



EUROPEAN COMMISSION  
DG Competition

*Case M.8454 - KKR /  
PELICAN ROUGE*

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) in conjunction with Art 6(2)  
Date: 25/08/2017

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Brussels, 25.8.2017  
C(2017) 5957 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

**To the notifying party**

**Subject: Case M.8454 – KKR / PELICAN ROUGE  
Commission decision pursuant to Article 6(1)(b) in conjunction with  
Article 6(2) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the  
Agreement on the European Economic Area<sup>2</sup>**

Dear Sir or Madam,

- (1) On 5 July 2017, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Selecta AG ("Selecta", Switzerland), indirectly solely controlled by KKR Co. L.P. ("KKR", United States), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over Pelican Rouge B.V. ("Pelican Rouge", Netherlands), by way of purchase of shares (the "Transaction").<sup>3</sup> Selecta and Pelican Rouge are referred to hereinafter as the "Parties").

## 1. THE PARTIES

- (2) **KKR** is a global investment firm offering a range of alternative asset management services to public and private market investors and capital markets solutions for the firm, its portfolio companies and other clients.

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

<sup>3</sup> Publication in the Official Journal of the European Union No C 224, 13.07.2017, p. 19.

- (3) **Selecta** is active in the provision of vending services in Europe in both public and private settings, such as the sale or lease of vending machines, the sale of consumables used to stock vending machines and other related supplies, as well as stocking and maintenance of vending machines, for both food and beverage vending.<sup>4</sup>
- (4) **Pelican Rouge** is active in the supply, installation and operation of vending equipment and beverage systems and provision of vending ingredients in Europe. Pelican Rouge is also a coffee provider owning and operating its own roasting facility, which supplies Pelican Rouge group companies and third parties with ingredients for coffee machines.

## 2. THE TRANSACTION

- (5) The Parties signed a Signing Protocol on 14 March 2017 pursuant to which an SPA was signed on 10 May 2017, after consultations with the works council.
- (6) Following the Transaction Selecta will own 100% of the equity capital of Pelican Rouge and therefore will acquire sole control over it.
- (7) Consequently, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## 3. EU DIMENSION

- (8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>5</sup> (KKR: EUR [...] million, Pelican Rouge: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (KKR: EUR [...] million, Pelican Rouge EUR [...] million), but the two do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (9) The Transaction therefore has an EU dimension pursuant Article 1(2) of the Merger Regulation.

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<sup>4</sup> In the Form CO, paragraph 18 and by email of 23 August 2017, KKR confirmed that there are no horizontal overlaps or vertical relationships between any other KKR controlled portfolio companies and Pelican Rouge or Selecta.

<sup>5</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

## 4. COMPETITIVE ASSESSMENT

### 4.1. Market Definition

#### 4.1.1. Vending services market

##### 4.1.1.1. Product market

- (10) The Commission has previously defined vending, by referring to the definition provided by Euromonitor, as the sale of products and services at an unattended point of sale using some form of payment system.<sup>6</sup>
- (11) The vending services provider is typically paid from the cash proceeds from end-product sales via the vending machines. Nevertheless the Commission acknowledged that beverage machines used in hotels, restaurants, catering and offices may be subsidised by the employer or host and therefore may not be equipped with a payment system, but can still be considered vending machines for the purposes of this Decision.<sup>7</sup>
- (12) In prior decisions, the Commission has also considered but ultimately left open segmentations of the vending services market<sup>8</sup> as follows:
  - i. By the type of services provided by the vending services operator, distinguishing between "full" and "ancillary" services. A full vending services operator provides solely some or all of the vending related services to its customers such as the supply and installation of vending machines, the cleaning and maintenance of such machines, the management and supply or procurement of products/ingredients to stock the machines, and the collection of cash takings or other means of payment. An ancillary vending services operator provides one or several of these services as part of a broader package offered, for example, by catering companies or facility management companies ("FMCs").<sup>9</sup>
  - ii. By the type of products the machine dispenses, distinguishing between (i) hot beverages, (ii) cold drinks and (iii) snacks and food.<sup>10</sup>
  - iii. By the type of distribution machine used for the vending services distinguishing between the three following main types of food and drink distribution machines: (i) vending machines, (ii) beverage machines used in hotels, restaurants and cafeterias ("HoReCa") and (iii) small capacity

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<sup>6</sup> See M.7319 – KKR/Allianz/Selecta, para 14; M.2373-Compass/Selecta, paras 13-17.

<sup>7</sup> See M.5338 – Barclays/Investcorp/N&W Global Vending, para 10.

<sup>8</sup> See M.5338 – Barclays/Investcorp/N&W Global Vending, para 13.

<sup>9</sup> See M.2373 – Compass/Selecta; M.5973 – CVC / Charden International, para 15.

<sup>10</sup> See M.5338 – Barclays/Investcorp/N & V Global Vending, para 13; M.6857 – Crane Co / MEI Group, para 93; M.5973 – CVC/Charden International, para 13; M.7319 – KKR / Allianz / Selecta, para 20.

machines without payment system designed for office coffee supply ("OCS").<sup>11</sup>

- (13) The Parties submit that the relevant product market comprises the provision of all vending services, including all categories of products or machines as well as full and ancillary services.<sup>12</sup>
- (14) However, the Parties have provided market data not only for the overall vending services market but also, in line with Commission's precedents, for all plausible market segmentations where their activities would overlap.
- (15) Given that none of the Parties is active in the manufacturing of vending machines, the Commission's assessment in this case will not include an analysis based on the plausible segmentation per type of distribution machine.
- (16) For the purpose of the present Decision, the exact product market definition, i.e. whether the markets for vending services should be segmented by type of service and product can be left open as the outcome of the competitive assessment remains the same under any plausible market definition.

#### 4.1.1.2. Geographic market

- (17) The Parties submit that the relevant geographic market for the overall vending services market, as well as any potential segments, is national. To support this view they refer to, for instance, the absence of EU-wide legislation for the vending industry, the difference in lifestyle and culture between the various European countries and the need for having teams of staff (machine engineers, stockists, operators) available at reasonable proximity to service a network of machines both on a regular basis and in response to client calls.
- (18) These elements have been previously taken into account by the Commission in its past decisions where the competition in the market for vending services, while its geographic scope has been left open, has been constantly assessed at the national level.<sup>13</sup>

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<sup>11</sup> See M.5338 – Barclays / Investcorp / N & W Global Vending, para 12; M.6857 – Crane Co / MEI Group, para 91; M.7319 – KKR / Allianz / Selecta, para 20. In a very limited number of instances, the Commission considered that OCS could also be a sub-segment of hot beverages. For the purpose of this decision, OCS is considered as a plausible split by type of distribution machine.

<sup>12</sup> See Form CO para 129. Regarding the segmentation based on the types of machines used for the vending services, the Parties note that such a segmentation was analysed by the Commission in the context of transactions involving potential vertical relationships between vending machine manufacturers and downstream vending services providers but this segmentation is not particularly relevant when considering a transaction involving the downstream vending services market only. This view appears to be supported by the market investigation as well, since the vending services providers would endeavour to provide the type of machine that their customer requires.

