

OFFICE FOR COMPETITION

6th February 2018

COMP-MCCAA/02/2018- Acquisition by Francis Busuttil & Sons (Marketing) 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 16 January 2018 pursuant to Regulation 5 of the Control of Concentrations Regulations,

Having considered the provisions of the Control of Concentrations Regulations

Facts

1. On 12 January 2018, 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 a Business Transfer Agreement (hereinafter referred to as “the Agreement”), Francis Busuttil & Sons (Marketing) Limited (hereinafter referred to as “the Notifying Party”) will acquire sole control of Charles Darmanin & Co. Ltd’s business (hereinafter referred to as the “Acquired Party”), specifically the importation, holding and distribution business of the Acquired Party in Malta and the operation of same as a going concern.
2. The notification was filed on 12 January 2018 and was accepted as a complete notification on 16 January 2018 and was notified to the public through a notice that appeared in a daily newspaper on 23 January 2018 and a notice that appeared in the Government Gazette No.19, 938 on 23 January 2018.

Parties

3. The Notifying Party, Francis Busuttil and Sons (Marketing) a Maltese company with a registered office at Busuttil Buildings St Venera Square, Santa Venera, having registration number C 24137, is a food and beverage import and distribution company, which is part of the Francis Busuttil and Sons Group. The Notifying Party is a sales, marketing and distribution operation representing a strong portfolio of globally renowned branded food and grocery products. The company’s business strategy focuses on the penetration and development of the brands. Emphasis is made on marketing branded products, mainly via advertising and various other promotional activities.

4. The Acquired Party, Charles Darmanin & Co. Ltd is a Maltese company with registered office at Luret Cutajar Street, Zebbug, with a registration number C 2271, is a company also actively involved in the import and wholesale business, representing a number of food and household goods.
5. Both companies are importers and distributors of fast moving consumer goods, in Malta.

Transaction

6. Pursuant to the Agreement, the Notifying Party proposes to acquire the whole of the Acquired Party.
7. The Notifying Party will take over the Acquired Party's importation, holding and distribution business in Malta and operating of same as a going concern, together with all business rights relative thereto, which include the goodwill and the intellectual property of the Acquired Party's business and the right to distribute the products of the Acquired Party in Malta on the current existing terms with the respective principals (subject to, the proposed change in distribution being consented to by said principals).

Notifiable Concentration

8. 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.
9. The proposed transaction brings about the acquisition of sole control by the Notifying Party on the Acquired Party's products, in the form of purchase of importation and distribution rights relative to the Acquired Party's products.
10. Therefore the proposed transaction constitutes a concentration within the meaning of Regulation 2 of the Regulations.

Threshold for Notification

11. 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.
12. The notified concentration, therefore, meets the notification threshold as set out in Regulation 2 of the Regulations.

Simplified Procedure

13. 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...

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% or in a product market which is upstream or downstream of a product market in which any other party to the concentration is engaged and their combined market share is less than 25%.”.

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