



DETERMINATION OF MERGER NOTIFICATION M/21/064 – BHSL/MOTA-ENGIL

Section 21 of the Competition Act 2002

Proposed acquisition by Biomass Heating Solutions Limited of Mota-Engil Ireland Services Limited, Mota-Engil Ireland Construction Limited and Mota-Engil International Construction (UK) Limited.

Dated 21 December 2021

Introduction

1. On 16 November 2021, 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 Glas Glan Holdings Limited (“Glas Glan”), a wholly-owned subsidiary of Biomass Heating Solutions Limited (“BHSL”), would acquire sole control of Mota-Engil Ireland Services Limited (“MISL”); Mota-Engil Ireland Construction Limited (“MEIC”); and Mota-Engil International Construction (UK) Limited (“MEICUK”) (collectively the “Target Companies”) from Mota-Engil Engenharia E Construcao S.A (“Mota-Engil EEC”) and GKM Construction Limited (“GKM”) (“the Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction will be implemented pursuant to two separate share purchase agreements, signed 15 November 2021, between Glas Glan and Mota-Engil EEC and Glas Glan and GKM respectively (the “Agreements”). Under the terms of the Agreements, Glas Glan will acquire the entire issued share capital of the Target Companies. Following completion of the Proposed Transaction, the Target Companies will be solely owned and controlled by BHSL through Glas Glan.



The Undertakings Involved

The Acquirer – BHSL

3. Glas Glan is a holding company wholly-owned by BHSL.
4. BHSL is the parent company of the BHSL Group. Its registered office is in Ballagh, Co. Limerick. BHSL is active in waste disposal and processing, as well as in water and wastewater treatment. BHSL operates in these markets through three companies:
 - i. *BHSL Waste Solutions Limited (“BWS”)*
 - BWS is an Irish registered agri-tech company based in Ballagh, Co. Limerick and is wholly-owned by BHSL. BWS’ patented fluidised bed combustion technology converts poultry manure to energy, which is subsequently used to power farms’ electricity and heating requirements.
 - ii. *Hydro International Limited (“Hydro”)*
 - Hydro is a wastewater treatment company which is active in the treatment of industrial wastewater in the State, the UK and the United States. Its offices in the State are located in Navan, Co. Meath. Hydro provides design, engineering and construction services relating to water and wastewater treatment systems to a range of industrial customers. Hydro manufactures, delivers and installs effluent treatment plants. Hydro also provide a range of screening and filtration systems individually and for hire, such as sludge dewatering, inlet screening and dissolved air flotation systems. Hydro is wholly-owned by BHSL.
 - iii. *Glanway Limited (“Glanway”)*
 - Glanway operates a waste processing and export facility in Co. Waterford which is licenced to process 133,000 tonnes of solid household waste per year. Glanway is majority owned by BHSL, with the remaining stake held by Glanway’s Managing Director.
5. For the financial year ending 31 December 2020, the worldwide turnover of BHSL was approximately [...], of which [...] was generated in the State.



The Target Companies – MISL, MEIC & MEICUK

6. The Target Companies are part of the Mota-Engil Group, a multinational operator active in the engineering, construction, environmental, transport concessions, energy, mining and tourism sectors internationally.
7. MISL is a holding company registered in the State under the company number 452267. Its registered office is in Loughrea, Co. Galway. MISL is the sole shareholder of the following companies:
 - i. *Glan Agua Limited (“Glan Agua”)*
 - Glan Agua is a water and wastewater company which provides design, engineering and construction services and operation and maintenance services for water and wastewater treatment systems. Glan Agua is a participant on several Irish Water Frameworks¹ such as the Major & Minor Mechanical, Electrical, Instrumentation, Control & Automation Framework and the Early Contractors Involvement Programme². Glan Agua holds a 50% shareholding (the other 50% is held by MEIC) in Streamcrest Limited. Streamcrest was incorporated for the purpose of Glan Agua and MEIC delivering, on a joint venture basis, a design, build and operation for Irish Water DAC and Cork County Council for the Courtmacsherry-Timoleague Sewage Scheme.
 - ii. *Glan Agua (UK) Limited (“Glan Agua UK”)*
 - Glan Agua UK is a UK registered company engaged in the provision of water and wastewater engineering services in the UK.
8. MEIC is an Irish company registered in the State under company number 447936. MEIC provides civil engineering and construction services in support of Glan Agua’s operations and engages with Irish Water in the provision of civil engineering-based projects. MEIC has also

¹ These Frameworks comprise a range of contractors which Irish Water can engage in the delivery of certain projects.

