



DETERMINATION OF MERGER NOTIFICATION M/12/026 – ONEX / SUMMIT / BBAM

Section 21 of the Competition Act 2002

Proposed acquisition of joint control by Onex and Summit of BBAM

Dated 21 December 2012

Introduction

1. On 30 November 2012, in accordance with Section 18 of the Competition Act, 2002 (“the Act”), the Competition Authority (“the Authority”) received a notification of a proposed transaction whereby Onex Corporation (“Onex”) through a number of wholly owned subsidiaries would acquire joint control of BBAM Limited Partnership (“BBAM”) by acquiring a 35% interest in BBAM from Summit Aviation Partners LLC and Summit Aviation Management Co. Limited (together “Summit”) and the 15% interest held in BBAM by Fly Leasing Limited (“Fly Leasing”).
2. Summit currently owns an 85% interest in and controls BBAM while Fly Leasing owns a 15% interest in BBAM. Following completion, Onex and Summit would jointly control BBAM.

The Undertakings Involved

Acquirer

Onex Corporation

3. Onex Corporation is a Canadian based corporation, listed on the Toronto Stock Exchange. Onex Corporation, as a private equity firm invests in companies through a number of private equity funds. Onex is ultimately controlled by an individual, Mr. Gerald W. Schwartz. Mr. Schwartz acts as the Chairman, President and Chief Executive Officer of Onex and controls approximately [...] of the voting rights in Onex.
4. The proposed transaction involves the acquisition of joint control of BBAM by a number of wholly owned subsidiaries of Onex Corporation.¹
5. Onex currently controls companies that are active in a variety of industry sectors, including electronics manufacturing services, aero-structures, financial services, customer care services (call centres), metal services, healthcare, gaming, building products, commercial vehicles, cabinetry products and real estate.²
6. Globally, Onex, through its portfolio funds, holds interests in two firms that service the aviation sector, namely:

¹ Namely: [...].

² The Onex companies operating in the State are namely: Carestream Health Inc; Celestica Inc; Davis-Standard LLC; JELD-WEN Holding Inc; [...]; Spirit AeroSystems Inc; The Warranty Group Inc and [...].

- (i) Spirit AeroSystems Inc ("Spirit"), a company based in Kansas in the US, in which Onex holds a 16% stake. Spirit designs, manufactures and supplies large component parts and assemblies for original equipment manufacturers of commercial, military and business or regional jet aircraft in North America, Aisa and Europe. In 2011 Spirit made sales to Irish customers of USD\$[...]. These sales related to spare parts shipped to customers located in Ireland.
 - (ii) Hawker Beechcraft Corporation ("Hawker"), a company based in Kansas, in which Onex holds a [...] % stake. Hawker is a business and military (trainer/attack) aircraft manufacturer, designing, marketing and supporting aviation products and services for businesses, governments and individuals worldwide. Its products are marketed under the Hawker and Beechcraft brand names. During the second quarter of 2012 Hawker filed for bankruptcy protection in the US. As a result, the parties state that Onex no longer exerts significant influence over Hawker and following restructuring Onex anticipates holding a non-controlling interest of less than [...] %.
7. Neither Onex, nor any of the funds controlled by Onex, currently own or control any entity that is engaged in commercial aircraft leasing, financing and management sectors either globally or within the State.
 8. Mr. Schwartz does not own or control any entities that are engaged in commercial aircraft leasing, financing and management sectors either globally or within the State.
 9. For the financial year ending 31 December 2011, Onex had a worldwide turnover of €[...] and turnover in the State for the same period of approximately €[...].³

Summit

10. Summit is a limited liability company incorporated in Delaware in the USA. Summit currently holds an 85% interest in and controls BBAM. Summit, which is owned by members of the management of BBAM, is majority owned and controlled by Mr. Steve Zissis, President and CEO of BBAM. Post transaction, Summit will hold a 50% interest in and jointly control BBAM (with Onex).
11. In addition to its interest in BBAM, Summit also owns commercial aircraft and engines and makes periodic investments in commercial aircraft and engines. The parties submit that at any point in time, Summit typically owns approximately [...] aircraft for its own account, all of which are managed by BBAM. All other aircraft interests are held on behalf of clients.
12. Summit operates in the State through its wholly-owned subsidiary Summit Aircraft Limited and its indirectly wholly-owned subsidiary Babcock & Brown Limited (and their respective wholly-owned subsidiaries). Both companies are incorporated in Ireland.

³ The figures have been calculated using the ECB €/USD\$ bilateral exchange rate for 2011 of €1/USD\$1.3920 and are based on Onex's worldwide turnover of USD\$[...] and its turnover in the State of USD\$[...] for the year ended 31 December 2011. All subsequent Euro figures in this Determination are calculated using the exchange rate set out above. Source: <http://sdw.ecb.europa.eu/home.do>.

