



DETERMINATION OF MERGER NOTIFICATION M/17/048 CANADA PENSION PLAN INVESTMENT BOARD/SHELL E&P IRELAND LIMITED

Section 21 of the Competition Act 2002

Proposed acquisition by Canada Pension Plan Investment Board of sole control of Shell E&P Ireland Limited

Dated 21 September 2017

Introduction

1. On 14 August 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 whereby Canada Pension Plan Investment Board (“CPPIB”), through its wholly-owned indirect subsidiary CPP Investment Board Europe S.ár.l. (“CPPIB Europe”), would acquire the entire issued share capital and thus sole control of Shell E&P Ireland Limited (“SEPIL”) (“the Acquisition of SEPIL by CPPIB”).

The Acquisition of SEPIL by CPPIB

2. The Acquisition of SEPIL by CPPIB is to be implemented by way of a share purchase agreement (“the Agreement”) dated 12 July 2017 between Shell Overseas Holdings Limited (“the Vendor”), which is the direct parent company of SEPIL, and CPPIB Europe.
3. Before the completion of the Acquisition of SEPIL by CPPIB, it is intended that the rights and obligations of CPPIB Europe under the Agreement will be novated to a newly incorporated wholly-owned subsidiary of CPPIB in the State (“NewCo”).
4. Following implementation of the Acquisition of SEPIL by CPPIB, CPPIB, through NewCo, will exercise sole control over SEPIL. SEPIL currently owns a 45% interest in the Corrib



Natural Gas Field (“Corrib”), which is located off the Irish coast,¹ and is also the operator of Corrib. Vermilion Energy Inc. (“Vermilion”)² and Statoil ASA (“Statoil”)³ currently hold 18.5% and 36.5%, respectively, of the remaining (non-operating) interest in Corrib.

5. For sake of completeness, the Commission notes that pursuant to an additional related but separate agreement between Vermilion and CPPIB, consisting of a legally binding put option, CPPIB intends to sell to Vermilion the entire issued share capital of SEPIL (“the Acquisition of SEPIL by Vermilion”)⁴. Prior to the Acquisition of SEPIL by Vermilion, pursuant to an internal restructuring within CPPIB, a 43.5% interest in Corrib will be transferred from SEPIL to a separate newly incorporated wholly-owned subsidiary of CPPIB in the State (“AcquiCo”). Following this internal restructuring, SEPIL will retain a 1.5% interest in Corrib. Pursuant to the Acquisition of SEPIL by Vermilion, Vermilion will acquire the entire issued share capital of SEPIL and thus an additional 1.5% interest in Corrib, thereby increasing its existing interest in Corrib from 18.5% to 20%. It is also envisaged that Vermilion, through SEPIL, will acquire the role of operator of Corrib. Ultimately, following implementation of the Acquisition of SEPIL by Vermilion, CPPIB, through AcquiCo, will hold a 43.5% non-operating interest, Vermilion will hold a 20% operating interest and Statoil will hold a 36.5% non-operating interest in Corrib.

The Undertakings Involved

CPPIB

6. CPPIB, headquartered in Toronto and with offices in London, Hong Kong, Luxembourg, Mumbai, New York City, Sao Paulo and Sydney, is a professional investment management organisation that invests the funds of the Canada Pension Plan (“CPP”) which are not needed to pay current pension benefits on behalf of its 20 million Canadian contributors and beneficiaries. As of 31 March 2017, the CPP fund was valued at \$316.7 billion.

¹ SEPIL has a 45% interest in each of the petroleum lease and foreshore licence which have been granted to allow for the extraction of gas from Corrib, as well as in operating agreements for Corrib, which include field operating services, terminal operating and terminal services agreements.

² Vermilion is a Canadian-based international oil and gas producer; see: <http://www.vermilionenergy.com/>.

³ Statoil is a Norwegian multinational oil and gas company; see <https://www.statoil.com/>.

⁴ The Acquisition of SEPIL by Vermilion was notified separately to the Commission on 14 August 2017 as M/17/049 - Vermilion Oil and Gas Ireland Limited / Shell E&P Ireland Limited.



7. CPPIB is governed and managed independently of the CPP and at arms'-length from governments. CPPIB operates four investment departments including: (a) Private Investments; (b) Public Market Investments; (c) Real Assets; and (d) Investment Partnerships. CPPIB's Natural Resources Group (which sits within CPPIB's Private Investments department), focuses on direct private investments in the oil and gas, power and renewables, and metals and mining industries. As of 31 March 2017, the CPPIB Natural Resources Group's portfolio consisted of nine direct investments valued at \$[...], none of which are located in the State.
8. The worldwide investment income for CPPIB for the financial year 2016 was approximately Canadian Dollars \$[...]. CPPIB, through the portfolio companies and investments over which it exercises control, generated turnover in the State⁵ in the financial year 2016 of approximately €[...]⁶.

