

DETERMINATION OF MERGER NOTIFICATION M/24/054 – MML CAPITAL/SOUTHERN CONTROL SYSTEMS

Section 21 of the Competition Act 2002

Proposed acquisition by MML Growth Capital Partners Ireland Limited of Southern Control Systems Limited

Dated 25 September 2024

1. On 6 September 2024, 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 MML Growth Capital Partners Ireland Limited (“MML Capital”), through its indirect subsidiary Imperium Bidco Limited (“Imperium”), would acquire sole control of Southern Control Systems Limited (“Southern Control”) (the “Proposed Transaction”).
2. The Proposed Transaction is to be implemented by way of a Share Purchase Agreement (“SPA”) executed on 4 September 2024 pursuant to which MML Capital is to acquire 100% of the shares in, and thus, sole control of Southern Control.
3. The parties are involved in the following business activities:

The Acquirer – Imperium

- Imperium is a newly incorporated company and acquisition vehicle indirectly owned by MML Growth Capital Partners Ireland Fund II Limited, a fund managed by MML Capital, created for the purpose of the Proposed Transaction

MML Capital

- MML Capital is a private equity firm providing growth capital to Irish SMEs through two funds (MML Growth Fund I and MML Growth Fund II) focused on different investment values across various sectors. MML Capital’s portfolio companies are active in sectors such as healthcare, manufacturing, travel, education and business services.

The Target – Southern Control

- Southern Control is a provider of building energy management systems, a computer-based control system installed in buildings that controls and monitors a building's mechanical and electrical equipment such as air handling and cooling plant systems, lighting, power systems, fire systems and security systems. Southern Control's services include engineering, supply, installation and commissioning of control panels, field controls, process controllers, bespoke GUI mimics and software programming. Southern Control also develops validation plans for building management systems and provides façade management services.
4. After examination of the notification, the Commission has concluded 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:
- none of the undertakings involved in the merger or acquisition are active or potentially active in the same product and geographic markets, or in any market(s) which is upstream or downstream to a market(s) in which another undertaking is active.¹
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 14.2 (a) – (f) of the SPA contains certain restrictive covenants including non-compete and non-solicitation clauses which the parties believe are directly related to and necessary for the implementation of the Proposed Transaction.
7. The Commission notes that Clause 14.2(a) of the SPA outlines a standard non-compete clause on Southern Control while Clause 14.2(e) outlines a non-solicitation of employees clause on Southern Control, both running for a period of 24 months post-transaction completion. The Commission considers that the duration and scope of these obligations do not exceed the maximum duration

¹ The Commission's Simplified Merger Notification Procedure Guidelines can be found [here](#).

and scope acceptable to the Commission.² The Commission therefore considers the restrictions contained in Clauses 14.2(a) and 14.2(e) of the SPA to be directly related and necessary to the implementation of the Proposed Transaction, in so far as it relates to the State.

8. The Commission notes that Clauses 14.2(b), (c), and (d) of the SPA contain restrictive obligations [...]. In the Commission's view, these restrictions go beyond the scope of what is acceptable to the CCPC for a restraint to be considered directly related and necessary to the implementation of the Proposed Transaction. Therefore, the Commission considers that Clauses 14.2(b), 14(c), and 14(d) of the SPA will not benefit from the protections offered by sections 4(8) and 5(3) of the Act.
9. The Commission notes that Clause 14.2(f) of the SPA contain restrictive obligations [...]. The Commission considers that this restriction goes beyond the scope of what is acceptable to the CCPC for a restraint to be considered directly related and necessary to the implementation of the Proposed Transaction. Therefore, the Commission considers that Clause 14.2(f) of the SPA will not benefit from the protections offered by sections 4(8) and 5(3) of the Act.

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 MML Growth Capital Partners Ireland Limited, through its indirect subsidiary Imperium Bidco Limited, would acquire sole control of Southern Control Systems 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

² In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 of its Notice on restrictions directly related and necessary to concentrations (2005) OJ C56/03. For more information, see: [https://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](https://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN).

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