

OFFICE FOR COMPETITION

20th March 2017

COMP-MCCAA/5/2017- Acquisition by Fairfax Financial Holdings 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 22 February 2017 pursuant to Regulation 5 of the Control of Concentrations Regulations,

Having considered the provisions of the Control of Concentrations Regulations

Facts

1. On the 22 February 2017, the Office for Competition received a notification of a proposed acquisition pursuant to Regulation 5 of the Control of Concentrations Regulations (hereinafter referred to as “the Regulations”), whereby pursuant to an Agreement and Plan of Merger (hereinafter referred to as “the Agreement”), Fairfax Financial Holdings Limited a holding company based in Toronto (hereinafter referred to as “the Notifying Party”) will acquire sole control of Allied World Assurance Company Holdings, AG (hereinafter referred to as the “Acquired Party”).
2. The notification was filed and accepted as a complete notification on the 22nd of February 2017 and was notified to the public through a notice that appeared in a daily newspaper on 28th February 2017 and a notice that appeared in the Government Gazette No. 19,733 on 28th February 2017.

Parties

3. The Notifying Party, Fairfax Financial Holdings Limited (Canada, Toronto) is a holding company whose corporate objective is to achieve a high rate of return on invested capital and build long term shareholder value¹. Through its subsidiaries, the Notifying Party is engaged in property and casualty insurance and reinsurance, and investment management. The Notifying Party is a public company whose subordinate voting shares are listed for trading on Toronto Stock Exchange.

¹<http://www.fairfax.ca/>

4. The Acquired Party, Allied World Assurance Company Holdings, AG (Zug, Switzerland) operates in three segments: North American Insurance, Global Markets Insurance, and Reinsurance². Its subsidiaries provide property, casualty and specialty insurance and reinsurance solutions to clients worldwide. The Acquired Party's shares are listed on the New York Stock Exchange.
5. Neither Party has a subsidiary or an office in Malta.

Transaction

6. Pursuant to the Agreement, Fairfax Financial Holdings (Switzerland) GmbH, a subsidiary of the Notifying Party ("Bid Sub") will commence an exchange offer to acquire all of the outstanding ordinary shares of the Acquired Party. Following the offer, assuming that the Notifying Party acquires at least 90% of the total voting rights in the Acquired Party and pursuant to the terms of the Agreement, the Acquired Party will be merged with and into Fairfax (Switzerland) GmbH, a subsidiary of Bid Sub.
7. On January 27, 2017 Fairfax entered into an agreement with OMERS, pursuant to which OMERS will acquire an approximately 21% interest in Bid Sub (and thereby a corresponding indirect interest in the Acquired Party) simultaneously with the acquisition of the Acquired Party by the Notifying Party and subject to certain regulatory approvals.
8. The Notifying Party will in all cases hold a greater than 50% interest in, and will have control of, the Acquired Party post-transaction. On closing, it is expected that the Notifying Party will hold at least a 67% interest in the Acquired Party.
9. The acquisition by the Notifying Party and of the Acquired Party is contingent upon the usual and customary conditions to closing, including inter alia, approval of the said transaction by the Office for Competition in Malta within the Malta Competition and Consumer Affairs Authority.

Notifiable Concentration

10. 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.
11. The proposed transaction brings about the acquisition of sole control by the Notifying Party on the acquired party in the form of purchase of sale shares.
12. Therefore the proposed transaction constitutes a concentration within the meaning of Regulation 2 of the Regulations.

² <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=1352812>

Threshold for Notification

13. 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.
14. The notified concentration, therefore, meets the notification threshold as set out in Regulation 2 of the Regulations.

Simplified Procedure

15. 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

In view of the above 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