² The Early Contractor Involvement Programme is a capital delivery model which bolsters collaboration between contractors throughout the life cycle of a project, in contrast to the traditional model where a contractor is only engaged following the design phase. The ECI programme was launched in 2019.



completed non-water related infrastructure projects such as the construction of roads, schools and social housing.

9. MEICUK is a UK registered company and does not currently trade.
10. For the financial year ending 31 December 2020, the worldwide turnover of the Target Companies was approximately [...], of which [...] was generated in the State.

Rationale for the Proposed Transaction

11. The parties state the following in the notification:

“The BHSL Group believes that the Target Companies’ experience and expertise in the provision of water and wastewater engineering solutions to the public / municipal sector will complement Hydro’s existing water and wastewater services in the industrial sector and that the Proposed Transaction will allow the BHSL Group to make a more attractive offering to customers, to enter the UK market in respect of municipal water and wastewater treatment solutions, as well as allowing BHSL to grow both its revenue and EBITDA.”

Third Party Submissions

12. No submission was received.

Industry Background -Water and Wastewater Engineering Services

13. The parties are active in the provision of water and wastewater treatment systems. Water and wastewater treatment systems are structures which provide various qualities and quantities of water depending on customer requirements. For municipal customers this often entails the purification and filtration of water from natural sources in the production of potable water, as well as the treatment of sewage water prior to its release into the environment. For industrial customers water will commonly be treated where it comprises part of the final product (such as beverages or pharmaceuticals), is used in industrial processes or needs to be discharged in accordance with regulatory specifications.



Competitive Analysis

Horizontal Overlap

14. As described above, BHSL and the Target Companies are both active in the supply of water and wastewater engineering services in the State. In particular, the parties are active in the provision of the design, construction, operation and maintenance of water and wastewater engineering services. This gives rise to a horizontal overlap between the activities of the parties in the State.

Relevant Product Market

15. The European Commission has previously considered the supply of water and wastewater treatment services. In *COMP/M.5934 - Veolia Water UK and Veolia Voda/ Subsidiaries of United Utilities Group*³, the European Commission considered the relevant product markets for (i) the design, engineering and construction of water and wastewater treatment systems (“DE&C Services”); and (ii) the operation and maintenance of water and wastewater treatment systems (“O&M Services”). The European Commission has also considered if these markets can be further divided by recipient of service, namely between municipal customers and industrial customers, but ultimately left the market definition(s) open.
16. The European Commission found that DE&C services are often provided on a project-by-project basis whereas O&M services can be more continuous in nature. Additionally, the European Commission noted that the technical and labour requirements of both services are also distinct, with DE&C services involving professional skills which can be provided centrally for a limited period whereas O&M requires an ongoing local presence and is more labour intensive.
17. The Commission previously considered the supply of water and wastewater services in *M/16/023 - Murphy/AECOM Ireland*⁴ and in *M/16/065 - Ward & Burke/Response*⁵. In each case, it was not necessary for the Commission to define precise relevant product and

³ COMP/M.5934 *Veolia Water UK and Veolia Voda/ Subsidiaries of United Utilities Group* (2010).

⁴ [https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-16-023-Determination-Murphy - AECOM-Ireland.pdf](https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-16-023-Determination-Murphy-AECOM-Ireland.pdf).

⁵ <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-16-065-Ward-Burke-Response-Public.pdf>.



geographic markets since there was no horizontal overlap between the parties' activities in the State.

Views of the parties on product market definition

18. In the notification, the parties agreed with the relevant product markets as previously concluded by the European Commission set out in paragraph 15 above.

Views of the Commission on product market definition

19. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. It is not necessary for the Commission to define the precise relevant product market or markets in this instance because the product market definition adopted will not alter the Commission's assessment of the competitive impact of the Proposed Transaction, whether the product market is defined as a broad market (i.e., water and wastewater engineering services) or a narrow market (i.e., separate markets for DE&C services, O&M services or markets by recipient).
20. For the purposes of carrying out its competitive assessment of whether the Proposed Transaction might result in a substantial lessening of competition from a horizontal perspective, the Commission analysed its impact by reference to the narrowest potential product markets:
 - i. the provision of DE&C services to (i) municipal customers and (ii) industrial customers;
 - ii. the provision of O&M services to (i) municipal customers and (ii) industrial customers.
21. The Commission notes that currently BHSL primarily provides DE&C services and O&M services to industrial customers, while MISL provides these services to municipal customers.