SEPIL

9. SEPIL is currently directly owned by the Vendor, which is owned and controlled by Royal Dutch Shell plc. Royal Dutch Shell plc is the parent company of the Shell group of companies ("Shell"), which is headquartered in The Hague in the Netherlands. SEPIL is therefore a wholly-owned indirect subsidiary of Royal Dutch Shell plc and, as such, is part of Shell.
10. Shell is a global group of energy and petroleum companies, operating in more than 70 countries and territories with businesses active in oil and gas exploration, production and marketing; manufacturing, marketing and shipping of oil products and chemicals; and renewable energy products.⁷
11. For the financial year ending 31 December 2016, SEPIL's worldwide turnover was approximately €[...] was generated in the State.

⁵ CPPIB's investments in the State include [...], none of which has activities in the production and supply of natural gas.

⁶ The parties state in the notification that the figure of \$[...] CAD has been converted using the spot conversion rate on 21 February 2017. The parties also state in the notification that the turnover in relation to portfolio companies has been pro-rated at 50% for jointly controlled entities and 100% for full control entities in accordance with the rules under the European Union Merger Regulation.

⁷ See: <http://www.shell.com/>



Rationale for the Acquisition of SEPIL by CPPIB

12. The parties state in the notification that:

“The Proposed Transaction represents the exit of Shell from the upstream gas sector in Ireland. The sale of SEPIL with the associated 45% interest in the Corrib Field is part of Shell's current three-year \$30 billion divestment programme worldwide⁸.

Shell's press release in relation to the Proposed Transaction is available at: <http://www.shell.com/media/news-and-media-releases/2017/shell-to-divest-upstream-interests-in-ireland.html>.

As a result of the Proposed Transaction, CPPIB hope to further its strategy of investing in high-quality natural resources assets alongside highly regarded and experienced operating partners such as Vermilion. Vermilion has a strong operational track record in both onshore and offshore projects. The Corrib Field fits with CPPIB's strategy to make direct, long-term investments in top tier assets. Natural resources are an attractive sector for CPPIB because it believes that investments in this sector deliver strong risk-adjusted returns over the long-term time horizon of the CPP Fund.

CPPIB's press release in relation to the Proposed Transaction is available at:

<http://www.cppib.com/en/public-media/headlines/2017/canada-pension-plan-investment-board-and-vermilion-energy-inc-announce-strategic-partnership-corrib/>.”

Third Party Submissions

13. No submission was received.

Competitive Analysis

Horizontal Overlap

14. 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 business activities of the parties in the State. SEPIL is active in the

⁸ <http://reports.shell.com/annual-report/2016/strategic-report/strategy-and-business/strategy-and-outlook.php>.



production and wholesale supply of natural gas in the State through its existing 45% interest in Corrib. None of the investments controlled by CPPIB that generate turnover in the State are currently active in the production and supply of natural gas in the State.

15. The Commission is therefore of the view that the Acquisition of SEPIL by CPPIB does not raise any horizontal competition concerns in the State.

Vertical Relationship

16. The parties have indicated in the notification that there is no vertical relationship between the activities of the parties in the State.
17. The Commission is therefore of the view that the Acquisition of SEPIL by CPPIB does not raise any vertical competition concerns in the State.

Conclusion

18. In light of the above, the Commission considers that the Acquisition of SEPIL by CPPIB will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

19. The Agreement contains a number of restrictive obligations. These include obligations on the parties not to solicit each other's staff for a period of [...] from date of completion of the Acquisition of SEPIL by CPPIB, and temporary transitional services and purchase and supply obligations on each of SEPIL and Shell Energy Europe Limited (which forms part of Shell). The duration of these obligations does not exceed the maximum duration acceptable to the Commission.⁹ The parties have also notified the Commission of a Transitional Services Agreement between SEPIL and Shell which contains a non-solicitation clause.¹⁰ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Acquisition of SEPIL by CPPIB.

⁹ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20, 26 and 33 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)

¹⁰ This non-solicitation obligation will also be limited to a period of [...] from the date of completion of the Acquisition of SEPIL by CPPIB.



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 Canada Pension Plan Investment Board, through its wholly-owned indirect subsidiary CPP Investment Board Europe S.ár.l., would acquire the entire issued share capital and thus sole control of Shell E&P 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

Brian McHugh
Member
Competition and Consumer Protection Commission