



## **DETERMINATION OF MERGER NOTIFICATION M/06/075 – ARCAPITA/ VIRIDIAN**

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

#### **Proposed acquisition by Arcapita Bank B.S.C.(c) of Viridian Group plc**

**Dated 15 /11/06**

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### **Introduction**

1. On 27 October 2006, the Competition Authority (“the Authority”), in accordance with Section 18 (1) (a) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposal whereby Arcapita Bank B.S.C.(c) (“Arcapita”), through ElectricInvest Acquisitions Limited (“ElectricInvest”), a company incorporated for the purpose of the acquisition, would acquire sole control of Viridian Group plc. (“Viridian”).
2. ElectricInvest is wholly owned and controlled by Arcapita.
3. The boards of ElectricInvest and Viridian announced on 6 October 2006 that they reached agreement on the terms of ElectricInvest’s proposal to buy the entire share capital of Viridian. The proposed acquisition is structured as a “Scheme of Arrangement” under Article 418 of the Companies (Northern Ireland) Order 1986 (as amended).

### **Schemes of Arrangement**

4. 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.
5. 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. Viridian is a public company and its shareholders must resolve whether to vote in favour of the proposed acquisition or against it.

6. 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 27 October 2006 and the proposed acquisition became notifiable from that date. Viridian has convened a meeting of its shareholders on 20 November 2006, with the approval of the court, to approve the steps necessary to implement the scheme of arrangement.

### **The Undertakings Involved**

7. Arcapita, the acquirer, is an international investment bank with offices in Bahrain, Atlanta and London. Arcapita's investments are focused on four key sectors: corporate investment; real estate investment; infrastructure and energy investment; and venture capital.
8. Arcapita's business activities in the island of Ireland are limited to two areas. Firstly, one of Arcapita's portfolio investments South Staffordshire plc ("SSW") provides customer service, contract management, billing and debt collection services to the Northern Ireland Water Service ("NIWS") through its non-regulated subsidiary Echo Management Services ("Echo"). Together with its consortium partners, Echo was awarded a [...] year contract in [...] to provide customer service for NIWS's customers.
9. Arcapita's other activity in the island of Ireland, and its only activity in the State, is conducted through one of its portfolio investments, Montrose Aviation, which provides lease financing to a remotely held Irish special purpose vehicle ("SPV") to enable the SPV to purchase aircraft which are then leased to [...].
10. During the financial year ended 31 December 2005 Arcapita's total global turnover was \$237 million. For the same period its revenue in the State was [...].<sup>1</sup>
11. Viridian, the target, is an energy company that has grown out of Northern Ireland Energy ("NIE"). Viridian's activities are conducted through two principal subsidiaries:
  - NIE, a regulated electricity business in Northern Ireland;<sup>2</sup> and,
  - Viridian Power and Energy Limited (VP&E), a vertically integrated energy business active in electricity generation in the Republic of Ireland through its Huntstown power station in north County Dublin and in electricity supply to non-domestic customers throughout the island of Ireland.
12. For the financial year ended 31 March 2006, Viridian's turnover was £976.8 million and its turnover in the State was €[...] million.

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<sup>1</sup> [...].

<sup>2</sup> NIE is carries on four regulated activities in Northern Ireland: transmission and distribution of electricity; power procurement; transmission system operation; and electricity supply.

## **Analysis**

13. The activities of Arcapita do not overlap in the State or the island of Ireland and consequently the proposed transaction does not raise any 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 Arcapita of Veridian 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