



## DETERMINATION OF MERGER NOTIFICATION M/19/030 - MML CAPITAL/EASTLAND ENGINEERING & EES

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### Section 21 of the Competition Act 2002

**The proposed acquisition by MML Funds (managed by MML Growth Capital Partners Ireland Limited) of Eastland Engineering Supply Co Limited and EES Florida LLC.**

**Dated 14 November 2019**

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#### **Introduction**

1. On 11 October 2019, 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, whereby MML Funds<sup>1</sup> (managed by MML Growth Capital Partners Ireland Limited (“MML Capital”)), through Source Topco Limited<sup>2</sup> (“Source Topco”) and Source Topco’s wholly owned subsidiary Source Bidco Limited (“Source Bidco”) (collectively “the Acquirer”), would acquire sole control of Eastland Engineering Supply Co Limited (“EES IRE”) and EES Florida LLC (“EES FLO”) (collectively “EES”) (the “Proposed Transaction”).

#### **The Proposed Transaction**

2. The Proposed Transaction is to be implemented pursuant to: (i) a share purchase agreement dated 11 October 2019 between Source Bidco, Thomas Hynes and Catherine Hynes (“the Vendors”) (the “SPA”) and (ii) a share subscription and shareholders agreement dated 11 October entered into by Source Topco, MML Funds, MML Capital, the Vendors, Osage Limited, Ger Corbett, Robert Keatinge, Greenfield Nominees Limited, EES IRE and Source Bidco (the “SSSA”).
3. Source Bidco is a company newly incorporated for the purposes of the Proposed Transaction and is a wholly-owned subsidiary of Source Topco, an Irish private limited company. The Parties informed the Commission that following completion of the Proposed Transaction, EES will be a wholly owned subsidiary of Source Bidco, which in turn will be a wholly owned subsidiary of Source Topco. At a time shortly after

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<sup>1</sup> [...]

<sup>2</sup> Source Topco is currently fully owned by the MML funds



completion of the Proposed Transaction, the shares in EES will be transferred from Source Bidco to Source Topco. Post transaction, Source Topco (and therefor EES) will be ultimately controlled by the MML Funds managed by MML Capital.

- Following completion of the SSSA, the shareholding structure in Source Topco in terms of voting rights will be;

**Table 1: Shareholding Structure in Source Topco in terms of voting rights**

[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]

Source: *Based on Information provided by parties*

## The Undertakings Involved

### Acquirer

#### The MML Funds

- The MML Funds are private equity funds, providing growth capital to private businesses on the island of Ireland for expansion, acquisitions, recapitalisations and shareholder reorganisations. [...]
- A list of the companies owned and controlled by the MML Funds in the State as of 31 August 2019, is provided in Table 1 below.

**Table 2: Companies owned and controlled by the MML Funds and activity, August 2019**

Company Name	Description of Activity
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]

Source: *Based on Information provided by parties*

- The investors in the MML Funds include US insurance companies, Allied Irish Bank, Enterprise Ireland, the European Investment Fund and various individuals.
- For the financial year ending 31 December 2018, the MML funds worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.



## EES

9. EES IRE is a private limited company incorporated in Ireland (and also active in the United Kingdom (“UK”) through its UK branch (EES Procurement Services)). EES FLO is a limited liability company incorporated in Florida. EES provides services associated with the Maintenance, Repair and Overhaul (“MRO”) programs<sup>3</sup> of customer owned manufacturing facilities. EES’s services include the following: (i) integrated management services; (ii) sourcing/procurement services (iii) stores management services.
10. For the financial year ending 31 May 2019, EES worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

## Rationale for the Proposed Transaction

11. The Parties state in the notification:

*“The Proposed Transaction reflects MML Capital’s strategy of backing managers of small and medium size private businesses located on the island of Ireland to reach the next stage of their evolution, maximising growth opportunities at home and abroad”.*

## Third Party Submissions

12. No submission was received.

## Competitive Analysis

### *Horizontal Overlap*

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 in the State between the activities of the Parties.
14. As described in paragraph 11 above, EES provides services associated with the MRO programs of customer owned manufacturing facilities. None of the portfolio companies owned and controlled by the MML Funds, set out in Table 1 above, are engaged in the same business activities as EES. Similarly, EES is not engaged in any of

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<sup>3</sup> MRO programs provide life cycle upkeep including scheduled maintenance, repair and/or overhaul of equipment/systems.



the business activities in which the MML Funds which generated turnover in the State in 2018 are engaged.

15. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

#### *Vertical Relationship*

16. The Parties informed the Commission that the Proposed Transaction does not give rise to any vertical relationships in the State. The Commission has not identified any vertical relationship between the Parties. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

#### **Conclusion**

17. 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**

18. Clauses 11.2.1, 11.2.2, 11.2.3 and 11.2.4 of the SPA contain non-compete and non-solicitation obligations on the Vendors. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission<sup>4</sup>. The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction, insofar as they relate to the State.

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<sup>4</sup> In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” [2005] OJ C56/03. For more information see [http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.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 acquisition, whereby MML Funds<sup>5</sup> (managed by MML Growth Capital Partners Ireland Limited), through Source Topco Limited<sup>6</sup> and Source Topco Limited's wholly owned subsidiary Source Bidco Limited, would acquire sole control of Eastland Engineering Supply Co Limited and EES Florida LLC, 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**

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<sup>5</sup> [...]

<sup>6</sup> Source Topco Limited is currently fully owned by the MML funds