

DETERMINATION OF MERGER NOTIFICATION M/23/005 - JOHN LAING / TOWERCOM

Section 21 of the Competition Act 2002

Proposed acquisition by John Laing Group Limited of sole control of ALS Telecom Limited, including its subsidiary Towercom Limited.

Dated 31 May 2023

Introduction

1. On the 31 January 2023, 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 John Laing Group Limited (“John Laing”) would indirectly acquire the entire issued share capital of ALS Telecom Limited (“ALS”), including its subsidiary Towercom Limited (“Towercom”), (together the “Parties”), (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement (“SPA”) dated 22 December 2022 which provides for the sale of the entire issued share capital of ALS by Northern Trust Fiduciary Services (Ireland) Limited in its capacity as the trustee and depositary of the Irish Infrastructure Fund (“IIF”), to TC Bidco Limited, a special purpose vehicle indirectly owned by John Laing. As a result of the Proposed Transaction, John Laing will indirectly acquire sole control of ALS and its subsidiary, Towercom.

The Undertakings Involved

The Acquirer – John Laing

3. John Laing is incorporated in England and indirectly controlled by investment funds, vehicles and/or accounts advised and managed by various subsidiaries of KKR & Co. Inc. (“KKR”).
4. John Laing is an international investor and asset manager focused on a range of infrastructure sectors including transport, social infrastructure, energy, accommodation and digital infrastructure. John Laing has operations in seven countries and invests in projects in the United Kingdom, North America, Latin America and Australia. [At the time the Proposed Transaction was notified to the Commission, John Laing did not have any infrastructure investments in the State.]
5. For the financial year ending 31 December 2021, John Laing generated turnover of €[.....], [...] of which was generated in the State.
6. KKR is a global investment firm that offers alternative asset management as well as capital markets and insurance solutions. KKR sponsors investment funds that invest in private equity, credit and real assets and has strategic partners that manage hedge funds. Following implementation of the Proposed Transaction, KKR will ultimately acquire indirect sole control of Towercom via John Laing.
7. On 9 November 2022, a consortium of funds led by Global Infrastructure Partners (“GIP”) and KKR (together, the “Consortium”) formed a strategic co-control partnership with Vodafone GmbH (“Vodafone”) in Germany through which the Consortium and Vodafone now jointly own and control Vantage Towers AG (“Vantage”) (the “Vantage Transaction”). Vantage, headquartered in Germany, is the ultimate parent company of a group of entities that owns and operates passive mobile telecommunications infrastructure in the European Union. Vantage’s network comprises approximately 83,000 sites. In the State, Vantage has [1,132-1,415] passive network infrastructure sites. The Vantage Transaction



was cleared by the European Commission on 22 February 2023.¹ Pursuant to the Vantage Transaction, KKR acquired indirect joint control of Vantage.

8. For the financial year ending 31 December 2021, KKR's worldwide turnover was approximately €[.....], of which [.....] was generated in the State.

The Target - Towercom

9. ALS, an Irish-incorporated company held by Northern Trust Fiduciary Services (Ireland) Limited, on trust for IIF, a sub-fund of the Irish Infrastructure Trust, owns 96% of Towercom with the remaining shares held by a small number of shareholders.²
10. Towercom is a wireless infrastructure provider in the State with a nationwide portfolio of [283-566] telecommunication towers [.....]. Towercom leases space on its towers for communications providers to place their active network equipment. Towercom's primary customers include [.....] both mobile network operators (MNOs) and fixed wireless access (FWA) operators.
11. For the financial year ending 31 December 2021, Towercom's turnover was €[.....], all of which was generated in the State.

Rationale for the Proposed Transaction

12. The Parties state the following in the notification:

"The proposed transaction represents [.....]. From the IIF's perspective, the Proposed Transaction allows it to make a return on

¹ The European Commission decision in relation to the Vantage Towers AG merger is at this link: https://ec.europa.eu/competition/mergers/cases1/202309/M_10991_9002530_221_3.pdf

² The remaining shares in Towercom are held by: KTL Investments Limited (2.01%), Leveret Developments Limited (0.27%), Morag Pollock (0.35%), Anthony Killarney (0.99%) and Declan Drummond (0.33%).

its investment in Towercom, while ensuring that Towercom will continue to be operated by an experienced infrastructure investor going forward.”

