



DETERMINATION OF MERGER NOTIFICATION M/14/010 -

Irish Wind/ SWS

Section 21 of the Competition Act 2002

Proposed acquisition by BIF II Irish Wind Limited of SWS Natural Resources Limited

Dated 17 April 2014

Introduction

1. On 25 March 2014, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed transaction whereby BIF II Irish Wind Limited ("Irish Wind"), would acquire, from Bord Gáis Éireann ("BGE"), sole control of SWS Natural Resources Holdings Limited and its subsidiaries (collectively "SWS").¹
2. The proposed transaction is pursuant to a Sale and Purchase Agreement, dated 25 March 2014, between BGE and Irish Wind and two other parties:
 - Centrica Netherland B.V. ("Centrica") which proposes to acquire the thermal electricity generation and supply business and the retail electricity and gas supply (and ancillary services) business of BGE.
 - Dekka Energy Enterprises Limited ("Deka") which proposes to acquire the gas distribution and the gas and electricity supply business in Northern Ireland of Firmus Group, a wholly owned subsidiary of BGE.
3. The parties state that the three proposed transactions (i.e., the proposed transaction notified to the Authority and the two transactions listed in paragraph 2 above) are separate transactions for the purposes of the Council Regulation (EC) No 139/2004.² The parties also state that that the proposed acquisition by Centrica will be notified to the European Commission (the "Commission") and that the proposed acquisition by Dekka does not require notification to the Authority or the Commission.³

¹ As stated by the parties, these renewable energy business assets and liabilities were transferred to SWS subsequent to the Gas Regulation Act 2013. Notification page 7. See also <<http://www.irishstatutebook.ie/pdf/2013/en.act.2013.0039.pdf>>

² Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation). See <<http://eur-lex.europa.eu/legal-content/EN/ALL/?jsessionid=ZLCGTGBfWBNNVxWn7Qjnnvmm8nT6sRLp3cnwFJHJQ1HfLp6BM8x2!-60161344?uri=CELEX:32004R0139>>.

³ Notification page 1.

The Undertakings Involved

Acquirer - Irish Wind and Brookfield Asset Management

4. Irish Wind is a special purpose vehicle, owned and controlled by Brookfield Renewable Energy LP ("BRELP") and BIF II ENA AIV (Cayman) ("BIF"), created for the purposes of acquiring SWS. Both BRELP and BIF are controlled by the ultimate acquirer Brookfield Asset Management Inc. ("BAM").
5. BAM, registered in Ontario, Canada, and listed on the New York and Toronto stock exchanges,⁴ is a global alternative asset⁵ manager in various sectors including property, renewable energy, infrastructure and private equity funds. BAM has offices in Canada, UK and US and manages assets of approximately €136 billion in value.⁶
6. BAM establishes investment products through which its clients can invest in the assets which BAM owns and operates. These products consist of both listed entities and private funds. BAM identifies three main business divisions relevant to the proposed transaction:⁷
 - Brookfield Property Partners is involved in the ownership and operation of office, retail, multi-family and industrial real estate.
 - Brookfield Renewable Partners is involved in power generation, primarily hydroelectricity, in Brazil, Canada, and US.⁸
 - Brookfield Infrastructure Partners is involved in electrical and natural gas transmission, transport (in particular ports and railway lines), energy, agrilands and timberlands in Australasia, Europe and North and South America.
7. BAM is active in the State through its ultimate control of the following undertakings:

[...].⁹ [...].¹⁰

[...].¹¹ [...].

[...].^{12 13}

⁴ BAM is co-listed on the New York and Toronto stock exchanges under the symbols BAM and BAM.A, respectively, and on the NYSE Euronext under the symbol BAMA.

⁵ The term "alternative asset" refers to assets that are less liquid in nature than most traditional assets. Alternative assets include hedge funds, venture capital-related projects and infrastructure and the term can also be applied to items such as art and antiques, precious metals, fine wines, stamps, and coins.

See <<http://www.investopedia.com/terms/a/alternativeassets.asp>>

⁶ Calculated using the ECB annual average exchange rate for 2013 of €1= \$US 1.3281. For more information about BIM see <<https://www.brookfield.com>>

⁷ Notification page 3.