<sup>13</sup> See M.7671– KKR/FIBA/WMF, para 21; M.7319 – KKR / Allianz / Selecta, para 17; M.5973 – CVC/Charden International, para 16; M.2373 – Compass/Selecta, para 16-17. In M.5338 – Barclays/ Investcorp/ N&W Global Vending, para 22 and M.6857 – Crane Co / MEI Group, para 98 – 100, the Commission left open whether the relevant geographic market for food and drink distribution machines was EEA-wide or national.

- (19) The Commission considers that the relevant geographic market for vending services is indeed national in scope. Therefore, in line with its previous practice, the Commission will assess the Transaction on the basis of national markets.

#### 4.1.2. *Roast & Ground coffee and other ingredients*

##### 4.1.2.1. Product market

- (20) Pelican Rouge is active in the manufacture and sale of various coffee and other hot beverage ingredients. It owns and operates its own roasting facility, which supplies Pelican Rouge's group companies and third parties with ingredients for coffee vending machines (roast and ground coffee and other hot beverage products, such as instant coffee, chocolate drinks, whiteners, and toppings).
- (21) The Commission has previously assessed the market for roast and ground coffee, instant products, flavoured dairy drinks and coffee whiteners.<sup>14</sup>
- (22) Roast and Ground coffee ("R&G") consists of coffee beans which have been pre-roasted and pre-ground for use in coffee-specific appliances. R&G coffee can be used in a range of appliances which often produce multiple cups of coffee at a time. In a previous decision, the Commission also examined a potential distinction between R&G coffee and "Greek" coffee but ultimately left the question open.<sup>15</sup>
- (23) Instant coffee (also called coffee powder or soluble coffee) is prepared by freeze-drying or spray-drying brewed coffee and has a very long shelf life. In a previous decision, the Commission found that instant coffee forms a separate product market from other coffee products.<sup>16</sup>
- (24) With respect to flavoured dairy drinks and coffee whiteners, in past decisions the Commission did not delineate precisely the relevant product markets.<sup>17</sup>
- (25) For the purpose of the present Decision, the exact product market definition can be left open since no competition concerns arise in relation to R&G coffee and other ingredients under any plausible market definition.

##### 4.1.2.2. Geographic market

- (26) In past decisions, the Commission has considered the relevant geographic market definition for roast and ground coffee, instant products, flavoured dairy drinks and coffee whiteners to be national.<sup>18</sup>

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<sup>14</sup> See M.7292 – DEMB/Mondelez/Charger OPCO, para 16; Case M. 2399 – Friesland Coberco/Nutricia, para 9.

<sup>15</sup> See M.7292 – DEMB/Mondelez/Charger OPCO, paras. 130 to 146. In this decision, the Commission also found unnecessary to distinguish between Arabica and Robusta Coffee.

<sup>16</sup> See M.7292 – DEMB/Mondelez/Charger OPCO, para. 151.

<sup>17</sup> See M.2399 – Friesland Coberco/Nutricia paras. 13 and 17.

- (27) The Parties do not contest this definition, although they observe that Pelican Rouge sells its coffee and instant products to distributors and other third parties located across the EEA and outside the EEA.
- (28) In line with its previous practice, the Commission will assess the Transaction on the basis of national markets.

#### 4.2. Assessment

- (29) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.
- (30) Non-coordinated effects may significantly impede effective competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour.
- (31) In view of the Parties' activities, the Transaction will mainly give rise to horizontal overlaps in a number of Member States and, to a lesser extent, to vertical links due to Pelican Rouge's activities in R&G coffee and other ingredients.

##### 4.2.1. *Horizontal assessment – National vending services markets*

- (32) The assessment of the compatibility of the Transaction with the internal market will focus on non-coordinated horizontal effects in the vending services market including any plausible segmentation where the Parties' activities overlap.
- (33) The factors listed in paragraphs 27 onwards of the Horizontal Merger Guidelines<sup>19</sup> may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, but not all of these factors need to be present to make significant non-coordinated effects likely and the list is not exhaustive.<sup>20</sup>
- (34) The Parties' activities overlap in seven Member States, namely Belgium, Finland, France, Ireland, the Netherlands, Spain and the UK as well as Norway. The Transaction gives rise to affected markets only in Belgium, France, Norway and Finland.<sup>21</sup>

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<sup>18</sup> See M.7292 – DEMB/Mondelez/Charger OPCO, para 157; Case M.2399 – Friesland Coberco/Nutricia, para 19.

<sup>19</sup> [Guidelines on the assessment of horizontal mergers](#) under the Council Regulation on the control of concentrations between undertakings. Official Journal C 31, 05.02.2004, p. 5-18 ("Horizontal Merger Guidelines"), para 27.

<sup>20</sup> Horizontal Merger Guidelines, para 26.

<sup>21</sup> Selecta is active also in Sweden, while Pelican Rouge sold its vending services business in Sweden in 2016 to Snabbstarten SEX. As a result, no horizontal overlap will arise in Sweden. Nonetheless, there

- (35) Based on the Parties' share estimates for 2015,<sup>22</sup> the Transaction leads to horizontally affected markets in:
- a. Belgium: for hot beverages provided by full service providers;
  - b. Finland: for all vending services, hot beverages, hot beverages provided by full service providers, cold drinks provided by full service providers, snacks and food provided by full service providers and overall full service providers;
  - c. France: for cold drinks and cold drinks provided by full service providers; and
  - d. Norway: for hot beverages provided by full service providers.
- (36) For the reasons set out in Recitals (37) to (50), the Commission has reached the conclusion that the Transaction would not lead to serious doubts in the market for vending services including any potential segmentation in Belgium, France, and Norway. Moreover, for the reasons set out in recital (51) to (74) the Commission has reached the conclusion that the Transaction would raise serious doubts in the markets for full vending services (all products and the hot beverages segment) and in the overall market for vending services in Finland.

#### 4.2.1.1. Belgium

##### (i) Parties' activities

- (37) In Belgium the Transaction gives rise to affected markets in hot beverages provided by full services providers where the Parties reach a combined market share of [20-30]%.<sup>23</sup>
- (38) The increment brought about by the Transaction in hot beverages provided by full service providers is very small ([0-5]%) and the combined market share is less than [20-30]% ([20-30]%).<sup>24</sup>

##### (ii) Commission's assessment

- (39) The Parties' combined market share is less than 25% under any plausible product market definition and the increment brought about by the Transaction is

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is a vertical link by virtue of Pelican Rouge's activities in the upstream market for the sale of R&G coffee in Sweden.

<sup>22</sup> Except for few cases where there are material deviations, which are highlighted in this decision, the Parties submit that 2015 market shares are representative also of the competitive situation in 2016.

