

OFFICE FOR COMPETITION

19th October 2018

COMP-MCCAA/09/2018- The acquisition of joint control in a newly created company Sutters & Co 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 17 September 2018 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 2018, J&C Pisani Limited and P.J. Sutters (Holdings) Company Limited (hereinafter referred to as “the Notifying Parties”) notified the Office for Competition (hereinafter referred to as “the Office”) with a Joint Venture Agreement (hereinafter referred to as “the Agreement”), whereby the Notifying Parties will acquire joint control of a newly created company called Sutters & Co Limited (hereinafter referred to as “The Transaction”).
2. The notification was filed on 14 September 2018 and was accepted as a complete notification on 17 September 2018 and was notified to the public through a notice that appeared in a daily newspaper on 20 September 2018 and a notice that appeared in the Government Gazette No.20,060 on 25 September 2018.

Parties

3. i. The Notifying Parties are both importers and distributors of various food products in Malta. J&C Pisani Limited (hereinafter referred to as ‘J&C Pisani) is a registered company, having a registration number C2300, with a registered address at Pastoral House, Prince Albert Street, Albert Town, Marsa, MRS 1041. J&C Pisani is an importer and distributor of frozen and chilled products selling to retail, hotels, restaurants and catering establishments (HORECA) .The Company represents international brands of various food products, with the purpose of marketing and distributing these products in Malta and Gozo. Its portfolio includes meat and

processed meat products, poultry, frozen fish and seafood, potato product, frozen fruits and vegetables, frozen dessert cakes and frozen pizza. Some of their brands include Greens, Vici, Ronsard, Bergia Frites and Cocorico Brand amongst others¹. A sister company of J&C Pisani, is DewFresh Products Ltd which is a manufacturing entity producing meat-based products locally under the DewFresh brand, which products are distributed alongside the rest of its imported portfolio of food products of J&C Pisani.

ii. P.J. Sutters (Holdings) Company Limited (hereinafter referred to as ‘P.J. Sutters’) is a registered company, having a registration number C15158, with a registered address at Valletta Road, Luqa, LQA 3000. P.J. Sutters is an importer and distributor of various food products. Its subsidiary, P.J. Sutters (Marketing) Limited, imports and distributes in Malta and Gozo a range of brands to the food and service and retail sectors. Its portfolio includes various cheeses, potato products, dehydrated food products, olive and cooking oil, herbs and spices, wet sauces, fish (canned and delicatessen), fresh salads, frozen pasta cereals, snacks, cured meats, sauces and condiments, frozen fruits, dairy products, drinking chocolate, teas, water and ice creams. Some of their brands include Aviko, Campofrio, Fry Family, Dira Frost and Schwartz amongst others².

iii. Both Notifying Parties have an equal share in Experia Ltd, ✂.....

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Transaction

4. Pursuant to the Agreement, the Notifying Parties propose to acquire joint control of a newly created company called Sutters & Co Limited.

5. The proposed concentration will give rise to a full-function joint venture within the meaning of the first proviso to the definition of concentration in regulation 2 of the Control on Concentrations Regulations. The Joint Venture will be performing on a lasting basis all the functions of an autonomous economic entity able to play an active role on the market. The Joint Venture will have an independent management structure in place dedicated to its day-to-day

¹ <http://www.jcpisani.com/brands/>

² <http://www.pjsutters.com.mt/Default.aspx?tabid=425>

operations and access to sufficient assets, personnel and financial resources in order to operate its business activity independently of its parent companies.

6. ✂.....

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7. The business of the Joint Venture will be managed by a Board of Directors consisting of an equal number of Directors of each of the Notifying Parties, with the fifth Director appointed jointly by the Notifying Parties, acting as a Chairman. The Directors will have equality of votes and the Chairman will have a casting vote. The Notifying Parties will in all cases hold jointly the shareholding of the joint venture.

Notifiable Concentration

- 8. The proposed transaction brings about the acquisition of joint control by the Notifying Parties of a fully functioning joint venture within the meaning of regulation 2(d) (ii) of the Regulations.
- 9. The Office considers that the proposed transaction constitutes a concentration within the meaning of Regulation 2 of the Regulations.

Threshold for Notification

- 10. 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.
- 11. The notified concentration, therefore, meets the notification threshold as set out in Regulation 2 of the Regulations.

Simplified Procedure

12. 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