



DETERMINATION OF MERGER NOTIFICATION M/23/057 – WATERLAND/GAFFNEY MECHANICAL

Section 21 of the Competition Act 2002

Proposed acquisition by Waterland Private Equity Investments B.V., through its indirectly wholly-owned subsidiary NetZero BidCo Limited, of the entire issued share capital, and thus sole control, of Gaffney Mechanical Limited.

Dated 14 November 2023

1. On 26 October 2023, in accordance with s18(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 NetZero BidCo Limited (“BidCo”), an indirectly wholly-owned subsidiary of Waterland Private Equity Investments B.V. (“Waterland”), would acquire the entire issued share capital, and thus sole control, of Gaffney Mechanical Limited (“Gaffney”) (the “Proposed Transaction”).
2. The Proposed Transaction is to be implemented by way of a Share Purchase Agreement, dated 26 October 2023, between BidCo and the Sellers (the “SPA”).¹ Pursuant to the SPA, BidCo will acquire the entire issued share capital, and thus sole control, of Gaffney.
3. The parties are involved in the following business activities:

Waterland

- Waterland is an Alternative Investment Fund Manager regulated by the Netherlands Authority for Financial Markets.
- Waterland manages a diverse portfolio of companies which are active across a wide range of areas. In particular, Waterland focuses on investing in ageing population, outsourcing and digitalisation, leisure and luxury, and sustainability markets.

BidCo

¹ As listed in Part A of Schedule 1 to the SPA, being BARC Gaffney Holdings Limited, Niall Gaffney, and Deirdre Gaffney.



- BidCo is a newly established entity incorporated for the purposes of the Proposed Transaction. BidCo is under the sole control of Waterland. BidCo does not currently generate any turnover in the State.

Gaffney

- Gaffney is active in the provision of mechanical engineering services with a particular focus on the provision of heating and plumbing services (“H&P Services”).
 - H&P Services can be considered to cover the design, installation, repair and maintenance of heating, ventilation and air conditioning systems, plumbing systems, and drainage systems in industrial, commercial, and residential units.
4. After examination of the notification, the Commission has concluded 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:
- two or more of the undertakings involved in the merger/acquisition are active in the same product and geographic market, but their combined market share is less than 15%.²
5. This conclusion was reached on the basis that, although there is a horizontal overlap between Gaffney and Waterland in the provision of H&P Services in the State,³ the combined market share of the parties in this potential product market in the State will be less than 15%.
6. In the 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.

² The Commission’s Simplified Merger Notification Procedure Guidelines can be found [here](#).

³ This horizontal overlap arises through Waterland’s ownership of Orbital Welding Solutions Limited, which it acquired earlier this year through its subsidiary WTech Fire Group. The determination of *M/23/007 - WTech Fire Group/ Orbital Welding Solutions* can be found [here](#). While Gaffney provides H&P Services as part of a wider mechanical engineering service offering, Orbital Welding Solutions Limited generates all of its turnover in the provision of H&P Services.



Ancillary Restraints

7. The parties state in the merger notification form that Clause 13.2 and Clause 13.3 of the SPA contain non-compete and non-solicitation obligations which are directly related to, and necessary for, the implementation of the Proposed Transaction.
8. The Commission notes that Clause 13.2 and Clause 13.3(c) of the SPA contain obligations on the Sellers, including a number of non-compete and non-solicitation provisions. The duration of these obligations does not exceed the maximum duration acceptable to the Commission.⁴ The Commission considers the restrictive obligations contained in Clause 13.2 and Clause 13.3(c) of the SPA to be directly related and necessary for the implementation of the Proposed Transaction in so far as they relate to the State.
9. Clause 13.3(a), Clause 13.3(b), Clause 13.3(d) and Clause 13.3(e), relating to non-solicitation provisions, were withdrawn by the parties following engagement with the Commission. These clauses are therefore not addressed in this determination as ancillary restraints.

⁴ In this respect, the Case Team 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). For more information see: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



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 Waterland Private Equity Investments B.V., through its indirectly wholly-owned subsidiary NetZero BidCo Limited, would acquire the entire issued share capital, and thus sole control, of Gaffney Mechanical 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

Ibrahim Bah

Director

Competition Enforcement and Mergers Division