



DETERMINATION OF MERGER NOTIFICATION M/06/035 – Babcock & Brown/Esot/eircom

Section 21 of the Competition Act 2002

**Proposed acquisition by Babcock & Brown Capital Limited and the
ESOP Trustee Limited of joint control of eircom plc**

Dated 07/07/2006

Introduction

1. On 13th June 2006 the Competition Authority, in accordance with Section 18 (1) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposal whereby Babcock & Brown Capital Limited (“BCM”) and the eircom Employee Share Ownership Trust (the “ESOT”) would acquire joint control of eircom plc (“eircom”) (“the proposed acquisition”).

Schemes of Arrangement

2. The proposed acquisition is structured as a Scheme of Arrangement under section 425 of the UK Companies Act 1985, which is equivalent to section 201 of the Irish Companies Act 1963. A Scheme of Arrangement to effect a takeover typically involves the following steps:
 - a. The target company and the bidding company announce that they have reached agreement on the terms upon which a bid for the target is to be made (the “Announcement”);
 - b. The target convenes a meeting of its shareholders, with the approval of the court, to approve the steps necessary to implement the Scheme of Arrangement;
 - c. The target sends a document (the “Scheme Document”) to its shareholders along with a notice convening the meeting. This document contains information similar to the information which is included in the Offer Document sent to shareholders in a public bid situation;
 - d. The target shareholders meeting is held and various resolutions are put to the shareholders of the target;
 - e. Following an application to it by the target, the court approves the Scheme of Arrangement; and,
 - f. The court order is filed in the Companies Office and the Scheme of Arrangement becomes effective.
3. Section 18(1) of the Act provides for the notification in writing of a proposal to put a merger or acquisition into effect within one month of the conclusion of an agreement or the making of a public bid. The Scheme of Arrangement used in this instance is more analogous to a public bid than to an agreement between private companies. eircom is a public company and its shareholders must resolve whether to vote in favour of the proposed acquisition or against it.

4. In the case of a takeover involving an Offer, the proposal is formally put to the shareholders when the Offer Document is posted to them. Consistent with its view that a public bid is made at the time of posting of an Offer Document to the shareholders, the Competition Authority regards the posting of the Scheme Document as the point at which the public bid is made in the instant Scheme of Arrangement. In this case, the Scheme Document was posted out to the target's shareholders on 13th June 2006 and the proposed acquisition became notifiable from that date.

Structure of the proposed acquisition

5. The structure of the proposed acquisition is as follows: BCM Ireland Holdings Limited ("Bidco"), a newly incorporated company and subsidiary of BCM Ireland Equity Company ("EquityCo"), will acquire the entire issued and to be issued ordinary share capital of eircom. Immediately following completion of the acquisition, EquityCo will be owned by BCM and certain other affiliates managed by the Babcock & Brown Group ("B&B") – via a newly incorporated investment vehicle B&B Ireland Group Limited ("BBIG") – as to 65% and by the ESOT as to 35%. The two B&B managed entities which have decided to co-invest with BCM in eircom through BBIG are BBGP Eamon Holdings Limited ("BBGP") and Babcock & Brown Direct Investment Fund Limited ("DIF"). They will hold approximately 6% and 2% of BBIG respectively. It is not proposed by BCM or B&B to make any structural changes within eircom.

The Undertakings Involved

6. BCM is an Australian-based investment company that is listed on the Australian Stock Exchange. It invests in domestic and overseas listed and private entities with the objective to grow their value over time. B&B has a number of listed and unlisted focused investment vehicles, in areas including real estate, renewable energy and infrastructure. B&B holds 9.4% of the ordinary shares in BCM. The day-to-day management of BCM and its investments is carried out by a B&B entity (in accordance with a 25-year fixed term agreement) and thus BCM is treated as being controlled by B&B for the purposes of this notification. B&B's activities in the State are currently limited to an aircraft leasing operation in Dublin. BCM, together with two other B&B managed entities currently has a 28.8% shareholding in eircom. In 2005, the B&B had worldwide turnover of approximately €1.154 billion and turnover in the State of approximately €2 million.
7. The ESOT was established in 1999 to encourage and facilitate the acquisition, holding, managing and appropriation of shares in eircom by and for the benefit of the employees and certain former employees of eircom and participating companies within the eircom group of companies. Its purpose is to acquire shares in eircom, or any successor, and to distribute such shares tax efficiently to its beneficiaries. The ESOT currently holds 21.4% of the ordinary share capital of eircom and all of its convertible preference shares, in additions to some redeemable preference shares and trancheable preference shares.
8. eircom is active in the provision of electronic communications services and operation of electronic communications networks and is the principal provider of fixed-line telecommunications services in Ireland. It also

provides a mobile phone service in Ireland through Meteor and is an internet service provider. More details on eircom's activities can be found in the text of the Authority's conditional determination in M/05/050 eircom/Meteor.

Analysis

9. None of the B&B companies or managed entities are active in the electronic communications sector in Ireland or have any shareholding greater than 5% in any undertaking operating in this sector in Ireland (save for the current 28.8% shareholding in eircom). Therefore BCM's acquisition of joint control does not give rise to competition concerns.

10. The ESOT's sole purpose is to acquire shares in eircom for the benefit of its employees and former employees. It has a shareholding in Vodafone plc of less than 0.1% (a legacy from the acquisition by Vodafone plc of Eircell Limited from eircom in 2001), which is not such as to give rise to competition concerns. Therefore the ESOT's acquisition of joint control does not give rise to competition concerns.

Determination

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by Babcock & Brown Capital Limited and the ESOP Trustee Limited of eircom plc will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Dr. Paul K. Gorecki
Member of the Competition Authority