



MALTA COMPETITION AND
CONSUMER AFFAIRS AUTHORITY

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Assessment of Proposed Concentration whereby Retail Marketing Limited as the joint venture entity takes over all supermarket operations conducted by Co-op Trading Company Limited, Polrem Limited, S. Borg & Sons Limited, Tower Supermarkets Complex Limited, Valyou Pendergardens Operations Ltd, Belleview Supermarkets Co. Ltd. and Valyou Supermarket Limited

13 February 2020

Decision on full-function joint venture in terms of Regulations 6 (1) (iii) of the Control of Concentrations Regulations (LN 294 of 2002 as subsequently amended)

Office for Competition - Case COMP/MCCAA/01/2020

**THIS DECISION IS NOT BINDING ON THE DIRECTOR GENERAL OF THE OFFICE FOR
COMPETITION**

The decision to open a Phase II investigation does not bind the Director General of the Office for Competition and is without prejudice to his final decision which will be adopted after a deeper assessment of the planned concentration. The decision to open a Phase II investigation shall not in any way be interpreted as confirming the unlawfulness of the proposed concentration, or as committing the Office for Competition into blocking or accepting the planned concentration with remedies.

Done at the Office for Competition, Malta Competition and Consumer Affairs Authority, Mizzi House, National Road, Blata l-Bajda, Malta on 13-02-2020.

Please note that [X] indicates figures or text which have been deleted or replaced for reasons of commercial confidentiality.

Summary

The Office for Competition within the Malta Competition and Consumer Affairs Authority has opened an in-depth investigation to assess whether the anticipated concentration of Retail Marketing Limited, a company registered in Malta with company registration number C34303 – being the joint venture entity – which will itself take over all supermarket operations currently being conducted by:

- i. Co-op Trading Company Limited, a company registered in Malta with company registration number C11111, which operates Trolees Supermarket situated at Triq il-Merluzz, Qawra, Malta;
- ii. Polrem Limited, a company registered in Malta with company registration number C14066, which operates Lasco Supermarket situated at Triq il-President Anton Buttigieg, Zejtun, Malta;
- iii. S. Borg & Sons Limited, a company registered in Malta with company registration number C8587, which operates the Park Towers Supermarkets situated in Psaila Street in Santa Venera, in Triq Gorg Borg Oliver in St Julian's, and in Spinola Park in St Julian's;
- iv. Belleview Supermarkets Co. Limited, a company registered in Malta with company registration number C54390, which operates Valyou Supermarket situated in Main Street, Mellieha;
- v. Tower Supermarkets Complex Limited, a company registered in Malta with company registration number C23628, which operates Tower Supermarket situated in Sliema;
- vi. Valyou Pendergardens Operations Limited, a company registered in Malta with company registration number C12098, which operates Valyou Pendergardens Supermarket situated in Pendergardens, Malta;
- vii. Valyou Supermarket Limited, a company registered in Malta with company registration number C29775, which operates Valyou Naxxar Supermarket situated in Naxxar,

is in line with the Control of Concentrations Regulations (Subsidiary Legislation 379.08).

As such, the transaction would result into each of the aforementioned current supermarket operations being taken over and operated by Retail Marketing Limited.

The Office for Competition has serious doubts that the proposed concentration could *prima facie* limit competition in the grocery retail market. This is primarily based on the potential harm to

competition and consumer welfare arising from the fact that the proposed concentration could lead to horizontal unilateral effects within the grocery retail market and potential coordinated and vertical effects. For these reasons, the Office for Competition opines that this proposed concentration may potentially lead to a substantial lessening of competition in the grocery retail market at a local level and as a result is opening an in-depth investigation to study the matter further.

A. Facts

1. On 30 December 2019, Retail Marketing Limited (hereinafter also referred to as “joint venture entity”) and Co-op Trading Company Limited, Polrem Limited, S. Borg & Sons Limited, Tower Supermarkets Complex Limited, Valyou Pendergardens Operations Ltd., Belleview Supermarkets Co. Ltd. and Valyou Supermarket Limited (hereinafter collectively referred to as “the Notifying Parties”) jointly notified the Office for Competition (hereinafter referred to as “Office”) via a concentration notification form, whereby Retail Marketing Limited will itself take over all supermarket operations currently being conducted by the aforementioned current supermarket operators.
2. The filling and the acceptance of such notification was notified to the public through a public notice in the Government Gazette number 20,327 on 10 January 2020 and a notice that appeared in a local newspaper and on the Malta Competition and Consumer Affairs Authority’s website on 10 January 2020.

