



## DETERMINATION OF MERGER NOTIFICATION M/16/065 - WARD & BURKE/RESPONSE

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### Section 21 of the Competition Act 2002

### Proposed acquisition by Ward & Burke Group Limited of sole control of Response Engineering Limited

Dated 27 January 2017

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#### Introduction

1. On 16 December 2016, 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 a proposed transaction whereby Ward & Burke Group Limited (“Ward & Burke”) would acquire the entire issued share capital, and thus sole control, of Response Engineering Limited (“Response”).<sup>1</sup>
2. The proposed transaction is to be implemented pursuant to a share purchase agreement dated 10 December 2016 between Ward & Burke and the shareholders of Response, namely Eileen Hanley, Response Nominees Limited and Response ECO Limited.

#### The Undertakings Involved

##### *Ward & Burke*

3. Ward & Burke, a private limited company registered in the State and headquartered in Kilcolgan, Co. Galway, provides civil engineering, tunnelling and construction services for projects involving (a) shaft and caissons; (b) water and wastewater;<sup>2</sup> (c) pipelines; and (d) tunnels, roads and bridges. Ward & Burke has operations in the State, Canada and the United Kingdom.
4. With respect to water and wastewater projects, Ward & Burke does not provide process engineering services.<sup>3</sup> Where such services are required in a project, Ward & Burke either tenders jointly with specialist process engineering companies, such as Response, or subcontracts such work to process engineering companies.

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<sup>1</sup> Eileen Hanley is the principal shareholder in Response and is the sole shareholder in each of the other two shareholders in Response, namely Response Nominees Limited and Response ECO Limited. The proposed transaction excludes Response’s existing contracts in the United Kingdom (which are being retained [indirectly] by Eileen Hanley) with the exception of one contract referred to by the parties in the notification as the “Birmingham Resilience Project”.

<sup>2</sup> Water projects refers to water for human consumption in contrast to wastewater which is not for human consumption.

<sup>3</sup> Process engineering services are described in detail in paragraph 6 below.



5. For the financial year ending 31 December 2015, Ward & Burke's worldwide turnover was approximately €150 million, of which approximately €40.5 million was generated in the State.

*Response*

6. Response, a private limited company registered in the State and headquartered in Charleville, Co. Cork, is active in the design, manufacture, supply, installation, operation and maintenance of water and wastewater treatment plants and equipment. In the notification, the parties refer to these activities as process engineering services. Response operates in the State and in the United Kingdom. The services provided by Response include the following:
  - the design of new water and wastewater facilities and the manufacture of plant-related equipment, tanks and vessels;
  - the expansion, upgrade and refurbishment of existing water and wastewater facilities; and
  - the provision of 24/7 services to operate and maintain water and wastewater facilities, including the provision of on-site engineers and the regular monitoring of performance efficiencies and plant optimisation.
7. Response's activities are mainly in the wastewater treatment sector, with only a small number of contracts won by Response in the water treatment sector in recent years. Response primarily provides full turnkey solutions for large scale wastewater projects with values ranging between €500,000 and €15 million.<sup>4</sup> Response's principal customer in the State is Irish Water.
8. Response is not active in the provision of civil engineering or construction services. If such services are required in a project, Response either tenders jointly with a civil engineering company, such as Ward & Burke, or subcontracts such work to a civil engineering company.
9. For the financial year ending 31 December 2015, Response's worldwide turnover was €21.4 million, of which €18.6 million was generated in the State.

**Rationale for the Proposed Transaction**

10. The parties state in the notification:

*“Provide an improved offering to the market by combining the civil [engineering] and MEICA [Mechanical and Electrical, Instrumentation Controls and Automation, and associated Environmental activities] elements in one complete turnkey*

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<sup>4</sup> Response provided the following explanation to the Commission as to why it does not compete on its own for projects with a value in excess of €15 million: *“Water projects are generally procured by first submitting a completed pre-qualification questionnaire to demonstrate technical and financial capability. In terms of financial capability, a company must demonstrate an average annual turnover of a certain value and balance sheet strength depending on the size of the project being tendered. Response's turnover and balance sheet strength restricts its ability to win tenders for projects with a value in excess of €15m. For projects over this figure, Response would tender jointly with another company to meet the minimum financial criteria.”*



*solution. Provide lower cost and shorter delivery times due to efficiencies gained from combining both disciplines. Benefit from greater scale required to compete more strongly in the water and wastewater treatment sectors. Investment in research, design and development in a holistic fashion with local third level institutions NUIG, UCC to include MEICA, commissioning & plant operation and civil install aspects. Integrate the delivery model for sanitary services infrastructure to include MEICA, civil design and construction, plant operation and maintenance.”*

