

OFFICE FOR COMPETITION

17 December 2019

COMP-MCCAA/19/2019 – Acquisition of JP Pharma Operations by Brown’s Pharma Limited

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

The Office for Competition,

Having considered the notification filed on 19 November 2019 pursuant to Regulation 5 of the Control of Concentrations Regulations,

Having considered the provisions of the Control of Concentrations Regulations,

Having considered Commission Notice on a simplified procedure for treatment of certain concentrations under Regulation (EC) No 139/2004

Facts

1. On 19 November 2019, the Office for Competition received a notification of a proposed acquisition pursuant to Regulation 5 of the Control of Concentrations Regulations (hereinafter referred to as “the Regulations”), whereby Brown’s Pharma Limited (hereinafter referred to as “the Notifying Party”) will acquire sole control of JP Pharma Operations (hereinafter referred to as “the Acquired Party”).
2. The proposed acquisition was notified to the public through a notice that appeared in a daily newspaper and on the Malta Competition and Consumer Affairs Authority’s website on 26 November 2019 and a notice that appeared in the Government Gazette No. 20,300 on 26 November 2019.

Parties

3. Brown’s Pharma Limited, the Notifying Party, having registration number C22952 with a registered address at Brown’s Pharmacies, Triq l-Industrija, Qormi, is the largest retail pharmacy group in Malta in management and the operation of retail community pharmacies. The Notifying Party operates its business from thirteen pharmacies around Malta, found in the following localities: Birkirkara, Hamrun, Kalkara, Mellieħa, Mosta, Naxxar, Paola, Pieta`, Qormi, Sliema and Żebbuġ.

4. JP Pharma Operations, the Acquired Party, having registration number P1236 with a registered address at St. Anne's Pharmacy, 24, St. Helen Square, Birkirkara, is a partnership active in Malta in the business of pharmacies. The Acquired Party operates its business from six pharmacies around Malta, found in the following localities: Birkirkara, Hamrun, Iklin, Naxxar, San Gwann and St. Julians.
5. Both parties are actively involved in the Maltese market in the management and operation of retail community pharmacies, where [65-75%] of their respective turnover is generated through the retail sales of pharmaceutical products.

Transaction

6. Pursuant to a Merger of Business Agreement, the Notifying Party proposes to acquire the retail community pharmacy business presently operated by the Acquired Party.
7. A new company, Brown's Top HoldCo (hereinafter referred to as 'Newco'), will be incorporated and will own the entire shareholding of the Notifying Party and the assets of the Acquired Party.
8. The present shareholders of Brown's Pharma Limited will hold 73% of the shares of Newco while the remaining shares will be held by the current partners of JP Pharma Operations.

Notifiable Concentration

9. 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 other undertakings.
10. The proposed transaction brings about the acquisition of the assets of the Acquired Party by the Notifying Party.
11. Therefore, the proposed concentration constitutes a concentration within the meaning of Regulation 2 of the Regulations.

Threshold for Notification

12. 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.
13. The notified concentration, therefore, meets the notification threshold as set out in Regulation 2 of the Regulations.

Third Party Objections

14. The Office did not receive any third-party objections.

Assessment

Relevant Product Market: Retail Pharmacies

15. Both parties operate and thus overlap in the retail pharmacy market. They both own several pharmacies around Malta which sell prescription medicines, non-prescription medicines, non-medicinal products (e.g., cosmetics, toiletries, beauty products and vitamins) and other products. The sale of medicines represents [65-75%] of pharmacies' turnover.
16. Therefore, the Office considers the relevant market as the sale of prescription medicines and non-prescription medicines from pharmacies.

Relevant Geographic Market

17. The European Commission, in its past decisions, has defined the geographic market to be national from the supply side and local from the demand side. This is due to pricing decisions being taken on a national basis by suppliers. On the other hand, retail pharmacies were considered to be local in nature, with a certain radius around each pharmacy.¹
18. The radius round a pharmacy was considered to be one-mile equivalent to 1.6km by the Commission² and also the UK Office for Fair Trading (hereinafter referred to as 'OFT')³.

