



DETERMINATION OF MERGER NOTIFICATION M/21/067 – SICON/SENSORI

Section 21 of the Competition Act 2002

Proposed acquisition by Sicon Strategic Investments Holdings Limited, through Sicon Strategic Investments Holdings Limited, of Sensori Facilities Management Limited

Dated: 07 January 2022

Introduction

1. On 30 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 Sicon Limited (“Sicon”), through its wholly-owned subsidiary Sicon Strategic Investments Holdings Limited (“Sicon Strategic”), would acquire sole control of Sensori Facilities Management Limited (“Sensori”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share purchase agreement dated 30 November 2021 between Sicon, Sicon Strategic, and Designer Group Engineering Contractors Holdings DAC (“DGECH”) (the “SPA”). At present, Sensori is jointly owned and controlled by Sicon’s wholly-owned subsidiary John Sisk & Son (Holdings) Limited (“Sisk”) and DGECH¹. Under the terms of the SPA, Sicon, through Sicon Strategic, will acquire DGECH’s 50% shareholding in Sensori and will thereby acquire sole control of Sensori.

The Undertakings Involved

The Acquirer – Sicon/Sicon Strategic

3. Sicon is a private limited company incorporated in the State under company number 2079. Sicon Strategic is a private limited company incorporated in the State under company number 706569,

¹ The acquisition by Sicon and DGECH of joint control of Sensori was notified to the Commission in M/18/096 *Sisk/Designer Group Engineering/Designer Group FM (JV)*. The Commission’s determination is available at <https://www.ccpic.ie/business/wp-content/uploads/sites/3/2018/12/2019.01.29-M-18-096-Merger-Determination-Sisk-DGECH-and-Designer-Group-FM-JV.pdf>.



and is a wholly-owned subsidiary of Sicon. Sicon and its subsidiaries (the “Sicon Group”) are primarily active as an international construction group of companies through Sisk, which is headquartered in the State with businesses located across Europe.² Sisk caters to clients from both the public and private sectors, offering services in relation to 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 services), professional services (such as pre-construction advice, design & build and validation/commissioning services), and public/private partnership services.

4. The Sicon Group also has various investments in other business lines including a distribution business,³ a small amount of investments in real estate,⁴ and a design, manufacture and installation business for innovative building structures called Vision Built Manufacturing Limited.⁵
5. In the financial year ending 31 December 2020, Sicon had a worldwide turnover of approximately €[...], of which €[...] was generated in the State.

The Target – Sensori

6. Sensori is a private limited company incorporated in the State under company number 548567.⁶ As noted above, Sensori is currently jointly owned and controlled by Sisk and DGECH.
7. Sensori provides integrated property facility management (“FM”) services to offices, retail units and commercial buildings, mixed development, government, industrial and educational premises. In particular, it offers services such as non-FM mechanical and electrical (“M&E”) installation services (“non-FM M&E services”), heating and ventilation and water treatment services. Sensori has offices in the State in Dublin, Limerick and Cork, with plans to establish an office in Galway. It provides services to customers located across the State, and has capacity to provide its services anywhere on the island of Ireland.

² For more information, please see: <https://www.johnsiskandson.com/>

³ For more information, please see: <https://www.origo.ie/>

⁴ The parties submitted that Sicon’s interests in real estate investments are *de minimis*. They stated that Sicon’s assets in use in the State equate to approximately €[...], and Sicon’s Investment Properties and Development Land in the State equates to approximately €[...]. The parties state that CBRE Group Inc. estimates that there will be over €[...] spent on commercial property in the State in 2021, meaning that the parties’ interests in real estate are *de minimis*.

⁵ Vision Built Manufacturing Limited was acquired by Sisk since the Commission’s determination in *M/18/096 Sisk/Designer Group Engineering/Designer Group FM (JV)*.

⁶ For more information, please see: <https://www.sensorifm.com/>



8. In the financial year ending 31 December 2020, Sensori had a worldwide turnover of approximately €[...] of which was generated in the State.

