



DETERMINATION OF MERGER NOTIFICATION M/19/023 - NTMA / CORK COUNTY COUNCIL

Section 21 of the Competition Act 2002

Proposed establishment of a joint venture between the National Treasury Management Agency and Cork County Council

Dated 16 August 2019

Introduction

1. On 17 July 2019, 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 the proposed creation of a joint venture between the National Treasury Management Agency (“NTMA”), as controller and manager of the Ireland Strategic Investment Fund (“ISIF”), and Cork County Council (“CCC”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction will be implemented pursuant to a Subscription and Shareholders Agreement (the “SSA”) between the NTMA (as controller and manager of the ISIF) and CCC (collectively, the “Parties”). The Parties entered into the SSA on 16 July 2019, and provided a copy of it to the Commission as part of their notification of the Proposed Transaction.
3. The SSA provides for the proposed incorporation of a private limited company, expected to be known as Housing Infrastructure Services DAC (the “JV Company”). Following completion of the SSA, which is conditional on the approval of the Commission, each of the Parties will hold 100 ordinary shares in the issued share capital of the JV Company and the JV Company will be jointly controlled by the NTMA and CCC. The Commission



understands that the JV Company will be operated by the Parties as a commercial joint venture.

The Undertakings Involved

NTMA

4. The NTMA is a State body established under the National Treasury Management Act 1990 (as amended), which provides a range of asset and liability management services to the Irish Government. The NTMA operates across five “business units”, namely: Funding and Debt Management¹; National Development Finance Agency²; NewERA³; State Claims Agency⁴; and ISIF.
5. The NTMA acts as the controller and manager of the ISIF. The ISIF is not a separate legal entity; rather, it is a fund comprising a collection of assets owned by the Minister of Finance and controlled by the NTMA (save as set out below). The ISIF has a statutory mandate to invest on a commercial basis in a manner designed to support economic activity and employment in the State. The ISIF operates two portfolios: a discretionary portfolio, whereby the NTMA may use its discretion to make investments to meet its statutory mandate, and a directed portfolio, whereby the NTMA can act solely under the direction of the Minister for Finance.
6. The Parties informed the Commission that the NTMA is considered to be a single economic entity for the purpose of the EU merger regulation⁵, and is separate from the rest of the State and from other entities controlled by the Minister for Finance. With

¹ The NTMA’s Funding and Debt Management unit is responsible for borrowing on behalf of the Government and managing the national debt.

² The National Development Finance Agency is an integrated finance, procurement and project delivery model established within the NTMA to bring a unified commercial approach to the procurement and project management of new public sector projects, including Public Private Partnerships.

³ NewERA is a centre of corporate finance expertise to Government taking a commercial approach to the oversight of certain State companies.

⁴ The State Claims Agency manages personal injury, property damage and clinical negligence claims brought against certain State authorities, including Government Ministers and health enterprises.

⁵ Council Regulation (EC) No 139/2004 of 20 January 2004 on the [control of concentrations between undertakings](#).



the exception of the directed portfolio, the NTMA makes independent investment decisions in accordance with its statutory mandate.⁶

7. For the financial year ending 31 December 2018, the worldwide turnover of the NTMA was approximately €[...].

CCC

8. CCC is a local authority governed by the Local Government Act 2001 (as amended). CCC is in receipt of public monies from the Exchequer. The principal functions of CCC include:

- Planning: CCC acts as a planning authority and also acts by reference to Project Ireland 2040 being the National Planning Framework;
- Housing: CCC acts as a housing authority within its functional area;
- Roads: CCC is the roads authority for all local and regional roads within its functional area and also acts as the lead local authority under Transport Infrastructure Ireland for the purpose of management of national roads within Cork City and County; and
- Economics Development: CCC encourages businesses and economic activities and relationships within its functional area.

9. For the financial year ending 31 December 2017, the worldwide turnover of CCC was approximately €314 million, all of which was generated in the State.

The JV Company

10. Following completion of the Proposed Transaction, the shares of the JV Company would be held jointly by the NTMA and CCC. Consequently, the JV Company would be jointly controlled by the Parties.
11. The JV Company is intended to operate within the construction and residential development sector within the State. The JV Company will provide a commercial service to housing developers, in the form of an all-inclusive design-build-finance product for

⁶ As a result, the Parties did not include the turnover of other commercial entities controlled by the Minister for Finance or the State in the revenues of the NTMA for the purpose of assessing whether the NTMA's revenues meet the relevant merger thresholds in the Act.



onsite infrastructure on residential development sites (referred to by the Parties as an ‘*infrastructure design-build-finance service*’). It is envisaged that the JV Company would enter into infrastructure agreements with housing developers [...]. Each infrastructure agreement will provide that the JV Company will deliver its ‘*infrastructure design-build-finance service*’ and charge in return a fee to the housing developer (“Infrastructure Fee”). [...].

