

**Assessment of Proposed Full-Function Joint Venture between Bianchi and Sons Limited, Merrill Invest Limited and Ziti Technologies Limited**

**21 October 2021**

**Decision on Proposed 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/09/2021**

**NON-CONFIDENTIAL VERSION**

**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 I-Bajda, Malta on 21-10-2021.

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

## SUMMARY

1. The Office for Competition (hereinafter referred to as 'the Office') within the Malta Competition and Consumer Affairs Authority has opened an in-depth investigation to assess whether the proposed full-function joint venture between Bianchi and Sons Limited, Merill Invest Limited and Ziti Technologies Limited (hereinafter referred to as 'Notifying Parties') is in line with the Control of Concentrations Regulations (Subsidiary Legislation 379.08).
2. If the Notifying Parties' request is acceded by the Office, Ziti Technologies Limited will become a shareholder in the already incorporated company Gozo Fast Ferry Limited, which currently has Bianchi and Sons Limited and Merill Invest Limited as shareholders. Following this transaction, Bianchi and Sons Limited, Merill Invest Limited and Ziti Technologies Limited will each own an equal share of Gozo Fast Ferry Limited, which manages and operates passenger fast ferry services between Valletta, Malta and Mgarr, Gozo.
3. Based on a preliminary assessment, the Office has serious doubts regarding the compatibility of the proposed concentration with the Control of Concentrations Regulations and it is of the view that the concentration could limit competition in the market for passenger fast ferry services between Valletta, Malta and Mgarr, Gozo. The Office believes that it could lead to adverse non-horizontal competition effects arising through input foreclosure; harming competition and consumer welfare in the process. For these reasons, the Office is of the view that the proposed concentration may lead to a substantial lessening of competition in the market for passenger fast ferry services at the national level. Therefore, the Office is hereby initiating proceedings for an in-depth investigation in accordance with regulation 6(1)(iii) of the Control of Concentrations Regulations to study the matter further.

## ASSESSMENT

### Parties

4. Bianchi and Sons Limited is a limited liability company registered in Malta with company registration number C 14. Its registered office is situated at Palazzo Marina, 143, St Christopher Street, Valletta. Bianchi and Sons Limited is involved in trades or businesses of shippers, ship and yacht owners/brokers, shipping and yachting agents, amongst others. Bianchi and Sons Limited forms part of the group of companies under Bianchi Group Ltd (C 88160), a limited liability company registered in Malta at the same aforementioned address, which operates in different activities and areas, mostly related to the service sector, in Malta and internationally. Bianchi Group Ltd is active, amongst others, in shipping and logistics, travel, insurance and investments, real estate and hospitality, retail and maritime transportation services.

5. Based on audited financial statements for the year ended 31 December 2020, Bianchi Group Ltd generated a total turnover of [REDACTED], while the turnover related specifically to Bianchi and Sons Limited amounted to [REDACTED].
6. Merrill Invest Limited is a holding company registered in Malta with company registration number C 95969. It has its registered office situated at 68, Tunny Net, Triq il-Mitġna l-Ġdida, Mellieħa. Merrill Invest Limited, holds shares in companies operating in the tourism sector. The company was established in 2020, [REDACTED].
7. Gozo Fast Ferry Limited is a private exempt limited liability company registered in Malta with company registration number C 98702. Its registered office is situated at Palazzo Marina, 143, St Christopher Street, Valletta. Gozo Fast Ferry Limited owns, provides, manages, and operates commercial fast ferry services between Valletta, Malta and Mġarr, Gozo.
8. The Parties to this transaction signed a Shareholders Agreement on 1 April 2021, whereby Gozo Fast Ferry Limited was incorporated by Bianchi and Sons Limited and Merrill Invest Limited, each acquiring 50% of the issued share capital in Gozo Fast Ferry Limited. The company commenced its commercial operations in Malta on 1 June 2021, and in its first three months of operation, generated a total turnover of [REDACTED].
9. Ziti Technologies Limited is a holding company with shares in the technology, land transport and laundry sector. The company is registered in Malta with company registration number C 81835 and has its registered office situated at Sqaq il-Fdal tal-Ħadid, Valletta Road, Luqa. Amongst others, the company owns Tallinja Technology Limited. Based on audited financial statements for the year ended 31 December 2020, Ziti Technologies Limited group of companies generated a total turnover of [REDACTED], while the turnover related specifically to Ziti Technologies Limited amounted to [REDACTED].
10. Tallinja Technology Limited is a limited liability company which provides ticketing technology services to transport companies both on land and at sea. The company is registered in Malta with company registration number C 81766 and has its registered office situated at Sqaq il-Fdal tal-Ħadid, Valletta Road, Luqa. Based on audited statements for the year ended 31 December 2020, Tallinja Technology Limited generated a total turnover of [REDACTED].
11. Malta Public Transport Services (Operations) Limited is a limited liability company registered in Malta with company registration number C 48875 and has its registered office situated at Sqaq il-Fdal tal-Ħadid, Valletta Road, Luqa. Malta Public Transport Services (Operations) Limited is the national bus operator and is responsible in the operation of all public transport services by bus in Malta and Gozo. The company issues the tallinja transport cards but makes use of ticketing technology services, provided by Tallinja Technology Limited, to operate Tallinja Card.
12. Ziti Technologies Limited and, therefore, Tallinja Technology Limited, as well as Malta Public Transport Services (Operations) Limited form part of the same group of companies owned by [REDACTED], which is the ultimate parent company of these companies (owning 100% shareholding). Since [REDACTED] exercises significant control over the affairs of all entities when making financial and operating decisions, the Office considers these entities to constitute a 'single economic unit'.