B. Parties

3. Co-op Trading Company Limited is a limited liability company registered in Malta with company registration number C11111. It has its registered office situated at 345/346, Farm Lane, Mellieha, Malta. Co-op Trading Company Limited operates Trolees Supermarket situated at il-Merluzz Street, Qawra, Malta. The estate of the late Ms. Kathleen Cilia and Mr. Vincent Cilia between them control Co-op Trading Company Limited.

Based on audited financial statement for the year ended 31 December 2018, Co-op Trading Company Limited generated a total revenue of [x] million.

4. Polrem Limited is a limited liability company registered in Malta with company registration number C14066. Its registered offices are situated at 42, Sir Paul Boffa Avenue, Bir id-Deheb, Zejtun, Malta. Polrem Limited operates Lasco Supermarket which is situated at Triq il-President Anton Buttigieg, Zejtun, Malta. Control of Polrem Limited is vested in Ms. Polly Saliba and Mr. Remigio Saliba.

Based on audited financial statement for the year ended 31 December 2018, Polrem Limited generated a total revenue of [x] million.

5. S. Borg & Sons Limited is a limited liability company registered in Malta with company registration number C8587. Its registered office is situated at Parktowers Supermarkets,

Spinola Park, Mikiel Ang Borg Street, St Julian's SPK1000, Malta. The company operates the Park Towers Supermarkets situated at Spinola Park in St. Julian's, Psaila Street in Santa Venera and Gorg Borg Oliver Street in St Julian's.

Based on audited financial statement for the year ended 31 December 2018, S. Borg & Sons Limited generated a total revenue of [€] million.

6. Belleview Supermarkets Company Limited is a limited liability company registered in Malta with company registration number C54390. Its registered office is situated at Valyou Supermarket, Main Street, Mellieha, Malta, which the said company operates. The control of Belleview Supermarkets Co. Ltd. is vested equally in Mr. Vincent Cilia, Mr. Mark Borg, Mr. Philip Borg and Mr. Raymond Mintoff.

Based on audited financial statement for the year ended 31 December 2018, Belleview Supermarkets Company Limited generated a total revenue of [€] million.

7. Tower Supermarkets Complex Limited is a limited liability company registered in Malta with company registration number C23628. Its registered office is situated at Tower Supermarkets Complex, High Street, Sliema, Malta. The company operates Tower Supermarket, situated at High Street, Sliema, Malta. Tower Supermarkets Complex Limited has the same shareholding structure and owners of Belleview Supermarkets Company Limited.

Based on audited financial statement for the year ended 31 December 2018, Tower Supermarkets Complex Limited generated a total revenue of [€] million.

8. Valyou Pendergardens Operations Limited is a limited liability company registered in Malta with company registration number C12098. Its registered office is situated at Valyou Supermarket, Parish Street, Naxxar, Malta. Valyou Pendergardens Operations Limited operates Valyou Pendergardens Supermarket which is situated at Sant' Andrija Street, Pendergardens, Malta. Valyou Pendergardens Operations Limited has the same shareholding structure and owners of Belleview Supermarkets Company Limited and Tower Supermarkets Complex Limited.

Based on audited financial statement for the year ended 31 December 2018, Valyou Pendergardens Operations Limited generated a total revenue of [€] million.

9. Valyou Supermarket Limited is a limited liability company registered in Malta with company registration number C29775. The company has its registered office situated at Valyou Supermarket, Parish Street, Naxxar, Malta. Valyou Supermarket Limited operates Valyou Naxxar Supermarket which is situated at Parish Street, Naxxar. Valyou Supermarket Limited has the same shareholding structure and owners of Belleview Supermarkets Company Limited, Tower Supermarkets Complex Limited and Valyou Pendergardens Operations Limited.

Based on audited financial statement for the year ended 31 December 2018, Valyou Supermarket Limited generated a total revenue of [€] million.

