



DETERMINATION OF MERGER NOTIFICATION M/21/070 – METEOR MOBILE COMMUNICATIONS (T/A EIR)/ SYNCHRO MANAGED SERVICES LIMITED

Section 21 of the Competition Act 2002

Proposed acquisition by Meteor Mobile Communications Limited t/a eir of certain assets of Synchro Managed Services Limited.

Dated 14 January 2021

Introduction

1. On 7 December 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 Meteor Mobile Communications Limited trading as *eir* (“Meteor”) would acquire the interest in 28 real estate assets currently held by 28 individual subsidiaries of Synchro Managed Services Limited (“Synchro”) pursuant to leasehold arrangements with various landlords (“the Proposed Transaction”).

The Proposed Transaction

2. Meteor and Synchro reached agreement on Heads of Terms on 8 October 2021, with a view to effecting the Proposed Transaction by means of an asset purchase agreement (“APA”), dated 31 December 2021, under which Meteor would acquire the assets consisting of 28 *eir* branded retail outlets, currently operated by Synchro under a dealer network management agreement between Synchro, Meteor and Eircom Limited (“Eircom”) (the “Dealer Network Management Agreement”), including leasehold interests for each outlet together with associated fixtures, fittings and equipment (the “Target Assets”). Following completion of the Proposed Transaction Meteor will operate the 28 retail outlets.



The Undertakings Involved

The Acquirer – Meteor

3. Meteor is a private limited company registered in the State under company registration number 282645 and trades as *eir*. Meteor is a wholly-owned subsidiary of Eircom. Eircom provides fixed-line and mobile communications services in the State, including a range of voice, data, broadband and TV services to residential, small business, enterprise and public sector customers. Eircom, which trades as *eir*, is a wholly-owned subsidiary of Eircom Holdings (Ireland Limited), which is part of the *eir* group of companies.
4. Eircom has three main business divisions:
 - (i) *eir retail* – *eir*'s retail consumer division offers fixed and mobile telephone services to over 1.5 million customers in the State. It also offers standalone and bundled voice, high speed broadband, TV, sports content and mobile services.
 - (ii) *eir Business* – *eir*'s business division generates revenues through the provision of integrated connectivity services¹ to small, medium, and large private sector enterprises and public sector bodies in the State. *eir* Business also provides integrated connectivity services to public sector customers in Northern Ireland, and to Irish companies with subsidiaries or branches in the United Kingdom.
 - (iii) *Open eir* – *eir*'s wholesale division provides wholesale access to *eir*'s nationwide fixed network. It offers a range of wholesale services, including interconnect services, bitstream, infrastructure access, local loop unbundling and wholesale leased lines and managed services.
5. For the year which ended 30 June 2020, the worldwide turnover of the *eir* group was €1.213 billion, almost all of which was generated in the State, other than €21 million which was attributable to the *eir* group of companies' activities in Northern Ireland.

¹ These services include fixed-line and mobile telecommunications services.



The Target Assets – 28 Synchro's eir-branded retail outlets

6. Synchro is a private limited company registered in the State under company registration number 487830 with a registered address at Loughlinstown, Co. Dublin. Through its wholly owned subsidiary Synchro Retail Holdings Limited, Synchro has operated and managed 33 *eir* branded retail outlets (previously branded as Meteor) since 2011, on behalf of Meteor and Eircom under the Dealer Network Management Agreement. Synchro leases these retail units from various landlords.
7. The Synchro outlets operate under the *eir* brand and Synchro is active in the sale of Eircom's products and services at their retail outlets under the Dealer Network Management Agreement. Synchro sells the following Eircom products and services:
 - (i) Mobile Services: Bill-Pay / Pre-Pay / Mobile Broadband products and the associated suite of tariffs;
 - (ii) Fixed-Line Products: Landline / Broadband / Fibre To The Home / Fibre To The Cabinet / TV service and the associated suite of tariffs; and,
 - (iii) Customer Care: Functionality in store to assist customers with certain customer care issues.
8. Synchro only sell Eircom's products and services. Synchro has to date only managed outlets on behalf of Meteor and Eircom and sold Eircom's products and services. Synchro has no other customer in addition to Eircom and will therefore have no business in the State following the Proposed Transaction.
9. Under the APA, Meteor would acquire the leases of the 28 retail outlets² currently managed by Synchro. Synchro has closed the remaining five retail outlets, which, in any event, would have ceased operation upon the expiration of the Dealer Network Management Agreement in March 2022.
10. Synchro primarily generates turnover from (i) earning commission from Eircom for the sale of Eircom's services to customers (the significant majority of turnover) and (ii) direct revenue