Contact with the Undertakings Involved

13. On 13 March 2023, the Commission served a Requirement for Further Information (“RFI”) on each of KKR and ALS pursuant to section 20(2) of the Act. The service of these RFIs adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.
14. Upon receipt of full responses from KKR and ALS on 21 April 2023, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 21 April 2023.
15. During its investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the Parties involved in the Proposed Transaction.

Market Enquiries

16. During its investigation, the Commission conducted market enquiries which included issuing questionnaires to a number of customers of Towercom. An information request was also sent to Vantage. The Commission received full responses from the majority of the customers that it contacted and from Vantage.

Third Party Submissions

17. No submission was received.

Industry Overview

18. Passive network infrastructure used for wireless communications comprises a range of structures (such as purpose-built towers, rooftop masts, pylons and other structures) on which active telecommunications equipment is deployed for the conveyance of signals.

19. The majority of passive network infrastructure in the State was developed and deployed by mobile network operators (“MNOs”) such as Vodafone Group Plc, Three Ireland (Hutchison) Limited and Eircom Limited to facilitate their own wireless mobile and broadband networks. Other State or semi-State enterprises such as the Electricity Supply Board Group (“ESB”), Coillte, and RTÉ also developed portfolios of passive network infrastructure in the deployment of their networks.
20. In more recent years, specialist suppliers of passive network infrastructure, referred to as wireless infrastructure providers (“WIPs”), such as Cellnex Telecom S.A. (“Cellnex”), have acquired or developed passive network infrastructure assets in the State. Space on the infrastructure is then leased to MNOs and other users. Hospitality services refers to the provision of space on passive network infrastructure. WIPs are responsible for managing the passive network infrastructure, while MNOs or FWAs will manage any active equipment installed at the site. In recent years, MNOs in the State have divested their passive network infrastructure portfolios, as evidenced by Vodafone’s spin off of Vantage into a separate listed business in 2019, Cellnex’s acquisition of the passive network infrastructure business of CK Hutchison in 2021, and Eircom Limited’s sale of Emerald Tower Limited (“Emerald Tower”) to Phoenix Tower International, LLC (“Phoenix Tower”) in 2020.
21. There are two broad categories of passive network infrastructure sites: macro sites and micro sites. Macro sites provide broad coverage and are generally characterised as sites containing tower structures, or assets such as rooftops or pylons. Micro sites provide infill coverage and densification in high use areas (such as in urban locations) and allow MNOs to improve network coverage and capacity.³

³There are two main types of micro site: small cells (which are primarily deployed outside, e.g., on street furniture like lamp posts and bus shelters) and distributed antennae systems (which are primarily deployed inside, e.g., in stadiums or shopping centres).



Market Definition

Relevant Product Market

Views of the Parties

22. The Parties state the following in the notification:

“The CCPC has previously considered the supply of access to passive infrastructure in its 2020 determination in Phoenix Tower/Emerald (eir), where it considered the competitive impact of that transaction by reference to the supply of passive infrastructure to wireless and fixed line operators whilst leaving open the precise product market definition. ... As the Proposed Transaction does not give rise to concerns on any plausible basis, the parties submit that it is not necessary for the CCPC to reach a definitive view on the precise scope of the relevant product market in this case.”

Views of the Commission

23. The Commission has previously examined transactions involving the provision of passive network infrastructure in the State. In *M/20/018 - Phoenix Tower/Emerald (eir)*, the Commission did not define a precise relevant product market since there was no horizontal overlap in the State between the business activities of the notifying parties.
24. In its merger decision in *M.9674 – Vodafone Italia/TIM/INWIT JV*, the European Commission concluded that hospitality services (i.e., the leasing of space on passive network infrastructure) on macro-sites are in a separate product market from hospitality services on micro-sites.⁴

⁴ See Case M.9674 *Vodafone Italia/TIM/Inwit/JV* at https://ec.europa.eu/competition/mergers/cases1/202037/m9674_516_3.pdf

25. The UK Competition and Markets Authority took a similar approach to the European Commission in the product market definition in its 2020 merger decision in *Case ME/6860/19 Cellnex/Arqiva*.⁵
26. 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 conclusions on the likely competitive impact of the Proposed Transaction will be unaffected. For the purposes of assessing the likely competitive impact of the Proposed Transaction, the Commission has examined the potential market for the provision of hospitality services on macro passive network infrastructure sites.

