



DETERMINATION OF MERGER NOTIFICATION M/07/037 – BANK OF SCOTLAND/POLYPIPE

Section 21 of the Competition Act 2002

Proposed acquisition by the Governor and Company of the Bank of Scotland of Pipe Luxembourg Sarl

Dated 01/08/07

Introduction

1. On 6th July 2007 the Competition Authority (“the Authority”), in accordance with Section 18 (1) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposal whereby the Governor and the Company of the Bank of Scotland (“BOS”) together with the current managers (“Managers”) of Polypipe Building Products Limited (“Polypipe Buildings”) through a newco (“Newco”) incorporated for the current transactions would acquire 100% of the share capital of Pipe Luxembourg Sarl (“Polypipe”).
2. Post acquisition although BOS will have a minority shareholding in Newco it will, through the veto rights assigned to this shareholding, exercise joint control of Newco, with the Managers.

The Undertakings Involved

3. BOS is a bank based in Scotland and operating in many countries through the world. In the last financial year BOS generated a turnover of approximately €63.6 billion worldwide and approximately €469 million in the State.
4. BOS is a wholly owned subsidiary of the HBOS plc which in turn is the holding company for the HBOS Group. The HBOS Group is listed on the London Stock Exchange and consists of four primary subsidiaries:
 - i. Halifax plc;
 - ii. The Governor and the Company of the Bank of Scotland;
 - iii. HBOS Insurance and Investment Group Limited; and,
 - iv. Halifax Share Dealing Limited.
5. Polypipe, the target, incorporated in Luxembourg, is a group of companies active in the manufacture, marketing and distribution of plastic piping and sanitary systems for the residential, commercial and infrastructure sectors with a primary focus on the utilities sectors (i.e., water, energy and telecoms).
6. For the year ending 31 December 2006, Polypipe achieved worldwide turnover of approximately €487 million and turnover in the State of approximately €[..].

Analysis

7. In the State there is minimal overlap in the activities of the undertakings involved both horizontally and vertically. This overlap arises as a result of various minor shareholdings of HBOS in both competitors to and customers of Polypipe in the State (see Table 1).

Table 1
Shareholdings of HBOS in Competitors and Customers of Polypipe

Competitors	Shareholding (%)
Geberit Group	0.054
Alphacan Group	0.002
Customers	
Shires and Qualceram Group	17.317
Protim	2.409
Heat Merchants Limited/Cork Turners Cross	2.118
Kerry Agribusiness Limited	0.024
Pulsar Limited (Grafton Group)	0.013
Source: HBOS	

8. These shareholdings do not confer on HBOS a controlling interest in any of these entities. Furthermore, the competitors in which HBOS has a shareholding have either a limited or no sales in the State.
9. While shareholdings in customers may give rise to the potential for possible anticompetitive activities of the merged entity in the downstream market, the Authority's investigation has revealed that there are "sufficient economic alternatives in the downstream market for the upstream rivals"¹ which prevent the issue of customer foreclosure arising in this case.
10. The proposed transaction does not, therefore, give rise to competition concerns.

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 acquisition of joint control by the Governor and the Bank of Scotland of Pipe Luxembourg Sarl 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

¹ See paragraph 60 of the European Commission, 2007, *Guidelines on the Assessment of Non-Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings*. Draft Commission Notice. This may be accessed at http://ec.europa.eu/comm/competition/mergers/legislation/draft_nonhorizontal_mergers.pdf