



DETERMINATION OF MERGER NOTIFICATION M/15/052 - DIF / EUROLINK

Section 21 of the Competition Act 2002

Proposed acquisition by DIF Management Holding B.V. of sole control of Eurolink Motorway Operations (M3) Limited and Eurolink Motorway Operation Limited

Dated 6 November 2015

Introduction

1. On 28 September 2015, in accordance with section 18(1) of the Competition Act 2002, as amended¹ (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification whereby DIF Management Holding B.V. together with its subsidiaries (“DIF”), through its subsidiaries DIF Infra 3 M3 Ireland Limited (“DIF M3”), DIF Infra 3 M4 Ireland Limited (“DIF M4”) and DIF Infra 3 UK Partnership Limited (“DIF Partnership”) (together the “DIF Companies”), would acquire 79.99% of the issued share capital (and thus sole control) of each of Eurolink Motorway Operations (M3) Limited (“Target M3”) and Eurolink Motorway Operation Limited (“Target M4”) (together, the “Target Companies”) from Cintra Infraestructuras Internacional S.L.U. (“Cintra”).

The Proposed Transaction

2. The proposed transaction involves the acquisition by DIF (through the DIF Companies) of sole control of the Target Companies (i.e. Target M3 and Target M4, respectively).

Target M3 Transaction

3. Target M3 is held jointly by [...]
4. Pursuant to a sale and purchase agreement between [...]
5. In addition, pursuant to a second sale and purchase agreement between [...]
6. Thus, post-acquisition, DIF (through DIF M3 and DIF Partnership) will hold 79.99% of the shares and loan stock in Target M3 and Cintra² will hold the remaining 20.01%.

Target M4 Transaction

¹ It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.

² Through Cintra Global Holding Limited and Cinsac.



7. Target M4 is held jointly by [...]
8. Pursuant to a sale and purchase agreement between [...]
9. The proposed M3 transaction and M4 transaction are conditional upon one another (i.e. they constitute interrelated transactions) and in effect can be considered as single transaction for purpose of notification to the Commission under Part 3 of the Act.

The Undertakings Involved

The Acquirer - DIF

10. DIF is an independent fund management company, with approximately €2 billion of funds under its management. Through five investment funds, DIF invests in high quality infrastructure assets that generate long-term and stable cash flows. DIF operates under licences issued by the Dutch and UK financial authorities (i.e. the Netherlands Authority for the Financial Markets and the UK Financial Conduct Authority).
11. In the State, DIF has the following road interests:
 - N1/M1 Dundalk Western By-Pass (toll road) via the DIF Infrastructure III fund - DIF has a [...] % interest, with Egis Road Operation holding the remaining [...] %.
 - M4/M6 Kilcock - Kinnegad (toll road) via the DIF Infrastructure III fund - DIF has a [...] % interest, with Cintra holding the remaining [...] %.
 - M50 (toll road) via the DIF Infrastructure III fund - DIF currently has a [...] % interest in this project, with Globalvia Inversiones holding [...] % and Hegarty Concessions holding [...] %.
 - East Link (toll bridge) via the DIF Infrastructure III fund - As the operator, DIF currently has a [...] % interest in any revenue, with [...] % going to Dublin Port and [...] % going to Dublin City Council.
12. The DIF Infrastructure II fund also has an 80% interest in an education project, Irish Schools (Pymble).
13. For the financial year ending 31 December 2014, the worldwide turnover of DIF was approximately €[...], of which €[...] was generated in the State.

The Vendors

Ferrovial, Cintra and Financinfrastructures

14. Ferrovial, S.A. (“Ferrovial”) (the parent company of Cintra and Financinfrastructures) is one of the world’s leading infrastructure operators with 69,000 employees in over 25 countries.
15. Ferrovial is active in the provision of:



- Urban and environmental services and maintenance of infrastructures and facilities.
 - The promotion, investment and operation of toll roads and other infrastructures.
 - The design and construction of infrastructure in the areas of civil engineering, building and industrial construction.
 - Airport investment and operation.
16. All of Ferrovial's toll road projects in the State are conducted through Cintra.
17. Cintra is a leading global developer of transport infrastructure. Cintra manages a portfolio of 26 road concessions, operating in Canada, the United States, Spain, the United Kingdom, Portugal, Ireland, Greece, Colombia and Australia.
18. Within the State, Cintra holds two investments:
- The M3 Clonee to Kells motorway in which Cintra has a [...] % interest, and SIAC (via SIAC M3) has the remaining [...] %.
 - The M4/M6 Kilcock to Kinnegad motorway in which Cintra has a [...] % interest, and DIF has the remaining [...] %.
19. Financinfrastructures is a special purpose vehicle which is owned 100% by Cintra. The purpose of the company is to act as a financial conduit between Cintra's group companies and to provide loans to, amongst others, the subordinated debt of the M3 Project i.e. M3 Clonee to Kells motorway.