Relevant Geographic Market

Views of the Parties

27. The Parties state the following in the notification:

“Consistent with the CCPC’s approach in the cases cited above and, more broadly, in assessing other aspects of the telecommunications sector, the parties submit that the relevant geographic scope of the supply of passive infrastructure is national. There are a number of reasons to support this view:

- The structure of demand for passive infrastructure is driven by nationally licensed telecommunications operators, including MNOs, fixed network operators and wireless broadband network operators;*
- The relevant regulatory rules, including a number of provisions in the telecoms regulatory framework which encourage or seek to facilitate*

⁵ See paragraphs 56-118 in *Case ME/6860/19 Cellnex/Arqiva* at https://assets.publishing.service.gov.uk/media/5ec246ffe90e071e29d537f6/Cellnex_Arqiva_full_text_decision_PDFaa.pdf

infrastructure sharing between telecommunications operators, are organised on a national basis; and

- *The majority of suppliers of passive infrastructure in the State (including Vantage and Towercom) are active on a national basis with infrastructure and sites located throughout the State.”*

Views of the Commission

28. In its previous determinations⁶ relating to the provision of passive network infrastructure, the Commission did not come to a definitive view on the relevant geographic market but examined the competitive impact of the relevant transactions by reference to the State. The Commission has followed the approach taken in previous determinations with respect to the potential geographic market and assessed the likely competitive impact of the Proposed Transaction in the State without coming to a definitive view on the precise relevant geographic market.

Conclusion of Market Definition

29. For the purposes of assessing the likely competitive impact of the Proposed Transaction, the Commission has analysed the impact of the Proposed Transaction by reference to the following potential market: the provision of hospitality services on macro passive network infrastructure sites in the State.

Competitive Analysis - Horizontal

30. As noted in paragraph 7 above, KKR recently acquired joint control of Vantage, which currently provides hospitality services on approximately [1,132-1,415] macro sites in the State. Towercom currently provides hospitality services on approximately [283-566] sites in the State. Thus, there is a horizontal overlap

⁶ See Case M/20/018 *Phoenix Tower/Emerald (eir)*, Case M/17/045 *IIF/GMC* and Case M/18/081 *Speed Fibre/GMC-D OH (Ireland)*

between the business activities of KKR and Towercom in the State in the provision of hospitality services on macro passive network infrastructure sites.⁷

31. On the basis of all of the information available to the Commission during its review of the Proposed Transaction, the Commission considers that the Proposed Transaction raises no horizontal competition concerns in the provision of hospitality services on macro passive network infrastructure sites in the State for the reasons set out below.
32. First, the Proposed Transaction will lead to a relatively small increase in KKR's share in the provision of hospitality services on macro passive network infrastructure sites in the State. Table 1 below illustrates estimated shares in the provision of hospitality services on passive network infrastructure in the State in 2022, as measured by the number of passive network infrastructure sites operated by providers.⁸ The Parties estimate that Vantage and Towercom had a [20-25]% and [5-10]% share, respectively, in the provision of hospitality services on passive network infrastructure in the State in 2022.⁹ Following completion of the Proposed Transaction, KKR will face competition from a number of providers of hospitality services on macro passive network infrastructure sites in the State including Cellnex,¹⁰ Phoenix Tower,¹¹ and the ESB.¹²

⁷ There is no horizontal overlap between KKR and Towercom in the State in the provision of hospitality services on micro passive network infrastructure sites since Towercom does not provide hospitality services on micro-sites.

⁸ Towercom informed the Commission that it considers the vast majority of the passive network infrastructure sites included in Table 1 to be macro-sites.

