



**MCCAA**

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MALTA COMPETITION AND  
CONSUMER AFFAIRS AUTHORITY

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**FINAL SUMMARY DECISION OF THE OFFICE FOR COMPETITION**

**OF 5<sup>TH</sup> JUNE 2020**

**ON FULL-FUNCTION JOINT VENTURE**

**ADDRESSED TO RETAIL MARKETING LIMITED,**

**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**

**DECLARING THAT THE CONCENTRATION IS LAWFUL IN TERMS**

**OF THE PROVISIONS OF THE CONTROL OF CONCENTRATIONS**

**REGULATIONS, 2002**

**OFFICE FOR COMPETITION - CASE COMP/MCCAA/01/2020**

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

## Summary Decision

1. The Office for Competition within the Malta Competition and Consumer Affairs Authority (hereinafter referred to as “the Office”) has decided that the proposed concentration (full-function joint venture) between 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”) is not expected to result in a substantial lessening of competition (SLC) in Malta. As a result, the Office is declaring the concentration lawful in terms of the provisions of the Control of Concentrations Regulations, 2002.

## Context of the Concentration

2. On 30 December 2019, the Office received a notification of a proposed concentration pursuant to regulation 5 of the Control of Concentrations Regulations by which Retail Marketing Limited 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 (hereinafter collectively referred to as “the Notifying Parties”).
3. The Notifying Parties collectively operate eight (8) retail supermarkets and one (1) convenience shop in Malta as shown in Table 1 below.

*Table 1: Supermarkets involved in this Proposed Full-Function Joint Venture*

| No | Supermarket                                               | Company                              |
|----|-----------------------------------------------------------|--------------------------------------|
| 1  | Park Towers Supermarket - Santa Venera                    | S. Borg & Sons Ltd.                  |
| 2  | Park Towers Supermarket - St Julian's                     | S. Borg & Sons Ltd.                  |
| 3  | Park Towers Supermarket - Spinola Park (Convenience Shop) | S. Borg & Sons Ltd.                  |
| 4  | Valyou Supermarket – Mellieha                             | Belleview Supermarkets Co. Ltd.      |
| 5  | Valyou Pendergardens Supermarket - Pendergardens          | Valyou Pendergardens Operations Ltd. |
| 6  | Valyou Naxxar Supermarket – Naxxar                        | Valyou Supermarket Limited           |
| 7  | Tower Supermarket – Sliema                                | Tower Supermarkets Complex Ltd.      |
| 8  | Trolees Supermarket – Qawra                               | Co-op Trading Co. Ltd.               |
| 9  | Lasco Supermarket – Zejtun                                | Polrem Ltd.                          |

4. Retail Marketing Limited would be the joint venture entity that brings together the notifying parties. Belleview Supermarkets Company Limited, Valyou Pendergardens Operations Limited, Valyou Supermarket Limited and Tower Supermarkets Complex Limited, collectively owned and controlled by the same shareholders, is the largest group of the notifying parties. It accounts for [0-5]% of the sector's total revenue ([X] largest grocery retailer in Malta) and operates via four supermarkets that together have a sales area of around 6,300 square meters from which they

sell a range of products, including several non-food items. The Park Towers Supermarket chain collectively owned and controlled by S. Borg & Sons Limited is the second largest of the notifying parties and accounts for [0-5]% of the sector's total revenue ([~~3~~] largest grocery retailer in Malta). It owns three supermarkets which together have a sales area of 6,400 square meters and also offers a wide range of products. Lasco Supermarket and Trolees Supermarket, each operating through one store, together account for [0-5]% of the sector's total revenue ([~~3~~] and [~~3~~] largest grocery retailers in Malta, respectively). Like the other notifying parties, they offer a wide range of groceries and a small number of non-food products. This concentration would create the third largest grocery retailer by turnover in Malta.