<sup>23</sup> In Belgium, the Transaction will not lead to affected markets in either the all vending services market, or potential segments based on the category of products sold in the vending machines alone (i.e. hot beverages, cold drinks, snacks and food). The Transaction will also not give rise to affected markets on the basis of a segmentation based on the type of services alone (i.e. full or ancillary services).

<sup>24</sup> The market shares are computed using 2015 data and for Selecta are computed using the turnover achieved in 2016 on the market size estimated in 2015. When using 2016 data the result would not be materially different.



also be very limited (approximately [0-5]%) so that there would be no material Transaction-specific effect in Belgium.

- (40) In addition, a sufficient number of competitors will remain post-merger, for instance Miko and Nespresso and further local competitors are active in the country.

(iii) Conclusion

- (41) The Commission thus concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in the market for hot beverages provided by full services providers in Belgium.

4.2.1.2. Finland

(i) Parties' and competitors' activities

- (42) According to the Parties, no reliable and comprehensive public source of market share data is available in the vending services market in Finland. The Parties have therefore provided their best estimates of Selecta's and Pelican Rouge's market shares, and the shares of their competitors.
- (43) Table 1 below provides an overview, based on the Parties' estimates, of the horizontally affected markets which would arise as a result of the Transaction in Finland.

Table 1 – Parties' market shares in Finland (Source: Form CO and replies to RFI 1)

Finland		<u>All products</u>	- hot beverages	- cold drinks	- snacks & food
Full services	Selecta	[10-20]%	[10-20]%	[10-20]%	[10-20]%
	Pelican Rouge	[20-30]%	[30-40]%	[10-20]%	[10-20]%
	Combined	<b>[40-50]%</b>	<b>[40-50]%</b>	<b>[20-30]%</b>	<b>[30-40]%</b>
Ancillary services <sup>25</sup>	Selecta	[0-5]%	[0-5]%	[0-5]%	[0-5]%
	Pelican Rouge	[0-5]%	[0-5]%	[0-5]%	[0-5]%
	Combined	[0-5]%	[0-5]%	[0-5]%	[0-5]%
All services	Selecta	[5-10]%	[5-10]%	[5-10]%	[5-10]%
	Pelican Rouge	[10-20]%	[10-20]%	[5-10]%	[10-20]%
	Combined	<b>[20-30]%</b>	<b>[20-30]%</b>	[10-20]%	[10-20]%

- (44) According to the Parties, the Transaction gives rise to affected markets (i) in the overall market for vending services, (ii) in the segment for hot beverages, (iii)

<sup>25</sup> When calculating market shares, the Parties attributed to themselves and other full services providers the turnover generated by selling their services to FMCs which were outsourcing vending services, while they allocated to ancillary services the turnover that FMC generates directly from their vending services (as opposed to sub-contracted vending services). Turnover of FMCs and competing full service providers is based on Parties' estimates – Parties' reply to QP5.

in the segment for full vending services and (iv) in its sub-segments based on type of products sold by full service providers.

- (45) More in detail, the Transaction will lead to the following affected (sub)markets in Finland:
- a. All vending services: combined market share [20-30]% (increment of [5-10]%)
  - b. All vending services provided by full service providers: combined market share [40-50]% (increment [10-20]%)
  - c. Hot beverages: combined market share [20-30]% (increment [5-10]%)
  - d. Hot beverages provided by full service providers: combined market share [40-50]% (increment [10-20]%)
  - e. Cold drinks provided by full service providers: combined market share [20-30]% (increment [10-20]%)
  - f. Snacks and food provided by full service providers: combined market share [30-40]% (increment [10-20]%)
- (46) According to the Parties, Selecta and Pelican Rouge face competition from three main competitors, namely the vending operator Paulig, the FMC ISS and the catering company Fazer. All three players have a larger individual share than either Pelican Rouge or Selecta in all vending services. Other smaller competitors are also present such as such as Eden Springs, Nespresso, Kaffecentralen, Cafè Break as well as other FMCs such as Compass, Coor, and Antell.

(ii) Commission's assessment

*Market reconstruction*

- (47) In addition to the estimates provided by the Parties, the Commission carried out a market reconstruction exercise in order to gather data on the revenues generated by the Parties' competitors in Finland for vending services including any potential segmentation. The Commission's market indicated that the Parties appear to have overestimated the market share of several competitors with regard to full vending services providers as well as FMCs.

*Market structure*

- (48) When considering a market for **full vending services providers**, Selecta and Pelican Rouge would have a high combined market share, of [40-50]% according to the Parties. According to the market reconstruction and the results of the market investigation it is likely above 60%.<sup>26</sup> According to the Parties' estimates, Selecta's and Pelican Rouge's combined market share would even be

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<sup>26</sup> See minutes of a call with a competitor on 17 May 2017 and minutes of a call with another competitor on 28 June 2017.

as high as [40-50]% in the market of hot beverages provided by full services providers. The presence of other competitors, except for Paulig, would be very limited and Paulig would be the only other sizeable full service provider.

- (49) As a result, for full service providers and in its segment of hot drinks provided by full service providers, the Transaction would lead in essence to a reduction of suppliers from 3 to 2.
- (50) In the overall market for **vending services**, ancillary providers such as FMCs would also belong to the relevant market. However, while FMCs are customer-facing and sometimes bid in competition with the Parties, respondents to the market investigation indicate that the competitive role of FMCs would be very limited, as they are generally not providing the vending services themselves with in-house solutions but rely in most cases on other providers.<sup>27</sup>
- (51) Finally, as a result of the present Transaction, FMCs themselves would also have one subcontractor less for the vending services, so that also from this point of view, the Transaction would lead to a reduction of suppliers from 3 to 2.

#### *Closeness of competition*

- (52) According to the Horizontal Merger Guidelines, a merger between close competitors is more likely to have anticompetitive effects and lead to a significant increase in price. The higher the degree of substitutability between the merging firms' products, the more likely it is that the merging firms will raise prices significantly. The purpose of assessing the closeness of competition between the Parties is therefore to determine whether they currently exert a significant competitive constraint on each other which would be removed post-Transaction and whether other suppliers would be able to sufficiently constrain the merged entity.<sup>28</sup>
- (53) With regards to the market for **full vending services providers**, Paulig, together with the Parties, appears to be the only competitor able to offer a nation-wide coverage with its full vending services.
- (54) With regards to the overall market for **vending services** in Finland, the Parties submit that catering company Fazer and FMC company ISS are significant direct competitors which provide a particular competitive constraint on the Parties. According to the Parties, FMCs and catering companies have the resources to provide in-house all the vending services that the Parties are offering to their customers and are actively competing with Selecta and Pelican Rouge in customers' bids for vending services. In order to factually underpin this, the Parties also submitted a loss analysis aimed at showing that the contracts lost by the Parties have been won by FMCs.

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<sup>27</sup> See minutes of a call with a competitor on 16 May 2017 and minutes of a call with another competitor on 18 May 2017.

