



DETERMINATION OF MERGER NOTIFICATION M/18/096 - SISK/DESIGNER GROUP ENGINEERING /DESIGNER GROUP FM (JV)

Section 21 of the Competition Act 2002

Proposed acquisition of joint control of Designer Group FM Limited by Sicon Limited (through its wholly owned subsidiary John Sisk & Son (Holdings) Limited) and Designer Group Engineering Contractors Holdings Designated Activity Company

Dated 29 January 2019

Introduction

1. On 20 December 2018, 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 Sicon Limited (“Sicon”), through its wholly owned subsidiary John Sisk & Son (Holdings) Limited (“Sisk”), would acquire 50% of the issued share capital of Designer Group FM Limited (“DGFM”) from Designer Group Engineering Contractors Holdings Designated Activity Company (“DGECH”) and thereby confer joint control of DGFM on Sicon and DGECH (the “Proposed Transaction”).

The Proposed Transaction

2. DGECH currently holds 100% of the issued share capital of, and thus exercises sole control over, DGFM and its wholly-owned subsidiaries Lenmac Mechanical Services Limited and Patrick Joseph Daly Limited (collectively “DGFM’s Subsidiaries” and each a “DGFM Subsidiary”).
3. The Proposed Transaction will be implemented pursuant to a share purchase agreement (the “SPA”) dated 19 December 2018, between Sisk and DGECH. Following the completion of the Proposed Transaction, Sicon, through Sisk, and



DGECH will each hold 50% of the issued share capital of DGFM. Therefore, Sicon and DGECH will exercise joint control over DGFM and DGFM's Subsidiaries.

The Undertakings Involved

The Acquirer - Sicon

4. Sicon is the ultimate parent company of Sisk, the acquiring entity. Sicon is an Irish group with business interests across a number of sectors and in a number of countries. Sicon has extensive construction and construction related interests in Ireland and the UK across a number of sectors. In addition, Sicon has an interest in property portfolio management and property development in Ireland, the UK and Europe through Korine Limited and its associated companies.
5. Sisk is an international construction company offering services in relation to the design, planning, construction, delivery and ongoing maintenance of buildings and infrastructural assets. In particular, Sisk provides construction services (such as main/principal contractor services and construction management), professional services (such as pre-construction advice, design & build and validation/commissioning services), public/private partnership services and facility management ("FM") services.
6. For the financial year ending 31 December 2017, the Sicon Group's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

The Vendor - DGECH

7. DGECH together with its various direct and indirect subsidiaries, collectively known as the Designer Group Corporate Group ("Designer Group"), is a specialist mechanical and electrical service provider operating in the UK, Ireland and Germany. Designer Group offers a full range of mechanical, electrical, process, instrumentation and commission services from concept design to post installation preventative maintenance.



8. For the financial year ending 31 January 2018, Designer Group's worldwide turnover was approximately €149.9 million, of which approximately €72.1 million was generated in the State¹.

The Target - DGFM

9. DGFM, a wholly-owned subsidiary of DGECH, provides integrated property FM services to offices, retail units and commercial buildings, mixed development, government, industrial and educational premises. In particular, DGFM offers electrical², mechanical³, building⁴, heating, ventilation and water treatment services.
10. For the financial year ending 31 January 2018, DGFM's worldwide turnover was approximately €13.1 million, all of which was generated in the State⁵.

Rationale for the Proposed Transaction

11. The parties state in the notification:

"The Proposed Transaction is highly complementary to the parties' existing businesses. The joint venture allows the parties to enhance their customer offer in relation to the provision of "hard" and "soft" facility management services and to compete more effectively in a growing market, in which Sisk has traditionally not had a significant presence."

Third Party Submissions

12. No submission was received.

¹ The parties note that the turnover figures of DGFM and DGFM's Subsidiaries have been excluded from these figures to avoid double counting.

² Electrical services include services such as fire detection, portable appliance testing and emergency lighting.

³ Mechanical services include services such as boiler servicing, mechanical installations, air handling units, air conditioning, gas detection, gas conversions, heating, fire hydrants and sprinkler systems.

⁴ Building services include services such as repairs, roofing, plumbing, electrical, painting, tiling, floor finishing, water checks and sterilisation).

⁵ The Commission notes that this turnover does not include turnover of DGFM's Subsidiaries that were acquired in July 2018 (this acquisition was cleared by the Commission in its determination [M/18/060 – Designer Group Engineering/Lenmac Mechanical Services](#)). For the financial year ending 31 December 2017, DGFM's Subsidiaries' worldwide turnover was approximately €8.3 million, all of which was generated in the State. The parties informed the Commission that, currently, DGFM's Subsidiaries' activities involve the provision of "hard" FM services.



Competitive Analysis

13. The Commission completed a two-stage test when conducting its competition assessment of the Proposed Transaction. This two-stage test involved the following: (i) an examination of any horizontal overlap and/or any vertical relationship between Sicon and DGECH (collectively the “Parents”); and (ii) an examination of any horizontal overlap and/or any vertical relationship between the Parents and DGFM.

Background

14. FM services comprise a range of services that can, broadly, be divided into two categories: (i) “soft” FM services; and (ii) “hard” FM services. “Soft” FM services involve the provision of support services including reception, switchboard, cleaning, catering, security, portage and post room services. “Hard” FM services involve the provision of technical, maintenance, fabric and engineering support and helpdesk services. Electrical, mechanical and building services are all considered to be “hard” FM services.

