

OFFICE FOR COMPETITION

24 August 2020

COMP-MCCAA/09/2020- Acquisition by Francis Busuttil & Sons (Marketing) Limited of some brands and assets of Vivian Corporation Limited

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 filed on 28 July 2020 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 28 July 2020, 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 Francis Busuttil & Sons (Marketing) Limited (hereinafter referred to as "the Notifying Party") will acquire the importation and distribution rights relating to some of Vivian Corporation Limited's brands (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 4 August 2020 and a notice that appeared in the Government Gazette No.20,453 on 31 July 2020. No third-party objections were received.

Parties

3. Francis Busuttil & Sons (Marketing) Limited, having registration number C 24137 with its registered address at Busuttil Buildings, St Venera Square, Santa Venera, is a food and beverage, import and distribution company, forming part

of Francis Busuttil and Sons Limited. The Notifying Party is a sales, marketing and distribution operation, representing a portfolio of globally renowned branded food and grocery products.

4. Vivian Corporation Limited, having registration number C 68 with its registered address at 29 Sanitas Building, Tower Street, Msida is also an import and distribution company of fast-moving consumer goods, representing a number of branded food and grocery products, baby products, cosmetics and healthcare products.
5. Both companies are involved in the importation, wholesale and distribution of fast-moving consumer goods in Malta.

Transaction

6. Pursuant to a Memorandum of Understanding, the Notifying Party proposes to acquire some of the Acquired Party's brands within its fast moving consumer goods business including all related importation, holding and distribution activities in Malta and the operation of same as a going concern, together with all business rights relative thereto, which include the right to distribute the Acquired Party's products in Malta on the same terms as those in place between the Acquired Party and its respective principals.

Notifiable Concentration

7. In terms of regulation 2 of the Control of Concentrations Regulations, a concentration, *inter alia*, 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 other means, of direct or indirect control of the whole or parts of one or more undertakings.
8. The proposed transaction brings about a permanent change of control over the assets transferred from the Acquired Party to the Notifying Party. The assets to be transferred constitute a business to which a market turnover can be attributed.
9. Therefore, the proposed transaction constitutes a concentration within the meaning of regulation 2 of the Control of Concentrations Regulations.

Threshold for Notification

10. The aggregate turnover of the undertakings concerned in the preceding financial year exceeds €2,329,373.40 and each of the parties had a turnover in

Malta equivalent to at least 10% of the combined aggregate turnover in Malta of the undertakings concerned.

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

Simplified Procedure

12. Following the examination of the notification, it is considered that the notified concentration falls within the scope of Regulation 12(1) 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% or in a product market which is upstream or downstream of a product market in which any other party to the concentration is engaged and their combined market share is less than 25%”.

Conclusion

In view of the above and in terms of Regulations 6 (1) (ii) and 12 (4) of the Regulations, it is therefore 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
Director General