Relevant Geographic Market

22. The European Commission has previously considered the relevant geographic market for the provision of DE&C services and O&M services as most likely national, but did not precisely define the relevant geographic market.⁶

Views of the parties on the relevant geographic market

23. In the notification, the parties note that the relevant geographic market is at least national if not broader.

Views of the Commission on the relevant geographic market

24. The Commission does not need to form a definitive view with respect to the relevant geographic market in this instance as its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant geographic market is defined narrowly (i.e. the State) or more broadly (i.e. EEA).
25. For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest potential geographic market (i.e. the State).

Horizontal Competitive Analysis

Supply of DE&C services

26. There is a horizontal overlap between BHSL, through Hydro, and MISL, through Glan Agua, in the provision of DE&C services in the State.
27. The parties submit that they currently have different customer bases, with BHSL primarily providing services to industrial customers whereas MISL provides services to municipal customers.
28. Table 1 details the parties' respective shares in the municipal DE&C segment in the State. As shown, BHSL and the Target Companies account for less than [1-5%] and [15-20%] shares

⁶ COMP/M.5724 Suez Environment/Agbar (2010) & COMP/M.5934 Veolia Water UK and Veolia VODA/Subsidiaries of United Utilities Group (2010).



respectively in the potential market for the supply of municipal DE&C services in the State. Therefore, following completion of the Proposed Transaction, the notifying parties combined market share would be approximately [15-20%].

Table 1. Estimated market shares for the provision of DE&C services to municipal customers in the State since 2014.

Provider	Revenue	Market Share
Target Companies	[...]	[15-20%]
BHSL Group	[...]	[0-5%]
Parties combined share	[...]	[15-20%]
Veolia Water Ireland Limited	[...]	[15-20%]
Electrical & Pump Services Limited	[...]	[15-20%]
J. Murphy & Sons Limited	[...]	[10-15%]
Celtic Anglian Water Limited	[...]	[0-5%]
Ward and Burke Construction Limited	[...]	[5-10%]
Coffey Water Limited	[...]	[5-10%]
Others	[...]	[10-15%]

Source: Irish Water.⁷

29. Following completion of the Proposed Transaction, the merged entity would continue to face competition from a significant number of competitors offering DE&C services in the State. Such providers include Electrical & Pump Services Limited, J. Murphy & Sons Limited, Veolia Water Ireland Limited, Ward & Burke Construction Limited and Coffey Water Limited.
30. Table 2 details the parties' estimates of market shares in the industrial DE&C segment. Based on information provided by the parties, the parties' competitors and Irish Water, the industrial DE&C segment is significantly smaller than the municipal market⁸.

⁷ As the largest municipal customer in the State, Irish Water's DE&C contracted spend is used as a proxy for provider revenue, and therefore for the overall municipal DE&C market. Table 1 is based on Irish Water's contracted DE&C spend since 2014.

⁸ Irish Water estimated that the municipal market represents 70% of the overall DE&C market.



Table 2. Estimated market shares for Provision of DE&C services to industrial customers in State in 2020

Provider	Market Share
BHSL Group	[10-15%]
Target Companies	[0-5%]
Combined share of parties	[10-15%]
Veolia Water Ireland Limited	[15-20%]
Electrical & Pump Services Limited	[15-20%]
Ward and Burke Construction Limited	[10-15%]
J. Murphy & Sons Limited	[10-15%]
Water Teknik Limited	[0-5%]
Others	[20-25%]

Source: The parties⁹.

31. Following the proposed transaction, the merged entity would continue to face competition in the provision of DE&C services to industrial customers from several providers of comparable estimated market share as listed in Table 2 above.
32. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in relation to the supply of DE&C services to both municipal and industrial customers in the State.

Supply of O&M Services

33. As noted earlier, BHSL primarily engages with industrial customers while MISL provides O&M services to municipal customers. On the potential market for the supply of O&M services to municipal customers in the State, BHSL and the Target Companies account for less than [0-5%] and [0-5%] shares respectively, as shown in Table 3 below. Following completion of the Proposed Transaction, the notifying parties combined market share would be approximately [0-5%].