## Investigation

5. A phase II investigation was officially initiated on 13 February 2020 after the Office concluded that prima facie there was the possibility of substantial lessening of competition when defining the relevant geographic market at a local level. The Office commenced its investigation on the basis of a possibility that substantial lessening of competition could possibly occur in local geographic markets which contain more than one of the grocery stores involved in this concentration. The objective of the investigation was for the Office to decide:
  - a. whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant concentration in terms of the Control of Concentrations Regulations; and
  - b. if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in Malta.
6. The Office's investigation into this concentration has necessarily been detailed and wide-ranging. We have conducted a representative survey of grocery shoppers covering in-store groceries and two waves of Requests for Information (RFI), covering all retail grocery outlets in Malta.
  - a. Demand-side: The need for customer data is due to three main reasons: (i) to properly define and delineate the grocery market in Malta, (ii) to ascertain that the competitive assessment reflects the local context rather than simply relying on European case law (the Office felt the need to ascertain that the demand-side characteristics upon which the Office base its competitive assessment truly reflect the local context by a tailor-made methodology designed to elicit consumer behaviour and perception in the Maltese grocery retail market) and, (iii) to ensure that the decision taken by the Office in its competitive assessment is backed by market data rather than based on elements of subjectivity. Fieldwork has taken place in February by means of computer-assisted telephone interviews and was carried out by an independent firm.
  - b. Supply-Side: First Wave - The Office gathered preliminary data through an RFI sent to the main supermarkets in Malta. In the same correspondence, the Office invited the stakeholders to submit any written objections which they may have on the proposed concentration. There was only one third party who argued that this concentration would lead to the lessening of competition within this sector.
  - c. Supply-Side: Second Wave - The Office compiled a database of all supermarket chains and grocery retail outlets operating in Malta and sent a detailed RFI to each undertaking on 17

March. This process took approximately 6 weeks to complete and involved contacting nearly 400 different supermarket chains and grocery retail outlets. Complete answers were received by 30th April. This RFI covered questions related to turnover, sales area, average spending per customer visit, percentage of sales related to food and beverages, price, range, quality, service and potential future investments.

7. All gathered data from the demand-side and the supply-side were analysed accordingly. Such analysis formed the foundations for the Office's definition of the relevant markets and the competitive assessment conducted in this concentration.

## **Our approach**

8. The Office's assessment of the SLC test is framed in terms of two related issues. The first concerns the identification of the markets for the goods or services concerned. The second concerns the Office's assessment of the competitive effects of the concentration in the markets.
9. The purpose of the market definition is to provide a framework for the analysis of the competitive effects of the concentration. The relevant markets are the markets within which the concentration may give rise to an SLC and contain the most significant competitive alternatives available to the customers of the notifying parties. As is stipulated in the EC's Notice on market definition<sup>1</sup>, market definition typically contains two dimensions:
  - (a) The relevant *product* market is a set of products that customers consider to be close substitutes.
  - (b) The relevant *geographic* market consists of both national and local aspects.
10. In delineating the relevant markets, the Office relied on three important sources of information. These are: (i) requests for information to the market players asking their views of the boundaries of the relevant market, (ii) evidence from recent local and foreign case law and market studies on the subject that offer actual examples of product and geographic substitutability including the views of competitors, and (iii) survey aimed at eliciting the views and preferences of customers on the boundaries of the product and geographic market.
11. Based on the above information, the Office made a distinction between categories of retail grocery stores on the basis of size (i.e. sales area). The Office opines that the grocery retail market in Malta is characterized by the presence of two main types of retail grocery stores, namely (i) supermarkets and discounters, and (ii) convenience and local village grocery stores. In fact, the main distinguishing features between these types of retail grocery stores in Malta are:
  - (a) size, with supermarkets and discounters generally having an area in excess of 200 square meters; and
  - (b) product range, with supermarkets and discounters having a broader selection of products to offer when compared to the smaller local stores.
12. Given that the proposed concentration includes horizontal overlaps in the 'supermarkets and discounters' category, the Office focused its attention on this category. Following the delineation

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

of the relevant markets, the Office resorted to market shares and measures of concentration (number of firms and the Herfindahl-Hirschman Index (HHI)) to assess the competitive effects of the proposed concentration.

