

OFFICE FOR COMPETITION

8 October 2015

COMP-MCCAA/11/2015 – Acquisition by P.Cutajar & Co.Ltd of part of Paul Anthony Bonnici Limited and Paul Bonnici & Son Limited.

Decision on acquisition in terms of regulations 6 (1) (ii) and 12(4) of the Control of Concentrations Regulations (LN 294 of 2002 as subsequently amended)

The Office for Competition,

Having considered the notification dated 14 September 2015 pursuant to regulation 5 of the Control of Concentrations Regulations,

Having considered the provisions of the Control of Concentrations Regulations

Facts

1. On the 14 September 2015, the Office for Competition received notification of a proposed concentration pursuant to regulation 5 of the Control of Concentrations Regulations (hereinafter referred to as “the Regulations”) whereby P.Cutajar & Co.Ltd (hereinafter referred to as “Buyer”) will acquire control over part of Paul Bonnici & Son Limited and Paul Anthony Bonnici Limited through the purchase of importation and distribution rights of certain brands , (hereinafter referred to as “Sellers”).
2. The notification was filed on the 14 September 2015, and accepted as a complete notification. It was notified to the public through a notice that appeared in Government Gazette Number 19,476 on 22 September 2015 and a daily newspaper on the 17 September 2015.

Parties

3. The Notifying Party is P.Cutajar & Co.Ltd focusing primarily on the importation and distribution of fast moving consumer goods, including high profile brands of chocolates, coffee, wines, mineral water and ice creams.

4. The Sellers (Paul Bonnici & Son Limited and Paul Anthony Bonnici Limited operating from Jade of Mdina Road Zebbug ZBG 9018 engages in the importation of fast moving consumer goods, including confectionery products, beverages, and household cleaning products).

Transaction

5. Pursuant to the Memorandum of Understanding (MOU) dated 7 July 2015 , it is proposed that the acquirer shall purchase brands listed in the gross profit and sales reports set out in Schedule 1 of the MOU currently represented by the 'Sellers'. The transfer contemplated relates solely to the brands.

Notifiable Concentration

6. In terms of regulation 2 of the Control of Concentrations Regulations, a concentration refers to the acquisition by one or more undertakings or by one or more persons already controlling at least one undertaking, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more undertakings.
7. The proposed transaction brings about a permanent change of control over the assets transferred from the Seller to the Notifying Party. The assets to be transferred constitute a business to which a market turnover can be attributed.
8. Therefore the proposed transaction constitutes a concentration within the meaning of regulation 2 of the Regulations.

Threshold for Notification

9. The aggregate turnover of the undertakings concerned in the preceding financial year exceeds €2,329,373.40 and each of the parties concerned had a turnover in Malta equivalent to at least 10% of the combined aggregate turnover of the undertakings concerned.
10. The notified concentration, therefore, meets the notification threshold as set out in regulation 2 of the Regulations.

Simplified Procedure

11. Following the examination of the notification, it is considered that the notified concentration falls within the scope of regulation 12(1)(iii) of the Regulations, whereby it is provided that:



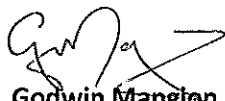
“The simplified procedure will apply to the following categories of concentrations that are deemed not to raise serious doubts as to their legality in terms of the provisions of these regulations...”

(iii) two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking and two or more of the parties to the concentration are engaged in business activities either in the same product and geographical market and their combined market share is less than 15%...”

Conclusion

For the above mentioned reasons and in terms of regulations 6 (1) (ii) and 12(4) of the Regulations, it is decided:

- (1) that the Concentration falls within the scope of the Regulations on Control of Concentrations;
- (2) that the Concentration does not raise serious doubts as to its lawfulness;
- (3) not to oppose the notified Concentration and to declare it a lawful Concentration.



Godwin Mangion
Acting Director General