



## DETERMINATION OF MERGER NOTIFICATION M/23/012 – EGIS INGÉNIERIE/J. B. BARRY & BEMRA ENGINEERING

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### Section 21 of the Competition Act 2002

### Proposed acquisition by Egis Ingénierie of sole control of J. B. Barry and Partners Holdings Limited and thereby indirect joint control of BeMRA Engineering Limited

Dated 3 May 2023

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#### Introduction

1. On 22 March 2023, 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 Egis Ingénierie (“Egis”) would acquire sole control of J. B. Barry and Partners Holdings Limited (“J. B. Barry”) and thereby indirect joint control of BeMRA Engineering Limited (“BeMRA”) (the “Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a Share Purchase Agreement (the “SPA”) dated 21 March 2023 between Egis and six private individuals, namely Liam Prendiville, Maurice O’Donoghue, Anne Marie Conibear, Eamon Daly, Martin Hogan and Garry Flood (together the “Vendors”). Pursuant to the SPA, Egis will acquire the entire share capital and thus sole control of J. B. Barry. Since J. B. Barry’s subsidiary J.B. Barry and Partners Limited holds 50% of the issued share capital of BeMRA, Egis will also acquire indirect joint control of BeMRA.

#### The Undertakings Involved

##### The Acquirer – Egis



3. Egis is a company registered in France under SIREN number 352 333 926.<sup>1</sup> Egis SA, a company also registered in France, is the ultimate holding company of Egis (Egis SA and its subsidiaries, including Egis, are collectively referred to in this determination as the “Egis Group”). The Egis Group is a global consulting and construction engineering group, which services the following sectors: (i) transportation; (ii) energy, water and the environment; and (iii) sustainable cities. The majority of the Egis Group’s business is in engineering and consulting projects, with a minority in operation and mobility projects.<sup>2</sup> The Egis Group runs and operates roads in over 20 countries. In the State, the Egis Group designs, operates and maintains railways, roads and mobility services.
4. For the financial year ending 31 December 2021, the Egis Group’s worldwide turnover was approximately €1.2 billion, of which approximately €54.9 million was generated in the State.<sup>3</sup>

#### **The Target – J. B. Barry**

5. J. B. Barry is a private company limited by shares incorporated in the State. J. B. Barry and its subsidiaries<sup>4</sup> (together the “JBB Group”) are active in the provision of engineering consultancy services, including project management, studies, stakeholder interaction, design, planning, environmental assessments, procurement and construction management in the following sectors and sub-sectors: civil engineering (water and wastewater, flood studies and flood protection, energy); transport (road, rail, public transport, active travel); building/development (residential, commercial and industrial); and environment.
6. For the financial year ending 31 March 2022, the JBB Group’s worldwide turnover was approximately €18.7 million, the vast majority of which was generated in the State.<sup>5</sup>

#### **The Joint Venture – BeMRA**

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<sup>1</sup> SIREN stands for “Système d’Identification du Répertoire des Entreprises,” i.e. “Business Register Identification System”.

<sup>2</sup> Egis Group offer mobility services including on-street parking management, video and free-flow tolling, and city access control which aim at decreasing traffic congestion and reducing carbon emissions and air pollution.

<sup>3</sup> The worldwide turnover for the Egis Group in the financial year ending 31 December 2022 was not provided to the Commission as it was not available, but the parties estimated in the notification that the turnover of the Egis Group in the State for 2022 was approximately €60.1 million.

<sup>4</sup> J.B. Barry and Partners Limited and J. B. Barry Transportation Limited.

<sup>5</sup> The previous year ending 31 March 2021, the total worldwide turnover was €[...], of which €[...] was generated in the State.



7. BeMRA is a private company limited by shares incorporated in the State. BeMRA is active in the provision of engineering consultancy services to the pharmaceutical industry in the State. BeMRA is a joint venture between JBB Group and Varming Consulting Limited (“Varming”). JBB Group and Varming each own 50% of the issued share capital of BeMRA.
8. For the financial year ending 31 December 2022, BeMRA’s worldwide turnover was approximately €[...], [...] was generated in the State.