¹ Case M.7721 Celesio/ Sainsbury's UK pharmacy business Para 20

² Case M.7721 Celesio/ Sainsbury's UK pharmacy business Para 28

³ OFT (now Competition & Markets Authority) - Boots plc of Alliance UniChem plc, Paras 14 – 16.

19. In Ireland, the Competition and Consumer Protection Commission defined the geographic market for pharmacies at a 2 km radius from each purchased pharmacy.⁴
20. From a survey conducted in Malta on behalf of the notifying party, 53.5% of the respondents said that they go mostly to the pharmacy near their home but sometimes they go to a pharmacy somewhere else while 23.5% said that they tend to only go to the pharmacy near their home.
21. Thus, the Office decided that the geographic market for each pharmacy should be a 1 km radius from the Acquired Party's branches due to the close proximity of localities.

Local Market Analysis

22. The target pharmacies, i.e. the pharmacies owned by JP Pharma are located at the following:

- i. *Ta' Giorni Pharmacy*

23. Ta' Giorni Pharmacy, located at Shop 2, Triq Lapsi, Ta' Giorni, San Ġiljan, does not have any Brown's pharmacy within a 1 km radius. The closest Browns pharmacy to Ta' Giorni Pharmacy is 2.02 km (2.5 km walking) away (32-minute walk)⁵ at 22A, "The Point" Shopping Mall Tigne. Thus, on the basis of the 1 km radius geographic market for Ta' Giorni Pharmacy, there is no geographic overlap between the parties.

- ii. *Mensija Pharmacy*

24. Mensija Pharmacy, located at 92 – 94, Triq il-Mensija, San Ġwann does not have any Browns pharmacy within a 1 km radius. The closest Brown's pharmacy to Mensija Pharmacy is 2.04 km (2.7 km walking) away (32-minute walk)⁶ at Marina Apartments, 10, Marina St, Tal-Pietà. Thus, on the basis of the 1 km radius geographic market for Mensija Pharmacy, there is no geographic overlap between the parties.

⁴ M/18/097 Uniphar / Certain Pharmacies of Inischem Dac Para 18 / Determination of Merger Notification
M/19/019 Lloyds Median BOFH Para 25

⁵ <https://goo.gl/maps/NWYv8CKyt7wDWg4F8> accessed on 22 November 2019

⁶ <https://goo.gl/maps/FaCfu2Pxhwmcs8hbA> accessed on 22 November 2019

iii. *Naxxar Pharmacy*

Table 1: Analysis of the pharmacies which are located within a radius of 1 km of Naxxar Pharmacy

Pharmacy	Location	Distance	Walking Distance	Walking Time
Naxxar Pharmacy	Vjal il-21 ta' Settembru, Naxxar	-	-	-
Browns Pharmacy Naxxar	St Paul's St, Naxxar	0.55 km	0.65 km	9 minutes
Victory Pharmacy	16, Triq il-Vitorja, Naxxar	0.2 km	0.25 km	4 minutes
Pillbox Pharmacy	63, Triq il-Bjad, Naxxar	0.41 km	0.5 km	6 minutes
Reeds Pharmacy	191 Vjal Il-21 Ta Settembru, In-Naxxar	0.5 km	0.5 km	6 minutes
Saghjtar Pharmacy	Triq Is Sghajtar, Il-Mosta	0.96 km	1.2 km	14 minutes

Source: Based on results from Google Maps

25. There are six pharmacies located within the 1 km radius, including Naxxar Pharmacy. The concentration will bring about a combined market share (based on number of pharmacies) of 33% in the geographic area, that is from six different market players down to five. The OFT opined that mergers from four to three or higher does not result in substantial lessening of competition in the pharmacy market.⁷ In the geographic area of Naxxar Pharmacy, there are four pharmacies that are not owned by the parties. It is also to be noted that there are three pharmacies that are closer to Naxxar Pharmacy than the nearest Brown's Pharmacy, which are Victory, Pillbox and Reeds pharmacies.