13. The *national* definition of the geographic market was limited to the territory of Malta (excluding Gozo and Comino) since all the supermarkets of the notifying parties are located in Malta; and getting to grocery stores located in Gozo would require an additional 20 minutes of travel time (a typical ferry crossing) and incurring related ferry-crossing expenses. Based on this definition, the Office estimated the market share of the notifying parties to be [10-15]% when excluding retail outlets with a sales area less than 200 square meters; which market share increases to [10-15]% when convenience stores and specialist dedicated stores exceeding a sales area of 200 square meters are removed from the population. Furthermore, these market shares are coupled with a post-merger HHI of 1,395 and a delta of 121.7 for the former and a post-merger HHI of 1,600 and a delta of 137.0 for the latter, which results exclude any possible competition concerns.<sup>2</sup>
14. While European case law provides information on the driving time that customers are willing to travel for their main grocery shopping, the Office opines that one must delineate the *local* relevant geographic market based on the Maltese context. The Office also considered the fact that any assumptions taken with regards to driving time will have a considerable effect on the competitive assessment at the local level. As a result, in order to eliminate subjectivity biases, the Office gathered such data by means of a population-based survey.
15. Based on the responses gathered (406 grocery shoppers), the Office estimated a weighted average driving time of 12.8 minutes. In order to account for possible response measurement biases and different traffic volumes, the Office undertook the assessment of the local geographic market based on four different scenarios:
  - a. Scenario 1: In this scenario, the Office resorted to the weighted average driving time inferred from the demand-side survey and undertook its competitive assessment for each supermarket involved in this concentration. In order to carry out the competitive assessment, this scenario involved a three-step approach: (1) the Office undertook a study to map the center of each locality in Malta and through Google Maps, measured the driving time from each supermarket involved in this concentration to the center of each locality in Malta; (2) based on this, the Office recorded the grocery retail outlets exceeding a sales area of 200 square meters which are located within the area of 12.8 minutes driving time; (3) to account for the fact that there may be grocery retail outlets located in the periphery of the locality as opposed to the center of the locality, the Office measured the driving time between each grocery retail outlet listed in step 2 to the respective supermarket involved in this concentration, terminating outlets that required a driving trip which exceeds 12.8 minutes. This methodology was repeated for every supermarket involved in this concentration. Based on the final list of grocery retail outlets which according to this scenario are local competitors to the respective supermarket involved in this concentration, through the data gathered from the RFIs, the Office computed the respective market shares and measures of concentration for each supermarket of the notifying parties.
  - b. Scenario 2: In order to account for the fact that some customers prefer to do their main grocery shopping during hours characterized by high traffic volume, the Office noted that when assuming an average driving speed of 40km/hour i.e. the typical average speed recorded in Malta during hours of high traffic volume, in 12.8 minutes, a customer would be

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<sup>2</sup> See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (Official Journal C 031, 05/02/2004 P.0005-0018), paragraphs 17-21.

able to cover a distance of approximately 8.5 kilometers. As a result, in this scenario, the Office undertook the same three-step approach outlined in Scenario 1 with one distinction i.e. instead of working with driving time, the distance of 8.5 kilometers was taken as the threshold value. The Office resorted to the same methodology in order to calculate the respective market shares and measures of concentration for each supermarket of the notifying parties.

