



DETERMINATION OF MERGER NOTIFICATION M/08/008 – GE/GAMA/TEL

Section 21 of the Competition Act 2002

Proposed acquisition of Gama Energy International BV and Gama Enerji AS by EFS-L Inc

Dated 19/03/08

INTRODUCTION

The Notification

1. On 6 March 2008 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 two proposed cross-conditional transactions. Completion of the two transactions is cross-conditional. As a result of the cross-conditional, the two transactions constitute a single "merger or acquisition" for merger control purposes.
2. The first proposed transaction involves the acquisition by General Electric Company ("GE") of sole control of Tynagh Energy Limited ("TEL"), through the acquisition of 50% shareholding in Gama Energy International BV ("Tynagh Dutch Co") by GE's indirect wholly owned subsidiary, EFS-L Inc ("GEEFS"). The second proposed transaction involves the acquisition by GEEFS of joint control of Gama Enerji AS ("Gama Enerji").

Background

3. The first proposed transaction relates to the acquisition by GEEFS (GE's indirect wholly owned subsidiary) of 50% of the issued share capital of Tynagh Dutch Co, a wholly owned subsidiary of Gama International BV ("Gama International") which in turn is a wholly owned subsidiary of Gama Holding AS ("Gama Holding"). Following the proposed acquisition, Tynagh Dutch Co will be 50/50 owned and joint controlled by GEEFS and Gama International. Through its acquisition of 50% of Tynagh Dutch Co, GEEFS will indirectly acquire a 20% interest in TEL (see below).
4. The current ownership structure of TEL is as follows: Gama Construction Ireland Limited ("GCIL"), an Irish registered subsidiary of the Gama group, holds 40%; EFS Tynagh Holding Company Limited, an Irish registered subsidiary of GE, holds 40%; and Mountside Properties Limited ("Mountside") holds 20%.
5. On or before the date of completion of the first proposed transaction, GCIL's 40% interest in TEL will be transferred to Tynagh Dutch Co, a non-trading holding company specifically formed to hold equity interests in TEL. The acquisition by GEEFS of 50% of the issued share capital of Tynagh Dutch Co will result in GEEFS's acquisition of a 20% interest in TEL. The remaining shareholding in TEL will be held by

Gama International (20%); EFS Tynagh Holding Company Limited (40%); and Mountside (20%).

6. The first proposed transaction will therefore confer GE sole control over TEL through two of its wholly owned subsidiaries: EFS Tynagh Holding Company Limited (40% shareholding in TEL) and GEEFS (20% shareholding in TEL).
7. The second proposed transaction involves the acquisition by GEEFS of 50% shareholding and joint control over Gama Enerji, a 90% owned subsidiary of Gama Holding. Post-transaction, GEEFS will hold 50% of the shares in Gama Enerji and Gama Holding will hold 40% of the shares in Gama Enerji.

THE UNDERTAKINGS INVOLVED

The Acquirer

8. GE is a global diversified manufacturing, technology and services company incorporated in New York, USA, with its headquarters in Fairfield, Connecticut, USA. GE is listed on the New York Stock Exchange (its principal market), the Boston Stock Exchange and the London Stock Exchange.
9. GE is made up of six primary business units: GE Infrastructure, GE Industrial, GE Commercial Financial, NBC Universal, GE Healthcare and GE Money (formerly known as GE Consumer Finance). These primary business units are active in fields including aircraft engines, broadcasting, consumer products, financial services, industrial systems, infrastructure, information services, medical systems, power generation equipment and systems, and transportation equipment and services.
10. GE businesses in the State cover the full spectrum of products and services from the production of wind turbines, products for the health sector, aviation financing, security systems, power generation, water treatment and consumer lending. GE's main centres in the State are located in Dublin, Cork and Shannon.
11. For the financial year ended 31 December, 2007, GE had worldwide turnover of USD 172,738 million (which is approximately EUR 126,040 million¹). GE had turnover in the State in 2007 of approximately [...].
12. GEEFS is an indirect wholly-owned subsidiary of GE. GEEFS is based in Stamford, Connecticut, USA, and has European offices in London and Paris. GEEFS is the energy financing business of GE. GEEFS's strategy is to invest in projects that provide income and cash flow stability. GEEFS offers structured equity, leveraged leasing, partnerships, project finance and broad-based commercial finance to the global energy industry from wellhead to wall socket.
13. GEEFS has no operations or activities in the State.

¹ Converted from USD to EUR at the ECB's average annual bilateral exchange rate for 2007 of USD 1.00 = EUR 0.7297.

The Targets

TEL

14. TEL was a successful bidder in the Commission for Energy Regulation's 2005 Capacity Competition and completed the construction of a 385 MW combined cycle gas turbine power plant (the "Tynagh Plant") at Tynagh, County Galway.
15. For the financial year ended 31 December 2006, TEL had turnover of [...] all of which was achieved in the State.