#### ***The Second Joint Venture Parent - Varming***

9. Varming is a private limited company incorporated in the State and is active in the provision of mechanical and electrical engineering consultancy services. Varming designs and monitors the installation of mechanical and electrical services in new builds and refurbishment projects to the commercial, education, healthcare, industrial and residential sectors in the State.
10. In the financial year ending in 31 December 2022, the estimated total worldwide turnover of Varming was approximately €[...], [...] was generated in the State.

#### **Rationale for the Proposed Transaction**

11. The parties state in the notification that:

*“Egis Ingénierie considers that the Proposed Transaction presents it with the opportunity to enter various engineering consultancy markets that it is currently not active in and also to expand its activities in the engineering consultancy market in Ireland.”*

#### **Third-Party Submissions**

12. No third-party submissions were received.

#### **Market Enquiries**



13. During its review of the Proposed Transaction, the Commission sent questions to the National Transport Authority (the “NTA”), Transport Infrastructure Ireland (“TII”) and Iarnród Éireann. The Commission received a response from all three bodies.

## Competitive Analysis

### Horizontal Overlap

14. There is a horizontal overlap between the business activities of the Egis Group, the JBB Group and Varming in the State in relation to the provision of engineering consultancy services to the rail sector in the State.

15. In the notification, the parties stated that there are three awarding authorities that procure engineering consultancy services for the rail sector in the State: Iarnród Éireann, TII and the NTA. These awarding authorities procure engineering consultancy services by issuing a framework which envisages the purchase of different services pursuant to various specific awards.<sup>6</sup> Both the Egis Group and the JBB Group have qualified for frameworks and have successfully been awarded contracts from at least one of these awarding authorities over the last five years.

16. The parties clarified to the Commission that the Egis Group and the JBB Group did not tender for the same contracts as the activities of the Egis Group and the JBB Group differ, with the former providing a degree of specialist experience and expertise drawn from projects carried out outside of the State and the latter providing local presence and experience. Historically, the Egis Group and the JBB Group have not tendered for the same engineering consultancy service projects. Varming’s activities in the provision of engineering consultancy services to the rail sector are very minimal, [...]. Varming has only provided a small volume of services to [...], on an ad-hoc basis and amounting to an estimated value of €[...]. In light of this, the Commission has not considered Varming’s activities in the provision of engineering consultancy services to the rail sector any further in this determination.

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<sup>6</sup> A framework involves the awarding body shortlisting interested bidders based on the responses to the invitation to tender for the framework; when the awarding authority subsequently seeks to procure relevant services, it will decide, depending on the procurement procedure used, to invite all or certain shortlisted bidders to submit a tender for the supply of the specific services concerned.



17. There is no horizontal overlap between the activities of BeMRA and the activities of either the JBB Group or the Egis Group as BeMRA only operates in the provision of engineering consultancy services to the pharmaceutical sector. The Commission considers, given that there is no horizontal overlap between the activities of BeMRA and the activities of either the JBB Group or the Egis Group, that it is not necessary to consider the activities of BeMRA any further in this determination.

### **Vertical Relationship**

18. The Commission has identified a potential vertical relationship between the parties in that the Egis Group is tendering for a number of projects involving the provision of engineering consultancy services to the rail sector, and the Egis Group has identified the JBB Group as a sub-consultant to the Egis Group to assist in providing these consultancy services.

19. The parties also state in the notification that there is a potential vertical relationship between the activities of the Egis Group and the activities of the JBB Group in that the Egis Group provides Operating and Maintenance (“O&M”) services for tolled and un-tolled motorways (and national roads which are extensions of motorways) in the State, whilst the JBB Group provides engineering consultancy services to the road sector in the State.

20. The parties state in the notification that motorway projects are carried out either by: (i) a public-private partnership where concession contracts (typically of 30-45 years’ duration) are awarded by TII to a joint venture, and the joint venture partners provide all the requisite services (e.g. designing, building, operating and financing); or (ii) direct contracts where TII awards separate contracts for specific aspects of a road design project (e.g. designing, building, operating etc.), and where typical O&M contracts with the TII are typically for 7 years. The Egis Group has never been part of a joint venture consortium and only provides O&M services for tolled and un-tolled motorways in the State through direct contracts awarded by TII; in light of this past practice, the Commission considers that it is not necessary to consider the provision of O&M services by a joint venture any further in this determination.