### **Third Party Submissions**

11. No submission was received.

### **Competitive Analysis**

12. 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 between the parties' activities in the State. Moreover, as explained in detail below, the vertical relationship between the activities of the parties in the State raises no competition concerns.
13. There is a vertical relationship between the parties' activities in the State as both parties operate at different levels of the supply chain for the design and construction of water and wastewater treatment facilities.
14. While both of Ward & Burke and Response are involved in the design and construction of water and wastewater treatment facilities, the services that each party provides are complementary rather than directly substitutable.
15. The design and construction of water and wastewater treatment facilities involves two separate activities: (a) process engineering (which is essentially planning); and (b) civil engineering (which is essentially construction).
16. A process engineering company, such as Response, is responsible for the design of the overall process to treat water and wastewater in a facility. This will include designing the stages of treatment and the flow and loads through the facility. The process engineering firm will also specify the size of the various elements in the facility and design the mechanical, electrical and control equipment to manage the facility. Ward & Burke does not provide process engineering services in the State.
17. The civil engineering contractor, such as Ward & Burke, is responsible for the physical construction of the various components of the treatment facility, many of which are large concrete structures. Response does not provide civil engineering or construction services in the State.
18. While the process engineering company and the civil engineering company work closely together to build a water or wastewater treatment facility, the activities performed by each entity complement each other and require different skillsets. In this regard, Ward



& Burke and Response regularly submit joint tenders for projects in the water/wastewater sector in the State (fourteen, in total, since 1 January 2008).

19. Since 1 January 2013, Response and Ward & Burke have submitted nine joint tenders for projects in the water/wastewater sector in the State (in each case, the customer was Irish Water) and appear to consider each other as preferred bidding partners.<sup>5</sup> It is, however, open to both parties to have other bidding partners. Ward & Burke has not previously submitted a joint tender with any other partner in the water/wastewater sector in the State.<sup>6</sup> Accordingly, while the proposed acquisition would bring about a proposed increase in the level of vertical integration of Ward & Burke, it would not alter the current market dynamics.
20. In addition, there are a number of competitors of Response currently active in the provision of process engineering services in the State who will act as a competitive constraint on Ward & Burke post-transaction. These competitors include Electrical & Pump Services Limited, AECOM Design Build Ireland Limited,<sup>7</sup> Veolia Water Ireland Limited, Celtic Anglian Water Limited, Glan Agua Limited and Coffey Water Limited. Estimated share data provided by the parties in the notification (based on estimated turnover generated in the State in 2015 for the provision of process engineering services to customers in the water/wastewater sector) indicates that each of these six competitors had a share of supply of process engineering services in the State which was greater than or equal to Response's share of supply of process engineering services in the State.<sup>8</sup>
21. Furthermore, three of Response's competitors (namely, AECOM Design Build Ireland Limited, Glan Agua Limited and Coffey Water Limited) are vertically integrated, providing both civil engineering and process engineering services to customers in the water/wastewater sector in the State.<sup>9</sup>
22. Finally, there are a number of companies currently active in the provision of civil engineering services in the State who will act as a competitive constraint on Ward & Burke post-transaction. These competitors include John Sisk & Son, BAM Ireland Limited, SIAC Construction Limited, Murphy International Limited, Roadbridge Limited

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<sup>5</sup> Of these nine joint tenders, six were successful while two were unsuccessful (in the latter tenders, the winning joint tenderers were Electrical & Pump Services Limited/Sorensen Civil Engineering Limited and Veolia Water Ireland Limited/BAM Ireland). One joint tender was submitted by Ward & Burke and Response in 2016 and the parties state in the notification that the outcome of this bid is not yet known.

<sup>6</sup> Ward & Burke, however, has submitted individual tenders for projects in the water/wastewater sector in the State using a competitor of Response as the nominated process engineering contractor. Since 1 January 2013, Ward & Burke has successfully submitted individual tenders for three projects using the following competitors of Response as the nominated process engineering contractor: TES, EMR Integrated Solutions and Cully Automation Limited. Similarly, Response has submitted individual tenders for projects in the water/wastewater sector in the State using a competitor of Ward & Burke as the nominated civil engineering contractor. Since 1 January 2013, Response has successfully submitted individual tenders for eight projects using the following competitors of Ward & Burke as the nominated civil engineering contractor: Sorensen Civil Engineering Limited, Cathy Group Limited and Source Civil Limited.

<sup>7</sup> On 28 June 2016, the Commission approved the acquisition by J. Murphy & Sons Limited, through its wholly-owned subsidiary Murphy International Limited, of Earth Tech Holdings Limited and its subsidiaries, including AECOM Design Build Ireland Limited. The Commission's merger Determination in *M/16/023 – Murphy/AECOM Ireland* can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m16023-murphy-aecom-design-build-ireland-limited>.

<sup>8</sup> Specifically, the shares of supply of the relevant competitors and of Response were: Electrical & Pump Services Limited (20%), AECOM Design Build Ireland Limited (15%), Veolia Water Ireland Limited (15%), Celtic Anglian Water Limited (11%), Glan Agua Limited (7%), Coffey Water Limited (7%) and Response (7%).

<sup>9</sup> Ward & Burke informed the Commission that Black and Veatch Limited is also a vertically integrated provider of civil engineering and process engineering services to customers in the water/wastewater sector in the State.



and Wills Bros Limited. Ward & Burke informed the Commission that all of these civil engineering companies currently tender for projects in the water/wastewater sector in the State. This was confirmed to the Commission by all six civil engineering companies.

23. 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**

24. 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 transaction whereby Ward & Burke Group Limited would acquire the entire issued share capital, and thus sole control, of Response Engineering Limited 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

**Patrick Kenny**  
**Member**  
**Competition and Consumer Protection Commission**