<sup>28</sup> Horizontal Merger Guidelines, paragraphs 28 and following.

- (55) When assessing the Parties' loss analysis, the Commission notices that for both contracts lost by Selecta and by Pelican Rouge, in the majority of cases it is not clear to whom such contracts were lost.
- (56) Respondents to the market investigation which are active in Finland and expressed an opinion, indicated that not only FMCs are not active as full service providers, but moreover their presence as direct competitors to the Parties in all vending services is also very limited. As a result, the only alternative supplier remaining post-merger would be Paulig.<sup>29</sup>
- (57) The Commission considers that the Parties' loss analysis does not allow for meaningful conclusions, notably as the question whether FMCs are the ones winning a significant share of the Parties' lost contracts remains unclear at this stage.
- (58) In light of the above, the Commission concludes that the Parties are competing with each other in full vending services. It also concludes that in the overall market for vending services the Parties and Paulig are close competitors in particular and that the FMCs and other smaller competitors appear to be distant competitors exercising a limited competitive constraint.

*Entry and expansion*

- (59) When entering a market is sufficiently easy, a merger is unlikely to pose any significant anti-competitive risk. For entry to be considered a sufficient competitive constraint on the merging parties however, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.<sup>30</sup> As some mergers could significantly impede competition by enabling the merged entity to make the expansion of smaller firms and potential competitors more difficult, the impact of the Transaction on the Parties' competitors' ability to enter or expand will be assessed.<sup>31</sup>
- (60) The Parties' view is that there are no significant barriers to entry in the vending services in Finland, notably given that several small new companies have successfully entered the vending services market recently.
- (61) The information obtained by the Commission in its market investigation did not confirm the Parties' view. In particular, respondents to the market investigation identified scale as a critical factor for success in the vending services market.<sup>32</sup>

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<sup>29</sup> See minutes of a call with a customer on 24 July 2017.

<sup>30</sup> Horizontal Merger Guidelines, para 68.

<sup>31</sup> Horizontal Merger Guidelines, para 36.

<sup>32</sup> See minutes of a call with a competitor on 17 May 2017 and minutes of a call with another competitor on 19 June 2017.

- (62) Market participants did not refer to any new entrant in Finland in the past 3 years, nor did they expect any specific entry in the near future.<sup>33</sup>
- (63) In view of the above, the Commission considers that there is no prospect of a likely, timely and sufficient entry/expansion that could counteract attempts by the merged entity to increase prices post-merger in Finland.

*Other factors*

- (64) While in limited number, the majority of respondents to the market investigation questionnaire also indicate that the merged entity would not face sufficient competition post Transaction on all vending services market in Finland.<sup>34</sup>

(iii) Conclusion

- (65) Based on the above and on the results of our investigation, non-coordinated horizontal effects would be likely in the market for full vending services (including the segment for hot beverages provided by full services providers) and in the overall market for vending services in Finland. Therefore, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market in relation to the market for full vending services (including the segment for hot beverages provided by full services providers) and in the overall market for vending services in Finland.

4.2.1.3. France

(i) Parties' activities

- (66) In France the Transaction gives rise to affected markets (i) in cold drinks, where the Parties reach a combined market share of [20-30]% with an increment of [0-5]% and (ii) in cold drinks provided by full services providers, where the Parties reach a combined market share of [20-30]% with an increment of [0-5]%.

(ii) Commission's assessment

- (67) The Parties' combined market share is less than [20-30]% under any plausible product market definition and the increment brought about by the Transaction would also be limited (less than [0-5]%) so that there would be no material Transaction-specific effect in France.
- (68) In addition, a sufficient number of competitors will remain post-merger, for instance Daltys, Prodia +, Qualidea, Lyovel, D8, Dayllmar and Merling.

(iii) Conclusion

- (69) The Commission thus concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in the market for cold

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<sup>33</sup> See minutes of a call with a competitor on 28 June 2017.

<sup>34</sup> See reply to Q1 – questionnaire to competitors, question 2 and 3.

drinks as well as in the market for cold drinks provided by full service providers in France.

#### 4.2.1.4. Norway

##### (i) Parties' activities<sup>35</sup>

- (70) In Norway the Transaction gives rise to affected markets in hot beverages provided by full service providers, where the Parties reach a combined market share of [20-30]% with an increment of [0-5]%.

##### (ii) Commission's assessment

- (71) The Parties' combined market share is less than [20-30]% and the increment brought about by the Transaction would also be limited so that there would be no material Transaction-specific effect in this market.
- (72) In addition, a sufficient number of competitors will remain post-merger, for instance, Coca Cola (Chaqwa/Sodexo), JDE/House of Coffee, Waterlogic, KaffeKnappen, Eden Springs, Varoma, Kaffebyggeriet, Scaromat, Paulig, Polar Drikk, Miko, Temerato KaffeMaskirer.
- (73) The markets investigation did not raise any concerns with respect to the market for vending services including any plausible segmentation in Norway.<sup>36</sup>

##### (iii) Conclusion

- (74) The Commission thus concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in the market for hot beverages provided by full service providers in Norway.

#### 4.2.2. Vertical assessment – National supply of R&G coffee and other ingredients

- (75) Pelican Rouge is active in the supply of R&G coffee, as well as instant products, chocolate, cappuccino, whiteners and toppings and others ingredients.<sup>37</sup> These products are sold either via Pelican Rouge vending channels or to private label customers, other vending operators (such as Selecta) and wholesalers.
- (76) The Transaction therefore gives rise to a vertical link between the supply of R&G coffee and other ingredients upstream, where Pelican Rouge is active, and vending services downstream, where Selecta and Pelican Rouge are active.

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<sup>35</sup> The Parties claim that, contrary to other EU countries, there is no European Vending Association (“EVA”) Report for Norway and that they have limited visibility on the total size of the vending services market in this country. As a result, the Parties have provided their best estimates. The market investigation has generally confirmed the presence of competitors in the vending services market in Norway as put forward by the Parties.

<sup>36</sup> See minutes of a call with a competitor on 16 May 2017 and minutes of a call with another competitor on 18 May 2017.

<sup>37</sup> The majority of sales (approximately [70-80]%) of Pelican Rouge in those upstream market are generated by R&G coffee.

- (77) According to the Parties, Pelican Rouge's market share in the upstream markets for R&G coffee and any other ingredient <sup>38</sup>is well below 30% under any plausible product and geographic market definition ([0-5]% in Finland and [5-10]% at most in Sweden). The Transaction therefore gives rise to vertically affected markets only because the Parties' presence downstream is above 30% in Finland (see Table 1 above) and Sweden ([30-40]%).
- (78) Pelican Rouge's very limited presence upstream renders input foreclosure strategies unlikely; in this respect, even if Pelican Rouge were to sell only to Selecta its R&G coffee currently sold to third parties, the current customers of Pelican Rouge, as well as the Parties' competitors in vending services, would have access to suppliers representing more than [90-100]% of the roasted coffee market in Finland and at least [90-100]% in Sweden.
- (79) Similarly, customer foreclosure strategies are also unlikely since Pelican Rouge sales in Finland cannot meet all of the needs of Selecta and thus Selecta could not use Pelican Rouge as its sole supplier.<sup>39</sup> In addition, in Sweden, and in Finland, Selecta's current suppliers of coffee would have many alternative solutions for selling their coffee, among which other vending operators but also wholesalers and HoReCa customers.
- (80) Based on the above, the Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of input or customer foreclosure on the market for R&G coffee and other ingredients.