21. The parties state in the notification that the award of engineering consultancy services to the road sector is made by TII or delegated by the TII to relevant local authorities. As such, undertakings which are active in the provision of O&M services for tolled and un-tolled motorways in the State do not choose the providers of engineering consultancy services to the road sector. Both the providers of O&M services and the providers of engineering services to the road sector in the State are awarded projects by TII or local authorities. TII and local authorities are the ultimate customers of both of these services.
22. In light of the above, the Commission considers that only one potential vertical relationship exists between the Egis Group and the JBB Group, namely in relation to the provision of engineering consultancy services to the rail sector.

### **Market Definition**

#### Relevant Product Market

23. The Commission has previously examined transactions involving the provision of engineering consultancy services in the State. In its determination in *M/10/026 – ESB/Northern Ireland Electricity Plc*,<sup>7</sup> the Commission's predecessor, the Competition Authority, without coming to a definitive view as to the precise relevant product market, examined the competitive effects of the transaction in the provision of engineering consultancy services to the electricity sector as the narrowest possible potential relevant product market.
24. In its determination in *M/20/005 – ESB/Coillte*,<sup>8</sup> in the context of the supply of engineering consultancy services, the Commission, without coming to a definitive view as to the precise relevant product market, analysed the likely competitive effects of the transaction with reference to the provision of engineering consultancy services to the electricity sector as the narrowest possible potential relevant product market.
25. The Commission defines the market to the extent necessary depending on the particular circumstances of a given case. As noted above, the parties' overlap is in the provision of engineering consultancy services to the rail sector. The parties state that the activities of

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<sup>7</sup> [M/10/026 - ESB/Northern Ireland Electricity Plc \(2010\)](#), at paragraph 102.

<sup>8</sup> [M/20/005 - ESB/Coillte \(2020\)](#), at paragraphs 3.25 to 3.29.



the Egis Group and the JBB Group are separate and distinct within the provision of engineering consultancy services to the rail sector. The Egis Group's activities are in rail projects where it provides a significant degree of specialist experience drawn from its international experience. Historically, the parties have not bid for any of the same tenders. The parties state that the JBB Group cannot provide the same level of specialist experience and expertise as the Egis Group.

26. In this case, it is not necessary for the Commission to define the precise relevant product market since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant product market are defined on a narrower basis (e.g. the potential market for the provision of engineering consultancy services to the rail sector) or more broadly (e.g. the potential market for the provision of engineering consultancy services to the transport sector). Additionally, the Commission considers that its conclusion on the competitive impact of the Proposed Transaction would also be unaffected if it were to define as the relevant product market an even narrower sub-segment of the potential market for the provision of engineering consultancy services to the rail sector to account for the parties' specific specialisms, as the activities of the parties would not overlap horizontally in this potential market. For the purpose of assessing the likely competitive effects of the Proposed Transaction, therefore, the Commission has assessed the likely competitive impact of the Proposed Transaction in the potential market for the provision of engineering consultancy services to the rail sector.

#### Relevant Geographic Market

27. In the notification, the parties state that, in their view, the relevant geographic market is the State, on the basis that the awarding authorities procure only for services required in the State in the sectors of rail and road.
28. In its determination in *M/20/005 – ESB/Coillte*, the Commission without coming to a definitive view as to the precise relevant geographic market, analysed the likely competitive effects of the transaction in the provision of engineering consultancy services to the electricity sector using the State as the geographic frame of reference.



29. In the light of the fact that the three awarding authorities procure engineering consultancy services for the rail sector for the entire State, and only the State, and taking into account the above precedent, for the purpose of its competitive assessment of the Proposed Transaction, the Commission has assessed the likely competitive impact of the Proposed Transaction in the provision of engineering consultancy services to the rail sector using the State as the geographic frame of reference.

#### Conclusion on relevant markets

30. Accordingly, for the purposes of carrying out its competitive assessment of the Proposed Transaction, the Commission has analysed the impact of the Proposed Transaction by reference to the provision of engineering consultancy services to the rail sector in the State.

### **Competitive Assessment**

#### Horizontal Overlap

##### *The Provision of Engineering Consultancy Services to the Rail Sector in the State*

31. The activities of the Egis Group, the JBB Group, and Varming in the potential market for the provision of engineering consultancy services to the rail sector in the State overlap horizontally.

