

DETERMINATION OF MERGER NOTIFICATION - M/22/039 – D9/ARQIVA

Section 21 of the Competition Act 2002

Proposed acquisition by D9 Wireless Opco 2 Limited of joint control of Arqiva Group Limited.

Dated: 22 August 2022

1. On 4 August 2022, in accordance with s18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission received a notification of the proposed acquisition whereby D9 Wireless Opco 2 Limited (“D9”) would acquire joint control of Arqiva Group Limited (“Arqiva”) with MEIF II Luxembourg Communications S.à.r.l. (“MEIF II”).
2. Currently, MEIF II and Frequency Infrastructure Communications Assets Limited (the “Seller”) jointly control Arqiva. The Proposed Transaction is to be implemented pursuant to a Sale and Purchase Agreement between the Seller and D9, dated 18 May 2022 (“SPA”). In terms of the SPA, D9 will acquire 48.02% of voting shares in Arqiva from the Seller. Following the implementation of the Proposed Transaction, D9 and MEIF II will jointly control Arqiva.
3. The business activities of the undertakings involved are:

D9:
 - D9 is an investment vehicle and a subsidiary of Digital 9 Infrastructure plc (“D9 plc”). D9 plc is an infrastructure investment company listed in the United Kingdom (“UK”), with investment in sub-sea cable and fixed wireless access infrastructure projects in the UK, Iceland and Ireland. In the State, D9 plc has interest in Lesson Telecom Limited (“Lesson Telecom”) and Aqua Comms DAC (“Aqua Comms”). Lesson Telecoms is a company that owns and operates the highest capacity licensed microwave-based fixed wireless access network in metropolitan Dublin with 50 base stations. Aqua Comms is an independent carriers’ carrier specialising in building and operating submarine cable systems and

supplying fibre pairs, spectrum and capacity networking solutions to the global content, cloud and carrier markets.¹

- MEIF II is indirectly controlled by Macquarie Group, which is a publicly traded company on the Australian Securities Exchange. Macquarie Group is a global provider of banking, financial, advisory, investment and funds management services listed on the Australian Securities Exchange. In the State, Macquarie Group, through Macquarie Capital, provides advisory services to project companies and is involved in delivering public private partnerships procured by the Irish state. Macquarie Capital is also active through the following companies in the State:²
 - Beuparc Utilities Holdings Limited, a company involved in domestic and commercial waste management; renewable energy supply; recycling collection and processing; logistics; green fuels and energy recovery.
 - Macquarie AirFinance Acquisitions (Ireland) Limited, a company that provides aircraft leasing services.
 - Macquarie Rotorcraft Leasing (Ireland) Limited, a company that provides helicopter leasing services.
- Arqiva is a UK-based data, network and communications service provider which owns and operates the UK's national terrestrial television and radio broadcasting networks, as well as "Internet of Things" and utilities connectivity platforms and satellite ground infrastructure. Arqiva does not provide services in the State.

4. After examination of the notification, the Commission has considered that the Proposed Transaction falls within the scope of paragraph 2.1 of the Simplified Merger Notification Procedure Guidelines for assessing certain notifiable mergers or acquisitions under section 18(1)(a) of the Act since: (i) there is no horizontal or vertical overlap in the activities of D9 (including D9 plc and its subsidiaries) in the State. In addition, there is no horizontal or vertical overlap in the activities of D9 (including D9 plc and its subsidiaries) and Macquarie Group in the State.

¹ According to Aqua Comms website, independent carrier's carrier means that Aqua Comms do not service directly the end customers in any geographic location. Aqua Comms provide capacity for the companies that use telecoms as part of their businesses – ISPs, major content providers and carriers. See <https://aquacomms.com/our-track-record/the-aqua-comms-story/>.

² [...].

5. In light of this, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

6. No ancillary restraints were notified.

Determination

7. 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 acquisitions whereby D9 Wireless Opco 2 Limited would acquire joint control of Arqiva Group Limited with MEIF II Luxembourg Communications S.à.r.l., 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

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