



## DETERMINATION OF MERGER NOTIFICATION M/20/018 - PHOENIX / EMERALD (EIR)

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### Section 21 of the Competition Act 2002

**Proposed acquisition by Phoenix Tower International Holdco, LLC of sole control of Emerald Tower Limited.**

**Dated 7 July 2020**

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#### **Introduction**

1. On the 2 June 2020, 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 acquisition, whereby Phoenix Tower International Holdco, LLC (“PTI”), through its wholly-owned indirect subsidiary Dolya Holdco Limited (“Dolya”), would acquire the entire issued share capital and thus sole control of Emerald Tower Limited (“Emerald”) (the “Proposed Transaction”). Emerald is a newly-formed entity, which is wholly-owned by Meteor Mobile Holdings Limited (“Meteor”), which is in turn a wholly-owned subsidiary of eircom Holdings (Ireland) Limited (“eir”).

#### **The Proposed Transaction**

2. The Proposed Transaction is to be implemented pursuant to a share sale agreement (“SSA”) dated 24 May 2020 between Meteor and Dolya. Pursuant to the terms of the SSA, Dolya will purchase the entire issued share capital of Emerald.
3. Following completion of the Proposed Transaction, PTI will have sole control of Emerald.

#### **The Undertakings Involved**

*Acquirer – PTI*



4. Dolya is a newly incorporated company for the purposes of the acquisition with registered number 669292. Its registered office is at 10 Earlsfort Terrace, Dublin 2. Dolya will be controlled by PTI.
5. PTI is a subsidiary of Phoenix Tower US Holdings L.P., which is the holding company for the PTI Group. The PTI Group is a privately-owned wireless infrastructure group, which currently owns a portfolio of more than 86,000 wireless infrastructure sites operating in 14 countries across Latin America, the Caribbean, Europe and the United States. The PTI Group concluded an agreement with Bouygues Telecom in March 2020 to develop approximately 4,000 newly constructed wireless towers in France.
6. The majority shareholder of the PTI Group is [...] which is a fund managed and/or advised by affiliates of the Blackstone Group Inc. (“Blackstone”). The PTI Group’s other shareholder is an affiliate of [...], a wholly-owned subsidiary of Manulife Financial Corporation. However, Blackstone has sole control of the PTI group for the purposes of the Act.
7. Blackstone is a global asset manager headquartered in the United States. Blackstone is listed on the New York Stock Exchange. Blackstone operates as an investment management firm. Each Blackstone controlled portfolio company has its own board of directors, which generally also includes Blackstone representatives.
8. A list of Blackstone controlled portfolio companies active in the State as of June 2020 is provided in Table 1 below.

**Table 1: Blackstone controlled portfolio companies active in the State as of June 2020**

Company Name	Description of Activity
[...]	[...]

Source: Based on information provided by parties

9. For the financial year ending 31 December 2019, PTI’s worldwide turnover was approximately €[...] million. PTI did not generate any turnover in the State.



10. For the financial year ending 31 December 2018<sup>1</sup>, Blackstone's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

*The Target - Emerald*

11. Emerald is a newly-formed entity, which is currently owned by Meteor, a wholly-owned subsidiary of eir. Emerald is an independent trading entity. It is an operator for eir's existing passive infrastructure assets in the State, providing passive infrastructure to wireless and fixed line operators in the State. Emerald's infrastructure assets portfolio consists of 654 sites (including 591 existing sites and 63 work-in-progress sites), comprising:

- (a) [...] towers;
- (b) [...] suburban rooftop masts; and
- (c) [...] urban rooftop masts.

12. The Emerald infrastructure is used for both radio coverage and transmission backhaul by customers including fixed network operators, mobile network operators ("MNOs"), wireless broadband network operators and emergency services. In addition to supporting Meteor's active equipment, Emerald's principal third party customers include [...].

13. In addition to its existing portfolio of 591 sites and 63 work-in-progress sites, Emerald also has a planned programme of [...] build-to-suit ("BTS")<sup>2</sup> sites, to be developed over the next [...]. The development of these work-in-progress and BTS sites forms part of a master services agreement ("MSA") to be entered into between Emerald and Meteor Mobile Communications Limited ("Meteor MC")<sup>3</sup> on completion of the Proposed Transaction. [...] Meteor MC will install active equipment to be used on the site, in line with its network requirements.

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

<sup>2</sup> Sites that are BTS involve the construction of passive infrastructure to the specification of a customer.

<sup>3</sup> Meteor Mobile Communications Limited is a wholly owned subsidiary of eir.



14. Emerald may market BTS sites to other MNOs as a means for those operators to enhance their network coverage and/or capacity at that location by co-locating active equipment at these sites. Similar to the existing sites, Emerald will be responsible for managing the passive infrastructure on BTS sites, while Meteor MC/eir and other MNOs (if relevant) will manage any active equipment installed at the site.
15. In addition, the MSA provides for the supply of certain services by Emerald to Meteor MC/eir on a non-exclusive basis, including hosting services (i.e. the hosting of telecommunications equipment on the passive infrastructure), ancillary services (e.g. preventative and corrective maintenance and permits management) and site access. These arrangements ensure the continued access of Meteor MC/eir to Emerald's passive infrastructure following the Proposed Transaction.
16. Emerald has been newly incorporated and therefore does not have a trading history. However, for the financial year ending 2019, the *pro forma* turnover attributable to the infrastructure business now held by Emerald was €[...] million, all of which was generated in the State.