Rationale for the Proposed Transaction

9. The parties state the following in the notification:

“The Proposed Transaction is highly complementary to Sicon’s existing business. The acquisition allows Sicon to enhance its customer offer in relation to the provision of “hard” FM services and to compete more effectively in a growing market, [...]”

Third Party Submissions

10. No third party submissions were received.

Competitive Analysis

Horizontal Overlap

11. The parties state in the notification that there is no horizontal overlap between Sicon and Sensori in the State, other than as a result of Sicon’s joint controlling interest, through Sisk, in Sensori.
12. The Commission understands that Sisk previously carried out minimal activity in the (i) provision of “hard” FM services, and (ii) provision of “soft” FM services segments in the State, in which Sensori is active.⁷ However, following the Commission’s determination in *M/18/096 - Sisk/Designer Group Engineering/Designer Group FM (JV)*, Sisk transferred all of its FM business to Sensori, with the result that Sisk currently provides all of its FM services through Sensori.
13. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

14. There is a limited vertical relationship between Sicon and Sensori with respect to: (i) the provision of non-FM M&E services; and (ii) the provision of FM services.

Relevant Product Market

15. The Commission has previously considered the non-FM M&E services segment in *M/18/096 - Sisk/Designer Group Engineering/Designer Group FM (JV)*. In that determination, the Commission

⁷ Further information on “hard” and “soft” FM services is detailed in paragraph 17 of this Determination.



assessed the existing vertical relationship between the undertakings involved by reference to the provision of non-FM M&E services.

16. The Commission and its predecessor the Competition Authority (the “Authority”) has also previously assessed the competitive impact of transactions involving the provision of FM services in the State.⁸ In *M/14/023 – Noonan/Resource*, the Authority assessed the likely competitive effects of the proposed transaction by reference to the provision of FM services. In *M/18/060 – Designer Group Engineering/Lenmac Mechanical Services*, the Commission also assessed the likely competitive impacts of the proposed transaction by reference to the provision of FM services, and noted that the provision of FM services could be further segmented into (i) the provision of “hard” FM services and (ii) the provision of “soft” FM services. The Commission followed that approach in *M/18/096 - Sisk/Designer Group Engineering/Designer Group FM (JV)* and assessed the likely impact of the proposed transaction on the potential product markets for (i) the provision of “hard” FM services and (ii) the provision of “soft” FM services.
17. “Hard” FM services involve technical, maintenance, fabric and engineering support and helpdesk services. Electrical, mechanical and building services are all considered to be “hard” FM services.⁹ “Soft” FM services involve the provision of support services including reception, switchboard, cleaning, catering, security, portage and post room services.
18. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, the Commission does not need to come to a definitive view on the precise relevant product market since its conclusion on the likely competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is defined narrowly (e.g. segmenting “hard” and “soft” FM services) or more broadly to encompass all FM services.

⁸ Please see, for example: *M/18/060 – Designer Group Engineering/Lenmac Mechanical Services*, the text of which is available at the following link: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/08/M.18.060-Merger-Determination-.pdf>; and *M/14/023 – Noonan/Resource*, the text of which is available at the following link: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-14-023-Noonan-Resource-Public.pdf>

⁹ “Hard” FM services may best be described as the improvement or replacement of what already exists in the hard fabric of the building and/or the M&E component of the building. This work is typically related to the general upkeep of the building asset.



19. In light of the above, and for the purposes of assessing the competitive impact of the Proposed Transaction, the Commission has assessed its impact by reference to the following potential product markets: (i) non-FM M&E services; (ii) “hard” FM services; and, (iii) “soft” FM services.

Relevant Geographic Market

20. In *M/18/096 - Sisk/Designer Group Engineering/Designer Group FM (JV)*, the Commission considered each of the above outlined market segments in respect of the State.¹⁰ With regard to the Proposed Transaction, the Commission has found no reason to depart from its earlier approach to the relevant geographic market. In any case, the Commission does not need to come to a definitive view on the precise relevant geographic market definition since its conclusion on the likely competitive impact of the Proposed Transaction will be unaffected whether the precise relevant geographic market is defined narrowly (i.e. the State) or more broadly (i.e. worldwide).