10. Retail Marketing Limited is a limited liability company registered in Malta with company registration number C34303. The company has its registered office situated at Hard Rocks Complex, Wied il-Ghasel, Naxxar, Malta. Retail Marketing Limited was incorporated in 2004 to import and distribute selective products, primarily Carrefour products, to the involved parties' supermarkets. The primary motivation for such importation was to: (i) be in a position to offer reduced cost product offerings to customers, and (ii) offer customers a broader range of products not otherwise found in the local market.

The ultimate beneficial owners of the companies listed in paragraphs (3) to (9) are also ultimate beneficial owners of Retail Marketing Limited and between them hold the majority of the ultimate beneficial ownership of the ordinary shares that are currently in issue in the capital of Retail Marketing Limited. The remaining shareholding is of Shoppers Limited which upon the implementation of the concentration, it will no longer hold, whether directly or indirectly, any shares in Retail Marketing Limited and accordingly will no longer be involved in any manner in or with Retail Marketing Limited.

Based on audited financial statement for the year ended 31 December 2018, Retail Marketing Limited generated a total revenue of [X] million.

C. Transaction - Full Function Joint Venture

11. The nature of the concentration is a full-function joint venture whereby Retail Marketing Limited – being the joint venture entity – will itself take over all supermarket operations currently being conducted by Co-op Trading Company Limited, Polrem Limited, S. Borg & Sons Limited, Tower Supermarkets Complex Limited, Valyou Pendergardens Operations Ltd, Belleview Supermarkets Co. Ltd. and Valyou Supermarket Limited.
12. Currently, the registered direct holders of the ordinary shares which are currently in issue in the capital of Retail Marketing Limited are the following:
- a. Co-op Trading Company Limited, representing 12.5% of the total issued share capital of Retail Marketing Limited;
 - b. Polrem Limited, representing 12.5% of the total issued share capital of Retail Marketing Limited;
 - c. S. Borg & Sons Limited, representing 25% of the total issued share capital of Retail Marketing Limited;
 - d. Shoppers Limited, representing 12.5% of the total issued share capital of Retail Marketing Limited;
 - e. Tower Supermarkets Complex Limited, representing 12.5% of the total issued share capital of Retail Marketing Limited;
 - f. Valyou Pendergardens Operations Ltd., representing 12.5% of the total issued share capital of Retail Marketing Limited;

- g. Valyou Supermarket Limited, representing 12.5% of the total issued share capital of Retail Marketing Limited.
13. Each notifying party will procure a reorganisation of its respective resources, assets and operations with a view to each current supermarket operation being taken over by Retail Marketing Limited.
14. Upon completion of the transaction, all shares issued in the capital of Retail Marketing Limited will be indirectly owned by the following persons:
- a. Mr. Vincent Cilia, as to 25%;
 - b. Polrem Limited as to 12.5%;
 - c. Mr. Christopher Borg as to 12.5%;
 - d. Mr. John Borg as to 12.5%;
 - e. Mr. Raymond Mintoff as to 12.5%;
 - f. Mr. Mark Borg as to 12.5%;
 - g. Mr. Philip Borg as to 12.5%.
15. Upon the implementation of the above proposals, the operation of all supermarkets referred to above will effectively be taken over and conducted by Retail Marketing Limited.

D. Duties of the Office for Competition as stipulated in the Control of Concentrations Regulations

16. As stipulated in regulation 4 of the Control of Concentrations Regulations, it is the duty of the Director General to determine whether a concentration leads to a substantial lessening of competition in the Maltese market.
17. As postulated in regulation 6(1)(iii) of the Control of Concentrations Regulations:
- “The Director General shall examine the notification within the time-limits set in regulation 9 and where he finds that the concentration notified falls within the scope of these regulations and raises serious doubts as to its lawfulness in terms of the provisions of these regulations, he shall decide to initiate proceedings.”*
18. The Office considers the above-mentioned regulation to be the legal basis upon which the Director General is initiating proceedings. **Notwithstanding this, this does not mean that the Office is going to block the proposed concentration or to accept it subject to remedies** but that an in-depth investigation is necessitated to study the matter further.

