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***Case M.7172 - APOLLO  
/ FITZWILLIAM /  
WITTINGTON /  
ARNOTTS***

Only the English text is available and authentic.

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

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Article 4(4)  
Date: 18.3.2014



## EUROPEAN COMMISSION

Brussels, 18.3.2014  
C(2014) 1917 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

MERGER PROCEDURE

**To the notifying parties**  
**To the Irish Competition Authority**

Dear Madams and Sirs,

**Subject: Case M.7172 - APOLLO / FITZWILLIAM / WITTINGTON / ARNOTTS  
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004<sup>1</sup> for referral of the case to the Ireland.**

**Date of filing: 5 March 2014**

**Legal deadline for response of Member States: 26 March 2014**

**Legal deadline for the Commission decision under Article 4(4): 9 April 2014**

### **I. INTRODUCTION**

1. On 5 March 2014, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of Ireland.
2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.

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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. A copy of this Reasoned Submission was transmitted to all Member States on 5 March 2014.
4. By letter dated 10 March 2014, the Irish Competition Authority ("ICA") as the competent authority of Ireland informed the Commission that Ireland agrees with the proposed referral.

## II. THE PARTIES

5. Arnotts Holdings Limited ("Arnotts", Ireland) is involved in the operation of non-specialised retail stores selling a range of predominantly consumer, household goods and non-food goods, and operates two outlets in the Dublin area.<sup>2</sup> Arnotts is currently jointly controlled by Apollo Management L.P ("Apollo", USA) and Ulster Bank.<sup>3</sup>
6. Apollo manages a number of investment funds that invest in companies involved in various businesses throughout the world, *inter alia*, companies in the chemical, cruise line, logistics, paper, packaging, and metals businesses.
7. Ulster Bank, which belongs to the Royal Bank of Scotland ("RBS", UK), is a full service retail and corporate bank active across Ireland.
8. Fitzwilliam Finance Partners Ltd ("Fitzwilliam", Ireland) is a property company founded by Wittington Investments Limited ("Wittington Canada", Canada) for the sole purpose of acquiring the debt/equity in Arnotts. Wittington Canada is the holding company for the Weston Group, Wittington Properties and the Selfridges Group.<sup>4</sup> [...] Through its subsidiaries, Wittington Canada operates food processing and distribution mainly in North America, financial products and services in Canada, commercial real estate holdings in North America, and department stores in Canada, Ireland, the Netherlands and the UK. In Ireland, it operates Brown Thomas and BT2. Brown Thomas is a leading luxury department store in Ireland, offering beauty, womenswear, menswear, childrenswear, footwear, accessories and homewares. BT2 is also a premium department store but carries a more limited range and targets a younger market than the main Brown Thomas stores. The four Brown Thomas stores are located in Dublin, Galway, Cork and Limerick. Each of the four BT2 stores is located in the Greater Dublin Area.

## III. THE OPERATION AND CONCENTRATION

9. The transaction in question involves the acquisition of joint control over Arnotts by Fitzwilliam/Wittington Canada and Apollo (the "Notifying Parties"). Pursuant to

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<sup>2</sup> Arnotts' outlets include: (i) its flagship outlet on Henry Street in Dublin's north city centre; and (ii) a smaller outlet nearby on Earl Street North under the "Boyers" brand.

<sup>3</sup> In 2010, Irish Bank Resolution Corporation ("IBRC"), formerly Anglo Irish Bank Corporation Limited (Ireland) and Royal Bank of Scotland (through Ulster Bank) acquired joint control over Arnotts. The two banks acquired joint control through the acquisition of Arnotts' debts in return for certain warrants and associated control rights over Arnotts. The Commission cleared that acquisition in August 2010. See Case M.5826 – *Anglo Irish Bank/RBS/Arnotts*. In 2014, IBRC sold its share of Arnott's debt to Apollo. The Commission cleared the transaction on 27 February 2014. See Case M.7150 – *Apollo/Ulster Bank/Arnotts*.

<sup>4</sup> See Case M.6084 – *Wittington/Divisie Bijenkorf*, Decision of 19 January 2011.

a Loan Sale Agreement dated [...], Fitzwilliam/Wittington Canada will assume RBS' joint control rights in Arnotts by acquiring, for €[...], from RBS' subsidiary Ulster Bank, certain Arnotts' debt, warrants and a call option to acquire 50% of Arnotts' share capital. As a result, Fitzwilliam/Wittington Canada will thus acquire joint control over Arnotts together with the incumbent Apollo, which currently has joint control over Arnotts with Ulster Bank/RBS.

#### IV. EU DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>5</sup> (Apollo: EUR [...] million; Wittington Canada: above EUR [...] million; Arnotts: EUR [...] million). Two of them have each an EU-wide turnover in excess of EUR 250 million (Apollo: EUR [...] million; Wittington Canada: EUR [...] million; Arnotts: EUR [...] million), 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 within Article 1(2) of the Merger Regulation.

#### V. ASSESSMENT

11. On the basis of the information submitted in the Reasoned Submission, the proposed transaction is likely to have an impact on the non-food retailing sector in the Greater Dublin Area.<sup>6</sup> Brown Thomas and Arnotts are two multi-category retailers (department stores) which operate respectively five and two stores in the Greater Dublin Area. According to the Notifying Parties, whilst there are differences between the stores' respective offerings and they are not each other's closest rival, there is a crossover in some of the brands they carry and therefore the concentration has the potential to affect competition.