21. Accordingly, for the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has assessed its competitive impact by reference to the State.

Non-FM M&E services

22. Non-FM M&E services refers to the new installation of an M&E system, as part of a one-off project in a new or existing facility.

23. Sicon currently procures the provision of non-FM M&E services for its projects. In this regard, Sicon sub-contracts to suppliers the provision of certain non-FM M&E services for its projects. Sensori is one of a number of sub-contractors used by Sicon to supply non-FM M&E services.¹¹

24. The parties submit that Sicon’s subsidiary Sisk is Sensori’s primary customer in respect of non-FM M&E services, [...].

25. This vertical relationship was previously examined by the Commission in *M/18/096 - Sisk/Designer Group Engineering/Designer Group FM (JV)*, and was considered not to give rise to any vertical foreclosure concerns for the following reasons:¹²

¹⁰ This approach was consistent with the Commission’s previous approach in *M/18/060 – Designer Group Engineering/Lenmac Mechanical Services*.

¹¹ For example, Sicon also sub-contracts to DGECH certain non-FM M&E services, as noted in *M/18/096*.

¹² *Supra*, note 1, at paragraph 25.



- i. *“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.”¹³*
and,
 - ii. *“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.”¹⁴*
26. The Commission has not, in the course of its assessment of the competitive impact of the Proposed Transaction, found sufficient reasons to depart from the approach taken in *M/18/096 - Sisk/Designer Group Engineering/Designer Group FM (JV)* for the following reasons.
27. Firstly, Sicon estimates its total spend on sub-contracting non-FM M&E services in the State to be approximately €[...] per annum, amounting to an estimated share of approximately 0-5% in the upstream purchase of non-FM M&E services. Following completion of the Proposed Transaction, there will remain a significant number of companies who require non-FM M&E services, including BAM Ireland Limited, Collen Construction Limited and Bennett (Construction) Limited. Competitors of Sensori can continue to provide non-FM M&E services to these companies following implementation of the Proposed Transaction. Therefore, the Commission considers that the Proposed Transaction is unlikely to give the merged entity the ability to engage in customer foreclosure with respect to non-FM M&E services.
28. Secondly, the parties submit that the provision of non-FM M&E services is characterised by the presence of a significant number of strong competitors. Table 1 below outlines the parties’

¹³ The Commission understand that these undertakings are all still active in the provision of non-FM M&E services. Other undertakings active in the provision of non-FM M&E services include: DGECH, Dornan Engineering Limited, Suir Engineering Limited, STS Group, Radley Engineering Limited, King & Mofatt Ireland Limited and Lynskey Engineering Limited.

¹⁴ With regard to the Proposed Transaction, the parties submit that buyers of non-FM M&E services include: P.J Hegarty & Sons Unlimited Company, BAM Ireland Limited, John Paul Construction Limited, Collen Construction Limited, Bennett (Construction) Limited, JJ Rhatigan & Company Unlimited Company, Mace Ireland Limited, Walls Construction Limited, Roadbridge Limited, Glenveagh Properties Public Limited Company, and Cairn Homes Public Limited Company.



estimated shares of Sensori and its competitors in respect of the provision of non-FM M&E services.¹⁵

Table 1: Estimated shares for the provision of non-FM M&E services in the State in 2020

Non-FM M&E Services	Estimated Turnover (€m)	Estimated Share (%)
Sensori	[...]	0-5%
Mercury Engineering Unlimited Company	[...]	0-5%
Jones Engineering Limited	[...]	0-5%
Kirby Group Engineering Unlimited Company	[...]	0-5%
Suir Engineering Limited	[...]	0-5%
Dornan Engineering Limited	[...]	0-5%
DGECH	[...]	0-5%
Winthrop Engineering & Contracting Limited	[...]	0-5%
STS Group	[...]	0-5%
Radley Engineering Limited	[...]	0-5%
King & Moffatt Limited	[...]	0-5%
Others	[...]	70-80%
Total	[...]	100%

Source: The parties.

