



## **DETERMINATION OF MERGER NOTIFICATION M/09/025 -**

### **Singapore Technologies /Eircom**

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#### **Section 21 of the Competition Act 2002**

#### **Acquisition by Singapore Technologies Telemedia PTE Ltd. of Eircom Holdings Ltd.**

**Dated 2 December 2009**

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#### **Introduction**

1. On 11 November 2009, in accordance with Section 18(1) of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed transaction whereby Singapore Technologies Telemedia PTE Ltd. ("STT") would acquire sole control of Eircom Holdings Ltd. ("ERC") through Emerald Communications (Cayman) SPC ("ECC"), a newly incorporated company specifically formed for the purpose of this transaction. ERC is the ultimate holding company of Eircom, a major provider in the State of fixed-line and mobile telecommunications services and Internet services.

#### **Schemes of Arrangement**

2. The proposed acquisition is structured as a Scheme of Arrangement under section 411 of the Australian Corporations Act 2001, 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 an offer for the target is to be made;
  - (b) The target convenes a meeting of its shareholders, with the approval of the court, to approve the Scheme of Arrangement;
  - (c) The target sends a document (the "Scheme Booklet") to its shareholders along with a notice convening the meeting. This document will contain 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) If the shareholders approve the Scheme Booklet, an application is made for court approval of the Scheme of Arrangement; and,
  - (f) The Scheme of Arrangement, if approved by the court, becomes effective when the court order is filed with the Companies Office.

3. Section 18(1) of the Act provides the obligation to notify the Authority in writing of a proposal to put a merger or acquisition into effect within one month after the conclusion of the agreement or the making of the public bid. In the Authority's view, a public bid is made at the time of posting of an offer document to the shareholders.
4. The Authority considers that the triggering event for the notification of a Scheme of Arrangement is analogous to the triggering event for the notification of a public bid. The Authority, therefore, regards the posting of the Scheme Booklet as the triggering event for the notification of a Scheme of Arrangement. In this case, the Scheme Booklet was posted electronically to the target's shareholders on 10 November 2009 and the proposed acquisition became notifiable within one month from that date.

### **The Undertakings Involved**

#### *Singapore Technologies Telemedia PTE Ltd*

5. STT, with headquarters in Singapore, is a global communications services provider with operations across the Asia-Pacific region, the Americas and Europe.
6. Globally STT, through STTC, provides a range of services including: mobile and fixed line communications, global telecommunications solutions, internet protocol ("IP") based networks, distribution of mobile handsets and equipment, and telecommunications and network engineering services.
7. The only business controlled by STT and with operations in Ireland, is Global Crossing Ltd. ("GCL"). Globally GCL is involved in the provision of global telecommunications solutions/services ("GTS") to large multinational enterprises, and international voice transmission services ("IVTS") carrier data services which are provided to other network operators, and communications providers.<sup>1</sup>
8. GCL's infrastructure within the State is limited to that necessary for interconnection to its international network.<sup>2</sup> Within the State, GCL does not actively target either enterprise or carrier business in Ireland. Rather, GCL's activities in respect of its Enterprise Business are limited to servicing the Ireland related elements of multinational networks provided by GCL to its global customers.<sup>3</sup>
9. Within the State, GCL does not operate a local access network, i.e., to ensure connection between the GCL's infrastructure and final customers. Rather, Eircom provides the so-called 'last mile' to the ultimate senders and receivers of information.

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<sup>1</sup> GCL's carrier business targets the communications carrier and alternative provider sectors, which include international and domestic network service providers, cable providers, internet service providers, wireless carriers, and content distribution service companies.

<sup>2</sup> This occurs through Points of Presence (PoPs), i.e. technical facilities where transmission equipment is located, and facilities are made available to GCL customers. In Ireland there are two such facilities located in Dublin.

<sup>3</sup> The provision by GCL of such services in Ireland results from purchasing decisions taken by GCL's customers outside Ireland (typically in the USA) to whom it provides certain carrier data services. In relation to carrier business, services incorporating an element in Ireland are accomplished partly through GCL's principal operating subsidiary in Ireland, Global Crossing Ireland Limited ("GCIL") and partly through other GCL subsidiaries located outside Ireland.

*Eircom Holdings Ltd*

10. ERC is the ultimate holding company of Eircom. Eircom provides fixed-line telecommunications services within the State. Eircom is also an Internet service provider ("ISP") and a provider of mobile telecommunication services through Meteor Mobile Communications Limited ("Meteor").
11. Eircom is primarily a national supplier of telecommunications services with a small presence outside of the State, principally in the U.K. Eircom's core business is focused on the Irish market and its target customers are predominantly Irish companies and consumers.

**Third Party Submissions**

12. No submissions were received.

**Analysis**

13. The parties submit that GCL and Eircom operate in separate markets and consequently the proposed transaction does not raise any horizontal overlap issues.<sup>4</sup>
14. There is a vertical overlap between the parties to the extent that GCL purchases local access services from Eircom, and Eircom purchases carrier data services from GCL.<sup>5</sup>
15. However, it is not likely that subsequent to the proposed transaction GCL would favour Eircom to the disadvantage Eircom's competitors.
16. Eircom is not the sole customer of GCL for international connectivity services. Rather, of GCL's top [...] customers in the State, revenue from Eircom accounts for less than [...] % of total revenue. Also GCL's customers, other than Eircom [...] can switch to alternative cable providers.
17. The prevalence of competitive tendering by customers for the supply of GTS, IVTS, carrier data services and internet connectivity will remain post-transaction and consequently continue to act as a competitive constraint on GCL.<sup>6</sup> Similarly customers purchasing cable capacity from more than one supplier will continue to provide a competitive constraint on GCL. GCL's surplus capacity further reduces the incentive limit its supply of services.
18. In addition purchasers of international connectivity capacity have an incentive to ensure continuity of supply, i.e., reduce the risk of supply failure, by purchasing from more than one supplier.
19. The Authority considers the acquisition of ERC by STT is unlikely to raise any competitive concerns, horizontal or vertical, within the State,

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<sup>4</sup> For example, in Comp M. 3752 – Verizon / MCI, in paragraphs 24, 25 and 52-55, the Commission reiterated its distinction, as established in previous decisions, between international GTS and national telecommunications services, while leaving open the question of geographic market.

<sup>5</sup> Access to Eircom's network for IVTS, data and internet connectivity is subject to regulation by ComReg.

<sup>6</sup> See note 3.

with respect to the provision of telecommunication services, for the following reasons:

- There is little or no horizontal overlap between the parties since STT is not involved in the same activities as ERC; and
- The vertical overlap, such as it exists, will not be likely to lead to post-transaction competition concerns for the following reasons:
  - Of GCL's top [...] customers for international connectivity services, Eircom accounts for less than [...]% of total revenue and GCL will have no incentive not to trade with competitors of Eircom due to purchase by others and GCL's available surplus capacity;
  - The presence of alternative suppliers of international connectivity services, such as Hibernia-Atlantic, British Telecom and Virgin Media/NTL; and
  - The presence of competitive tendering for international connectivity, i.e., for all of GTS, IVTS, carrier data services and internet connectivity.

#### **Determination**

20. 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 Eircom Holdings Ltd. by Singapore Technologies Telemedia PTE Ltd. 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**

Dr Stanley Wong  
Member of the Competition Authority