E. Counterfactual

19. The Office assesses a concentration's impact relative to the situation that would prevail absent the concentration (i.e. the counterfactual). For proposed concentrations, the Office generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the concentration.
20. Notwithstanding this, the Office will also consider other factors including potential competition such as the entry of Eurospin, a large discount store currently active in Italy and Slovenia, as *ex post* counterfactuals in its assessment.

F. The Relevant Market

21. Market definition typically contains two dimensions: a product and a geographic area. As is stipulated in the European Commission's (EC) Notice on market definition, "...*The main purpose of market definition is to identify in a systematic way the competitive constraints that the undertakings involved face. The objective of defining a market in both its product and geographic dimension is to identify those actual competitors of the undertakings involved that are capable of constraining those undertakings' behaviour and of preventing them from behaving independently of effective competitive pressure.*"¹

I. Product Markets

22. The concept of the relevant market implies that there can be effective competition between the products which form part of it. In fact, the EC Commission's Notice on market definition states that, "*a relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use.*"² As such, the key question when assessing the relevant market is whether the grocery retail outlets concerned are close enough substitutes to be sensibly regarded as being in the same market.
23. The EC's Notice on market definition explicates that firms are subject to three core competitive constraints: demand substitutability, supply substitutability and potential competition. Demand substitutability refers to the possibilities for customers to switch some of their purchases from the focal product to other readily available substitute products in response to a hypothetical, small but permanent relative price increase in the focal product. Supply side substitutability occurs where in relation to a rise in relative prices, undertakings are able to switch production to the relevant products in the short term without incurring considerable additional costs. Potential competition is not analysed at the stage of market definition but is examined at a later stage when considering barriers to entry.
24. There are a number of European competition case law which concern investigations into transaction involving the retail supply of groceries in recent years. In general, the common

¹ See Commission Notice on the definition of the relevant market for the purposes of Community competition law (97/C 372/03), paragraph 2.

² *Ibid*, paragraph 7.

practice is to define grocery stores according to the size of their retail area.³ For example, in the *J Sainsbury PLC / Asda Group Ltd* merger inquiry, the UK Competition and Markets Authority (hereinafter referred to as “CMA”) made a distinction between:

- a. one-stop stores, being large format stores that sell a full range of grocery items, having a sales area of 1,400 square meters and larger which stores are only constrained by other one-stop stores;
 - b. mid-size stores being food and beverage-focused stores with sales areas of between 280 and 1,400 square meters; and
 - c. convenience stores, having a sales area which is less than 280 square meters which stores are constrained by other convenience stores, mid-size stores and one-stop stores.
25. The reason behind this delineation by store size is that from a demand-side perspective, small stores are not considered to be good substitutes for larger stores on the basis that they may not supply the full range of products which a larger store offers and therefore, may not be able to cater for shopping ‘missions’ that involve larger or wider range of products.
26. In fact, there is also general consensus that the competitive constraints faced by grocery stores is asymmetric in the sense that large stores do impose competitive constraints on smaller stores but not *vice-versa*.⁴
27. The Notifying parties collectively operate 8 retail supermarkets and 1 convenience shop in Malta.
28. While the Office acknowledges the above distinctions which are generally made in European competition case law, the Office agrees with the EC and opines that the above distinctions should be made and tailored to fit into and reflect domestic market realities. The above views are also resonated by the views of the Notifying Parties.
29. The Notifying Parties submitted that the Maltese market is characterized by the presence of two main types of retail grocery stores, namely (a) the supermarket (including convenience stores); and (b) the local village grocer. This delineation was made according to:
- a. size, with supermarkets and convenience stores in Malta generally having an area in excess of 200 square meters; and
 - b. product range, with supermarkets and convenience stores having a broader selection of products to offer when compared to the smaller local village grocery stores.

³ For example *Co-operative Group / Nisa retail merger enquiry*, CMA decision of 23 April 2018; *Tesco / Booker merger enquiry*, CMA decision of 21 July 2017 (Phase 1) and Final Report of 20 December 2017 (Phase 2); *Asda stores / Co-operative Group merger inquiry*, CMA decision of 28 November 2014; *J Sainsbury PLC / Asda Group Ltd merger inquiry*, CMA decision of 25 April 2019.

⁴ *Ibid*.