## **5. PROPOSED REMEDIES**

### **5.1. PROCEDURE**

- (81) In order to address the competition concerns identified by the Commission, the Notifying Party submitted a set of commitments (the "Proposed Commitments") on 1 August 2017.
- (82) The Proposed Commitments aim at addressing the serious doubts that arise (i) in the market for full vending services (including the segment for hot beverages provided by full services providers) and (ii) in the overall market for vending services in Finland.
- (83) The Commission launched a market test of the Proposed Commitments on 2 August 2017. The respondents to the market test indicated that overall the Proposed Commitments addressed the serious doubts raised in relation to the market for full vending services (including the segment for hot beverages provided by full services providers) and in the overall market for vending services in Finland.

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<sup>38</sup> The Parties confirmed that Pelican Rouge market share in coffee and any other ingredients is less than 30% under any plausible market definition.

<sup>39</sup> In Finland Pelican Rouge sells R&G coffee only to [...].

- (84) The Commission has assessed the Proposed Commitments and concluded that they remove the serious doubts which have been identified in this Decision.

## **5.2. FRAMEWORK FOR THE COMMISSION'S ASSESSMENT**

- (85) Where a notified concentration raises serious doubts as to its compatibility with the internal market, the parties may modify the notified concentration so as to remove the grounds for the serious doubts identified by the Commission with a view to having it declared compatible with the internal market pursuant to Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.
- (86) As set out in the Commission Notice on Remedies,<sup>40</sup> commitments have to eliminate the Commission's serious doubts entirely, they have to be comprehensive and effective from all points of view and they must be capable of being implemented effectively within a short period of time, as the conditions of competition on the market will not be maintained until the commitments have been fulfilled.<sup>41</sup>
- (87) In assessing whether or not commitments will restore effective competition, the Commission considers their type, scale and scope by reference to the structure and the particular characteristics of the market in which the Commission has identified serious doubts as to the compatibility of the notified concentration with the internal market.<sup>42</sup>
- (88) Divestiture commitments are the best way to eliminate serious doubts resulting from horizontal overlaps of the merging parties' activities.<sup>43</sup> Other commitments (such as licensing) may be suitable to resolve serious doubts if those commitments are equivalent to divestitures in their effects. The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and that is divested as a going concern.<sup>44</sup>
- (89) The business to be divested must include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness. Personnel and assets which are currently shared between the business to be divested and other businesses of the parties, but which contribute to the operation of the business or which are necessary to ensure its viability and competitiveness, must also be included. Otherwise, the viability and competitiveness of the business to be

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<sup>40</sup> Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (2008/C 267/01), (the "Commission Notice on Remedies").

<sup>41</sup> Commission Notice on Remedies, paragraph 9.

<sup>42</sup> Commission Notice on Remedies, paragraph 12.

<sup>43</sup> Commission Notice on Remedies, paragraph 17.

<sup>44</sup> Commission Notice on Remedies, paragraph 23.



divested would be endangered. Therefore, the business to be divested must contain the personnel providing essential functions for the business, at least in a sufficient proportion to meet the on-going needs of the business to be divested.<sup>45</sup>

### 5.3. THE PROPOSED COMMITMENTS OF 1 AUGUST

#### *Description of the Proposed Commitments of 1 August*

- (90) In order to render the concentration compatible with the internal market, the undertakings concerned have modified the notified concentration by entering into the following commitments, which are annexed to this decision and form an integral part thereof.
- (91) The Proposed Commitments would in particular entail the divestment of Oy Selecta AB, a Finnish company registered in Helsinki under the number 0202563-1 active in vending services in Finland (the "Divestment Business")
- (92) The Divestment Business comprise the following:
- a. all the tangible assets owned or used by the Divestment Business;
  - b. contracts, leases, commitments and customer orders owned by the Divestment Business; all customer, credit and other records of the Divestment Business;
  - c. the Personnel;
  - d. at the request of the Purchaser, an exclusive, royalty-free, non-transferable (other than within the Purchaser's group), and non-assignable license trademark agreement for the use of Selecta's trademarks exclusively for use in Finland;
  - e. at the request of the Purchaser, the operation of the Divestment Business's website with the domain name selecta.fi; and
  - f. at the request of the Purchaser, on terms and conditions equivalent to those at present afforded to the Divestment Business, all current arrangements under which the Notifying Party or its Affiliated Undertakings supply products or services to the Divestment Business.
- (93) For the avoidance of doubt, the Divestment Business shall not include:
- a. Any brands or logos currently held, as owner or licensee, by Selecta Finland or any rights to sell the products sold by the Divestment Business with the Selecta name (subject to the certain provisions)<sup>46</sup>;

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<sup>45</sup> Commission Notice on Remedies, paragraphs 25 and 26.

<sup>46</sup> See paragraph 10 of the Schedule to the Commitments

- b. Any right to www.selecta.fi or any domain names owned by KKR-Selecta or entities controlled by KKR-Selecta (subject to the provisions of paragraph 10 of the Schedule);
  - c. The contracts entered into between Selecta group and (i) [...] and (ii) [];
  - d. Any activities outside Finland, except for the intercompany sales currently existing between the Divestment Business and other entities controlled by the KKR-Selecta. If requested by the Purchaser, these sales to other entities of the Selecta group will continue after the divestment of the Divestment Business for a [...] period.
- (94) The Commission assessed the appropriateness of the remedies offered and carried out a market test.

*The Commission market test*

- (95) The Commission launched a market test of the Commitments on 2 August 2017. The market test included competitors and customers active in the affected markets.
- (96) In general, there was the view that the Proposed Commitments were sufficiently clear in order to form a view as to the content of the Divestment Business.
- (97) The majority of competitors and customers which responded to the market test generally considered that the Divestment Business could be interesting, it would also include all necessary assets and would be able to compete effectively with the merged entity. The majority of the respondents to the market test also considered that the [...] (extendable by [...]) duration of the proposed transitional supply and services agreements for machines, spare parts and filling products on terms and conditions equivalent to those currently offered to the Divestment Business is sufficient.<sup>47</sup>
- (98) Similarly, the majority of the respondents to the market test indicated that the length of the proposed licence ([...] extendable by [...]) for the use of Selecta's brands in Finland followed by a black-out-period of [...] is sufficient for the licensee to establish itself as an effective and viable competitor to the Parties in full vending services (including the segment for hot beverages provided by full services providers) and in the overall market for vending services in Finland.<sup>48</sup>
- (99) Finally, respondents to the market test emphasized that a purchaser meeting the requirements set out in the Proposed Commitments (Section D) acquiring the Divestment Business can compete effectively with the merged entity on a lasting basis.<sup>49</sup>

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<sup>47</sup> Replies to the market test Questionnaire.