12. The Parties state that the services to be provided by the JV Company will be new and innovative, and can be considered to be a combination of the services provided by construction contractors, design professionals, bank funders, and equity investors. The Parties informed the Commission that as far as they are aware there are currently no other providers of this combination of services in the State. [...].
13. The Parties informed the Commission that the JV Company [...]. The JV Company in this case can offer a consolidated service under the terms of multiple infrastructure agreements entered into between the JV Company and each of the relevant landowners and/or developers. [...].
14. The Parties informed the Commission that the service that will be provided by the JV Company is anticipated to first be provided [...].
15. The Parties informed the Commission that the JV Company will not have traded or generated any turnover prior to its incorporation.

Rationale for the Proposed Transaction

16. The Parties state the following in the notification:

“The commercial objective sought to be achieved by the proposed joint venture is to provide a commercial service to housing developers that is not currently available in the Irish market by providing an “infrastructure design-build-finance service” to developers that meet certain criteria. [...].

Pursuant to “Infrastructure Agreements” to be entered into between the relevant housing developers and the JV Company, it is envisaged that the JV Company will, in return for providing such service, charge the Infrastructure Fee. [...].



The aim is: (i) to accelerate the development of zoned sites through the provision of the “infrastructure design-build-finance service”; and (ii) to encourage developers and landowners to develop who may not otherwise do so due to either or both: (a) inability to source the required investment capital given the scale of the infrastructure investment; and (b) dependency on multiple site owners developing infrastructure on a joint basis.”

Third Party Submissions

17. No submission was received.

Competitive Assessment

Horizontal Overlap

18. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant product and geographic markets since there is no horizontal overlap in the State between the activities of the Parties, or between the activities of either of the Parties and the JV Company. In fact, the JV Company will be created to provide new services in the State. Neither the NTMA nor CCC is involved in the same business activities in which the other is active in the State. The Commission therefore considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

19. The Parties informed the Commission that there is no vertical overlap in the commercial activities between the Parties, or between either of the Parties and the JV Company.
20. In the course of the Commission’s review of the notification submitted by the Parties, the Commission identified a potential vertical relationship between the JV Company and the Parties. In particular, the Commission identified the following risks which it considered, in certain cases, could potentially have detrimental effects on third parties active in the housing sector in the State:



- a. commercially sensitive information received by the JV Company from third parties (for example, housing developers) could potentially be passed from the JV Company to the Parties; and
 - b. CCC could potentially have a conflict of interest when decision-making in its capacity as planning authority due to its interest in the JV Company.
21. The Commission noted that the SSA [...]. However, the notification did not contain any information as to the safeguards and governance structures that would be put in place by the JV Company for the handling of third parties' commercially sensitive information and for preserving the impartiality of the planning process. Therefore, the Commission asked the Parties to provide detailed information as to whether any such safeguards and governance structures would be put in place and to clarify to whom [...] clauses contained in the SSA would apply.
22. In response to the Commission's questions, the Parties confirmed that:
 - a. at the earliest opportunity following its incorporation, the JV Company will [...] ⁷[...] and
 - b. the JV Company will also put in place a [...]
23. On the basis of the information provided by the Parties, the Commission was satisfied that, following implementation of the Proposed Transaction, the JV Company would have in place sufficient safeguards and governance mechanisms to mitigate the risks of any potential sharing of third parties' commercially sensitive information between the JV Company and the Parties and of any potential conflict of interest arising in the course of CCC's decision-making in its capacity as planning authority during the planning process.
24. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

⁷ [...].



Conclusion

25. 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.

Ancillary Restraints

26. No ancillary restraints were notified.



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 transaction, which will involve the creation of a joint venture between the National Treasury Management Agency (as controller and manager of the Ireland Strategic Investment Fund) and Cork County Council, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the transaction may be put into effect.

For the Competition and Consumer Protection Commission

Patrick Kenny

Member

Competition and Consumer Protection Commission