29. As demonstrated in Table 1 above, Sensori has an estimated market share of less than 0-5% in the downstream market for the provision of non-FM M&E services in the State. Further, following implementation of the Proposed Transaction, there will continue to be a significant number of alternative suppliers to Sensori for the provision of non-FM M&E services, such as Mercury Engineering Unlimited Company, Jones Engineering Limited, Kirby Group Engineering Unlimited Company, and Suir Engineering Limited, amongst others. Customers of non-FM M&E services can continue to procure services from these alternative suppliers. Therefore, the Commission

¹⁵ The parties state this is a rough estimate of the overall size of the market. The Commission has found no reason to dispute the parties' estimate in this regard. Equally, it is evident that there are a large number of undertakings with a significantly higher turnover than Sensori in respect of the provision for non-FM M&E services in the State. Therefore, should the estimated total market size be slightly lower or higher than the parties' estimate, Sensori will still retain a *de minimis* share in respect of the market for the provision of non-FM M&E services.



considers that the Proposed Transaction is unlikely to give the merged entity the ability to engage in input foreclosure with respect to non-FM M&E services.

30. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in respect of the provision of non-FM M&E services in the State.

“Hard” and “soft” FM services

31. The parties submit that there is a further *de minimis* relationship between the parties with respect to “hard” and “soft” FM services. The head office and regional offices of Sisk procure “soft” FM services from providers of such services (but not from Sensori). On an “as needs” basis, the Sicon Group procures “hard” FM services for certain of its commercial properties.
32. As outlined above, the Commission has previously considered the provision of “soft” and “hard” FM services in *M/18/096- Sisk/Designer Group Engineering/Designer Group FM (JV)* and *M/18/060 – Designer Group Engineering/Lenmac Mechanical Services*. In both cases, the Commission noted the difficulties in obtaining shares of supply for these potential markets, on the basis that there is no reliable third-party source of information available in respect of both potential markets. The Commission notes that this remains the case in respect of the Proposed Transaction.
33. With regard to the Proposed Transaction, the parties submit that the provision of FM services is characterised by a substantial number of service providers with significantly higher shares of the “hard” and “soft” FM categories than Sensori, and hundreds of smaller players who provide more specialised services.
34. Sicon estimates that it spends approximately €[...] per annum on procuring each of “hard” and “soft” FM services (out of Sicon’s annual project spend of approximately €[...]). It procures “hard” FM services from Sensori and other FM services providers. It does not currently procure any “soft” FM services from Sensori. Sensori is more focused on providing “hard” FM services, with roughly 80-90% of Sensori’s services being “hard” FM services. Sensori supplies a portion only of Sicon’s annual requirement for “hard” FM services¹⁶ and none of Sicon’s “soft” FM services.

¹⁶ The parties submit that Sensori supplied Sicon with approximately €[...] worth of “hard” FM services in the most recent financial year to date up to 30 November 2021, and [...] supply Sicon with [...] “hard” FM services in the financial years ending 31 December 2019 and 31 December 2020.



“Hard” FM services

35. The parties estimate, on a “conservative” basis, that the total value of the upstream purchase of “hard” FM services in the State is €[...] million. Sicon is estimated to have a share of the purchase of such services of approximately 0-5%. Given Sicon’s minimal share of purchasing of “hard” FM services, competitors of Sensori can continue to supply “hard” FM services to alternative purchasers following implementation of the Proposed Transaction. Therefore, the Commission considers that the Proposed Transaction is unlikely to give the merged entity the ability to engage in customer foreclosure with respect to “hard” FM services.
36. Table 2 below outlines the parties’ estimated shares for Sensori and its competitors in respect of the provision of “hard” FM services, on the basis that the overall size of that market is €[...] million.