<sup>48</sup> Replies to the market test Questionnaire.

<sup>49</sup> Replies to the market test Questionnaire.

### *The Commission's assessment*

- (100) The Commission finds that the Divestment Business would remove the overlap between the Parties' activities in the market for full vending services (including the segment for hot beverages provided by full services providers) and in the overall market for vending services in Finland. In addition, the Divestment Business includes all tangible and intangible assets to operate as a stand-alone business and therefore it will create a new player in the market for full vending services (including the segment for hot beverages provided by full services providers) and in the overall market for vending services in Finland, replacing Selecta as a competitor.
- (101) The Divestment Business would therefore be able to remove the competition concerns identified by the Commission for the following reasons.
- (102) First, in addition to all main the assets, the Divestment Business will also include its current customers. While a limited number of the customers' contracts include a change of control clause, the Notifying Party will use its best efforts to transfer also these contracts. In this respect, among the Divestment Business top 15 customers, the Notifying Party identified only one contract which contains such clause. The Divestment Business also includes the necessary Key Personnel.
- (103) Second, the Divestment Business will allow the purchaser to use transitional supply and services agreements for machines, spare parts and filling products (for a duration of [...] extendable by [...]) on terms and conditions equivalent to those currently afforded by the Divestment Business.
- (104) Third, the Commission considers that, on the basis of the Proposed Commitments, the duration of the licence ([...] extendable by [...]) and of the black-out period ([...]) are likely to be adequate in the present case to enable a proper re-branding by the purchaser.
- (105) Fourth, the outcome of the market test has generally indicated that the Proposed Commitments are sufficient to remedy in a clear-cut manner the competition issues raised by the Transaction in the market for full vending services (including the segment for hot beverages provided by full services providers) and in the overall market for vending services in Finland.
- (106) Based on the above, the Commission therefore concludes that the Divestment Business will constitute a viable and competitive business that will be able to compete effectively in the in the market for full vending services (including the segment for hot beverages provided by full services providers) and in the overall market for vending services in Finland.

### **5.4. CONCLUSION**

- (107) On the basis of the above, the Commission concludes that the Proposed Commitments are suitable and sufficient to remedy the serious doubts raised by the Transaction in relation to the market for full vending services (including the segment for hot beverages provided by full services providers) and in the overall market for vending services in Finland. Moreover, the Proposed Commitments

are comprehensive and effective from all points of view, and are capable of being implemented effectively within a short period of time.

## **6. CONDITIONS AND OBLIGATIONS**

- (108) Pursuant to the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.
- (109) The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market and the EEA Agreement no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6)(b) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- (110) In accordance with the basic distinction between conditions and obligations, the decision in this case is conditional on full compliance with the requirements set out in Section B of the Proposed Commitments, which constitute conditions. The remaining requirements set out in the other Sections of the said Proposed Commitments are considered to constitute obligations.
- (111) The full text of the Proposed Commitments is annexed to this Decision as Annex I and forms an integral part thereof.

## **7. CONCLUSION**

- (112) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the Proposed Commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Section B of the commitments annexed to the present Decision and with the obligations contained in the other Sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(signed)*

*Margrethe VESTAGER*

*Member of the Commission*

## Case M. 8454 – KKR/PELICAN ROUGE

### COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), Selecta AG (the “*Notifying Party*”) hereby enters into the following Commitments (the “*Commitments*”) vis-à-vis the European Commission (the “*Commission*”) with a view to rendering the acquisition of sole control over Pelican Rouge B.V. (the “*Concentration*”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “*Decision*”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “*Remedies Notice*”).

#### Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

**Affiliated Undertakings:** undertakings controlled by the Parties and/or by the ultimate parents of the Notifying Party, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “*Consolidated Jurisdictional Notice*”).

**Assets:** the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 6 (a), (b) and (c) and described more in detail in the Schedule.

**Closing:** the transfer of the legal title to the Divestment Business to the Purchaser.

**Closing Period:** the period of [...] from the approval of the Purchaser and the terms of sale by the Commission.

**Confidential Information:** any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

**Conflict of Interest:** any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

**Divestment Business:** the business or businesses as defined in Section B and in the Schedule which the Notifying Party commits to divest.

**Divestiture Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Party and who has/have received from the Notifying Party the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

**Effective Date:** the date of adoption of the Decision.

**First Divestiture Period:** the period of [...] from the Effective Date.

**Hold Separate Manager:** the person appointed by the Notifying Party for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

**Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

**Monitoring Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Party, and who has/have the duty to monitor the Notifying Party's compliance with the conditions and obligations attached to the Decision.

**Parties:** the Notifying Party and the undertaking that is the target of the concentration.

**Pelican Rouge:** Pelican Rouge B.V., a private limited liability company, incorporated under the laws of the Netherlands, with its registered office at Leeghwaterstraat 6, 3316EC Dordrecht, the Netherlands, registered under the number 50483285.

**Personnel:** all staff currently employed by the Divestment Business.

**Purchaser:** the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

**Purchaser Criteria:** the criteria laid down in paragraph 17 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

**Schedule:** the schedule to these Commitments describing more in detail the Divestment Business.

**Selecta:** Selecta AG, a private limited liability company incorporated under the laws of Switzerland, with its registered office at Industrie Neuhof 783422 Kirchberg Bern, Switzerland and registered with the identification number CHE-105.968.547.

**Trustee(s):** the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

**Trustee Divestiture Period:** the period of [...] from the end of the First Divestiture Period.

## **Section B. The commitment to divest and the Divestment Business**

### Commitment to divest

2. In order to maintain effective competition, the Notifying Party commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 18 of these Commitments.
3. To carry out the divestiture, the Notifying Party commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Notifying Party has not entered into such an agreement at the end of the First Divestiture Period, the Notifying Party shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 30 in the Trustee Divestiture Period.
4. The Notifying Party shall be deemed to have complied with this commitment if:
  - (a) by the end of the Trustee Divestiture Period, the Notifying Party or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 18; and
  - (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.
5. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 44 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

### Structure and definition of the Divestment Business

6. The Divestment Business consists of the vending services business of Selecta in Finland. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
  - (a) all tangible assets owned or used by the Divestment Business;

- (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
  - (c) the contracts, leases, commitments and customer orders owned by the Divestment Business; all customer, credit and other records of the Divestment Business; and
  - (d) the Personnel.
7. In addition, at the request of the Purchaser, the Divestment Business includes the benefit, for a transitional period, and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which the Notifying Party or its Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the Divestment Business operations. The Divestment Business will also include, at the request of the Purchaser, an exclusive, royalty-free, non-transferable (other than within the Purchaser's group), and non-assignable license trademark agreement for the use of Selecta's trademarks described in Annex 3 to the Schedule exclusively for use in Finland and the operation of the Divestment Business's website with the domain name selecta.fi by the Notifying Party for a [...] period, which could be extended by another [...] if needed (the "Licensing Period"). The Notifying Party commits not to use any trademarks listed in Annex 3 to the Schedule in Finland during the Licensing Period and for an additional blackout period of [...] after the expiration of the Licensing Period.