30. In fact, the Notifying Parties submitted that the European distinction between mid-size stores and convenience stores is very much lost in Malta and as such, these two categories realistically merge into one and the same category of retail grocery store (i.e. supermarket). Supplementing these arguments, the Notifying Parties have also submitted that supermarkets and convenience stores in Malta offer a similar range of products which can be broadly categorized into: (i) food; (ii) beverages (both alcoholic and non-alcoholic); and (iii) personal care and household products. Although the larger stores offer larger quantities and a broader range of products, it may be reasonably noted that grocery stores in Malta offer the aforementioned product categories which, in turn, is an indicator of a high level of substitutability.
31. While the Office acknowledges the views submitted by the Notifying Parties, the Office opines that while it agrees with the Notifying Parties regarding the threshold of 200 square meters as a means to define grocery stores according to the size of the retail area, however, the Office feels that there other attributes which customers look for when making their grocery shopping decisions such as for example prices of different products, convenience, quality of products, etc. These are important demand-side factors which the Office must consider when evaluating the closeness of competition between grocery stores.
32. Moreover, the Office has its reservations when it is argued that if large and small grocery stores offer a similar range of products, they should be regarded as being highly substitutable. The Office believes that a distinction should be made between grocery stores offering wider product ranges from those with narrower ranges. While there may be cases where such distinction does not play a vital role (e.g. when shopping for daily necessities), the Office opines that the whole shopping experience is entirely different and as a result, such stores may not be constituted as being in the same product market.
33. The Office takes note of the approach taken in European competition case law i.e. that large stores do impose competitive constraints on smaller stores but not *vice-versa* and *a priori*, it is of the same opinion. As a result, *a priori*, the Office opines that a distinction should be made between small-sized and large-sized grocery stores and that for the aforementioned reasons, supermarkets and convenience stores should not be regarded as being in the same product market.
34. In view of the above, the Office has already started a process of sending a number of Request for Information (RFI) to grocery stores in Malta requesting data on their retail sales area. Following the delineation of the product market by sales area, the Office will then proceed to further sub-divide the product market according to other important demand-side characteristics. In order to properly infer these demand-side characteristics and ascertain that these characteristics truly reflect the local context, apart from referring to European case law, the Office is also collecting primary data by means of a survey. This survey should help the Office at eliciting consumer behaviour and perception in the Maltese grocery retail market.
35. The Office believes that the review of a proposed concentration should be evidence-based rather than based on subjectivity. Consequently, the RFI information received from third-parties and the information inferred from the survey will form the backbone for the competitive assessment of the Office.

II. Geographic Markets

36. The EC defines the relevant geographic market as '*comprising the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those area*'.⁵
37. A number of cases and investigations involving supermarkets have found that there are both national and local aspects to competition.⁶
38. In their submissions, the Notifying Parties argued that all retail grocery stores in Malta (excl. Gozo and Comino) are effectively able to have a national sphere of influence due to the small size of the island, with all supermarkets and convenience stores aiming to have a national appeal and customer base being reasonably within reach from all places on the island by not more than a 20-minute drive. The Notifying Parties noted that this further confirms the high level of substitutability between grocery stores in Malta, with consumers being able to easily shift their preferred stores should they ever perceive the need to do so.
39. Furthermore, it was argued that the particular geographic characteristics of the island of Malta mean that travel to a retail grocery store is not a significant undertaking to the average consumer. However, grocery stores in the island of Gozo should not be included within the same geographic market in view of an additional travel time of 20-minutes attributed to the typical time of ferry crossing and additional expenses. This further supports the conclusion that the island of Malta may be realistically viewed as a single geographic market.
40. The Office does not agree with this view since *a priori*, it expects that customers are not willing to travel for considerable periods of time for their grocery shopping (e.g. the average customer living in the South of Malta is expected not to be willing to travel to the North of Malta to do his/her main grocery shopping).
41. As argued by the CMA in *J Sainsbury PLC / Asda Group Ltd* investigation, the Office opines that grocery stores compete to attract customers to their stores and as a result, compete with other stores in the local areas for those customers.
42. The Office notes that many factors that determine or affect competition within the supply of groceries appear to be decided centrally and applied uniformly. In particular, supermarket chains typically set their pricing policies as well as some other key elements of their competitive offer (e.g. product quality, product range, etc.) uniformly across their stores at a national level. The Notifying Parties have strong, national brand identities and operate across a number of local markets.
43. Based on the above arguments, the Office believes that it is appropriate to consider the effect of the concentration both at national and local levels.