SIAC

20. SIAC Construction Limited ("SIAC") is the parent company of SIAC M3. SIAC is one of Ireland's largest contractors which partners with major international civil engineering contractors and specialist contractors to undertake a range of large scale and complex infrastructure projects.
21. Within the State, SIAC has been involved in a number of road infrastructure projects such as the:
- M1 Lissenhall to Balbriggan Motorway;
 - M1 Northern Motorway (South Of The Boyne);
 - M3 Clonee - Kells Motorway;
 - M4/M6 Kilcock to Kinnegad PPP Motorway;
 - A1/N1 Newry Dundalk Link Road;
 - N5 Charlestown Bypass;



- N15 Ballyshannon / Bundoran Bypass;
 - N25 South Ring Road, Sarsfield Road to Bandon Road improvement scheme, Cork; and
 - M50 Upgrade Contract 1.
22. SIAC, via SIAC M3, has a [...] % interest in the M3 Project, i.e. M3 Clonee to Kells motorway.

The Target Companies

Target M3

23. The M3 motorway is a toll road, with a real toll payment system, which has been fully operational since June 2010. The concession term of the M3 Project is 45 years from 24 April 2007, ending in 2052. Target M3 is an Irish registered company which holds the concession to design, build, finance, operate and maintain the M3 Clonee to North of Kells Motorway.
24. On the basis of non-published accounts for the financial year ending 31 December 2014, Target M3 generated turnover of approximately €[...], all of which was generated in the State.

Target M4

25. The M4/M6 motorway is a toll road, with a real toll payment system, that links the N4 and N6 National Primary Routes west of Kinnegad to the existing M4 motorway at Kilcock. The M4/M6 motorway has been fully operational since June 2005. The concession term of the M4/M6 Project is 30 years from 24 March 2003, ending in 2033. Target M4 is an Irish registered company which holds the concession to design, build, finance, operate and maintain the M4-M6 Kilcock to Kinnegad Motorway.
26. On the basis of non-published accounts for the financial year ending 31 December 2014, Target M4 generated turnover of approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

27. The parties state in the notification:

“DIF is actively involved in the management of a road portfolio with a project value of €6.1 billion, comprising over 500 kilometres of road. Long term PPP projects with a stable cash flow profile are at the core of the investment target projects for DIF and its investors. The proposed transaction represents an opportunity for DIF to add complementary toll road services to its portfolio and enhance transportation services for road users in Ireland.”