Gama Enerji

16. Gama Enerji is a 90% owned subsidiary of Gama Holding. Gama Enerji is a Turkish company engaged principally in power generation, distribution, retail and water supply services, wholesale, distribution and retail project development in the energy sector.
17. For the financial year ended 31 December 2006, Gama Enerji did not generate any worldwide turnover.
18. Gama Enerji has no operations or activities in the State.

COMPETITIVE ANALYSIS

First proposed transaction

19. There is horizontal overlap between GE and TEL in the State in relation to electricity generation. GE, through its business unit GE Energy, currently owns and operates the Arklow Bank Offshore Wind Park ("Arklow Bank"), which is an offshore wind farm project located approximately 10 kilometres off the east coast of Ireland on the Arklow Bank and has a generation capacity of 25 MW. Arklow Bank was co-developed by GE and Airtricity Holdings Ltd ("Airtricity"). TEL built and owns a combined cycle gas turbine power plant at Tynagh (County Galway) which has a generation capacity of 385 MW.
20. However, this horizontal overlap does not raise competition concerns in the State since post-transaction the notifying parties will have a combined market share of approximately [0-5%] of total electricity generation capacity in the State. There are other competitors (including ESB and Viridian) with a higher share of total generation capacity in the State than the merged entity. Furthermore, [...] and TEL has a long-term 10-year financial hedge agreement with ESB under which it has agreed to supply 89% of its output to ESB at the wholesale level in accordance with agreed pricing terms.
21. In addition to the horizontal impact of the first proposed transaction the Authority examined the vertical relationship between GE and TEL to determine whether the proposed transaction could lead to vertical foreclosure.
22. There is a vertical overlap between GE and TEL in the State in relation to the supply and maintenance of gas and wind turbines, which are upstream input products for electricity generation facilities. The combined cycle gas turbines which the Tynagh Plant operates are GE

designs, and TEL and GE International Inc have an agreement for long-term maintenance of these turbines.

23. However, the vertical overlap between the activities of GE and TEL does not raise competition concerns in the State. Post-transaction GE could not engage in customer foreclosure since the merged entity would have a market share of approximately [0-5%] on the downstream power generation market in the State.
24. GE would not have the ability or incentive to engage in input foreclosure in respect of the supply of the upstream turbine products for the following reasons:
 - (i) The merged entity's market share on the downstream power generation market in the State would be approximately [0-5%] and there are a number of larger competitors present on this market in the State including ESB and Viridian. Hence, it would be commercially irrational for GE to engage in an input foreclosure strategy because it would forego valuable profits derived from the sale of turbines at the upstream level without any credible prospect of recoupment for GE on the downstream power generation market;
 - (ii) There are a significant number of strong suppliers of gas turbines (e.g. Siemens, Ansaldo, Alstom, Mitsubishi and Pratt and Whitney) and all of these offer viable and strong alternative sources of supply for gas turbines. In addition, there is wide range of suppliers of wind turbines to wind farms in the State (e.g. Vestas, Siemens, Enercon, Gamesa, Nordex and Nordtank). Power generation facilities could easily source gas turbines and wind turbines from these other global and reputable manufacturers if GE hypothetically restricted access to, or raised the price of, turbines to TEL's competitors;
 - (iii) Turbines represent only a small proportion of the total costs involved in building a power generation facility. Therefore, hypothetically engaging in input foreclosure in respect of turbines would have, at most, a negligible effect on rival's costs;
 - (iv) There is strong buyer power at the downstream level which would act as a countervailing factor in any attempt by GE to raise the prices of turbines. In particular, ESB, Viridian and Airtricity have strong buyer power. A large proportion of contracts for the provision of turbines to electricity generation facilities are won through a process of competitive tender. The effect of competitive tendering is that customers have strong buyer power and there is strong rivalry between GE and other large global suppliers of turbines for the supply contracts awarded under these tenders;
 - (v) TEL and Arklow Bank are both only active in selling electricity output at the wholesale level and are not active in the downstream supply of electricity to end users in the State;
 - (vi) The Tynagh Plant has a set capacity of 385 MW, and cannot increase output beyond this ceiling without having to invest in building new capacity. In addition, TEL has a long-term 10-year financial hedge agreement with ESB under which it has agreed

to supply a majority (89 per cent) of its output to ESB at the wholesale level in accordance with agreed pricing terms [...]. Similarly, Arklow Bank has a set capacity of 25 MW (which cannot be increased without having to invest in building new capacity) [...]. Therefore, the merged entity would have no incentive to effect input foreclosure at the upstream level as it could not recoup lost profits at the upstream level by profit gain at the downstream level.

Second Proposed Transaction

25. There is no horizontal or vertical overlap between the activities of GE and Gama Enerji in the State as Gama Enerji has no activities on the State.

CONCLUSION

26. The Authority is of the view that for the reasons set out above, the proposed acquisition will not substantially lessen competition in the State.

DETERMINATION

The 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 sole control of Tynagh Energy Limited by General Electric Company and the acquisition of joint control of Gama Enerji AS by EFS-L Inc will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, the acquisition may be put into effect.

For the Competition Authority

Dr. Paul K. Gorecki
Member of the Competition Authority