⁸ Only 11 of 216 generating facilities owned by Brookfield Renewable Partners are powered by wind. However, BAM states that "we continue to expand our operations through acquisitions and new development projects, including a newly constructed wind farm in Northern Ontario, the largest of its kind in Canada". See <<https://www.brookfield.com/content/overview-26726.html>>.

⁹ [...].

¹⁰ [...].

¹¹ [...].

¹² [...].

8. For the year ended 31 December 2012 BAM's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.¹⁴

Vendor - BGE

9. BGE is a State owned energy company head-quartered in Cork. BGE maintains and operates a gas network across the island of Ireland. BGE supplies gas and electricity to homes and businesses throughout the island of Ireland.¹⁵

Target – SWS

10. SWS, registered in Cork, consists of the renewable business assets and liabilities of BGE. This comprises:
- Wind farm assets - operating wind assets located primarily in the State with possible future expansion also into Northern Ireland.
 - A [...] in Tidal Ventures, a joint venture between BGE and Open Hydro (see below) - Tidal Ventures has secured the option to develop a tidal energy farm near Torr Head, County Antrim with future energy production not likely until 2020 at earliest.
 - Non-controlling minority interests in:
 - Open Hydro ([...]) - an Irish energy technology company involved in the design and manufacture of marine turbines for generating renewable energy from tidal streams.
 - Tonn Power ([...]) - an Irish company involved in wave farm development.
 - VP Power ([...]) - an Irish company involved in developing underground coal gasification (UCG) off Ireland's east coast in the Kish bank basin.
11. For the year ended 31 December 2012 SWS's worldwide turnover was approximately €[...] million, [...].

Third Party Submissions

12. No submissions were received.

Rationale for Transaction

13. As stated by BAM:

"BAM focuses, inter alia, on growing renewable power markets and seeks to use its industry, operating and transactional expertise in order to secure opportunities to acquire and develop renewable assets at attractive returns

¹³ *ibid.*

¹⁴ *ibid.* [...].

¹⁵ For more information on BGE see <<http://www.bordgais.ie/corporate/aboutus>>.

*for its shareholders and institutional partners. The Proposed Transaction is in line with that commercial strategy."*¹⁶

Analysis

Horizontal Overlap

14. There is a global horizontal overlap in the activities of the parties given that both BAM and SWS are involved in power generation including renewable energy. There is, however, no horizontal overlap in the activities of the parties within the State. Within the State, SWS is involved only in power generation (and within that sector mostly in renewable power generation) whereas BAM's activities within the State do not include power generation.
15. The proposed transaction would imply a reduction in potential competition to the extent that BAM currently provides a competitive constraint on firms currently involved in power generation within the State. It does not, however, appear to be the case in this instance that the proposed transaction will give rise to competition concerns deriving from reduced potential competition.

Vertical Overlap

16. The parties state that there is no vertical overlap in the activities of the parties at present. The proposed transaction would establish a vertical relationship in the State through vertical integration. Within the State BAM-controlled firms in the State (listed above in paragraph 7) may consume energy produced by the renewable energy assets to be acquired by BAM. The vertical integration implied by the proposed transaction would not, however, appear to imply a risk of either input or customer foreclosure for the current rivals of BAM-controlled undertakings in the State or current rivals of SWS.

Conclusion

17. In light of the above, the Authority concludes that the proposed transaction will not raise competition concerns in any market for goods or services in the State.

Ancillary Restraints

18. The parties have entered into non-solicitation and non-compete covenants with respect to the vendor which will apply for a period of [...] years post completion. The Authority considers that these covenants are directly related to and necessary for the implementation of the proposed transaction.¹⁷

¹⁶ Notification page 14.

¹⁷ See also Commission Notice on restrictions directly related and necessary to concentrations (2005/C 56/03) <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:056:0024:0031:EN:PDF>>.

DETERMINATION

The Competition Authority, 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 BIF II Irish Wind Limited would acquire sole control of SWS Natural Resources Holdings Limited and its subsidiaries will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect.

For the Competition Authority

Stephen Calkins
Member of the Competition Authority
Director, Mergers Division