26. The Office therefore considers that as a result of the concentration there will not be a substantial lessening of competition within the geographic market of Naxxar Pharmacy.

⁷ OFT - Anticipated acquisition by Boots plc of Alliance UniChem plc Para 46

iv. *Iklin Pharmacy*

27. Iklin Pharmacy, located at Triq Geronimo Abela, I-Iklin, does not have any Brown's pharmacy within a 1 km radius. The closest Browns pharmacy to Iklin Pharmacy is 1.4 km (1.5km walking) away (23-minute walk) at St Paul's Street, Naxxar. Thus, on the basis of the 1 km radius geographic market for Iklin Pharmacy, there is no geographic overlap between the parties.

v. *Lister Pharmacy*

Table 2: Analysis of the pharmacies which are located within a radius of 1 km of Lister Pharmacy

Pharmacy	Location	Distance	Walking Distance	Walking Time
Lister Pharmacy	-	-	-	-
Browns Pharmacy Hamrun	678 Triq il-Kbira San Ġużepp, Hamrun	0.13 km	0.13 km	1 minute
Browns Pharmacy Pieta'	Marina Apartments, 10, Marina St, Tal-Pietà	0.94 km	1.1 km	14 minutes
Chemimart International	Triq il-Kbira San Ġużepp, Hamrun	0.09 km	0.09 km	1 minute
Darwin Pharmacy	Triq il-Kbira San Ġużepp, Hamrun	0.22 km	0.22 km	3 minutes
Fra Diegu Dispensary	Triq Villambrosa, Hamrun	0.2 km	0.28	3 minutes
National Pharmacy	17, St. Mary Street, Hamrun	0.18 km	0.29 km	4 minutes
Anici Pharmacy Hamrun	Triq Villambrosa, Hamrun	0.34 km	0.4 km	5 minutes
San Gaetano Pharmacy	Triq il-Kappillan Mifsud, Hamrun	0.28 km	0.45 km	6 minutes
Vivien Pharmacy	Triq Patri Magri, Marsa	0.42 km	0.5 km	6 minutes

Thomas's Pharmacy	796 St Joseph High St, Hamrun	0.53 km	0.55 km	6 minutes
Charing Pharmacy	Triq il-Mimosa, Pietà	0.44 km	0.55 km	7 minutes
Cosmed Pharmacy	Triq Villambrosa, Hamrun	0.46 km	0.55 km	7 minutes
St Venera Pharmacy	Triq il-Kbira San Ġużepp, Hamrun	0.55 km	0.55 km	7 minutes
Healthplus	89, Triq il-Kappillan Mifsud II-Hamrun	0.48 km	0.7 km	8 minutes
Trinity Pharmacy	Triq Il Marsa, Marsa	0.69 km	0.8 km	9 minutes
The Cross Pharmacy	860 St. Joseph High Road, Hamrun	0.76 km	0.8 km	9 minutes
San Raffael Pharmacy	247, Triq Hal Qormi	0.79 km	1 km	12 minutes
St Lukes Pharmacy	7 Triq San Luqa, Gwardamangia, Pietà	0.83 km	1 km	12 minutes
Lantern Pharmacy	46, Misraħ il-Kebbies, Santa Venera	0.7 km	1.1 km	13 minutes
Debys Pharmacy	1, Misraħ il-Barrieri, Msida	0.82 km	1.2 km	14 minutes