- c. Scenario 3: To account for possible response measurement biases, a margin of error of +/- 15% to the 12.8 minutes weighted average driving time inferred from the demand-side survey is assumed, yielding an upper threshold value of 15 minutes driving time. The same three-step methodology adopted in the above scenarios was also adopted for this scenario.
  - d. Scenario 4: This scenario amalgamates the Office's assumptions of the typical average speed recorded in Malta during hours of high traffic volume with the upper threshold value of 15 minutes driving time estimated in Scenario 3. According to the Office's calculations, this equates to a total covered driving distance of 10 kilometers. Based on this value, the same methodology adopted in Scenario 2 is also applied here.
16. As stated in paragraph 18 of the *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*:

*"Concentrations which, by reason of the limited market share of the undertakings concerned, are not liable to impede effective competition may be presumed to be compatible with the common market. Without prejudice to Articles 81 and 82 of the Treaty, an indication to this effect exists, in particular, **where the market share of the undertakings concerned does not exceed 25 % either in the common market or in a substantial part of it.**"<sup>3</sup>*

[Emphasis Added]

17. According to the results outlined in Table 2, all supermarkets registered a market share below 25% with the exception of Tower Supermarket which accounted for a market share of [30-35]% in Scenario 1. Given that the threshold is only exceeded by [5-10] percentage points and that this is only the case in one out of the four scenarios undertaken, the Office does not view this result as posing a serious threat to substantial lessening of competition. This is due to the fact that in line with the *Merger Assessment Guidelines* published by the UK Office of Fair Trading (now Competition and Markets Authority), it is noted that:

*"In relation to market shares, previous OFT decisions in mergers in markets where products are undifferentiated **suggest that combined market shares of less than 40 per cent will not often give the OFT cause for concern over unilateral effects...**"<sup>4</sup>*

[Emphasis Added]

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<sup>3</sup> See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (Official Journal C 031, 05/02/2004 P.0005-0018), paragraph 18.

<sup>4</sup> See Merger Assessment Guidelines, a joint publication of the Competition Commission and the Office of Fair Trading (OFT1254, September 2010 CC2 Revised), paragraph 5.3.5.

Table 2: Market Share of Retail Marketing Limited Post-Concentration (Office's Calculations)

|       | Lasco    | Trolees  | Valyou Mellieha | Tower    | Valyou St. Julian's | Valyou Naxxar | Park Towers St. Venera | Park Towers St. Julian's |
|-------|----------|----------|-----------------|----------|---------------------|---------------|------------------------|--------------------------|
| SCN 1 | [5-10]%  | [20-25]% | [20-25]%        | [30-35]% | [15-20]%            | [15-20]%      | [15-20]%               | [15-20]%                 |
| SCN 2 | [5-10]%  | [15-20]% | [20-25]%        | [20-25]% | [10-15]%            | [15-20]%      | [10-15]%               | [15-20]%                 |
| SCN 3 | [10-15]% | [10-15]% | [20-25]%        | [20-25]% | [10-15]%            | [15-20]%      | [10-15]%               | [10-15]%                 |
| SCN 4 | [10-15]% | [10-15]% | [20-25]%        | [15-20]% | [10-15]%            | [10-15]%      | [10-15]%               | [10-15]%                 |

18. Moreover, as stated in paragraph 20 of the *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*:

***“The Commission is also unlikely to identify horizontal competition concerns in a merger with a post-merger HHI between 1000 and 2000 and a delta below 250, or a merger with a post-merger HHI above 2000 and a delta below 150...”***<sup>5</sup>

[Emphasis Added]

19. According to the results highlighted in table 3, with the exception of Scenarios 1 and 3 for Tower Supermarket, all supermarkets had a delta HHI value below 250. Coupled with the number of firms and market share analysis, the Office opines that post-concentration, there is no threat of serious unilateral and/or coordinated effects and as a result, no serious threat to substantial lessening of competition. This is corroborated by the fact that as stated in the *Merger Assessment Guidelines* published by the Office of Fair Trading:

***“These thresholds may be most informative for mergers in a market where the product is undifferentiated and where competition between firms involves firms choosing what volume to supply to the market. In other cases the significance of these thresholds will be less.”***<sup>6</sup>

[Emphasis Added]

20. While the Office opines that the proposed concentration includes undifferentiated products to a certain degree, firms choosing what volume to supply to the market is unlikely to be prevalent in this market. This strengthens the Office's position and competitive assessment of finding no hardcore evidence of potential substantial lessening of competition.

