



DETERMINATION OF MERGER NOTIFICATION M/15/048 – ENDLESS / IMTECH SUIR

Section 21 of the Competition Act 2002

Proposed acquisition of Imtech Suir Engineering Limited by Endless LLP

Dated 7 September 2015

Introduction

1. On 28 August 2015, in accordance with section 18(1) of the Competition Act 2002 as amended¹ (“the 2002 Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Endless Fund IV, an investment fund managed by Endless LLP (“Endless”), would acquire sole control of Imtech Suir Engineering Limited (“Imtech Suir”) from Royal Imtech N.V.

The Proposed Transaction

2. Royal Imtech N.V., the Dutch parent company of Imtech Suir, was placed into administration in the Netherlands in August 2015, having filed an application with the District Court in Rotterdam, the Netherlands, for suspension of payments (“surseance van betaling”). The Court granted the request and appointed administrators, who are forcing the sale of various Imtech business divisions.
3. On 26 August 2015, the Dutch administrator announced its intention to sell the UK and Irish divisions of the Imtech Group and stated that it was engaged in exclusive negotiations with Endless. On the date of notification to the Commission, the parties indicated that Endless was in detailed negotiations with the trustees of Royal Imtech N.V. and the Imtech management regarding the acquisition of Imtech Suir.²
4. Section 18(1A)(b)(ii) of the Act allows for parties to make a notification to the Commission where the parties have demonstrated to the Commission a good faith intention to conclude an agreement. In this case, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii) of the Act.

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 Notification page 6.



The Undertakings Involved

Endless

5. Endless, headquartered in Leeds, in the United Kingdom, is a limited liability partnership authorised by the UK Financial Conduct Authority to undertake investment management activities.³ Endless, including through Endless Fund IV, is involved in management buyouts, non-core acquisitions from larger groups, business turnarounds and financial restructurings across a wide range of sectors.⁴
6. Within the State, Endless generates turnover from the following UK-based companies within its overall portfolio:
 - Adare Group Limited - a supplier of marketing and secure communication services.
 - Andrew Page Limited - a supplier of car parts.
 - eSubstance Limited (t/a Ink) - a supplier of information technology and products primarily for airlines and railways including travel documents and digital advertising.
 - EVO Business Supplies Limited (“Evo”) - a broadline wholesaler of business supplies.⁵
 - Gradus Group Holdings Limited - a supplier of flooring products.
 - High Street TV (Group) Limited - a retailer of licensed and own-brand products in various categories (e.g. home, fitness, beauty and DIY) sold primarily via television channels.
 - James Briggs (Holdings) Limited - a supplier of paints, lubricants and cleaning products.
 - Karro Food Group Limited (“Karro”) - a supplier of pork products.
 - Liberata Limited - a supplier of business process management services.
 - The Book People Limited - a bookseller.
 - The Works Stores Limited (“The Works”) - a bookseller.

³ [...] <<http://www.endlessllp.com/team>>.

⁴ Notification page 1. For more information on Endless see <<http://www.endlessllp.com>>.

⁵ The Competition Authority cleared the acquisition of Evo by Endless on 17 September 2014. See <<http://www.ccpic.ie/enforcement/mergers/merger-notices/m14021-evo-office-office>>.



7. Endless states that only Evo, Karro and The Works have business operations located within the State.⁶ Endless does not have any investments in the engineering services sector within the State.⁷
8. For the year ended 30 April 2015, Endless's worldwide turnover was approximately €2.7 billion, of which approximately €[...] was generated in the State.⁸

Imtech Suir

9. Imtech Suir, a wholly-owned subsidiary of Royal Imtech N.V, is a private company based in Waterford, County Waterford. Within the State, Imtech Suir provides electrical and industrial engineering services to a variety of customers in various sectors including the health and social care, manufacturing and industrial, science and technology, and utilities sectors.⁹
10. For the year ended 31 December 2014, Imtech Suir's worldwide turnover was approximately €88.0 million, of which approximately €[...] was generated within the State.