² The Target Assets relate to properties located in Co. Carlow, Co. Cavan, Co. Cork, Co. Dublin, Co. Kerry, Co. Kildare, Co. Kilkenny, Co. Leitrim, Co. Limerick, Co. Longford, Co. Louth, Co. Mayo, Co. Monaghan, Co. Sligo, Co. Tipperary, Co. Wexford, Co. Wicklow.



to Synchro from the sale of the physical mobile handsets and related hardware to customers (a smaller amount of turnover).

11. For the financial year ending in March 2021, Synchro generated a turnover of [...] through the ownership and operation of the 28 Target Assets, all of which was generated in the State.

Rationale for the Proposed Transaction

12. The parties state the following in the notification:

“the entire commercial rationale for the Proposed Transaction is for the eir group to in-source all of its retail activities and services back into the eir group to consolidate its retail business, and to more directly serve its customers.”

Third Party Submissions

13. No submission was received.

Competitive Analysis

Horizontal Overlap

14. Both Eircom and Synchro are active in the retail sale of telecommunication products and services in the State, but they are active at different levels of the supply chain. Under the Dealer Network Management Agreement, Synchro exclusively operates and manages *eir* branded stores and sells Eircom’s products and services. Synchro does not sell telecommunication products and services independently of Eircom, and therefore has no independent share in the potential market for the provision of telecommunications products and services. Consequently, there is no horizontal overlap between the activities of the parties in the State.

Vertical Relationship

15. As noted, Synchro operates *eir* branded retail outlets and sells Eircom’s products and services under the Dealer Network Management Agreement, which the parties submit is a vertical agreement. This gives rise to a vertical relationship between the parties.

Relevant Product Market



16. 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 markets because doing so will not alter the Commission's assessment of the likely vertical competitive effects of the Proposed Transaction in the State.
17. The Commission has previously considered the potential market for the provision of retail mobile communications, but ultimately left the market definition open.³
18. The Commission for Communications Regulation publishes a Quarterly Key Data Report on the Irish Communications market, which considers both the fixed-line and mobile market⁴.
19. Having considered the Commission's previous determination⁵ and the above mentioned Commission for Communications Regulation Quarterly Key Data Report, for the purposes of its vertical competitive analysis, the Commission has decided it will assess the potential effects of the Proposed Transaction in relation to the potential market for the provision of retail telecommunications services in the State. This market includes the sale of mobile services such as mobile bill-pay and pre-pay plans, fixed-line products such as broadband service and TV service contracts and mobile handsets to customers in the State.

Relevant Geographic Market

20. The Commission does not need to come to a definitive view on the exact relevant geographic market in this instance, since its conclusion on the vertical competitive impact of the Proposed Transaction will be unaffected whether the relevant geographic market is defined as local or national.
21. The Commission has previously considered the potential market for the provision of retail mobile communications in the State on a national basis, but ultimately left the market

³ M/17/037 – Tesco Ireland/ Tesco Mobile, the Commission's Determination can be accessed at <https://www.ccpic.ie/business/mergers-acquisitions/merger-notifications/m17037-tesco-ireland-tesco-mobile/>.

⁴ Accessible at <https://www.comreg.ie/industry/electronic-communications/market-information/quarterly-key-data-report/>.

⁵ M/17/037 – Tesco Ireland/ Tesco Mobile the Commission's Determination can be accessed at <https://www.ccpic.ie/business/mergers-acquisitions/merger-notifications/m17037-tesco-ireland-tesco-mobile/>.



definition open.⁶ The European Commission has previously considered the market for retail mobile telecommunications on a national basis⁷.