## **Section C. Related commitments**

### Preservation of viability, marketability and competitiveness

8. From the Effective Date until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular the Notifying Party undertakes:
- (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
  - (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
  - (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Notifying Party's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Notifying Party shall provide a reasoned proposal to replace the person



or persons concerned to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

#### Hold-separate obligations

9. The Notifying Party commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by the Notifying Party have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Notifying Party and do not report to any individual outside the Divestment Business.
10. Until Closing, the Notifying Party shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which the Notifying Party is retaining. Immediately after the adoption of the Decision, the Notifying Party shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Notifying Party. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 8(c) of these Commitments. The Commission may, after having heard the Notifying Party, require the Notifying Party to replace the Hold Separate Manager.
11. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise the Notifying Party's rights as shareholder in the legal entity or entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Notifying Party's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Notifying Party. Upon request of the Monitoring Trustee, the Notifying Party shall resign as a member of the boards or shall cause such members of the boards to resign.

#### Ring-fencing

12. The Notifying Party shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by the Notifying Party before the Effective Date will be eliminated and not be used by the Notifying Party. This includes measures vis-à-vis the Notifying Party's appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Notifying Party may obtain or keep

information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to the Notifying Party is required by law.

#### Non-solicitation clause

13. The Notifying Party undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [...] after Closing.

#### Due diligence

14. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Notifying Party shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
  - (a) provide to potential purchasers sufficient information as regards the Divestment Business; and
  - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

#### Reporting

15. The Notifying Party shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). The Notifying Party shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.
16. The Notifying Party shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

#### **Section D. The Purchaser**

17. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:
  - (a) The Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
  - (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Notifying Party and other competitors;

(c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

18. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When the Notifying Party has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

## **Section E. Trustee**

### **I. Appointment procedure**

19. The Notifying Party shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.

20. If the Notifying Party has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Notifying Party at that time or thereafter, the Notifying Party shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

21. The Trustee shall:

(i) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;

(ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(iii) neither have nor become exposed to a Conflict of Interest.

22. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package

of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

*Proposal by the Notifying Party*

23. No later than two weeks after the Effective Date, the Notifying Party shall submit the name or names of one or more natural or legal persons whom the Notifying Party proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, the Notifying Party shall submit a list of one or more persons whom the Notifying Party proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 21 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
  - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
  - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

*Approval or rejection by the Commission*

24. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Notifying Party shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Party shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by the Notifying Party*

25. If all the proposed Trustees are rejected, the Notifying Party shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 19 and 24 of these Commitments.

*Trustee nominated by the Commission*

26. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Notifying Party shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

## II. Functions of the Trustee

27. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Notifying Party, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

### *Duties and obligations of the Monitoring Trustee*

28. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Notifying Party with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
  - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Notifying Party, in accordance with paragraphs 8 and 9 of these Commitments;
  - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 10 of these Commitments;
  - (c) with respect to Confidential Information:
    - determine all necessary measures to ensure that the Notifying Party does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
    - in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
    - make sure that any Confidential Information relating to the Divestment Business obtained by the Notifying Party before the Effective Date is eliminated and will not be used by the Notifying Party and
    - decide whether such information may be disclosed to or kept by the Notifying Party as the disclosure is reasonably necessary to allow the Notifying Party to carry out the divestiture or as the disclosure is required by law;

- (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Notifying Party or Affiliated Undertakings;
- (iii) propose to the Notifying Party such measures as the Monitoring Trustee considers necessary to ensure the Notifying Party's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
  - (a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
  - (b) potential purchasers are granted reasonable access to the Personnel;
- (v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
- (vi) provide to the Commission, sending the Notifying Party a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;
- (vii) promptly report in writing to the Commission, sending the Notifying Party a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Party is failing to comply with these Commitments;
- (viii) within one week after receipt of the documented proposal referred to in paragraph 18 of these Commitments, submit to the Commission, sending the Notifying Party a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;
- (ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

29. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

### *Duties and obligations of the Divestiture Trustee*

30. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 17 and 18 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Notifying Party, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
31. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party.

### III. Duties and obligations of the Notifying Party

32. The Notifying Party shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Notifying Party's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Notifying Party and the Divestment Business shall provide the Trustee upon request with copies of any document. The Notifying Party and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
33. The Notifying Party shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. the Notifying Party shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. the Notifying Party shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
34. The Notifying Party shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors

to assist with the sale process. Upon request of the Divestiture Trustee, the Notifying Party shall cause the documents required for effecting the sale and the Closing to be duly executed.

35. The Notifying Party shall indemnify the Trustee and its employees and agents (each an “**Indemnified Party**”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Party for, any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
36. At the expense of the Notifying Party, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Party’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Notifying Party refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Party. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 35 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Notifying Party during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
37. The Notifying Party agrees that the Commission may share Confidential Information proprietary to the Notifying Party with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
38. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
39. For a period of 10 years from the Effective Date the Commission may request all information from the Notifying Party that is reasonably necessary to monitor the effective implementation of these Commitments.

#### IV. Replacement, discharge and reappointment of the Trustee

40. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
  - (a) the Commission may, after hearing the Trustee and the Notifying Party, require the Notifying Party to replace the Trustee; or
  - (b) the Notifying Party may, with the prior approval of the Commission, replace the Trustee.
41. If the Trustee is removed according to paragraph 40 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 19-26 of these Commitments.



42. Unless removed according to paragraph 40 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

**Section F. The review clause**

43. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Notifying Party or, in appropriate cases, on its own initiative. Where the Notifying Party requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall the Notifying Party be entitled to request an extension within the last month of any period.

44. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

**Section G. Entry into force**

45. The Commitments shall take effect upon the date of adoption of the Decision.

## SCHEDULE

1. The Divestment Business as operated to date consists of Oy Selecta Ab, a Finnish company registered in Helsinki under the number 0202563-1 active in vending services in Finland (“Selecta Finland”). As a result of the Commitments, the Divestment Business will be separated from Selecta.
2. The Divestment Business will be carried out through the transfer of the legal entity Selecta Finland and will include assets, contracts and other elements which are necessary to allow the Purchaser to run it as a self-sufficient business in the vending services market in Finland.
3. Specifically, in accordance with paragraph 6 of these Commitments, the Divestment Business will include:
  - (a) **the following main tangible assets:**
    - Lease of Selecta Finland headquarters;
    - Leases of 10 local offices listed in Annex 1;
    - IT systems and software listed in Annex 2;
    - POS vending equipment;
    - Technical service equipment;
    - Administration (furniture);
    - Vehicles (shelves in car – not the cars);
    - Gross inventory;
    - Leased POS;
    - Leased cars.
  - (b) **the following main intangible assets:**
4. The Divestment Business would not include intangible assets unless specified otherwise in paragraph 10. Selecta Finland currently uses certain IP rights listed in Annex 3. The Notifying Party commits to request the renewal of any trademark listed in Annex 3 that will expire during the Licensing Period.
  - (c) **the following main licences, permits and authorisations:**
5. The Purchaser will acquire all licenses, permits and authorizations necessary to operate the Divestment Business.
  - (d) **the following main contracts, agreements, leases, commitments and understandings necessary to operate the Divestment Business:**
6. The Purchaser will acquire all contracts which are currently owned by the Divestment Business, unless expressly excluded. The Notifying Party will use its best efforts to transfer any of the contracts with customers or suppliers that contain a change of control provision.
  - (e) **the following customer, credit and other records:**
7. The Purchaser will acquire Selecta Finland’s customer, credit and other records.

**(f) the following Personnel:**

8. The Purchaser will acquire all the personnel of the Divestment Business, including employees who are indispensable for the operation and viability of the Divestment Business. A list of the Personnel is attached as **Annex 4**.

**(g) the following Key Personnel:**

- [...] (managing director, head of sales and marketing)
- [...] (head of finance and administration)
- [...] (operational manager)
- [...] (business manager public vending)
- [...] (key account manager)
- [...] (key account manager)
- [...] (top field sales)
- [...] (service manager Helsinki)
- [...] (service manager Helsinki)

**(h) the arrangements for the supply with the following products or services by the Notifying Party or Affiliated Undertakings for the transitional periods described below after Closing:**

9. The Notifying Party commits to provide the following transitional services under the supervision of the Monitoring trustee to facilitate the transfer of the Divestment Business within the scope of such services as the Notifying Party currently provides to the Divestment Business:

- (i) Supply of vending machines (*i.e.*, machines (either new machines or available machines in the event of refurbishment), spare parts for the machines and filling products:
  - a. Selecta commits to use its best efforts to ensure that any suppliers currently indirectly supplying the Divestment Business with machines, spare parts or filling products via contracts with other entities controlled by the Notifying Party enter directly into separate agreements with the Divestment Business if required by the Purchaser;
  - b. If any such supplier does not sign a supply agreement directly with the Divestment Business for the relevant machines, spare parts or filling products and if required by the Purchaser, the Notifying Party commits to enter into a supply agreement with the Purchaser in relation to any such machines, spare parts or filling products for a [...] period (renewable for an additional [...] period if requested by the Purchaser), on terms and conditions equivalent to those currently afforded to the Divestment Business;
  - c. The Notifying Party also commits to supply spare parts for the Ferrara machines to the Purchaser if required by the Purchaser for a period of [...] (renewable for an additional [...] period if required by the Purchaser), on terms and conditions equivalent to those currently afforded to the Divestment Business.
- (ii) IT-related and information systems related (*e.g.*, CRM, desktop software, local servers and local servers back-up, e-mail, internet access) support services: The Notifying Party commits to enter into a transitional IT support agreement for a

period of up to [...], if required by the Purchaser, on terms and conditions equivalent to those currently afforded to the Divestment Business.

10. Where required by the Purchaser, the Notifying Party commits to offer an exclusive, royalty-free, non-transferable (other than within the Purchaser's group), non-assignable license for the use of Selecta's trademarks in Finland listed in Annex 3 and operate the Divestment Business's website with the domain name [selecta.fi](http://selecta.fi) for a [...] period (which can be extended by another [...] if needed by the Purchaser). The Notifying Party commits not to use any trademarks listed in Annex 3 to the Schedule in Finland during the Licensing Period and for an additional blackout period of [...] after the expiration of the Licensing Period.
11. The Divestment Business shall not include:
  - a) Any brands or logos currently held, as owner or licensee, by Selecta Finland or any rights to sell the products sold by the Divestment Business with the Selecta name (subject to the provisions of paragraph 10 above);
  - b) Any right to [www.selecta.fi](http://www.selecta.fi) or any domain names owned by the Notifying Party or entities controlled by the Notifying Party (subject to the provisions of paragraph 10 above);
  - c) The contracts entered into between Selecta group and (i) [...]and (ii) [...];
  - d) Any activities outside Finland, except for the intercompany sales currently existing between the Divestment Business and other entities controlled by the Notifying Party. If requested by the Purchaser, these sales to other entities of the Selecta group will continue after the divestment of the Divestment Business for a [...] period.
12. If there is any asset or personnel which is not be covered by paragraphs 2 to 10 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

## GUIDELINES

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### General property information

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**List of IT Systems**

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# BOVARD

31/07/2017

## Listing of designs

Client/Principal	Selecta						
Title	Designated countries	Grp.	no. of design	Registration no	Registratio n date	Renewal Remarks date	our ref.
Coffee vending machine	Finland (by designation of the European Union)	WD	2	DM/076 323		28/06/2021	[...]

## Listing of trademarks

Client/Principal	Selecta								
Title	Designated countries	Grp.	Classe(s)	Registration no	Registration date	Last renewal	Renewal date	Remarks	Our ref.
SELECTA (Kl. 37 + 42 / 1993)	Finland	WO	37, 42	611 078	05/11/1993	05/11/2013	05/11/2023	[...]	[...]
SELECTA (Kl. 9 + 30 / 1990)	Finland	WO	09, 30	549 862	15/02/1990	15/02/2010	15/02/2020	[...]	[...]
SELECTA COMFORT	Finland		09, 30, 37, 42	213 603	15/04/1999	15/04/2009	15/04/2019	[...]	[...]
SELECTA COMFORTINA	Finland		09, 30, 37, 42	213 604	15/04/1999	15/04/2009	15/04/2019	[...]	[...]
S (fig.)	Finland (European Union)	WO	09, 30, 35, 37	851 701	07/06/2005	07/06/2015	07/06/2025	[...]	[...]
MIOFINO	Finland (European Union)	CT	30	006750509	25/09/2008		13/03/2018	[...]	[...]
Miofino (fig.)	Finland (European Union)	CT	30	006751697	13/10/2008		13/03/2018	[...]	[...]

## Listing of trademarks

Client/Principal	Selecta								
Title	Designated countries	Grp.	Classe(s)	Registration no	Registration date	Last renewal	Renewal date	Remarks	Our ref.
fresh + fit (fig.)	Finland (European Union)	WO	03, 30, 35, 37, 44	1 110 988	21/12/2011		21/12/2021	[...]	[...]
fresh point (fig.)	Finland (European Union)	WO	09, 30, 35, 37, 44	1 106 772	21/12/2011		21/12/2021	[...]	[...]

[...]

