

OFFICE FOR COMPETITION

4th January 2016

COMP-MCCAA/28/2015- Acquisition by GO Data Centre Services Limited (C48299)

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 2 December 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 2nd December 2015, the Office for Competition received a notification of a proposed concentration pursuant to Regulation 5 of the Control of Concentrations Regulations (“the Regulations”), whereby GO Data Centre Services Limited will acquire sole control of Kinetix IT Solutions Limited by way of a share acquisition pursuant to a promise of sale agreement dated 13 November 2015 which will be completed subject to clearance from the Office for Competition within the Malta Competition and Consumer Affairs Authority.
2. The notification was filed and accepted as a complete notification on 2nd December 2015 and was notified to the public through a notice that appeared in a daily newspaper on 7 December 2015 and a notice that appeared in the Government Gazette number 19,508 on 7 December 2015.

Parties

3. The Notifying Party is GO Data Centre Services Limited, a Maltese company with registered office situated at GO, Fra Diegu Street, Marsa MRS 1501, Malta and with company registration number C 48299. GO Data Centre Services Limited is a holding company and is the sole shareholder, except for one share, of BMIT Limited. BMIT Limited is a Maltese company with registered office situated at 10, Triq ic-Cawqli, Qormi, Malta and with company registration number C 39594. The economic sectors

of BMIT Limited are those concerning data centre services, cloud services & software, managed IT services, and hardware sales.

4. Kinetix IT Solutions Limited is a Maltese company with registered office situated at 55 Birbal Street, Balzan BZN 9017, Malta and with company registration number C27726. Kinetix IT Solutions Limited is involved in the provision of managed IT solutions, sale of computing hardware and software to businesses as well as management and support services of hardware and software at the customers' premises.

Transaction

5. GO Data Centre Services Limited proposes to acquire fifty one per cent (51%) of the total issued share capital of Kinetix IT Solutions Limited pursuant to a Share Purchase Agreement ("SPA") made between the parties on 13 November 2015. Completion of the acquisition, that is, the sale and purchase of the sale shares, is conditional upon the written approval by the Office for Competition within the Malta Competition and Consumer Affairs Authority ("the Relevant Authority").

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 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)(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 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
Director General