<sup>5</sup> See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (Official Journal C 031, 05/02/2004 P.0005-0018), paragraph 20.

<sup>6</sup> See Merger Assessment Guidelines, a joint publication of the Competition Commission and the Office of Fair Trading (OFT1254, September 2010 CC2 Revised), paragraph 5.3.5.

Table 3: Retail Marketing Limited Post-Concentration  $\Delta$ HHI (Office's Calculations)

|       | Lasco | Trolees | Valyou Mellieha | Tower | Valyou St. Julian's | Valyou Naxxar | Park Towers St. Venera | Park Towers St. Julian's |
|-------|-------|---------|-----------------|-------|---------------------|---------------|------------------------|--------------------------|
| SCN 1 | 0     | 155.6   | 205.3           | 500.8 | 135.3               | 166.7         | 117.2                  | 147.7                    |
| SCN 2 | 0     | 110.2   | 212.2           | 214.5 | 96.3                | 135.0         | 82.6                   | 131.3                    |
| SCN 3 | 74.5  | 52.2    | 205.3           | 279.0 | 84.0                | 134.9         | 135.2                  | 101.4                    |
| SCN 4 | 72.9  | 40.3    | 205.3           | 128.4 | 82.7                | 101.7         | 117.9                  | 96.3                     |

21. The definitions of the relevant national and local *geographic* markets were complemented by the definition of the relevant *product* market to determine which grocery stores sell products that may be considered as substitutes to those sold by the Notifying Parties in the eyes of the consumer.
22. The definition of the relevant product market was based on an in-depth assessment of the competitive constraint imposed by various grocery stores on the stores owned by the Notifying Parties. In line with the preferences revealed by the consumers participating in the Survey, the assessment considered the price, range, and service characteristics of all stores with a sales area of at least 200 square meters.
23. Based on the extent of the competitive constraint imposed on the Notifying Parties in terms of price, range and service, each store was classified as either being *within* the relevant product market or *outside* it. The rationale for considering these characteristics and the classification of stores is the following:
  - a. Price: any product price which is "approximately equal to" the price charged by the Notifying Parties imposes some competitive constraint. Specifically, a store was deemed to impose a competitive constraint on the Notifying Parties if the price of at least 30% of a selection of products is within one standard deviation of the average price of a select group of major supermarkets.
  - b. Range: stores are deemed to impose a competitive constraint if they offer a range of products that is similar to the range offered by the Notifying Parties. Specifically, a store is deemed to impose a competitive constraint on the Notifying Parties if the number of products in at least 50% of the product-groupings (e.g. pasta, vegetables, soft drinks and mixers) is within one standard deviation of the average number of products sold by a select group of major supermarkets.
  - c. Service: stores that belong to the same product market as the Notifying Parties must offer at least some similar services that are deemed desirable by the consumer. Specifically, a store is deemed to impose a competitive constraint on the Notifying Parties if it has at least three of a selection of "good-service" characteristics (such as opening on a Sunday, parking facilities, customer support, discounts, etc.).

Those stores that impose a competitive constraint in at least two out of the above-identified characteristics are classified as part of the relevant product market.

24. Since the analysis necessarily entailed some subjectivity, the classification of grocery stores based on price, range and service was benchmarked against a number of headline indicators

(such as spend per customer, identification of competitors, etc.) to ensure a sensible classification.

25. Based on the product market definition, 13 supermarket outlets (or 9 supermarket chains) have been found not to pose serious threats to competition to the supermarkets involved in this concentration. As a result, the Office replicated the same methodology applied to delineate the local geographic market but this time excluding those supermarkets which according to the product market definition should not be constituted in the same relevant market as that of the supermarkets of the notifying parties. By merging the local geographic market definition with the product market definition, the Office ensured that the assessment of the competitive effects is also undertaken for the most restrictive definition of the relevant market.