13. Summit Aircraft Limited has [...] Irish subsidiaries which own and lease aircraft or aircraft engines. The parties state that as of 12 December 2012, the Irish subsidiaries of Summit Aircraft Limited together own interests in [...] aircraft.⁴
14. Babcock & Brown Limited has [...] Irish subsidiaries which own and/or lease aircraft on behalf of clients. The parties state that principals of Summit Aviation Partners LLC do not hold an economic interest in these aircraft and leases other than in respect of servicing and other fees. [...] [...].⁵
15. For the financial year ending 31 December 2011, Summit had a worldwide turnover of approximately €[...] and turnover in the State for the same period of approximately €[...].⁶

Target

BBAM Limited Partnership

16. BBAM Limited Partnership is an exempted limited partnership incorporated in the Cayman Islands.⁷ BBAM is currently owned and controlled by Summit, which holds an 85% interest in BBAM. The remaining 15% is held by Fly Leasing, through its wholly-owned subsidiary Fly-BBAM Holdings Limited.
17. Fly Leasing is involved in the acquisition and leasing of commercial jet aircraft under long-term contracts to a diverse group of airlines throughout the world. Fly Leasing currently has a fleet of approximately 110 aircraft which it leases under multi-year operating leases to approximately 54 airlines in 29 countries.
18. BBAM operates in the commercial aircraft leasing, financing and management sectors. It provides over 200 airline client customers across 50 countries with fleet and financing solutions. Some of BBAM's clients include British Airways, Ryanair, United Airlines and Emirates.
19. BBAM also provides asset management services to leasing companies, aviation investors and financial institutions. These asset management services include aircraft operating lease activities, such as facilitating aircraft purchase, sale and sale-leaseback transactions and other activities including marketing of aircraft and monitoring maintenance of aircraft. BBAM has asset management relationships with about 80 airlines covering about 280 aircraft, including the 110 aircraft owned by Fly Leasing. In addition, BBAM has been providing aircraft financing with Nomura Babcock & Brown for over twenty years.
20. BBAM currently manages the entire aircraft fleet of Fly Leasing. This includes activities such as arranging for the leasing of the fleet, assisting in acquiring and disposing of aircraft, marketing activities, monitoring maintenance and insurance of the aircraft. BBAM operates in the State through BBAM Aviation Services Limited and BBAM Aircraft

⁴ Information provided by the parties in response to queries raised by the Authority.

⁵ Ibid.

⁶ The figures are based on Summit's worldwide turnover of USD\$[...] and its turnover in the State of USD\$[...] for the year ended 31 December 2011.

⁷ BBAM is registered under the Exempted Limited Partnership Law 2007 (as amended) of the Cayman Islands.

Management (Europe) Limited, both of which are incorporated in Ireland.

21. For the financial year ending 31 December 2012, BBAM had a worldwide turnover of approximately €[...] and turnover in the State for the same period of approximately €[...].⁸

The Proposed Transaction and Rationale

22. The proposed transaction is an acquisition of an equity interest in a partnership pursuant to a Purchase Agreement dated 30 November 2012. Summit currently owns an 85% interest in and controls BBAM while Fly Leasing owns a 15% interest in BBAM. Following completion, Onex and Summit would jointly control BBAM.
23. The parties state that the proposed transaction is a "*financial investment by Onex in line with its commercial strategy*".⁹

Third Party Submissions

24. No third party submission was received.

Analysis

25. There is no horizontal overlap in the activities of the parties. Onex is involved in private equity investment while BBAM is involved in commercial aircraft leasing, financing and management. Neither Onex nor any of the companies controlled by Onex is active globally or within the State in the provision of commercial aircraft leasing, financing or management.
26. The Authority considers that the proposed transaction raises no vertical competition concerns in the State. No vertical overlap exists between the activities of either Spirit or Hawker and those of BBAM either worldwide or in the State. The goods and services supplied by Spirit and Hawker are provided to original equipment manufacturers and, in addition, BBAM does not purchase or lease business jets or military aircraft.
27. In light of the above, the Authority concludes that the proposed transaction does not raise competition concerns in the State.

⁸ The Euro figures are based on BBAM's worldwide turnover of USD\$[...] and its turnover in the State of USD\$[...] for the year ended 31 December 2011.

⁹ As provided in the Notification Form at page 9.

DETERMINATION

The Competition Authority, in accordance with Section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby Onex Corporation, through a number of wholly owned subsidiaries, together with Summit Aviation Partners LLC and Summit Aviation Management Co. Limited would acquire joint control of BBAM Limited Partnership will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Stephen Calkins
Member of the Competition Authority
Director, Mergers Division