Rationale for the Proposed Acquisition

11. Endless states that the acquisition is

*“in line with its commercial objective to focus on turnarounds and carve outs from large corporates.”*¹⁰
12. Imtech Suir states that it is being sold as part of a forced divestment of divisions of Royal Imtech N.V by administrators appointed by the District Court (the “Administrators”) in Rotterdam, the Netherlands.¹¹

⁶ Notification page 2.

⁷ Endless has previously been (but is no longer) involved in the engineering sector in the State. At the time of the Competition Authority's review of *M/12/029 – Endless/Vion*, Endless's portfolio of companies included Acenta Steel, a UK-based engineering steel processor and distributor supplying a range of industries including automotive, power, heavy engineering and construction. See

<<http://www.ccpc.ie/enforcement/mergers/merger-notices/m12029-endless-vion>>. Endless, in correspondence dated 1 September 2015, confirmed that as of 7 March 2013 Acenta Steel is no longer part of the Endless portfolio of companies.

⁸ These figures are calculated using an average annual ECB exchange rate for 2014 of €1 = £0.8061. Endless states, in correspondence dated 4 September 2015, that these figures include turnover generated from [...].

⁹ For more information on Imtech Suir see <<http://imtech.com/EN/ImtechUK/Our-Business/Ireland.html>>.

¹⁰ Notification page 7.

¹¹ See also

<<http://imtech.com/EN/corporate/Newsroom/Press-releases/Royal-Imtech-NV-declared-bankrupt-by-Rotterdam-court-Marine-and-Nordic-divisio.html>> and

<[http://imtech.com/EN/corporate/Newsroom/Press-releases/\(49761\)-Press-Release-from-the-Trustees-of-Royal-Imtech-NV.html](http://imtech.com/EN/corporate/Newsroom/Press-releases/(49761)-Press-Release-from-the-Trustees-of-Royal-Imtech-NV.html)>.



Third Party Submission Deadline

13. Under section 20 of the Act, the Commission is required to “*cause a notice to be published in respect of a notification received by it within 7 days*” after the proposed transaction has been notified to the Commission. The practice of the Commission as set out in its Merger Procedures is initially to give third parties 10 working days from the date of the notice to make their submission. The Commission can, however, change this time limit if circumstances so require.
14. Prior to the notification of the proposed transaction, Imtech Suir contacted the Commission and requested that the Commission either waive or shorten the period for receipt of third party submissions.¹² Imtech Suir cited the following circumstances for its request:
 - Imtech Suir’s parent company, Royal Imtech N.V., has been declared insolvent and consequently Imtech Suir is in financial jeopardy and would be unlikely to operate as a going concern.
 - Public knowledge of Royal Imtech N.V.’s insolvency is adding to pressure on Imtech Suir’s ability to operate as a going concern.
 - The Administrators require that any proposed transaction involving Imtech Suir be cleared quickly.
 - In the absence of the proposed transaction, approximately 600 jobs at Imtech Suir would be lost.
15. The Commission considered that reducing the time for third party submissions to five working days was justified, in this instance, given the specific circumstances outlined in paragraph 14 above.

Third Party Submissions

16. No submission was received.

Competitive Analysis

17. There is no horizontal overlap between the parties within the State since neither Endless, nor any of its portfolio companies in Endless Fund IV, is involved in electrical or industrial engineering activities in the State. Imtech Suir is involved only in electrical and industrial engineering within the State.
18. The proposed transaction does not raise vertical competition concerns.

¹² Correspondence between Imtech Suir and the Commission on 27 August 2015.



Conclusion

19. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

20. No ancillary restraints were notified.



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 acquisition whereby Endless Fund IV, an investment fund managed by Endless LLP, would acquire sole control of Imtech Suir Engineering Limited from Royal Imtech N.V. 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