



## DETERMINATION OF MERGER NOTIFICATION M/17/037 – TESCO IRELAND/ TESCO MOBILE

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### Section 21 of the Competition Act 2002

**Proposed acquisition by Tesco Ireland Holdings Limited of sole control of Tesco Mobile Ireland Limited.**

**Dated 26 July 2017**

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#### **Introduction**

1. On 30 June 2017, 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 (the “Proposed Transaction”) whereby Tesco Ireland Holdings Limited (the “Purchaser”), would acquire sole control of Tesco Mobile Ireland Limited (the “Target Company”).

#### **The Proposed Transaction**

2. The Purchaser and Three Ireland Services (Hutchison) Limited (the “Vendor”) each currently hold 50% of the Target Company’s issued share capital. The Proposed Transaction is to be implemented by way of a share purchase agreement (“the Agreement”) dated 19 June 2017.<sup>1</sup> The Proposed Transaction involves the Purchaser acquiring the remaining 50% shareholding in the Target Company from the Vendor resulting in the Purchaser acquiring sole control of the Target Company.

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<sup>1</sup> The Agreement is between the Vendor, the Purchaser, and the Target Company. The execution of the Agreement is conditional on clearance of the proposed transaction by the Competition and Consumer Protection Commission.



## The Undertakings Involved

### *The Purchaser*

3. The Purchaser is a private company limited by shares, incorporated in the State, and a wholly-owned subsidiary of Tesco plc.<sup>2</sup> The Purchaser, through its operating subsidiary Tesco Ireland Limited, has a number of business activities in the State, including operations in the grocery sector. For ease of reference, in this determination the Purchaser and Tesco Ireland Limited are referred to collectively as “Tesco Ireland.” Tesco Ireland also provides retail mobile telecommunications services.
4. Tesco Ireland is one of the leading grocery retailers in the State with 149 retail stores and an internet grocery home shopping service. Tesco Ireland has an estimated<sup>3</sup> share of approximately 22% in the grocery retail sector in the State. Tesco Ireland also operates a retail fuels business at 22 locations in the State.
5. For the financial year ending 25 February 2017, Tesco Ireland’s turnover was approximately €2.5 billion, all of which was generated in the State.

### *The Target Company*

6. The Target Company is currently a joint venture between the Purchaser and the Vendor.<sup>4</sup> It is an Irish based mobile virtual network operator which offers mobile telecommunications services to customers in the State. The Target Company offers mobile telecommunications services to both pre-pay/pay-as-you-go and post-pay/bill-pay customers using Tesco Ireland’s retail distribution network and the Vendor’s mobile telecommunications services. The Target Company markets its mobile communications service under the “*Tesco Mobile*” brand and sells these services through Tesco Ireland’s network of stores and on-line at [www.tesco.ie](http://www.tesco.ie). In addition, customers can purchase

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<sup>2</sup> Tesco plc is a UK headquartered retail business and employs approximately 460,000 employees worldwide with a turnover of approximately stg£55.9 billion for the financial year ended 25 February 2017.

<sup>3</sup> Source: Kantar Worldpanel

<sup>4</sup> The Target Company was initially established as a ten-year joint venture between the purchaser and O2 Ireland, specifically Telefónica Ireland Limited in 2007. The name of this company was subsequently changed to Three Ireland Services (Hutchison) Limited after its sale to Hutchison 3G Ireland Finance Limited on 15 July 2014. This transaction was conditionally cleared by the European Commission in its decision dated 28 May 2014, M.6992 – *Hutchison 3G UK/Telefonica Ireland* (“**Three/O2**”).

See [http://ec.europa.eu/competition/mergers/cases/decisions/m6992\\_20140528\\_20600\\_4004267\\_EN.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m6992_20140528_20600_4004267_EN.pdf)



'top-ups' in-store, on-line, by text and at various independent locations throughout the State.

7. [...]

8. For the financial year ended 31 December 2016, the Target Company's collective worldwide turnover was approximately €[...], all of which was generated in the State.

