



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

Decision on the implementation of remedies -
Art. 6(1)(b) in conjunction with 6(2) - Purchaser approval

Date: 21.2.2018



Brussels, 21.2.2018
C(2018) 1188 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party:

Dear Sir or Madam,

Subject: Case M.8454 – KKR / PELICAN ROUGE
Approval of JOBmeal as purchaser of Selecta’s business in Finland
including assets and contracts following your letter of 29 January 2018
and the Trustee’s Reasoned Opinion of 5 February 2018

I. FACTS AND PROCEDURE

1. By decision of 25 August 2017 adopted in application of Article 6(1)(b) in connection with Article 6(2) of the Merger Regulation¹ (“the Decision”), the Commission approved the acquisition by Selecta AG of Switzerland (“Selecta” or the “Notifying Party”), controlled by KKR Co. L.P. (“KKR”, United States), of sole control over Pelican Rouge B.V. of the Netherlands (“Pelican Rouge”) (the “Transaction”), conditional on the Notifying Party’s commitments (the “Commitments”) to divest Selecta’s business in Finland (the “Divestment Business”) to a suitable purchaser.
2. In particular, in order to remove the Commission's serious doubts as to the compatibility of the Transaction with the internal market, the Commitments provide for the divestment of:
 - 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;

¹ Council Regulation (EC) No 139/2004 of 20 January 2004, (“the Merger Regulation”), Official Journal L 24, 29.01.2004, p. 1-22.

- 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.
3. In paragraph 2 of the Commitments, Selecta commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business which shall be subject to the Commission's approval pursuant to paragraph 18 of the Commitments.
 4. By letter of 29 January 2018, the Notifying Party proposed JOBmeal Group AB of Sweden ("JOBmeal" or the "Proposed Purchaser") for approval by the Commission as purchaser of the Divestment Business and submitted the proposed Share Purchase Agreement and its Exhibits (the "Proposed Agreement").
 5. On 5 February 2018, the appointed Monitoring Trustee (hereafter the "Trustee") submitted a Reasoned Opinion with an assessment of JOBmeal's suitability as a purchaser and, in particular, has indicated that it fulfils the criteria of the purchaser requirements in section D of the Commitments. In his assessment, the Trustee also indicated that, on the basis of the Proposed Agreement, the Divestment Business would be sold in a manner consistent with the Commitments.

II. ASSESSMENT OF THE PROPOSED PURCHASER

(a) Legal framework

6. According to paragraph 18 of the Commitments, in its assessment of the Proposed Agreement the Commission has to ensure that the Proposed Purchaser fulfils the purchaser criteria and that the Divestment Business is being sold in a manner consistent with the Commitments.
7. In particular, pursuant to paragraph 17 of the Commitments in order to be approved by the Commission, the Proposed Purchaser must fulfil the following criteria:
 - a) It shall be independent of and unconnected to the Notifying Party and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
 - b) It 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.

(b) Description of the Proposed Purchaser

8. JOBmeal is Sweden's second largest, nationwide supplier of vending services. It is currently only active in the Swedish market, with no operations in other countries. JOBmeal offers a broad range of coffee machines and services through more than 20 local offices and it employs around 250 people. JOBmeal has in recent years experienced strong organic growth and its revenue grew from EUR 40.9 million in 2016 to EUR 47.4 million in 2017 and increased its EBITDA from EUR [...] in 2016 to EUR [...] million in 2017.²
9. JOBmeal was founded in 2000 by 18 local companies with a similar service and product offering. Since March 2016, Valedo, a private equity group, has been the majority owner (72%) of JOBmeal, with the management and key employees of JOBmeal having invested alongside Valedo. In January 2018, the different entities of JOBmeal have been consolidated in a single entity, JOBmeal AB.
10. JOBmeal's operations are currently run through a decentralised model divided in six regions in which all of the regional managers are part of the group management and report to the CEO.
11. Valedo is an independent Swedish private equity group investing in high-quality small/mid cap companies in the Nordic region. Valedo is focusing on companies with clear growth and development potential. Valedo's investment philosophy is based on multi-year business plans aimed at developing, securing and strengthening the company's strategic position.

(c) Independence

12. The Notifying Party submits and the Trustee's review of the relationships between the Parties and JOBmeal confirms that JOBmeal and its affiliates are independent of and unconnected to the Parties and their affiliates. In particular, there are:
 - a) no cross-shareholdings
 - b) no common director or member on the management or supervisory boards
 - c) no joint ventures
 - d) no commercial agreementsbetween JOBmeal or Valedo and its affiliates on the one hand and Selecta or KKR and its affiliates on the other hand.
13. Therefore, on the basis of the information made available to the Commission by the Notifying Party and the Trustee, the Commission considers that the Proposed Purchaser is independent of and unconnected to the Notifying Party.

