

OFFICE FOR COMPETITION

16th November 2015

COMP-MCCAA/25/2015- Acquisition by Brait CM1 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 28 October 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 October 2015, the Office for Competition received a notification of a proposed concentration pursuant to Regulation 5 of the Control of Concentrations Regulations (hereinafter referred to as “the Regulations”), whereby Brait CM1 Limited (hereinafter referred to as “Buyer”) will acquire negative sole control of Iceland TopCo Limited, (hereinafter referred to as “Seller”) by way of a share acquisition pursuant to a Share Purchase Agreement (hereinafter “SPA”) dated 2 October 2015.
2. The notification was filed on the 14 October 2015, and accepted as a complete notification on 28 October 2015 and was notified to the public through a notice that appeared in a daily newspaper on 31 October 2015 and a notice that appeared in the Government Gazette number 19,492 on 3 November 2015.

Parties

3. The Notifying Party is Brait CM1 Limited which is a wholly owned subsidiary of Brait Mauritius Limited, a company incorporated in Mauritius. Brait Mauritius Limited is a wholly owned subsidiary of Brait Malta Limited (C 49644), a company duly incorporated under the laws of Malta, having its principal place of business at Level 1 Cornerline, Dun Karm Street, Birkirkara BKR, 9039, Malta. Brait Malta Limited is a wholly owned subsidiary of Brait Societas Europaea (the “Group”)(SE 1), a public investment company having its principal place of business at Avantech Building, 4th Floor, St Julian’s Road, San Gwann, SGN 2805, Malta. Brait is an

investment holding company with an investment portfolio focusing on unlisted market businesses operating in the broad consumer sector.

4. Iceland TopCo Limited ('Iceland') is a food retailer incorporated in the UK with 858 stores in the UK as well as stores in Ireland, the Czech Republic and Iceland. Iceland offers frozen and chilled food and grocery products. The range of products includes daily items such as milk, eggs and bread as well as an extensive range of approximately 900 frozen products covering a broad spectrum from ready meals, pizzas and party food to frozen meat, fish, poultry and vegetables. Iceland focuses on the value-end of the retail market. Iceland is active in Malta via its Maltese distributor F.A.D. LTD (C71214) with registered office at Big Bon Complex, Naxxar Road, B'Kara, Malta.

Transaction

5. Brait CM1 Limited proposes to enter into a Sale and Purchase Agreement relating to the sale and purchase of the Sale Shares in the capital of Iceland TopCo Limited dated 2 October 2015 to increase its existing stake in Iceland from approximately 18.7% to approximately 57%. The sale and purchase of the Sale Shares is conditional upon approval of the said transaction by the Irish Competition and Consumer Protection Commission and the Office for Competition in Malta ("the Relevant Authorities").

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 the acquisition by the Notifying Party of negative sole control on the Seller in the form of purchase of sale shares.
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) 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..."

ii) two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, provided that none of the parties to the concentration are engaged in business activities in the same product or geographical market, or in a product market which is upstream or downstream of a product market in which any other party to the concentration is engaged".

Conclusion

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