#### *The Vendor*

9. The Vendor is an Irish incorporated company having its registered office at 28/29 Sir John Rogerson's Quay, Dublin 2. The Vendor operates in the telecommunications services market under the brand name "Three". The Vendor is Ireland's second largest mobile operator with approximately 33% market share by total retail revenues.<sup>5</sup>

#### **Rationale for the Proposed Transaction**

10. The parties state in the notification that:

*"Tesco Ireland and TMI [Tesco Mobile Ireland Limited i.e., the Target Company] believe that the Proposed Transaction will result in a more streamlined structure for TMI enhancing its ability to deliver for its customers and shareholder. More broadly, Tesco Ireland and TMI believe that the combination of Three Ireland's wholesale offer, guaranteed access to the[...], plus Tesco Ireland's promotion, branding and distribution expertise will allow TMI to continue to develop its business in the Irish telecommunications sector."*

#### **Third Party Submissions**

11. No submission was received.

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<sup>5</sup> Source: ComReg - Irish Communications Market Quarterly Key Data Report - Data as of Q1 2017



### **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 the precise markets because doing so will not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State. However, the Commission will assess the potential effects of the Proposed Transaction in relation to the potential market for the provision of retail mobile telecommunications services in the State.
13. The Commission notes that, in many instances, a move from joint control to sole control of an undertaking may not result in any significant anti-competitive impact since the purchaser already exercises some degree of control in the relevant market. However, where the purchaser and the target compete with each other, there is a possibility that, post-acquisition, the competitive incentives of the parties may be adversely affected such that competition concerns may arise.

### **Horizontal Overlap**

14. The Target and Vendor are both active in the provision of retail mobile telecommunications services in the State. In this instance, the Proposed Transaction is likely to create an enhanced incentive for the Purchaser, via its sole ownership and control of the Target Company, to compete as it will become an independent mobile virtual network operator. The Proposed Transaction is therefore likely to increase the level of competition in the potential market for the provision of retail mobile telecommunications services in the State. Table 1 below shows the market shares, by total revenue, of the providers of retail mobile telecommunications services in the State.



**Table 1: Market Shares (by Revenue) for Mobile Operators for the period Q1 2017<sup>6</sup>**

| Mobile Operators                    | Revenue (%) |
|-------------------------------------|-------------|
| Vodafone                            | 42.2        |
| Three Group                         | 33.5        |
| Eir Group Mobile (including Meteor) | 18.4        |
| Tesco Mobile                        | 4.0         |
| Other Authorised Operators          | 1.9         |

Source: Commission for Communications Regulation

15. The Target Company currently accounts for 4% of the total retail revenue of retail mobile telecommunications services in the State. The Proposed Transaction, on its own, is unlikely to change the market share of any party post-transaction.
16. In the light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the provision of retail mobile telecommunications services in the State.

### Vertical Relationship

17. The Vendor currently provides wholesale mobile telecommunications services to the Target Company as per the initial joint venture arrangement,<sup>7</sup> as revised and amended, between the Purchaser and the Vendor. Cognisant of the initial ten-year timespan of the joint venture, the parties state in the notification that, the Purchaser and the Vendor have engaged regarding the future structure of the Target Company which has resulted in the Proposed Transaction.
18. The parties state in the notification that the Vendor has committed, pursuant to an Amended and Restated Mobile Services Agreement dated 19 June 2017, to continue to provide wholesale mobile communications services to the Target Company subject to completion of the Proposed Transaction. The initial term of this agreement is for a

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<sup>6</sup> Source: [https://www.comreg.ie/media/dlm\\_uploads/2017/06/ComReg-1750.pdf](https://www.comreg.ie/media/dlm_uploads/2017/06/ComReg-1750.pdf)

<sup>7</sup> The Target Company was initially established as a ten-year joint venture between the Purchaser and O2 Ireland, specifically Telefónica Ireland Limited in 2007.



period of [...] years. At the expiry of this period, the Target Company is free to source mobile telecommunications services from an alternative supplier.

19. The Vendor also supplies wholesale mobile telecommunications services to other retail mobile virtual network operators and will continue to do so post-transaction.
20. For the reasons set out above, the Commission considers that the Proposed Transaction will not result in any vertical foreclosure concerns in the potential market for the provision of retail mobile telecommunications services in the State.

### **Conclusion**

21. 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**

22. 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 acquisition whereby Tesco Ireland Holdings Limited would acquire sole control of Tesco Mobile Ireland 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

**Fergal O'Leary**  
**Member**  
**Competition and Consumer Protection Commission**