Horizontal overlap

15. The parties informed the Commission that there are two horizontal overlaps in the State between Sicon’s and DGFM’s business activities: (i) the provision of “hard” FM services; and (ii) the provision of “soft” FM services.
16. The Commission has previously assessed the competitive impact of transactions involving the provision of FM services⁶ in the State.
17. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this case, the Commission does not need to come to a definitive view on the precise relevant product market definition since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is narrow (e.g., a

⁶ Please see, for example, merger determination [M/18/060 – Designer Group Engineering/Lenmac Mechanical Services](#) and [M/14/023 - Noonan/Resource](#).



particular segment of the “soft” FM or “hard” FM services market) or broader to encompass the provision of all categories of FM services.

18. For the purposes of this determination, the Commission has followed its approach in *M/18/060 – Designer Group Engineering/Lenmac Mechanical Services* and has assessed the likely competitive impact of the Proposed Transaction on the potential product markets for the supply of: (i) “hard” FM services; and (ii) “soft” FM services.
19. In relation to the geographic scope of the potential product markets, the Commission has followed its approach in *M/18/060 – Designer Group Engineering/Lenmac Mechanical Services* and has assessed the likely competitive impact of the Proposed Transaction in the State.

Horizontal overlap between the Parents’ activities in the State

20. There is no horizontal overlap between the activities of the Parents in the State other than the overlap of activities between the Parents and DGFM.

Horizontal overlap between the activities of the Parents and DGFM in the State

21. Table 1 sets out the changes in market shares which would result from the Proposed Transaction in the potential product markets for the supply of: “hard” FM services in the State; and (ii) “soft” FM services in the State. Estimates provided by the parties indicate that the Parents’ combined market share in the supply of “hard” FM services in the State is less than [0-10]%, while the Parents’ combined market share in the supply of “soft” FM services in the State is less than [0-10]%⁷.

⁷ The parties state that no reliable third-party source of market shares is available for the provision of “soft” and “hard” FM services. The parties have provided their own estimates of market shares, using estimated market size for the provision “hard” FM services of €1 billion and estimated market size for the provision of “soft” FM services of €3 billion. The parties also provided their best estimate for their competitors’ revenues from “hard” and “soft” FM services based on Companies Registration Office filings. The Commission notes that it has no reason to question these figures.



Table 1: Market shares of FM services providers in the State as of 2017

Service	Service provider	Market share pre-transaction	Market share post-transaction
"Soft" FM services (market shares are based on the parties' estimates of annual total turnover from the provision of "soft" FM services in the State in 2017)	Sicon	[0-10]%	[0-10]%
	DGFM	[0-10]%	
	Others	[90-100]%	[90-100]%
"Hard" FM services (market shares are based on the parties' estimates of annual total turnover from the provision of "hard" FM services in the State in 2017)	Sicon	[0-10]%	[0-10]%
	DGFM	[0-10]%	
	Others	[90-100]%	[90-100]%

Source: The Commission's analysis of information provided by the parties.

22. Furthermore, following implementation of the Proposed Transaction, the Parents will continue to face competition from a number of suppliers of "hard" and "soft" FM services located in the State, such as Noonan Services Group Limited,⁸ Mitie Facilities Management Limited,⁹ Sodexo Ireland Limited,¹⁰ CBRE GWS (Ireland) Limited,¹¹ and Aramark Ireland Holdings Limited.¹²
23. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the supply of "hard" and/or "soft" FM services in the State.

Vertical Relationship

24. There is an existing vertical relationship between the Parents with respect to the provision of non-FM electrical and mechanical installation services. Sisk sub-

⁸ The facility management services provided by Noonan in the State can be viewed at <http://www.noonan.ie/services/facilities-management/>.

⁹ The facility management services provided by Mitie in the State can be viewed at <https://www.mitie.com/services/>.

¹⁰ The facility management services provided by Sodexo in the State can be viewed at <https://ie.sodexo.com/sites/sdxcom-uk/home/services/integrated-facilities-management.html>.

¹¹ The facility management services provided by CBRE in the State can be viewed at <https://www.cbre.ie/en/services/occupiers/facilities-management>.

¹² The facility management services provided by Aramark in the State can be viewed at <http://aramarkproperty.ie/facilities-management/>.



contracts to DGECH certain non-FM electrical and mechanical installation services that Sisk itself does not provide in its projects.

25. The Commission considers that the Proposed Transaction does not give rise to any vertical foreclosure concerns in the State in relation to the provision of non-FM electrical and mechanical installation services for the following reasons:

- With regard to input foreclosure, there are a number of companies competing with DGECH in the supply of non-FM electrical and mechanical installation services in the State, such as Jones Engineering Limited, Mercury Engineering Unlimited Company, Winthrop Engineering & Contracting Limited and Kirby Group Engineering Unlimited Company.
- With regard to customer foreclosure, following the completion of the Proposed Transaction, there will remain a large number of customers availing of non-FM electrical and mechanical installation services such as BAM Ireland Limited, Collen Construction Limited and Bennett (Construction) Limited. DGECH's competitors would not be foreclosed from supplying non-FM electrical and mechanical installation services in the State.

Conclusion

26. 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

27. The parties have informed the Commission that the shareholders' agreement between DGECH, Sisk and DGFM contains a number of restrictive obligations on Sisk and DGECH in their capacity as shareholders. The duration of these restrictive obligations does not exceed the maximum duration acceptable to the Commission. The Commission considers these obligations to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.



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 acquisition whereby Sicon Limited, through its wholly owned subsidiary John Sisk & Son (Holdings) Limited, would acquire 50% of the issued share capital of Designer Group FM Limited, which would thereby confer joint control of Designer Group FM Limited on Sicon Limited and Designer Group Engineering Contractors Holdings Designated Activity Company, 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

Brian McHugh

Member

Competition and Consumer Protection Commission