⁵ Commission Notice on the definition of the relevant market for the purposes of Community competition law (97/C 372/03), paragraph 8.

⁶ *Asda / Netto*, OFT decision of 23 September 2010; *Co-operative Group Ltd / Somerfield Ltd*, OFT decision of 20 October 2008; *J Sainsbury PLC / Asda Group Ltd* merger inquiry, CMA decision of 25 April 2019.

44. In its practice, the EC delineated the geographic market for retail sale of daily consumer goods according to demand side considerations, by the boundaries of a territory where the outlets can be reached easily by consumers – with a radius of approximately 20 to 30 minutes driving time. The EC has stressed that the delineation of each local area should be undertaken on a case by case basis by taking into account specific local circumstances.
45. In contrast to what the Notifying Parties submitted, the Office opines that driving time in Malta is a major concern and that customers are not willing to travel for considerable periods of time for their grocery shopping. The Office notes that this information is relevant for the local assessment of competition rather than for the national assessment of competition i.e. to compute the geographic catchment areas. Notwithstanding this, the Office will be following the practice adopted by the CMA in the *J Sainsbury PLC / Asda Group Ltd* investigation i.e. the relevant geographic market will be assessed both from a national and also from a local perspective.
46. The Office appreciates the fact that while European case law provides information on the driving time that customers are willing to travel for their main grocery shopping, one must delineate the local relevant geographic market based on the Maltese context. The Office also appreciates the fact that any assumptions taken with regards to driving time will have a considerable effect on the competitive assessment at local level. As a result, in order to eliminate subjectivity, the Office will be gathering such data from a statistically representative sample of the Maltese context.

G. Competitive Assessment

47. In compiling the competitive assessment at this stage, the Office has relied extensively on relevant EC Guidelines, European competition case law and information received from third parties.
48. As part of its assessment of the effects of a concentration on competition, the Office may use market shares and measures of concentration, assessed on the relevant markets indicated in the previous section. In order to calculate the market shares and compute the concentration ratios, the Office needs access to sales revenue data depending on the relevant market being analysed.
49. As a result, ensuring that the relevant markets (i.e. the relevant product market, the relevant geographic market on a national basis and the relevant geographic market on a local basis) are properly delineated is key for the Office as this determines the boundaries within which the Office defines grocery stores as being substitutable to each other. For example, if the relevant product market is food and beverages, then the Office needs to ensure that when calculating the market shares of supermarkets, the turnover data analysed is solely that attributed to food and beverages and excludes other products not falling under the food and beverages umbrella which the supermarket could be selling from its premises.

50. As stated in regulation 4 of the Control of Concentrations Regulations, in assessing whether a concentration leads to substantial lessening of competition in the Maltese market, the Director General shall take into account, *inter alia*:
- a. *“the need to maintain and develop effective competition in the Maltese market in view of, among other things, the structure of all the markets concerned and the actual or potential competition from undertakings located either within or outside Malta;*
 - b. *whether the business, or part of the business, of a party to the concentration has failed or is likely to fail;*
 - c. *the nature and extent of development and innovation in a relevant market;*
 - d. *the market position of the undertakings concerned and their economic and financial power, the alternatives available to suppliers and users, their access to supplies or markets, any legal or other barriers to entry, supply and demand trends for the relevant goods and services, the interests of the intermediate and ultimate consumers, and the development of technical and economic progress provided that it is to consumers’ advantage and does not form an obstacle to competition.”*
51. For the purpose of Section 6 III of the Concentration Notification Form (annexed to the Regulations on the Control of Concentrations), *affected markets* are relevant product markets where, in the Maltese territory or a relevant part thereof:
- a. two or more of the parties to a concentration are engaged in business activities in the same product market and where the concentration will lead to a combined market share of 15% or more, or
 - b. one or more of the parties to the concentration are engaged in business activities in a product market, which is upstream or downstream of a product market in which any other party to the concentration is engaged, and any of their individual or combined market share is 25% or more, regardless of whether there is or is not any existing supplier customer relationship between the parties to the concentration.
52. The activities of the Notifying Parties involve both horizontal relationships since collectively the Notifying Parties operate 4 established local supermarket chains which collectively operate 8 retail supermarkets and 1 convenience shop in Malta and also vertical relationships attributed to the fact that Retail Marketing Limited imports and distributes selected products to the involved parties’ supermarkets.
53. In assessing any competitive concerns in relation to the above relationships as a result of the proposed transaction, the Office will factor whether the proposed concentration gives rise to the following anti-competitive effects:
- a. **Horizontal unilateral effects:** unilateral effects in concentrations involving horizontal relationships can arise when firms that previously provided a competitive constraint join forces, allowing the joint venture entity to raise prices on its own and without needed to coordinate with its rivals. A theory of harm relevant to the consideration of horizontal unilateral effects is the loss of existing competition.