#### *The Seller - eir*

17. Eir is a private limited company registered in Jersey and with its principal place of business in Heuston South Quarter, Dublin 8. It is involved, primarily in the State and also in the UK, in the telecommunications sector and also, since January 2014, in the television broadcasting sector within the State. Eir is part of the eir group of companies ("eir Group").

#### *Meteor*

18. Meteor is a wholly-owned indirect subsidiary of eir, and is registered in the State under the registration number 325785.

#### *Rationale for the Proposed Transaction*

19. The parties state in the notification:



“[...]”

### Third Party Submissions

20. No submission was received.

### Industry Overview

21. Passive infrastructure used for wireless communications comprises a range of structures (such as purpose-built towers, rooftop masts, pylons and other structures) on which active telecommunications equipment used for the conveyance of signals is deployed.
22. As set out in Table 2 below there are a number of passive infrastructure providers active in the State, each of which operates a number of sites (including tower sites and rooftop masts). According to the parties the majority of passive infrastructure in the State was developed and deployed primarily by mobile network operators (“MNOs”), such as Vodafone, Three and Meteor to facilitate their own wireless and mobile and broadband networks. Other State or semi-State enterprises such as The Electricity Supply Board, Coillte Cuideachta Ghníomhaíochta Ainmnithe and Raidió Teilifís Éireann also developed portfolios of passive infrastructure in the deployment of their networks. In more recent years specialist wireless infrastructure providers (“WIPs”) such as Cellnex and Wireless Infrastructure Group (see Table 2 below) have acquired or developed passive infrastructure assets in the State. Space on the infrastructure is then leased to MNOs and other users. Essentially the WIP is responsible for managing the passive infrastructure, while MNOs will manage any active equipment installed at the site.

**Table 2: Shares of passive infrastructure by number of sites, Ireland, 2020.**

Supplier	By volume	
	No. of Sites	%
Emerald	[...]	[10-20%]
Vodafone	[...]	[20-30%]
Three	[...]	[10-20%]



Towercom	[...]	[5-10%]
ESB	[...]	[5-10%]
Cellnex/Cignal	[...]	[5-10%]
Office of Public Works (OPW)	[...]	[5-10%]
Shared Access	[...]	[0-5%]
Wireless Infrastructure Group	[...]	[0-5%]
Others	[...]	[10-20%]
<b>TOTAL</b>	[...]	<b>100.0%</b>

Source: Parties estimates based on public information

### Competitive Analysis

#### *Horizontal Overlap*

23. 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 in the State between the activities of parties.
24. Emerald is the operator for eir's existing passive infrastructure assets in the State, providing passive infrastructure to wireless and fixed line operators in the State. Neither PTI nor Blackstone (or any of its controlled portfolio companies, set out in Table 1 above) is engaged in the supply of passive infrastructure in the State. Similarly, Emerald is not engaged in any of the business activities in which PTI or the Blackstone portfolios are active in the State as of June 2020.
25. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

#### *Vertical Relationship*

26. The parties informed the Commission that the Proposed Transaction does not give rise to any direct vertical relationships between PTI or Blackstone (or any of its



controlled portfolio companies active in the State) and Emerald<sup>4</sup>. The Commission has not identified any significant vertical relationship between the parties.

27. The parties will, however, have a vertical relationship post-transaction. As outlined in paragraphs 13-15 above, an MSA will be entered into between Emerald and Meteor Mobile Communications Limited on completion of the Proposed Transaction, which will ensure continued access of eir to Emerald's passive infrastructure on a non-exclusive basis following completion of the Proposed Transaction. The Commission considers that the Proposed Transaction raises no vertical competition concerns in the State based on the analysis set out below.
28. First, the Commission considers that the Proposed Transaction would not give PTI or Emerald the incentive to foreclose third parties from accessing the infrastructure formerly owned by eir. As an independent trading entity PTI and Emerald will have clear incentive to ensure that the infrastructure is used as efficiently as possible in order to get return on the investment.
29. Second, the Commission considers that, following the implementation of the Proposed Transaction, PTI or Emerald would not have the ability to foreclose third parties from accessing passive infrastructure. As outlined in Table 2, Emerald has a relatively small share of passive infrastructure in the State. Third party users of passive infrastructure will continue to have access to infrastructure owned and operated by Emerald's competitors.
30. Third, MNOs currently using Emerald's infrastructure such as [...] and [...] each have their own site portfolios used in the deployment of their own networks, and are highly sophisticated purchasers of infrastructure services. While MNOs and other operators will look to reduce network costs by sharing infrastructure to the extent possible, they have a broad range of passive infrastructure suppliers from which to choose, as well as the option of developing and further supplementing their own passive infrastructure portfolio

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<sup>4</sup> [...].



31. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

### **Conclusion**

32. 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**

33. Clause 11 of the SSA contains non-solicitation obligations on Dolya (and the PTI Group). The duration of these non-solicitation obligations does not exceed the maximum duration acceptable to the Commission<sup>5</sup>. The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction, insofar as they relate to the State.

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<sup>5</sup> In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” [2005] OJ C56/03. For more information see [http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)





### **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 Phoenix Tower International Holdco LLC, through its wholly-owned indirect subsidiary Dolya Holdco Limited, would acquire the entire issued share capital and, thus, sole control of Emerald Tower 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**