*Table 4: Market Share of Retail Marketing Limited Post-Concentration (Office's Calculations) – Merging Product and Local Geographic Markets*

|       | Lasco    | Trolees  | Valyou Mellieha | Tower    | Valyou St. Julian's | Valyou Naxxar | Park Towers St. Venera | Park Towers St. Julian's |
|-------|----------|----------|-----------------|----------|---------------------|---------------|------------------------|--------------------------|
| SCN 1 | [5-10]%  | [20-25]% | [20-25]%        | [30-35]% | [15-20]%            | [15-20]%      | [15-20]%               | [15-20]%                 |
| SCN 2 | [5-10]%  | [15-20]% | [20-25]%        | [20-25]% | [10-15]%            | [15-20]%      | [10-15]%               | [15-20]%                 |
| SCN 3 | [10-15]% | [10-15]% | [20-25]%        | [25-30]% | [10-15]%            | [15-20]%      | [15-20]%               | [15-20]%                 |
| SCN 4 | [10-15]% | [10-15]% | [20-25]%        | [15-20]% | [10-15]%            | [10-15]%      | [10-15]%               | [10-15]%                 |

*Table 5: Retail Marketing Limited Post-Concentration  $\Delta$ HHI (Office's Calculations) – Merging Product and Local Geographic Markets*

|       | Lasco | Trolees | Valyou Mellieha | Tower | Valyou St. Julian's | Valyou Naxxar | Park Towers St. Venera | Park Towers St. Julian's |
|-------|-------|---------|-----------------|-------|---------------------|---------------|------------------------|--------------------------|
| SCN 1 | 0     | 164.2   | 212.3           | 609.9 | 154.7               | 192.9         | 133.1                  | 167.1                    |
| SCN 2 | 0     | 116.4   | 219.7           | 247.8 | 108.2               | 150.1         | 93.4                   | 147.5                    |
| SCN 3 | 77.1  | 54.2    | 212.3           | 329.3 | 93.6                | 149.9         | 152.4                  | 114.2                    |
| SCN 4 | 75.4  | 42.8    | 212.3           | 146.3 | 92.3                | 113.9         | 131.8                  | 108.4                    |

26. As can be observed from tables 4 and 5, the conclusions reached by the Office based on the local geographic market also apply when amalgamating both market definitions together.

27. Based on the above assessment, the Office does not feel the need to delve deeper into the theories of harm and assessment of competitive effects since the headline indicators already indicated no threat to substantial lessening of competition. Concomitantly, the notifying parties informed the Office that the concentration would facilitate improvements in the following areas:

- a. Price and improved competition.
- b. Investment in quality management including professional management structures.

- c. Investment in labour resources through training and improvements in IT systems.
- d. Improved working environment for personnel and investment in higher health and safety standards.
- e. Higher standards for employees, job creations and better financial packages.

### **Findings of the Office**

28. Based on the above arguments, the Office for Competition,

Having considered the joint notification of Retail Marketing Limited 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 pursuant to regulation 5 of the Control of Concentrations Regulations 2002,

Having considered the provisions of the Control of Concentrations Regulations, 2002,

Having considered EU and other foreign jurisprudence,

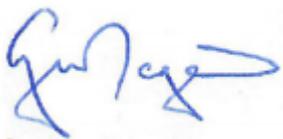
Having regard to all the information and supporting documentation submitted by the parties,

Having regard to the Office's decision of 13 February 2020 to initiate a Phase II investigation on this proposed concentration,

Having given the undertakings concerned the opportunity to make their views known to the Office,

the Director General of the Office for Competition has decided, in terms of regulation 6(1)(ii) of the Control of Concentrations Regulations:

- I. that although the concentration falls within the scope of these Regulations, the Concentration does not raise serious doubts about its lawfulness;
- II. not to oppose the Concentration; and
- III. to declare it a lawful Concentration.



Godwin Mangion

Director General of the Office for Competition