- b. **Coordinated effects:** these arise when firms operating in the same market recognize that they are mutually interdependent and that they can reach a more profitable outcome if they coordinate to limit their rivalry. Coordinated effects could take many forms including firms keeping prices higher than they would otherwise have been post concentration or dividing markets for example by geographic area or customer characteristics.
 - c. **Foreclosure effects:** occur where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the concentration, thereby reducing these companies' ability and incentive to compete.
54. These three aspects are to be assessed by comparing market incentives and likely outcomes in terms of business strategies and effects on consumer welfare in a counterfactual situation without the concentration, to those which would likely to prevail if the concentration were to take place.

55. As is postulated in regulation 4 of the Control of Concentrations Regulations:

“Concentrations that bring about or are likely to bring about gains in efficiency that will be greater than and will offset the effects of any prevention or lessening of competition resulting from or likely to result from the concentration shall not be prohibited if the undertakings concerned prove that such efficiency gains cannot otherwise be attained, are verifiable and likely to be passed on to consumers in the form of lower prices, or greater innovation, choice or quality of products or services.”

Following the assessment of potential anti-competitive effects, the Office would then proceed with assessing whether the efficiencies claimed by the Notifying Parties outweigh the anti-competitive effects that could potentially be associated with this concentration. For example, a joint venture involving two small firms in a market resulting in efficiency gains might allow the joint venture entity to compete more effectively with the larger firms. After examining the efficiency arguments brought forward by the Notifying Parties, the Office will then determine whether these should be included as part of the substantial lessening of competition analysis or in the consideration of relevant customer benefits.

56. In assessing whether a concentration leads to a substantial lessening of competition, the Office will also consider possible changes in the barriers to entry and expansion as a result of the transaction. The Office will also conduct an assessment as to whether the concentration gives rise to countervailing buyer power.

H. Conclusion

57. In view of the above arguments the Office opines that there is a possibility of substantial lessening of competition when defining the relevant geographic market at a local level.

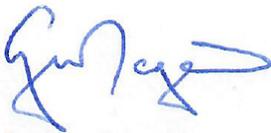
58. *A priori*, the Office believes that substantial lessening of competition could occur in local geographic markets which contain more than one of the grocery stores involved in this concentration. As a result, serious doubts exist in the areas where any of the above-mentioned grocery stores are in close proximity to each other. To this end, the Office is paying extra attention onto the Sliema - St.Julian's and the Qawra – Mellieha areas.
59. *A priori*, the Office believes that these areas may potentially be more concentrated relative to the other local geographic areas delineated for the other supermarkets not located in the above-mentioned areas. Notwithstanding this, the Office believes that at this stage, it is too premature to reach conclusions and that a detailed investigation is warranted in order to verify the concerns which the planned concentration may bring about.

I. Third Party Views and Objections

60. The Office is in contact with various parties and stakeholders operating in the grocery retail sector. There was a third party who argued that this concentration would lead to the lessening of competition within this sector. At the moment, the Office is analyzing whether the arguments put forward by the party point to serious doubts of substantial lessening of competition.

J. Decision

On the basis of the analysis and assessment presented above, the Director General of the Office for Competition has decided that the Office is going to initiate proceedings in respect of the proposed concentration in line with regulation 6(1)(iii) of the Control of Concentrations Regulations since the proposed concentration raises serious doubts as to the lawfulness thereof.



Godwin Mangion

Director General