Table 2: Estimated shares for the provision of “hard” FM services in the State in 2020

“Hard” FM service providers	Estimated turnover (€m)	Estimated share (%)
Sensori	[...]	0-5% ¹⁷
CBRE Group, Inc.	[...]	10-20%
Aramark Property Services Limited	[...]	5-10%
Bidvest Noonan (ROI) Limited	[...]	5-10%
BAM Ireland Limited	[...]	0-5%
Apleona HSG Limited	[...]	0-5%
Mite Limited	[...]	0-5%
Others	[...]	50-60%
Total	[...]	100%

Source: The parties.

37. As is evident from Table 2 above, there are a significant number of alternative suppliers of “hard” FM services, such as CBRE Group, Inc., Aramark Property Services Limited, Bidvest Noonan (ROI) Limited and BAM Ireland Limited, who will continue to compete with the parties following

¹⁷ In M/18/096 – Sisk/Designer Group Engineering/Designer Group FM (JV), it was estimated that the parties had a combined share of 0-5% in respect of “soft” FM services, and 0-5% in respect of “hard” FM services.



implementation of the Proposed Transaction. Customers of “hard” FM services can continue to procure services from these alternative suppliers. Accordingly, the Commission considers that the Proposed Transaction is unlikely to give the merged entity the ability to engage in input foreclosure with regard to the provision of “hard” FM services.

38. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in respect of the provision of “hard” FM services in the State.

“Soft” FM services

39. The parties estimate, on a “conservative” basis, that the total value of the upstream purchase of “soft” FM services in the State is €[...]. Sicon is estimated to hold a share of the purchase of such services of approximately 0-5%. Given Sicon’s minimal share of purchasing of “soft” FM services, competitors of Sensori can continue to supply “soft” FM services to alternative purchasers following implementation of the Proposed Transaction. In addition, the Commission notes that Sicon does not currently procure any “soft” FM services from Sensori. Therefore, the Commission considers that the Proposed Transaction is unlikely to give the merged entity the ability to engage in customer foreclosure with regard to the provision of “soft” FM services.

40. Table 3 below outlines the parties’ estimated shares for Sensori and its competitors in respect of the provision of “soft” FM services.

Table 3: Estimated shares for the provision of “soft” FM services in the State in 2020

“Soft” FM service providers	Estimated turnover (€m)	Estimated share (%)
Sensori	[...]	0-5%
Bidvest Noonan (ROI) Limited	[...]	5-10%
Aramark Property Services Limited	[...]	5-10%
Sodexo Ireland Limited	[...]	5-10%
ISS Ireland Limited	[...]	0-5%
CBRE Group, Inc.	[...]	0-5%
Apleona HSG Limited	[...]	0-5%
Mite Ilimited	[...]	0-5%
Veolia Water Ireland Limited	[...]	0-5%



Others	[...]	60-70%
Total	[...]	100%

Source: The parties.

41. As is evident from Table 3 above, there are a significant number of alternative suppliers of “soft” FM services, such as Bidvest Noonan (ROI) Limited, Aramark Property Services Limited, Sodexo Ireland Limited, and ISS Ireland Limited, who will continue to compete with the parties following implementation of the Proposed Transaction. Customers of “soft” FM services can continue to procure services from these alternative suppliers. Accordingly, the Commission considers that the Proposed Transaction is unlikely to give the merged entity the ability to engage in input foreclosure with regard to the provision of “soft” FM services.
42. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in respect of the provision of “soft” FM services in the State.

Conclusion on Competitive Assessment

43. 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

44. The parties state in the notification that Clause 14.2(a)-(d) of the SPA contains non-compete and non-solicitation clauses which the parties believe are directly related to and necessary for the implementation of the Proposed Transaction.
45. The duration of the restrictive covenants contained in Clauses 14.2(a)-(d) of the SPA does not exceed the maximum duration acceptable to the Commission.¹⁸ The Commission considers these non-compete and non-solicitation obligations to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

¹⁸ 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, available at <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 Sicon Limited, through its wholly-owned subsidiary Sicon Strategic Investments Holdings Limited, would acquire sole control of Sensori Facilities Management 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