Source: Based on results from Google Maps

28. There are 21 pharmacies located within the 1 km radius, including Lister Pharmacy. There are also two Browns pharmacies within such radius. The concertation shall, thus, result in a 21 to 19 market players (14.29% market share) within the area. One Browns pharmacy is within a minute walk of Lister Pharmacy. However, there are a number of alternatives to pharmacies owned by the parties. In fact, there are 18 such alternative pharmacies within a 14-minute walk, five of which are even within a five-minute walk. It is also worth noting that some of the pharmacies within the area, are even in the same street. The Office therefore considers there to be no substantial lessening of competition within the geographic market of Lister Pharmacy.

vi. *St. Anne Pharmacy*

Table 3: Analysis of the pharmacies which are located within a radius of 1 km of St Anne Pharmacy

Pharmacy	Location	Distance	Walking Distance	Walking Time
St Anne Pharmacy	24, Misrah Sant' Elena, Birkirkara	-	-	-
Browns Pharmacy Birkirkara	32 Triq Fleur - De - Lys, Birkirkara	0.41 km	0.5 km	6 minutes
Herba Pharmacy	183, Triq il-Kbira, Birkirkara	0.09 km	0.15 km	1 minute
Remedies	Floor 1, St Helena Buildings,, Triq Tumas Fenech, Birkirkara	0.21 km	0.24 km	3 minutes
St Jude Pharmacy	213, Triq il-Wied, Birkirkara	0.36 km	0.45 km	5 minutes
St Paul's Pharmacy	Triq Brared, Birkirkara	0.5 km	0.55 km	7 minutes
Rational Pharmacy	74, 75 Triq il-Wied, Birkirkara	0.54 km	0.65 km	8 minutes
Mackie's Pharmacy	Triq L- Casolani, Birkirkara	0.51 km	0.8 km	10 minutes
The Local Dispensary	Triq Kan Karm Pirotta, Birkirkara	0.64 km	0.85 km	11 minutes
Pharmaplus	112 Triq Ganu, Birkirkara	0.69 km	0.85 km	11 minutes
Balzan Pharmacy	Triq San Frangisk, Balzan	0.97 km	1.1 km	14 minutes
Marrit Pharmacy	Triq L-Ewwel Ta' Mejju, Birkirkara	0.86 km	1.1 km	15 minutes
Collis Williams Pharmacy	Triq P. Borg Olivier, Birkirkara	0.95 km	1.2 km	15 minutes

Source: Based on results from Google Maps

29. There are 13 pharmacies located within the 1 km radius, including St Anne Pharmacy. The concertation shall, thus, result in a 13 to 12 market players (15.38% market share) within the area. Consumers will still have a choice of 12 alternative pharmacies to the parties, all within a 15-minute walk of St Anne Pharmacy and three of which are within a five-minute walk. It is also important to note that there are three alternative pharmacies that are closer than Browns Pharmacy to St Anne Pharmacy. The Office therefore considers there to be no substantial lessening of competition within the geographic market of St Anne Pharmacy.

National Basis

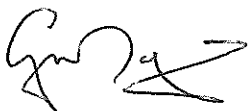
30. On a national level, the notifying party and the acquired party have 6.19% and 2.86%, respectively, of the total number of retail pharmacies in Malta. In terms of the sales value of medicines, the parties' cumulative market share will be [5-10%].
31. The proposed transaction will not result in a significant increase in the market share of the notifying party and does not raise competition concerns in the market for the supply of medicines to retail pharmacies.

Conclusion

32. At a retail level, the Office considers that the proposed transaction will not substantially lessen competition in the sale of prescription and non-prescriptions medicines in retail pharmacies in the potential local market comprising a catchment area of a radius of 1 km for the target pharmacies.
33. Post transaction, the parties will own [5-10%] of pharmacies in Malta and the Office considers that they will not have significant market power with which it could be able to exert pressure on its suppliers.

Decision

34. For the abovementioned reasons and in terms of regulation 6 (1) (ii) of the Control of Concentrations Regulations, it is therefore decided:
- (1) that the Concentration falls within the scope of the Control of Concentrations Regulations;
 - (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

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