



DETERMINATION OF MERGER NOTIFICATION M/18/081 – SPEED FIBRE DESIGNATED ACTIVITY COMPANY /GMC-D OH (IRELAND) INTERMEDIATE HOLDINGS LIMITED

Section 21 of the Competition Act 2002

Proposed acquisition by Speed Fibre Designated Activity Company of sole control of GMC-D OH (Ireland) Holdings Limited/GMC-D OH (Ireland) Intermediate Holdings Limited.

Dated 1 November 2018

Introduction

1. On 5 October 2018, 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 the Irish Infrastructure Fund (the “IIF”), through Speed Fibre Designated Activity Company (“Speed Fibre”), a special purpose company wholly-owned by the IIF, would acquire sole control of the telecommunications businesses trading as Enet and Airspeed (the “Target”) from Granahan McCourt Dublin (Ireland) Limited (“GMC”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share purchase agreement signed by the parties on 29 August 2018 (“the Agreement”).¹ The IIF

¹ The Agreement is between GMC, GMC-D OH (Ireland) Holdings Limited, Speed Fibre, David McCourt and Summit Asset Managers Limited. The parties state in an authorisation letter accompanying the notification that Irish Life Investment Managers and Summit Asset Managers Limited have given full authorisation solely in their capacities as investment manager and manager of the IIF to AMP, through its legal advisors Matheson, to submit a notification concerning the Proposed Transaction to the Commission.



already has joint control of the Target and this Proposed Transaction relates to a change in the extent of control from joint control to sole control.² More specifically, each of Speed Fibre and GMC-D OH (Ireland) Holdings Limited (“GMC Holdings”) currently exercise joint control through shareholdings of 78.029% and 21.971%, respectively, in the entity which has sole control and 100% ownership of the Target, namely GMC-D OH (Ireland) Intermediate Holdings Limited (“GMC Intermediate Holdings”).

3. The Agreement provides for two alternative acquisition structures, both of which result in an acquisition by the IIF of a 100% shareholding in, and thus sole control of, the Target. The choice of acquisition structure ultimately lies with the IIF through Speed Fibre. The two acquisition structures consist of the IIF acquiring either:
 - (i) GMC Holdings, the entity which owns GMC’s 21.971% interest in GMC Intermediate Holdings (and indirectly in the Target), or
 - (ii) GMC’s 21.971% interest in GMC Intermediate Holdings (and indirectly in the Target).
4. Regardless of the acquisition structure ultimately chosen, the IIF will exercise sole control over the Target following implementation of the Proposed Transaction.

The Undertakings Involved

The Acquirer – the IIF

5. The IIF was established by Irish Life Investment Managers (“ILIM”) and is a sub-fund of the Irish Infrastructure Trust, a unit trust established in October 2011.³ ILIM is part of the Great-West Lifeco group of companies and manages money on behalf of a wide

² The IIF’s previous acquisition of joint control of Intermediate Holdings and the Target was approved by the Commission in 2017 in case M/17/045 – Speed Fibre DAC/GMC-D OH (“Previous Determination”). The Commission also considered a previous acquisition by the Buyer in case M/15/010 – IIF CCD / CCD Hotel / SDDC / SD Hotel.

³ The Irish Infrastructure Trust is authorised by the Central Bank of Ireland as an open-ended limited liquidity investment fund. The Irish Infrastructure Trust is organised in the form of an umbrella fund with each sub fund, such as the IIF, having a portfolio of investments. For more information, please see <http://registers.centralbank.ie/FundRegisterDataPage.aspx?fundReferenceNumber=C89502®ister=4&AspxAutoDetectCookieSupport=1>



range of clients from large multinational corporations, charities and domestic companies.

6. The IIF invests in publicly and privately-owned infrastructure in the State. Investments may be made in infrastructure assets either through special purpose companies or wholly-owned subsidiaries whereby the IIF may acquire the economic interest in such companies through the acquisition of debt or equity securities. Speed Fibre is a wholly-owned subsidiary of the IIF.
7. Summit Asset Managers Limited (“SAM”), a wholly-owned subsidiary of ILIM, is ultimately responsible for: (i) managing the investments of the IIF; (ii) general administration; and (iii) the distribution of the IIF.⁴
8. SAM has appointed AMP Capital Investors (UK) Limited (“AMP”)⁵ to provide certain investment management services to the IIF. These services include identifying and evaluating potential acquisitions for the IIF, managing the acquisition process, monitoring infrastructure assets held by the IIF and proposing asset disposals if appropriate.
9. The IIF currently controls the following investments that generated turnover in the State in 2017:

Towercom Limited

Towercom Limited (“Towercom”) is an independent owner of towers, providing critical mobile network infrastructure (passive tower infrastructure services) to wireless and fixed line operators in the State. Towercom’s portfolio consists of ownership and interests in [...] sites, which are used for the provision of physical mast infrastructure and weather-proof accommodation for electronics and services related to wireless site access.

⁴ Further information about Summit Asset Managers Limited is available from Irish Life’s website at: https://www.ilim.com/fund-fact-sheets/alternative-investment-funds/01_Irish_Infrastructure_Trust/Data%20Privacy%20Notice.pdf

⁵ AMP, a wholly owned subsidiary of AMP Capital, is the Infrastructure Investment Manager of the IIF (providing infrastructure investment management services and investment advice) pursuant to an agreement with ILIM, acting under an appointment by SAM, dated 17 October 2011.



