State. However, Towercom is not active in the provision of fibre and wireless connectivity services on a wholesale level or the provision of telecommunications services on a retail level in the State.
23. Having reviewed the IIF's investments which are active in the State, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns as there is no overlap between the activities of Enet and Airspeed and the activities of the IIF's current investments.

Vertical Relationship

24. There is a vertical relationship between Towercom and Airspeed as Towercom provides passive tower infrastructure services to Airspeed under a long-term contract since 2013.



The provision of such passive tower infrastructure services allows Airspeed to provide wholesale and retail leased line services to customers in areas of the State where Airspeed has no physical infrastructure.

25. The parties state in the notification that Airspeed also purchases passive tower infrastructure services from Towercom, on an exceptional basis, to provide low quality broadband (on a retail and wholesale level) to third parties in the State. The parties informed the Commission that the revenue generated from this activity is negligible.
26. The parties estimate in the notification that there are approximately 2,789 towers in the State and these are primarily owned by mobile network operators and public and semi-State bodies. Towercom operates [...] towers and masts throughout the State. Towercom provides passive tower infrastructure services to Airspeed in approximately [...] locations in the State.
27. Tower infrastructure services vary depending on the operator's needs and specifications such as the types of infrastructure services required (towers, cables, ducts, shelters and power facilities and cooling systems), the capability of the towers at each site, and the location of each site and the areas it can service.
28. Passive tower infrastructure services are provided by way of long term contracts (typically 5 – 15 years). At the end of the contractual period, operators either renew their contracts (as certain sites or infrastructure may be particularly attractive) or terminate the contracts as the operator may have developed its own tower infrastructure services or may decide to go out to tender where competing providers of tower infrastructure services compete against each other to offer the most attractive services offering.
29. The Commission considers that the vertical relationship between Towercom and Airspeed will not lead to vertical foreclosure concerns in the State for the following reasons:
 - I. Towercom will not have the ability to foreclose any competitors of Airspeed as it owns a relatively small number of masts (approximately [...]) and there are



many alternative providers of tower infrastructure services currently active in the State, including mobile operators and State / semi-State bodies.⁴

- II. Towercom has no incentive to foreclose as it has long-term and medium-term contracts with its customers including competitors of Airspeed (e.g., eir).
- III. There is no incentive for Towercom to foreclose current competitors of Airspeed as Airspeed is a relatively small customer of Towercom and the majority of Towercom's revenue is generated from third parties including competitors of the Airspeed.

Ancillary Restraints

30. The Agreement contains a number of restrictive obligations on the Vendor. These include non-compete and non-solicitation clauses. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission. The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction.

⁴ A number of organisations provide tower infrastructure throughout the State. For example, private mobile network operators such as Vodafone, Three and eir have constructed towers and masts to facilitate their own mobile and broadband networks and State or semi-state enterprises such as ESB, An Coillte and RTÉ have also developed large portfolios of tower infrastructures.



Determination

31. 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 acquisition (“the Proposed Transaction”) whereby the Irish Infrastructure Fund (“the IIF”), through Speed Fibre DAC, a special purpose company wholly-owned by the IIF, would acquire a majority shareholding and joint control of GMC-D OH (Ireland) Intermediate Holdings Limited (“GMC-D OH Intermediate”) from GMC-D OH (Ireland) Holdings Limited (“GMC-D OH Ireland”) 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