

DETERMINATION OF MERGER NOTIFICATION M/22/031 – WATERLAND/MTM ENGINEERING

Section 21 of the Competition Act 2002

Proposed acquisition by WPEF VIII Holdco 20 B.V., an affiliate of Waterland Private Equity Fund VIII C.V., of sole control of MTM Engineering Limited

Dated: 3 August 2022

1. On 15 July 2022, 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 WPEF VIII Holdco 20 B.V. (“WPEF VIII Holdco 20”), an affiliate of Waterland Private Equity Fund VIII C.V. (“WPEF VIII”) which is managed by Waterland Private Equity Investments B.V (“Waterland”), would indirectly acquire [...] % of the issued, and to be issued, ordinary share capital in, and sole control of, MTM Engineering Limited (“MTM Engineering”), including its subsidiary MTM Engineering (Europe) Limited (the “Proposed Transaction”).
2. The Proposed Transaction is to be implemented pursuant to a Share Purchase Agreement (“SPA”), dated 12 July 2022, between [...]. The indirect acquirer of [...] % shareholding of MTM Engineering will be WPEF VIII Holdco 20 via its participation on the board of [...], of which [...] is a wholly-owned subsidiary. [...] is a newly established entity for the purposes of the Proposed Transaction.
3. The parties are involved in the following business activities:
 - Waterland is a regulated Alternative Investment Fund Manager supervised by the Netherlands Authority for Financial Markets. Waterland focuses on investing in ageing population¹, outsourcing and digitalisation, leisure and luxury and sustainability markets. Waterland is the fund manager of WPEF VIII of which WPEF VIII Holdco 20 is an affiliate.

¹ Waterland invests in the aging population through its investment in the Silver Stream Healthcare Group, which has 12 nursing homes in the State.

- The portfolio companies controlled by Waterland that generated turnover in the State in the most recent financial year are shown in Table 1 below:

Table 1: Waterland’s portfolio companies which generated turnover in the State in 2021

Company Name	Sector	Turnover in the State (€)
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]

- For the financial year ending 31 December 2021, Waterland’s worldwide turnover was approximately €[...], of which €[...] was generated in the State.

WPEF VII Holdco 20

- WPEF VIII Holdco 20 is an affiliate of WPEF VIII which is managed by Waterland. WPEF VIII Holdco 20 is a special purpose vehicle established for the purpose of the Proposed Transaction and does not have any other activities in the State.

MTM Engineering Limited

- MTM Engineering provides electrical engineering services specialising in sub mains cabling on large scale industrial and commercial projects. MTM Engineering provides its services by deploying teams of professionals who can deliver projects from electrical, mechanical and civil design through to final handover and commissioning on sectors including pharmaceutical, data centres, wind farms, renewables, incinerators, manufacturing, hospitals, power stations and commercial projects.

- For the financial year ending 31 December 2021, MTM Engineering’s worldwide turnover was approximately €[...], of which €[...] was generated in the State.
4. After examination of the notification, the Commission has considered that the Proposed Transaction falls within the scope of paragraph 2.1 of the Simplified Merger Notification Procedure Guidelines for assessing certain notifiable mergers or acquisitions under section 18(1)(a) of the Act since the Proposed Transaction does not give rise to any horizontal overlaps or vertical relationships between the Waterland portfolio companies and MTM Engineering’s activities in the State.
 5. In the light of this, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

6. The parties state in the notification that Clause [10] of the SPA contains non-compete and non-solicitation obligations which are directly related to and necessary for the implementation of the Proposed Transaction.
7. The Commission notes that Clauses 10.1.1 (a), 10.1.1 (b), 10.1.1 (c), 10.1.2 and 10.1.4 of the SPA contain obligations on the Warrantors², including a number of non-compete and non-solicitation provisions. The duration of these obligations does not exceed the maximum duration acceptable to the Commission.³ The Commission considers the restrictive obligations contained in Clauses 10.1.1 (a), 10.1.1 (b), 10.1.1 (c), 10.1.2 and 10.1.4 of the SPA to be directly related and necessary for the implementation of the Proposed Transaction in so far as they relate to the State.
8. The Commission notes that Clause 10.1.3 of the SPA states that the Warrantors shall not:

“[...]”.

² As listed in Part 4 of Schedule 1 to this SPA, being [...] (the “Warrantors”).

³ In this respect the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its 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).

9. The Commission is of the view that, when read in the context of clause 10 of the SPA as a whole, Clause 10.1.3 of the SPA appears to function as a “non-disparagement” clause rather than a “non-compete” clause.

10. The Commission notes that Clause 10.1.1 (d) of the SPA imposes a non-solicitation of employees obligation upon the Warrantors for a period of [...] years from the date of completion of the Proposed Transaction. The Commission notes that the restriction contained in Clause 10.1.1 (d) of the SPA does not appear to be limited to any specific employees and/or group of employees of MTM Engineering Limited.

11. Following engagement with the Commission, the parties subsequently withdrew their request that Clause 10.1.3 and Clause 10.1.1 of the SPA be considered by the Commission as restrictions that are directly related and necessary to the implementation of the Proposed Transaction. These clauses are therefore not addressed in this determination as ancillary restraints.

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 WPEF VIII Holdco 20 B.V., an affiliate of Waterland Private Equity Fund VIII C.V. which is managed by Waterland Private Equity Investments B.V., would acquire sole control of MTM Engineering 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

Ibrahim Bah

Director

Competition Enforcement and Mergers