² The exchange rate SEK/EUR used is 0.102 EUR for 1 SEK.

(d) Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

14. With regard to financial resources, the Notifying Party submits that the Proposed Purchaser has sufficient financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive business.
15. The Trustee's Reasoned Opinion indicates that JOBmeal has the financial capacity to maintain and develop the Divestment Business. The acquisition by JOBmeal of the Divestment Business will be financed by a combination of equity and debt financing. The purchase price for the Divestment Business is approximately EUR [...] million. In this respect, Valedo already committed to make [...] to JOBmeal in the context of the acquisition of the Divestment Business and a [...] has already been signed.
16. According to the Trustee, the financing of the proposed acquisition includes a reasonable part of equity ([...]%). Therefore, JOBmeal's financial risk is limited.
17. With regard to its expertise, JOBmeal has an extensive experience of the coffee and water vending machines market in Sweden, with over 15 years of operations in this market. As mentioned above, JOBmeal is the number two player of the vending services market in Sweden with an estimated [10-20]% market share.
18. With regard to its incentive in maintaining and developing the Divestment Business, JOBmeal has a strategy to grow its business in Northern Europe. Due to the geographical and cultural proximity between Sweden and Finland, JOBmeal sees Finland as a very attractive market for JOBmeal's expansion. Therefore, the acquisition of the Divestment Business fits with JOBmeal's expansion plan outside of Sweden.
19. In view of the above, the Commission considers that the Proposed Purchaser has the financial capabilities, proven expertise and incentive to maintain and develop Divestment Business as a viable and active competitive force in competition with the Notifying Party and other competitors.

(e) Absence of prima facie competition problems

20. Although it is an important and growing competitor in the vending services market in Sweden, JOBmeal is currently not active in Finland.
21. Given that the geographic scope of the market for vending services market is national, the implementation of the Commitments would lead to the entry of a new player on the Finish market. As a consequence the acquisition of the Divestment Business does not raise prima facie competition concerns.
22. Finally, according to the Trustee Reasoned Opinion and the Proposed Agreement, there are no regulatory approvals required for completion of the transaction apart from the Commission's approval of JOBmeal as the Divestment Business's purchaser. In any case, this prima facie assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by the Proposed Purchaser by a competent competition authority under applicable merger control rules.

(f) Conclusion on the purchaser criteria

23. In the light of the above considerations and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that JOBmeal meets the purchaser criteria set out in paragraph 17 of the Commitments.

III. ASSESSMENT OF THE PROPOSED AGREEMENT

24. The Proposed Agreement was concluded on 23 January 2018 and sets forth JOBmeal's irrevocable commitment to purchase the Divestment Business on the terms and conditions as set forth in the Share Purchase Agreement.
25. The Trustee has reviewed and provided an assessment of the Proposed Agreement and concluded that it fulfils the requirements of the Commitments and that the Divestment Business is sold in a manner consistent with the Commitments.
26. The Proposed Agreement is fully in line with the scope of the Divestment Business as defined in the Commitments. In particular, the Proposed Agreement comprise among others: (i) the Share Purchase Agreement, executed on 23 January 2018, which sets out the terms of the sale of the Divestment Business; (ii) the Supply Agreement, which sets out the terms and conditions of supply of machines and spare parts (including for the Ferrara product line) as well as filling products to JOBmeal in accordance with paragraph 9(i) of the schedule of the Commitments; (iii) the Transitional Services Agreement, which specifies and sets out the terms and conditions of certain IT-related, software, and information system related support services to be provided to JOBmeal in accordance with paragraph 9(ii) of the schedule of the Commitments; and (iv) the License Agreement, which sets out the terms for the use of Selecta's trademarks by JOBmeal reflecting paragraph 10 of the schedule of the Commitments.
27. In the light of the above considerations and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the Divestment Business is sold in a manner that is consistent with the Commitments.

IV. CONCLUSION

28. On the basis of the above assessment, the Commission approves JOBmeal as a suitable purchaser for the above-mentioned reasons.
29. Moreover, on the basis of the Proposed Agreement, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
30. This decision only constitutes approval of the Proposed Purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that the Notifying Party has complied with the Commitments.

31. This decision is based on section B, C and D of the Commitments attached to the Commission Decision of 25 August 2017.

For the Commission

(Signed)
Johannes LAITENBERGER
Director-General