

***Case No COMP/M.5826 -  
ANGLO IRISH BANK/  
RBS/ ARNOTTS***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 09/08/2010

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Brussels, 09.08.2010  
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C(2010) 5638

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying parties:**

Dear Sir/Madam,

**Subject: Case No COMP/M.5826 – ANGLO IRISH BANK/ RBS/ ARNOTTS  
Notification of 02.07.2010 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>  
Publication in the Official Journal of the European Union No C 187 of  
10.07.2010, p. 15**

1. On 02.07.2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 Council Regulation (EC) No 139/2004 (the Merger Regulation) by which the undertakings Anglo Irish Bank Corporation Limited ("Anglo Irish Bank", Ireland) and The Royal Bank of Scotland Group plc ("RBS", UK) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Arnotts Holdings Limited ("Arnotts", Ireland) on a contractual basis.

**I. THE PARTIES**

2. **Anglo Irish Bank** is the third largest bank in Ireland with an expertise in commercial and property finance in three core markets including Ireland, the United Kingdom and the United States. Anglo Irish Bank was nationalised on 21 January 2009 following the signing into law of the Anglo Irish Bank Corporation Act 2009 and is managed on an arms' length basis.

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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.

3. **RBS** is a holding company listed on the London Stock Exchange and headquartered in Edinburgh (UK). RBS' wholly owned subsidiary, Ulster Bank Ireland Limited, is a full service retail and corporate bank active across Ireland. RBS was nationalized by the UK Government in 2008, which holds 70,3% of its shares. RBS is managed on an arms' length basis through UK Financial Investments Limited.
4. **Arnotts** operates a small number of retail outlets, including one of Ireland's oldest department stores in the Dublin city centre. Through Art Holdings, Arnotts is controlled and 55% owned by the Nesbitt family. Arnotts is involved in the operation of non-specialised retail stores selling, a range of predominantly consumer, household goods and non-food goods, and operates a number of outlets in the Dublin area.

## II. THE OPERATION

5. Anglo Irish Bank and RBS ("the banks") intend to restructure Arnotts' existing debt in return for (i) a warrant and a call option concerning the entire issued share capital of Arnotts<sup>2</sup>, and (ii) associated control rights.<sup>3</sup>
6. According to the Shareholders Agreement,<sup>4</sup> a so-called "Lender Consent" of each bank is required in relation to [...], as well as a number of other matters likely to impact upon the day-to-day operation of the business of Arnotts.<sup>5</sup> Once Lender Consent is given in respect of any matter, Arnotts and its shareholders are required to implement such matters. Furthermore, both banks have by way of "Lender Consent" an effective veto right over the exercise of the voting rights attached to the shares held by Art Holdings Limited.
7. Upon completion of the present transaction, the two banks will, on a contractual basis, each have important veto rights concerning key strategic decisions [...] of Arnotts' commercial behaviour. Conversely, Art Holdings Limited will not be in a position to exercise decisive influence on Arnotts, given that the two banks' consent is required for the exercise by Art Holdings Limited of its voting rights in Arnotts in respect of each of these key strategic decisions and given that Art Holdings Limited can no longer decide on Arnotts' board composition. The above will therefore result in joint control by the Anglo Irish Bank and RBS over Arnotts.

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<sup>2</sup> Arnotts will issue warrants to the banks, which will give each bank the right to subscribe, at par, for new shares that will equal 49.5% of the issued share capital in Arnotts. Furthermore, the banks and Art Holdings will enter into a call option agreement that will give each bank the right to acquire up to 50% of the current issued share capital of Arnotts from Art Holdings.

<sup>3</sup> The proposed concentration takes place in the ordinary course of business of managing claims and therefore appears to be compatible with the conditions imposed within the context of the State aid support given to both banks.

<sup>4</sup> The Shareholders' Agreement has been concluded between the banks, Arnotts and its existing management and shareholders.

<sup>5</sup> Clause 4.1(a)(ii) of the Shareholders' Agreement and Schedule 2 of the Shareholders' Agreement. Lender Consent is defined in the Subscription Agreement as: "the prior written consent of the Lenders holding, or being entitled to subscribe for, at least 75% in number, of the E Ordinary Shares issued, or which may be issued, pursuant to exercise of the Warrants".

### III. CONCENTRATION

8. On the basis of the above, the envisaged restructuring amounts to a concentration within the meaning of Article 3 (1) of the Merger Regulation.

### IV. EU DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>6</sup> [Anglo Irish Bank: EUR 6,025 million, RBS: EUR 63,692 million and Arnotts: EUR [...]]. Two of them have an EU-wide turnover in excess of EUR 250 million [Anglo Irish Bank: EUR [...], RBS EUR [...]] but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

### V. COMPETITIVE ASSESSMENT

#### A. *The Product and Geographic Markets*

10. Arnotts is present in the market for non-specialised retail. The parents are present in banking services markets.
11. Referring to previous Commission decisions in the sector, the parties submit that there is a non-specialised retail market, which can further be sub-divided according to the categories of non-food consumable goods<sup>7</sup>. The geographical scope was previously considered as national; the precise market definition was however left open.<sup>8</sup>
12. Referring to previous Commission decisions in the sector<sup>9</sup>, the parties submit that, with regard to the parents, within the markets for banking services a distinction shall be made between retail banking, corporate banking and financial market services.
13. However, for the purpose of the present case no precise market definition is necessary, since under no alternative product or geographic market definition the present transaction raises competition issues.

#### B. *Competitive assessment*

14. Arnotts and the parent companies perform different types of activities (non-specialised retail as opposed to banking and financial services). Therefore, none of the parents has activities in the same markets as Arnotts.
15. Furthermore Arnotts only represents a very small part of the parents' portfolio so that spill-over effects within the meaning of Article 2(4) of the Merger Regulation as a result of the proposed transaction can be discarded.

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<sup>6</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

<sup>7</sup> Case COMP/M. 3437 -KKR/Vendex; COMP/M. 5176-CVC/Schuitema.

<sup>8</sup> Case M. 3437- KKR / Vendex KBB.

<sup>9</sup> COMP/M. 4844-Fortis/ABN Amro Assets and COMP/M. 5384-BNP Paribas/Fortis.

16. For these reasons, the Commission concludes that the concentration does not raise serious doubts as to its compatibility with the internal market and the EEA Agreement.

## **VI. CONCLUSION**

17. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the European Commission,  
*(signed)*  
Štefan FÜLE  
Member of the Commission