⁹ In response to the RFI, Towercom provided to the Commission estimated shares of supply in the provision of hospitality services on passive network infrastructure in the State for 2022 as measured by the number of tenancies, which is defined as unique customer-site combinations. Vantage and Towercom had estimated shares of supply in the provision of hospitality services on passive network infrastructure in the State for 2022 of [20-25]% and [5-10]%, respectively. Cellnex's share of supply in 2022 was estimated to be [30-35]%, with Phoenix Tower estimated to have a [10-15]% share of supply.

¹⁰ Cellnex is headquartered in Spain and its portfolio comprises approximately 130,000 telecommunication sites across Europe. Cellnex acquired the passive infrastructure assets of CK Hutchison (the parent company of Three Ireland) in a number of jurisdictions, including in the State, in 2021.

¹¹ Founded in 2013, Phoenix Tower is headquartered in Florida, USA, and operates over 4,000 passive network infrastructure sites in Europe and more than 100,000 globally. Following its acquisition of Emerald Tower Limited from Eircom Limited in 2020, Phoenix Tower operates more than 800 sites in the State. Phoenix Tower has a long-term agreement in place with Meteor Ireland Limited/Eircom Limited in relation to these sites and others to be developed under a build-to-suit programme.

¹² The Electricity Supply Board Group is a State-owned diversified and vertically integrated utility primarily active in the energy sector. The Electricity Supply Board Group has a portfolio of approximately [283-566] passive network infrastructure sites across the State.

Table 1: Estimated Shares in the Provision of Hospitality Services on Passive Network Infrastructure, by number of sites¹³, the State, 2022		
Provider	No. of sites	%
Cellnex Telecom S.A.	[1,698-1981]	[30-35]%
<i>Vantage Towers AG (John Laing's parent company KKR will hold minority joint control following the Proposed Vantage Transaction)</i>	<i>[1,132-1,415]</i>	<i>[20-25]%</i>
Phoenix Tower International, LLC	[566-849]	[10-15]%
<i>Towercom Limited</i>	<i>[283-566]</i>	<i>[5-10]%</i>
Electricity Supply Board Group	[283-566]	[5-10]%
Office of Public Works	[0-283]	[0-5]%
Shared Access Limited	[0-283]	[0-5]%
Others	[283-566]	[5-10]%
Total	[4,245-6,509]	100%
Source: The Parties' estimates, based on public information.		

33. Second, the vast majority of customers contacted by the Commission raised no competition concerns about the Proposed Transaction and all customers contacted by the Commission stated that they use multiple providers of hospitality services on macro passive network infrastructure sites.¹⁴

Competitive Analysis – Vertical

34. There is no direct vertical relationship between KKR (or any of the portfolio companies owned and controlled by KKR) and Towercom in the State. As noted in paragraph 7 above, however, Vodafone currently has indirect joint control of

¹³ Towercom informed the Commission that it considers the vast majority of the passive network infrastructure sites included in this table to be macro-sites

¹⁴ One customer expressed a potential concern that there may be local areas in the State where Towercom and Vantage may be the only providers of hospitality services on passive network infrastructure in the State and, if this were the case, the Proposed Transaction might as a result give KKR some level of market power in the provision of hospitality services on passive network infrastructure in some local areas in the State. This customer, however, was unable to provide any example of a local area in the State where Towercom and Vantage are the only providers of hospitality services on passive network infrastructure. Furthermore, no other customer contacted by the Commission raised this competition concern and there was no evidence in the internal documentation provided by the Parties to the Commission in response to the RFI to indicate that any of the passive network infrastructure sites operated by Towercom in the State are especially close competitors to any of Vantage's passive network infrastructure sites in the State or vice versa.



Vantage with KKR and GIP. Towercom informed the Commission that its biggest customer in the State is [.....]. The Commission considers that the Proposed Transaction raises no vertical competition concerns in the State since KKR will have no ability or incentive following implementation of the Proposed Transaction to foreclose rivals of Vodafone from accessing Towercom or Vantage's macro passive network infrastructure sites in the State.

Conclusion of Competitive Analysis

35. 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

36. There are no ancillary restraints in the SPA relating to the Proposed Transaction.



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 Transaction whereby John Laing Group Limited would indirectly acquire the entire issued share capital and, thus, sole control of ALS Telecom Limited, including its subsidiary Towercom 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