

OFFICE FOR COMPETITION

1 July 2015

COMP-MCCAA/10/2015 – Acquisition by BC Partners of Pharmathen S.A.

Decision on acquisition in terms of regulations 6 (1) (ii) and 12(4) of the Control of Concentrations Regulations (LN 294 of 2002 as subsequently amended)

The Office for Competition,

Having considered the notification dated 9 June 2015 pursuant to regulation 5 of the Control of Concentrations Regulations,

Having considered the provisions of the Control of Concentrations Regulations,

Facts

1. On the 9 June 2015, the Office for Competition received notification of a proposed concentration pursuant to regulation 5 of the Control of Concentrations Regulations (hereinafter referred to as “the Regulations”), whereby BC Partners (hereinafter referred to as “Buyer”) will acquire sole control of Pharmathen S.A., (hereinafter referred to as “Seller”).
2. The notification was filed on the 9 June 2015, and accepted as complete notification. It was notified to the public simultaneously in Government Gazette Number 19,444 and a daily newspaper on the 23 June 2015.

Parties

3. The Notifying Party is BC Partners Ltd, a private equity firm advising on and comprising the establishment of a number of equity funds, including the BC European Capital IX Limited Partnership and the BC European Capital VIII Limited Partnerships which invest in, acquire and develop European or multinational businesses to create value in partnership with management. One of BC Partners’ portfolio companies is the pharmaceutical company Aenova GmbH, based in Germany. Aenova is a full-service pharmaceutical contract development manufacturing organisation (CDMO) for a wide range of customers, including pharmaceuticals, veterinary medical products and cosmetics.

4. The Seller (Pharmathen S.A) is a niche pharmaceutical company focused on developing, manufacturing and out-licensing of complex generic drugs operating mainly in the CDMO market. It runs three state-of-the-art research and development facilities and two production sites in Greece. The two business activities of Pharmathen comprise contracts with companies located in more than 80 countries worldwide.

Transaction

5. Pursuant to the Share Purchasing Agreement (SPA) dated 18 May 2015, it is proposed that the acquirer shall indirectly acquire 79% of the issued share capital of Pharmathen S.A, under the terms and conditions stipulated in the SPA, subject to the acquirer obtaining clearance from the relevant 'Merger Control Authorities' as defined in SPA.

Notifiable Concentration

6. In terms of regulation 2 of the Control of Concentrations Regulations, a concentration refers to the acquisition by one or more undertakings, or by one or more persons already controlling at least one undertaking, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more undertakings.
7. The proposed transaction brings about a permanent change of control over the assets transferred from the Seller to the Notifying Party. The assets to be transferred constitute a business to which a market turnover can be attributed.
8. Therefore the proposed transaction constitutes a concentration within the meaning of regulation 2 of the Regulations.

Threshold for Notification

9. The aggregate turnover of the undertakings concerned in the preceding financial year exceeds €2,329,373.40 and each of the parties concerned had a turnover in Malta equivalent to at least 10% of the combined aggregate turnover of the undertakings concerned.
10. The notified concentration, therefore, meets the notification threshold as set out in regulation 2 of the Regulations.

Simplified Procedure

11. Following the examination of the notification, it is considered that the notified concentration falls within the scope of regulation 12(1)(iii) of the Regulations, whereby it is provided that:

"The simplified procedure will apply to the following categories of concentrations that are deemed not to raise serious doubts as to their legality in terms of the provisions of these regulations...

(iii) two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking and two or more of the parties to the concentration are engaged in business activities either in the same product and geographical market and their combined market share is less than 15%..."

Conclusion

For the above mentioned reasons and in terms of regulations 6 (1) (ii) and 12(4) of the Regulations, the Office has decided:

- (1) that the Concentration falls within the scope of the Regulations on Control of Concentrations;
- (2) that the Concentration does not raise serious doubts as to its lawfulness;
- (3) not to oppose the notified Concentration and to declare it a lawful Concentration.



Godwin Mangion
Acting Director General