The Towercom infrastructure is used for both radio coverage and transmission backhaul by customers including fixed network operators, mobile network operators, the national public safety network and wireless broadband network operators.

Cyclone Wind Portfolio

Cyclone Wind Portfolio consists of majority stakes in Cyclone RoI Limited, which is incorporated in the State, and Cyclone NI Limited, which is incorporated in Northern Ireland. Through these two companies, the IIF holds a majority stake in 104 Megawatts of operational wind farms located in both the State and Northern Ireland.

The Convention Centre Dublin

The Convention Centre Dublin is a conference centre in Dublin's financial district. The venue is Ireland's only purpose-built conference centre and can accommodate conferences in 22 multi-functional rooms over 6 levels.

Valley Healthcare Designated Activity Company

Valley Healthcare Designated Activity Company (“Valley Healthcare”) was set up in January 2017 as an investment vehicle for the IIF that invests in primary care centres in Ireland which provide outpatient care in local communities. Currently, Valley Healthcare controls four operational centres located in Bray, Co Wicklow; Ballina, Co Mayo; Tralee, Co Kerry, and Mitchelstown, Co Cork. Valley Healthcare has also acquired sites at Clonakilty, Co Cork, and Listowel, Co Kerry, for the construction of new primary care centres. These sites have full planning permission and agreements for lease in place with the Health Services Executive.

10. For the financial year 2017, the turnover attributable to the IIF, through its controlling investments, was €[...], of which €[...] was generated in the State.

The Target – certain businesses of GMC Intermediate Holdings



11. GMC Intermediate Holdings controls two businesses active in the State: Enet and Airspeed. The business activities of Enet and Airspeed relate to the telecommunications sector in the State.

Enet

Enet operates, manages and maintains 94 State-owned fibre optic networks (Metropolitan Area Networks or “MANs”) under a licence awarded by the Department of Communications, Climate Action and Environment, which is due to expire in 2030. Enet is also a wholesale provider of “managed services” to telecommunications clients by combining the MAN infrastructure with owned and third party infrastructure to provide end-to-end connectivity service for clients in the State.⁶

Airspeed

Airspeed is primarily a retail provider of wireless and managed network services to business customers, including licensed wireless high bandwidth, uncontended, voice and data services, as well as licence applications, equipment procurement and installation and monitoring services.

Airspeed also provides wholesale services to telecommunications clients such as BT and eir by providing wireless services in areas where these clients may not have geographic coverage.

12. For the financial year 2017, the turnover attributable to GMC Intermediate Holdings, from the Enet and Airspeed businesses, was €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

13. The Parties state in the notification that:

⁶ A full description of Enet’s managed services is available from the company’s website, available at: <https://www.enet.ie/managed-services.html>



“In its capacity as infrastructure investment manager and advisor to IIF, AMP considers the Proposed Transaction meets the investment objectives and policies of IIF, which are to provide unit holders with a return generated from a combination of capital growth and income yield from its portfolio of assets.”

Third Party Submissions

14. No submission was received.
15. The Commission contacted the Commission for Communications Regulation (“Comreg”) in relation to the Proposed Transaction. Comreg did not raise any competition concerns about the Proposed Transaction.

Competitive Analysis

16. The Proposed Transaction relates to the acquisition by the IIF of sole control of the Enet and Airspeed businesses from GMC.
17. The IIF’s previous acquisition of joint control of Intermediate Holdings and the Target was approved by the Commission in 2017 in case M/17/045 – Speed Fibre DAC /GMC-D OH (“Previous Determination”).⁷
18. There have been no significant changes in the relevant facts since the Commission issued the Previous Determination. It is therefore not necessary for the Commission to alter its approach with regard to its competitive analysis of the Proposed Transaction. In particular, the Proposed Transaction will not result in a substantial lessening of competition in any market in the State for the following reasons:
 - (i) The IIF does not compete with Enet and Airspeed in any market (i.e., there is no horizontal overlap), and
 - (ii) There is a limited vertical relationship between the IIF and the Target. This vertical relationship concerns the provision by Towercom of passive tower infrastructure services to Airspeed. As noted by the Commission in its Previous Determination,

⁷ Case M/17/045 – Speed Fibre DAC/GMC-D OH, determination available at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/08/M_17_045-IIF-GMC-Determination.pdf.



however, this vertical relationship does not give rise to a competition concern. In particular, given Towercom and Airspeed's moderate market shares and the presence of many competitors in any vertically affected market, the risk of vertical foreclosure is low.

19. Therefore, for the reasons outlined above, the Commission considers that the Proposed Transaction does not raise any competition concerns in the State.

Ancillary Restraints

20. The Agreement contains a number of restrictive obligations on GMC and a named director of GMC. These restrictive obligations include non-compete and non-solicitation clauses. The duration of these restrictive obligations does not exceed the maximum duration acceptable to the Commission.⁸ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction.

⁸ In this respect, the Commission follows the approach set out by the EU Commission in paragraphs 20 and 26 of its Notice on restrictions directly related and necessary to concentrations [2005] OJ C56/24.



Determination

21. 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 the Irish Infrastructure Fund, through Speed Fibre Designated Activity Company, a special purpose company wholly-owned by the Irish Infrastructure Fund, would acquire sole control of GMC-D OH (Ireland) Holdings Limited/GMC-D OH (Ireland) Intermediate Holdings 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