

OFFICE FOR COMPETITION

17th May 2019

COMP-MCCAA/05/2019 – Centerbridge Partners L.P.’s Acquisition of Certain Software Assets from International Business Machines Corporation

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 26 April 2019 pursuant to Regulation 5 of the Control of Concentrations Regulations,

Having considered the provisions of the Control of Concentrations Regulations,

Having considered Commission Notice on a simplified procedure for treatment of certain concentrations under council Regulation (EC) No 139/2004

Facts

1. On the 26 April 2019, the Office for Competition (hereinafter referred to as “the Office) was notified with an acquisition, pursuant to an Asset Purchase Agreement, by Centerbridge Partners, L.P. (hereinafter referred to as “the notifying party”), through its wholly-owned subsidiary, Scotch Holdco, L.P., of certain IT software products from International Business Machines Corporation, which consist in marketing management software solutions, customer experience analytics, customer insight software, price and promotion optimisation software, and an e-commerce payments solution.
2. The notification was filed on 26 April 2019 and was accepted as a complete notification on 29 April 2019. It was notified to the public through a notice that appeared in a daily newspaper on 7 May 2019 and a notice that appeared in the Government Gazette No. 20,183 on 7 May 2019. No third-party objections were submitted.

Parties

3. The Notifying Party, Centerbridge Partners, L.P., having its registered address at 375 Park Avenue, 11th Floor, New York, NY 10152-0002, United States, is a private investment management firm, registered with the U.S. Securities and Exchange Commission that focuses its investment activities principally in North America and Europe. Investments are made across a variety of sectors including building materials, business services, energy, financial services, healthcare, industrials, media, telecommunications and technology, real estate, gaming and lodging, retail and consumer goods, structured products, and transportation and logistics.
4. Scotch Holdco, L.P. (hereinafter referred to as "Scotch"), with registered address at The Corporation Trust Company, 1209 Orange Street, Corporation Trust Center, County of New Castle, Wilmington, Delaware 19801, United States, is a wholly owned subsidiary of the notifying party. Scotch was created for the purposes of the concentration, that is of the acquisition, management, marketing and advertising of the acquired IT products. It is registered under Delaware Corporate Law. It was formed on 21 March 2019 and converted to a Delaware Limited Partnership on 29 March 2019.
5. International Business Machines Corporation (hereinafter referred to as "IBM"), having its registered address at 1 New Orchard Road, Armonk, New York 10504-1722, United States, is a public company active worldwide in the development, production and marketing of a wide variety of IT solutions, namely enterprise IT software and systems (such as servers, storage systems, cloud, and cognitive offerings) and IT implementation services (such as business consulting and IT infrastructure services).
6. It is important to note that neither the notifying party, nor Scotch have a subsidiary or an office in Malta. Also, although IBM has a subsidiary in Malta, IBM Malta Limited, no assets of the Maltese subsidiary are party to the concentration.

Transaction

7. By the virtue of an Asset Purchase Agreement, the notifying party, through its wholly-owned subsidiary, Scotch Holdco, L.P., will acquire, from IBM, ownership of software products consisting in marketing management software solutions (campaign automation), customer experience analytics, customer insight software, price and promotion optimisation software, and an e-commerce payments solution (payments gateway).

8. Scotch will be responsible for the management, marketing and advertising of the acquired IT software products.

Notifiable Concentration

9. 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 other undertakings.
10. The proposed transaction brings about the acquisition of control of IT assets mentioned in paragraph 7 by the Notifying Party, through its wholly-owned subsidiary Scotch.
11. The Office considers that the proposed transaction constitutes a concentration within the meaning of Regulation 2 of the Regulations.

Threshold for Notification

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

Simplified Procedure

14. Following the examination of the notification, it is considered that the notified concentration falls within the scope of Regulation 12(1) of the Control of Concentrations 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 and

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 Control of Concentrations 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