⁹ Based on information provided by the parties.



Table 3. Estimated market shares for the provision of O&M services to municipal customers in the State since 2014.

Provider	Revenue	Market Share
Target Companies	[...]	[0-5%]
BHSL Group	[...]	[0-5%]
Parties' combined share	[...]	[0-5%]
Celtic Anglian Water Limited	[...]	[20-25%]
Veolia Water Ireland Limited	[...]	[15-20%]
Electrical & Pump Services Limited	[...]	[15-20%]
J. Murphy & Sons Limited	[...]	[10-15%]
Ward and Burke Construction Limited	[...]	[5-10%]
Coffey Water Limited	[...]	[0-5%]
SDD Shanganagh (Water Treatment) Limited	[...]	[0-5%]
Others	[...]	[15-20%]

Source: Irish Water.¹⁰

34. Following completion of the Proposed Transaction, the merged entity would continue to face competition from several larger and similarly sized competitors offering O&M services in the State, including providers such as Celtic Anglian Water Limited, J. Murphy & Sons Limited, Veolia Water Ireland Limited, Electrical & Pump Services Limited, Ward & Burke Construction Limited.
35. In relation to the potential market for the provision O&M services to industrial customers, the parties submit that industrial customers generally seek to operate and maintain the systems themselves rather than outsourcing the provision of O&M services. BHSL generated no turnover from the provision of O&M services in 2020, the latest year for which audited accounts are available. The Target Companies are not active in the provision of O&M services to industrial customers.

¹⁰ As the largest municipal customer in the State, Irish Water's O&M contracted spend is used as a proxy for provider revenue, and therefore the overall municipal O&M market. Table 3 is based on Irish Water's contracted O&M spend since 2014.



36. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the provision of O&M services to either municipal customers or industrial customers in the State.

Vertical Competitive Analysis

Vertical Relationship

37. There is no existing vertical overlap between the parties.
38. There is a potential vertical overlap between the activities of the parties in relation to the provision of DE&C services in the State. The parties submit that DE&C service providers often appoint a sub-contractor to complete construction works. At present, MEIC exclusively carries out such works for Glan Agua and does not engage with other DE&C providers¹¹. BHSL, through Hydro, contracts with civil engineering contractors on a project-by-project basis.
39. The Commission considers that the Proposed Transaction will not lead to input or customer foreclosure in the State for the following reasons:
- Table 1 illustrates the minimal increase in the market share of the merged entity in the supply of DE&C services following the Proposed Transaction. Further, as noted in paragraph 29 above, there are a significant number of competitors that provide DE&C services in the State. Sub-contractors could continue to carry out work for these competitors following completion of the Proposed Transaction.
 - In addition to the competitors above, there are several other civil engineering competitors to the merged entity that carry out sub-contracting work for DE&C services providers, such as Murphy International Limited, Farrans Construction Limited, Roadbridge Limited and John Sisk & Sons Limited. Providers of DE&C services could continue to appoint these competitors as subcontractors following completion of the Proposed Transaction.
40. Based on the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

¹¹ MEIC also contracts directly with Irish Water for the provision of primarily civil-engineering-based projects.



Conclusion

41. 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

42. The parties notified non-compete and non-solicitation obligations on Mota-Engil EEC and GKM by reference to the Agreements. The Commission notes that Clause 10.2 of the Agreements contain non-compete and non-solicitation obligations on Mota-Engil EEC and GKM. The parties submit that said restrictions are limited in geographic and business scope and are directly related and necessary to the Proposed Transaction.
43. The Commission notes that the duration of the ancillary restraints contained in Clause 10.2 of both share purchase agreements does not exceed the maximum duration acceptable to the Commission.¹² The Commission considers the restrictions to be directly related and necessary to the implementation of the Proposed Transaction in so far as they relate to the State.

¹² In this respect, the CCPC follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” [2005] OJ C56/03 (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XC0305%2802%29>).



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 Glas Glan Holdings Limited, a wholly-owned subsidiary of Biomass Heating Solutions, would acquire sole control of Mota-Engil Ireland Services Limited; Mota-Engil Ireland Construction Limited; and Mota-Engil International Construction (UK) Limited from Mota-Engil Engenharia E Construcao S.A and GKM Construction Limited, 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