## Transaction

13. The nature of the concentration is a full-function joint venture between Bianchi and Sons Limited and Merill Invest Limited, already incorporated in Gozo Fast Ferry Limited, and Ziti Technologies Limited.
14. Bianchi and Sons Limited and Merill Invest Limited incorporated Gozo Fast Ferry Limited on 1 April 2021, with an authorised share capital of EUR3 million constituting of three million ordinary shares of EUR1 each and an initial share capital of one-thousand and two-hundred shares of EUR1 each. On the incorporation of the Gozo Fast Ferry Limited, Bianchi and Sons Limited and Merill Invest Limited subscribed to six-hundred shares of EUR1 each, thereby each acquiring 50% of the shareholding rights in Gozo Fast Ferry Limited.
15. Should the Office give its approval to the proposed full-function joint venture, Ziti Technologies Limited will become a shareholder in Gozo Fast Ferry Limited, [§], within [§] following the decision by the Office.
16. Upon completion of the transaction, all shares issued in the capital of Gozo Fast Ferry Limited will be owned equally by Bianchi and Sons Limited, Merill Invest Limited and Ziti Technologies Limited.

## Jurisdiction

17. As stipulated in Regulation 4 of the Control of Concentrations Regulations (Legal Notice 294 of 2002), it is the duty of the Director General to determine whether a concentration leads to a substantial lessening of competition in the Maltese market.
18. Regulation 6(1)(iii) of the Control of Concentrations Regulations states that:

*“where he [the Director General of the Office for Competition] 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.”*
19. The Office considers that the above-mentioned regulation to be the legal basis upon which the Director General is initiating proceedings. **This does not mean that the Office is going to block the proposed concentration or to accept it subject to remedies.** However, an in-depth investigation is warranted to study matters further.
20. The proposed concentration is not subject to review by any other foreign competition authority.

## Procedure

21. As per the same Shareholders Agreement already outlined in paragraph 8 of this decision, Ziti Technologies Limited would initially participate in this venture through [§]. Following the commencement date of operations of Gozo Fast Ferry limited, the Parties agreed that

Ziti Technologies Limited would become a shareholder in Gozo Fast Ferry Limited, subject to [REDACTED], and conditional on the decision of the Director General of the Office, declaring the transaction a lawful concentration in terms of the Control of Concentration Regulations.

22. Following meetings convened between the authorised representatives of the Notifying Parties and the Office, a notification of the concentration was deemed complete on 1 September 2021.
23. The filing and the acceptance of the concentration notification was notified to the public through a public notice in the Government Gazette (No. 20,696) on 7 September 2021 and a notice that appeared in a local newspaper and on the Malta Competition and Consumer Affairs Authority's website on the same day.
24. In compiling the preliminary competitive assessment, the Office has relied extensively on the relevant guidelines on the assessment of non-horizontal mergers<sup>1</sup> issued by the European Commission, and on European competition case law.
25. In its assessment, the Office relied on three main sources of data: (i) Requests for Information (hereinafter referred to as 'RFI') sent to the Parties involved in this proposed concentration; (ii) RFI sent to the undertakings involved in the market being studied; and (iii) third-party objections on the proposed concentration.