32. In order to calculate shares of this potential market, the parties calculated the number of contracts each of the Egis Group and the JBB Group have been awarded or involved in that were tendered for by each of TII, the NTA and Iarnród Éireann between February 2018 and 2023. Table 1 below details the number of contracts issued by these awarding authorities between 2018 and 2023, the number of contracts which indicated or were likely to have indicated to have a rail element, and the parties' resulting estimated shares.

**Table 1: The shares of the Egis Group and JBB Barry in the provision of engineering consultancy services to the rail sector in the State based on contracts awarded between February 2018 – February 2023**





Awarding Authority	Contracts issued Feb 2018-2023	Contracts which have or are likely to have rail element	Egis Group awarded <sup>9</sup>	JBB Group awarded <sup>10</sup>
<b>Iarnród Éireann</b>	[...]	[...]	[...]	[...]
<b>TII</b>	[...]	[...]	[...]	[...]
<b>NTA</b>	[...]	[...]	[...]	[...]
<b>Total</b>	[...]	[...]	[...]	[...]
<b>Share of total awarded contracts that are likely to have a rail element</b>			[10-15]%	[5-10]%

Source: The parties, based on information from TII, the NTA and Iarnród Éireann

33. The parties estimate that the Egis Group's share of the provision of engineering consultancy services to the rail sector in the State is [10-15]% and that the JBB Group's share is approximately [5-10]%.<sup>11</sup> The combined share of the Egis Group and the JBB Group is [15-20]%. Following the implementation of the Proposed Transaction, the Egis Group's share is estimated to increase by [5-10] percentage points based on the calculations provided by the parties.<sup>12</sup> Neither the JBB Group nor the Egis Group have [...].<sup>13</sup>

34. The parties were unable to provide share data for their competitors for the provision of engineering consultancy services in the State as neither Iarnród Éireann nor TII provide access to details of the successful bidders on frameworks. The NTA publishes information

<sup>9</sup> In the case of [...] of the [...] contracts awarded to the Egis Group by [...], the contract was also awarded to at least one other engineering consultancy service provider along with the Egis Group.

<sup>10</sup> The [...] awarded to the JBB Group by [...] were also awarded to a number of other engineering consultancy service providers along with the JBB Group.

<sup>11</sup> The Commission has seen no evidence that the JBB Group has won any significantly large-value contracts such as would invalidate the use of the number of contracts as a proxy for the share of the JBB Group in the provision of engineering consultancy services in the State.

<sup>12</sup> The Commission has not come to its conclusion as to the likely competitive impact of the Proposed Transaction in the potential market for the provision of engineering consultancy services to the rail sector in the State solely based on the estimated market shares in Table 1, but based on all the evidence available to it at the time of the determination and the evidence discussed in paragraphs 34-36.

<sup>13</sup> Emails from LK Shields Solicitors LLP and Philip Lee LLP to the Commission dated 02 April 2023 and 04 April 2023.



on the successful bidders. Out of the thirteen contracts tendered by the NTA between 2018-2023 which related to rail services, the successful bidders were:

- Jacobs Engineering Ireland Limited (“Jacobs”) (6 contracts);
- Systra Limited (1 contract);
- AECOM Ireland Limited (1 contract);
- JBB Group along with a number of other providers including AECOM Ireland Limited, WS Atkins Ireland Limited (“Atkins”), Clandon Civil Consulting; Clifton Scannell Emerson Associates Limited (“CSEA”) (1 contract);
- JBB Group along with AECOM Ireland Limited, Arup Ireland Partner Limited, Atkins, and CSEA (1 contract);
- A group of providers including AECOM Ireland Limited, Atkins, WSP Ireland Consulting Limited, RPS Group Limited, Systra Limited and Jacob (1 contract);  
and
- Two contracts have yet to be awarded.