22. For the purposes of its competitive analysis, and given that the underlying properties relevant to the Target Assets are located across the State⁸, the Commission will assess the potential vertical competitive effects of the Proposed Transaction at the national level.

Competitive Assessment

23. Eircom will not increase its market share in the potential market for the provision of retail telecommunication services in the State as a result of the Proposed Transaction. Following the Proposed Transaction, Eircom will bring the running of the Target Assets, which currently only sell Eircom's products and services, in-house.
24. The Commission does not consider the Proposed Transaction will lead to customer foreclosure as the Target Assets are currently only involved in the sale of Eircom's products and services. This will not change as a result of the Proposed Transaction.
25. In respect of input foreclosure, Eircom had a share of 16.6% in the potential market for the provision of mobile subscriptions⁹ in the State in 2021¹⁰. Eircom had a share of 28.6% in the potential market for the provision of retail fixed broadband subscriptions in the State in 2021¹¹. Aside from the retail outlets managed by Synchro, Eircom does not outsource the running of its retail activities or retail through independent retail outlets. Consequently, the Commission does not consider that the Proposed Transaction will result in input foreclosure.

⁶ M/17/037 – Tesco Ireland/ Tesco Mobile, the Commission's Determination can be accessed at <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m17037-tesco-ireland-tesco-mobile/>.

⁷ Case No COMP/M.6992 Hutchison 3G UK/ Telefonica Ireland (2014), accessible at https://ec.europa.eu/competition/mergers/cases/decisions/m6992_20140528_20600_4004267_EN.pdf

⁸ See footnote 2.

⁹ Each mobile operator's share of the total number of mobile subscriptions (GSM/2G Sims, 3G/HSDPA Sims and 4G/LTE data cards and modems), expressed as a percentage.

¹⁰ Based on information contained in the Commission for Communications Regulation's Quarterly Key Data Report for Q2 2021.

¹¹ Based on information contained in the Commission for Communications Regulation's Quarterly Key Data Report for Q2 2021.



26. Consequently, the Proposed Transaction does not raise vertical competition concerns in the State.

Conclusion on Competitive Assessment

27. 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

28. The parties submit that Clause 5(m) of the Heads of Terms contain non-compete and non-solicitation obligations which the parties consider to be directly related and necessary to the implementation of the Proposed Transaction. The obligations are placed on Synchro entities, including Synchro, Synchro Retail Holdings Limited and its wholly owned subsidiaries and two individuals¹².
29. The Commission notes that the restriction set out in Clause 5(m)(i) (non-compete) is limited in scope, and does not exceed the maximum duration acceptable to the Commission¹³. The Commission considers this non-compete obligation to be directly related to and necessary for the implementation of the Proposed Transaction insofar as it relates to the State.
30. The Commission notes that Clause 5(m)(ii) of the Heads of Terms contains an obligation upon Synchro entities not to [...]. [...]. The Commission considers that Clause 5(m)(ii) of the Heads of Terms contains a restrictive obligation which is not directly related and necessary to the Proposed Transaction.
31. The Commission notes that Clause 5(m)(iii) of the Heads of Terms contains an obligation upon Synchro entities not to [...]. [...]. The Commission considers that Clause 5(m)(iii) of the Heads of Terms contains a restrictive obligation which is not directly related and necessary to the Proposed Transaction.
32. Following the notification of the Proposed Transaction, the parties subsequently submitted the APA, dated 31 December 2021. The APA contains restrictive covenants that are more

¹² Mr. Ian Gavin and Mr. Brendan O'Hagan.

¹³ 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>).



detailed than those in the Heads of Terms. As the parties have not claimed the restrictive covenants in the APA as ancillary restraints, these restrictive covenants have not been reviewed by the Commission.



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 Meteor Mobile Communications Limited trading as *eir* would acquire the interest in 28 real estate assets currently held by 28 individual subsidiaries of Synchro Managed Services Limited pursuant to leasehold arrangements with various landlords, 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