##### A. Relevant product markets

12. According to the Commission's decisional practice, the retail sector has been divided between food and non-food segments.<sup>7</sup> It has also been considered that the non-food retail segment may be divided according to different product lines (e.g. clothing and footwear, furniture and furnishing, electronics and appliances)<sup>8</sup> which, in turn, can be further divided into sub-categories (e.g. "women's apparel", "men's apparel", "shoes", "leather goods").<sup>9</sup> The Commission also considered in previous decisions whether there may be a separate market for the retail sale of luxury products.<sup>10</sup> Finally, the Commission has so far left open the issue whether non-food retail via different channels, i.e. home shopping (through catalogues or online) as opposed to brick-and-mortar shops (which could further be distinguished in speciality stores, department

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<sup>5</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

<sup>6</sup> The Greater Dublin Area is defined as Dublin and its adjacent counties, Kildare, Meath and Wicklow.

<sup>7</sup> Case M.070 – *Otto/Grattan*, Decision of 21 March 1991; Case M.5721 – *Otto/Primondo Assets*, Decision of 16 February 2010.

<sup>8</sup> See Case M.5721 – *Otto/Primondo Assets*, cited above. See also Case M.5840 – *Otto/Quelle Schweiz Assets*, Decision of 10 May 2010.

<sup>9</sup> See Case M.5721 – *Otto/Primondo Assets*, cited above.

<sup>10</sup> Case M.1534 – *Pinault-Printemps-Redoute/Gucci*, Decision of 22 July 1999; Case M.2941 – *CNP/Taittinger*, Decision of 16 October 2002.

stores, supermarkets and pharmacies<sup>11</sup>), should be analysed as different product markets.<sup>12</sup>

### **B. Relevant geographic market**

13. As regards the geographic scope of these markets, the Commission's precedents suggest that they are national or even locally defined on the basis of catchment areas.<sup>13</sup> In line with the ICA's decisional practice,<sup>14</sup> the Notifying Parties submit that the relevant geographic market is the Greater Dublin area.

### **C. Assessment**

14. The Notifying Parties were not able to exclude that the proposed transaction might give rise to affected markets in relation to the beauty, clothing, footwear and jewellery sectors in the Greater Dublin area. The Notifying Parties have provided market share estimates for the broadest markets in these sectors (e.g. the market for the retail sale of clothing in the Greater Dublin area), but no data were available for narrower segments (e.g. the potential markets for the retail sale of women's or men's apparel in the Greater Dublin area). Given that in certain markets the combined market share of the Notifying Parties and Arnotts is [...], it cannot be excluded that under narrower market definitions, the transaction might lead to affected markets. For instance, it cannot be excluded that the potential market for the retail sale of luxury cosmetics in the Greater Dublin area may be affected.
15. In view of the foregoing, the transaction may significantly affect competition in a number of possible, narrowly defined markets relating to the beauty, clothing, footwear and jewellery sectors. Its principal effects would be restricted to Ireland and specifically to the Greater Dublin area. Further, the markets in question present all the characteristics of a distinct market.

#### *Additional factors*

16. A referral to the ICA is also justified by these authorities' recent experience of the markets for non-food retail, which makes it the best placed authority to deal with the case.<sup>15</sup>
17. In addition, in previous cases concerning non-food retail,<sup>16</sup> the Commission has also taken the step of referring the matters to the French and Danish competition authorities under Article 4(4) of the Merger Regulation.

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<sup>11</sup> Case M.312 – *Sanofi/YSLI*, Decision of 18 February 1993; Case M.3643 – *Sephora/El Corte Ingles/JV*, Decision of 9 March 2005; Case No. COMP. M.3716 – *A.S. Watson/Marionnaud*, Decision of 4 April 2005.

<sup>12</sup> See Case M.5721 – *Otto/Primondo Assets*, cited above.

<sup>13</sup> Case M.2951 – *A.S. Watson/Kruidvat*, Decision of 27 September 2002; Case M.1533 – *Artemis/Sanofi/Beaute*, Decision of 21 June 1999; Case M.1534 – *PPR/Gucci*, cited above; Case M.3716 – *A.S. Watson/Marionnaud*, Decision of 4 April 2005.

<sup>14</sup> See ICA, Determination of Merger Notification M/06/052 Debenhams/Roches, 6 June 2006\*.

<sup>15</sup> See ICA, Determination of Merger Notification M/06/052 Debenhams/Roches, 6 June 2006\* and the Retail-related Import and Distribution Market Study published in May 2009.

\* Should read: 6 September 2006.

18. Moreover, the benefit of a "one stop shop" remains as the case would be entirely referred to Ireland.
19. Finally, the ICA agreed to the referral of the case by a letter dated 10 March 2014.

## **VI. REFERRAL**

20. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations<sup>17</sup> (point 17) indicates that, in seeking a referral under Article 4(4), "*the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*", and that "*such indications may be no more than preliminary in nature...*". The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in Ireland, and that the requested referral would be consistent with point 20 of the notice.

## **VII. CONCLUSION**

21. For the above reasons, and given that Ireland has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by Ireland. This decision is adopted in application of Article 4(4) of the Merger Regulation.

*For the Commission*

*(signed)*  
*Alexander ITALIANER*  
*Director General*

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<sup>16</sup> See e.g. Cases M.7094 – *Advent/Groupe Nocibé*, Decision of 16 December 2013, and M.4281 – *CVC/Matas*, Decision of 9 November 2006

<sup>17</sup> OJ C 56, 5.3.2005, p. 2.