35. TII informed the Commission that, of the projects in respect of which it issued requests for tenders that relate to the provision of engineering consultancy services for the rail sector in the State, one is still at an evaluation stage, and the successful bidders for the other projects included: Rina Consulting Limited; Alastair Coey Architects, Operam Limited and Grimshaw Architects. TII stated that there are *“numerous suppliers for each of the tenders listed who could have potentially provided the services. The successful tender was awarded on the basis of the Most Economically Advantageous Tender”*.<sup>14</sup> Iarnród Éireann informed the Commission that, of the projects in respect of which it issued requests for tenders that relate to the provision of engineering consultancy services for the rail sector in the State the successful bidder(s) included: [...], [...], [...], [...], [...], and [...].<sup>15</sup>

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<sup>14</sup> Email from TII to the Commission dated 17 April 2023.

<sup>15</sup> Email from Iarnród Éireann to the Commission dated 24 April 2023. In the case of most projects, [...].



36. The Commission has also taken into consideration that although the Egis Group and JBB Group provide engineering consultancy services to the rail sector in the State, the Egis Group and JBB Group did not tender for any of the same contracts with TII, the NTA or Iarnród Éireann. The parties state in the notification that the activities of the Egis Group and the JBB Group differ, with the former providing a degree of specialist experience and expertise drawn from projects carried out outside of the State and the latter providing local presence and experience. Varming's activities in the provision of engineering consultancy services to the rail sector are very minimal, [...]. Varming has only provided a small volume of services to [...] on an ad-hoc basis, amounting to an estimated value of [...] and a share of less than [0-5]% of the provision of engineering consultancy services to the rail sector in the State.<sup>16</sup>

37. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the provision of engineering consultancy services to the rail sector in the State as the parties have minimal market shares and the merged entity will continue to face competitive constraints from a number of other providers of these services in the State, who have been successfully awarded contracts for the provision of same.

#### Vertical Relationship

38. There is a potential vertical relationship between the Egis Group and the JBB Group in the State as the JBB Group may provide certain services to the Egis Group as its sub-consultant. The Egis Group is currently tendering for four projects which all involve the provision of engineering consultancy services to the rail sector. The Egis Group has named the JBB Group as its sub-consultant, or one of its many sub-consultants, to provide certain services for these projects.

39. The Commission considers that the Proposed Transaction will not give the Egis Group the ability or incentive to engage in customer foreclosure by refusing to purchase certain engineering consultancy services from other potential sub-contractors. First, as noted

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<sup>16</sup> Based on the information available to the Commission on the value of the contracts which are awarded by the NTA, TII and Iarnród Éireann, Varming's share of the potential market for the provision of engineering consultancy services to the State is less than [0-5]%.



above the Egis Group's share of the provision of engineering services to the rail sector is approximately [10-15]%. The Egis Group also informed the Commission that large international consultancies which are active in the State use local consultancy partners, such as the JBB Group, for different rail tenders. Following the implementation of the Proposed Transaction, there will remain a number of international consultancies which are active in the provision of engineering consultancy services to the rail sector such as Jacobs, AECOM Ireland Limited, Atkins and Arup Ireland Partner Limited. These large consultancies will require sub-contracting services from local rail engineering consultancy firms in order to offer a portfolio of local and international references when bidding for a rail project.

40. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

#### **Conclusion of Competitive Analysis**

41. 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**

42. The parties submitted that Clause 8.2 of the SPA (excluding Clause 8.2.1(e) of the SPA) contains arrangements constituting restrictions which are directly related and necessary to the implementation of the Proposed Transaction. The Commission notes that the restrictions in question appear to be contained in Clause 8.2.1 of the SPA.

43. The Commission notes that Clause 8.2.1 of the SPA imposes certain non-compete and non-solicitation obligations on the Vendors for a period of [...] following the completion of the Proposed Transaction. The Commission considers that the duration of these obligations does not exceed the maximum duration acceptable to the Commission. The Commission therefore considers the non-compete obligations contained in Clauses 8.2.1(a), 8.2.1(b) and 8.2.1(c) of the SPA and (insofar as they relate to employees in a senior or management capacity) the non-solicitation obligations contained in Clause 8.2.1(d) of the SPA to be directly related and necessary to the implementation of the Proposed Transaction, insofar as they relate to the State.



## **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 Transaction whereby Egis Ingénierie would acquire the entire issued share capital, and thus sole control, of J. B. Barry and Partners Holdings Limited, and thereby indirect joint control of BeMRA 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

**Brian McHugh**

**Member**

**Competition and Consumer Protection Commission**