Third Party Submissions



28. No submission was received.

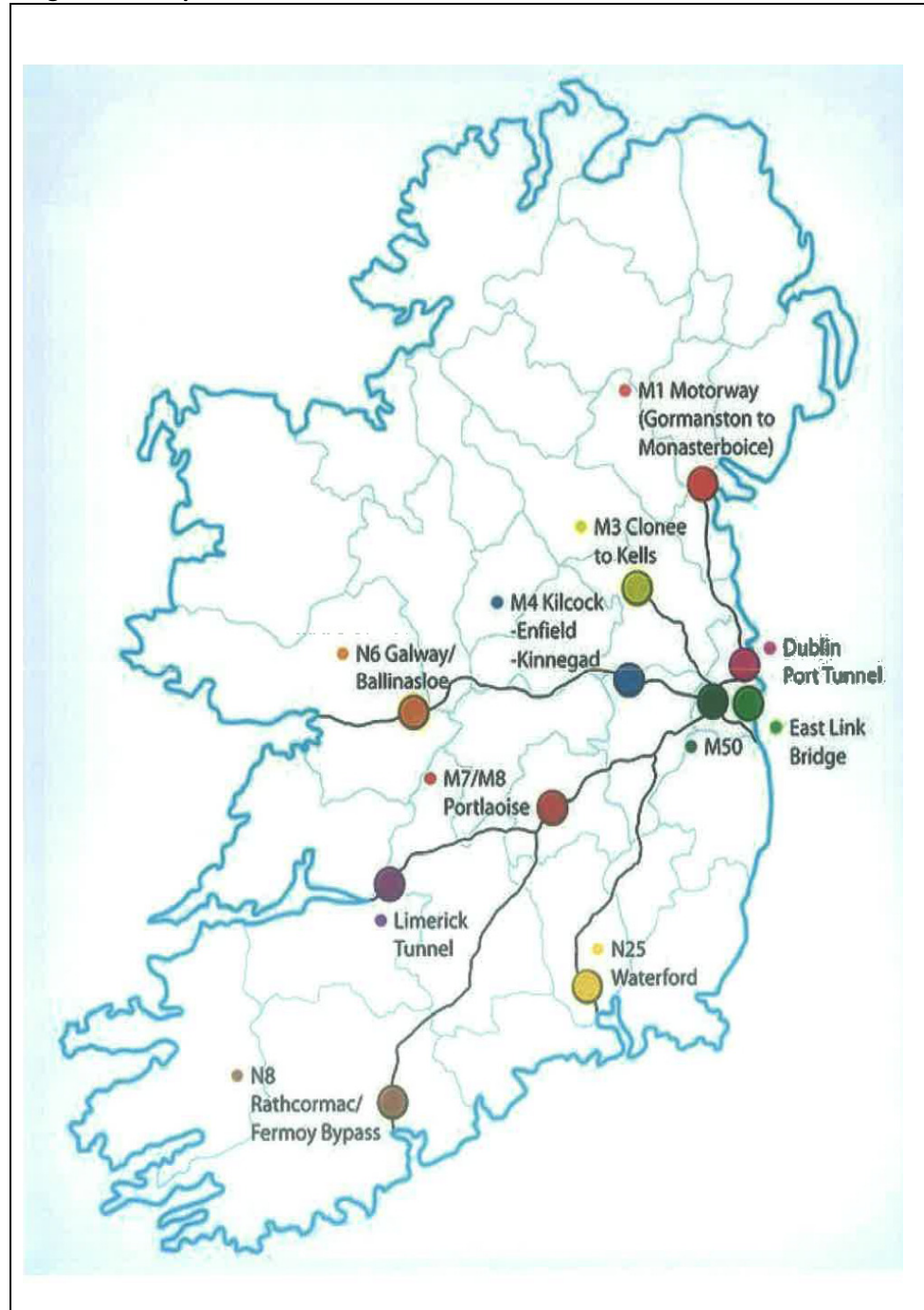
Competitive Analysis

29. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, the Commission considers that it is not necessary to define precise relevant market since:

- a) Neither DIF nor the Target Companies are active in the design, financing and construction of toll motorway concessions.
- b) Even though both DIF and the Target Companies are active in the operation and maintenance of toll motorways, DIF's road holding interests (with the exception of DIF's current [...] % holding in Target M4), as described in paragraph 11 above and illustrated in Diagram 1, do not overlap with the activities of Target M3 and Target M4. Furthermore, the activities of Target M3 and Target M4 do not overlap with each other. In other words, from the perspective of customers of DIF and the Target Companies (i.e. road users), the provision and operation of transport services on one particular motorway is not a substitutable product to the provision and operation of transport services on another motorway. By way of example, a driver wishing to leave Dublin and arrive in Kells would not consider the M1 Dundalk Western Bypass (in which DIF has a [...] % interest) a substitutable product to the M3 motorway.



Diagram 1 – Map of National Toll Roads in Ireland, 2015



Source: The parties

30. For the sake of clarity it is also important to note that neither DIF nor the Target Companies have the ability to set the price of tolls on the toll motorways which they



operate. Tolls are set by Transport Infrastructure Ireland³ under the provisions of the Roads Act 1993, as amended.

31. 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.

³ Transport Infrastructure Ireland was established in August 2015 through the merger of the National Roads Authority and the Railway Procurement Agency under the Roads Act 2015. See <http://www.tii.ie/> for more information.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby DIF Management Holding B.V., through its subsidiaries DIF Infra 3 M3 Ireland Limited, DIF Infra 3 M4 Ireland Limited and DIF Infra 3 UK Partnership Limited, would acquire 79.99% of the issued share capital (and thus sole control) of each of Eurolink Motorway Operations (M3) Limited and Eurolink Motorway Operation Limited from Cintra Infraestructuras Internacional S.L.U. 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

Gerald FitzGerald
Member
Competition and Consumer Protection Commission