## **Background**

### ***Fast ferry services***

26. The market being studied relates to the newly introduced commercial fast ferry service between Valletta, Malta and Mġarr, Gozo. Based on the number of Commercial Vessel Operator Licenses issued by Transport Malta, the inter-island fast ferry service is being offered by two operators, namely, Gozo Fast Ferry Limited<sup>2</sup> and Virtu Ferries Limited<sup>3</sup>. The fast ferry service commenced on 1 June 2021 and allows passengers to travel from Malta to Gozo, and vice versa, in less than 45 minutes.
27. Based on information submitted to the Office by Transport Malta, both operators have been granted equivalent berthing slots at the terminals, ensuring that their respective schedules are not in conflict. Furthermore, information submitted by the Notifying Parties and other market players suggests that, in terms of technical specifications, the duration of the journey and services on board and berthing spots, the two operators offer an almost identical service.
28. The demand for the newly introduced fast ferry service is reflected in the number of trips made by both operators from June to August 2021. Data collected by the Office from Transport Malta show that [REDACTED] passengers were transported over [REDACTED] trips from Valletta, Malta to Mġarr, Gozo during the three-month period. On the other hand, [REDACTED] trips were made from Mġarr, Gozo to Valletta, Malta, carrying a total of [REDACTED] passengers. The number of trips and passengers for each operator are presented in the tables below.

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<sup>1</sup> Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07).

<sup>2</sup> <https://gozofastferry.com/>

<sup>3</sup> <https://virtuqozo.com/>

Table 1: Total Number of Trips and passengers from Malta to Gozo between June - August 2021

	Virtu Ferries Limited		Gozo Fast Ferry Limited		Total No. of Trips	Total No. of Passengers
	No. of Trips	No. of Passengers	No. of Trips	No. of Passengers	Malta to Gozo	Malta to Gozo
June	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
July	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
August	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				<b>Total:</b>	<b>[REDACTED]</b>	<b>[REDACTED]</b>

Source: Data provided by Transport Malta<sup>4</sup>

Table 2: Total Number of Trips and passengers from Gozo to Malta between June - August 2021

	Virtu Ferries Limited		Gozo Fast Ferry Limited		Total No. of Trips	Total No. of Passengers
	No. of Trips	No. of Passengers	No. of Trips	No. of Passengers	Gozo to Malta	Gozo to Malta
June	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
July	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
August	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
				<b>Total:</b>	<b>[REDACTED]</b>	<b>[REDACTED]</b>

Source: Data provided by Transport Malta<sup>5</sup>

29. In the first three months of the operation of the fast ferry service, Gozo Fast Ferry Limited carried out [REDACTED]% of the total number of trips from Valletta, Malta to Mġarr, Gozo, and [REDACTED]% of the total number of trips from Mġarr, Gozo to Valletta, Malta. The rest of the trips were carried out by Virtu Ferries Limited. In terms of passengers, Gozo Fast Ferry Limited carried [REDACTED]% of total passengers travelling from Valletta, Malta to Mġarr, Gozo and [REDACTED]% of those travelling from Mġarr, Gozo to Valletta, Malta.

### **Ticketing technology**

30. Gozo Fast Ferry Limited and Virtu Ferries Limited reached an agreement with Tallinja Technology Limited which stipulates that customers using the newly introduced fast ferry service can also pay by a personalised Tallinja Card issued by Malta Public Transport Limited. [REDACTED]
31. [REDACTED]

<sup>4</sup> As submitted by Transport Malta in its reply to RFI on 16 September 2021.

<sup>5</sup> As submitted by Transport Malta in its reply to RFI on 16 September 2021.

## Relevant Market

32. Regulation 2 of the Control of Concentrations Regulations defines the relevant market as “...*the market for the products or services whether within Malta or limited to any particular area or locality within Malta or outside Malta, and whether or not restricted to a particular period of time or season of the year*”.
33. Moreover, as stated in the European Commission’s notice on the definition of the relevant market (97/C/372/03), “...*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.*”<sup>6</sup>
34. The product and geographic markets considered in the preliminary assessment are discussed in the subsequent sub-sections. However, the Office notes that the product and geographic market definitions adopted in Phase II may vary as the Office compiles more information and investigates deeper. The approach adopted in this Phase I decision is therefore not intended to act as the starting point from which the Phase II assessment will develop.

## Product Market

35. In the European Commission’s notice on market definition, it is stated 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.*”<sup>7</sup>
36. On the basis of this definition, the Office’s approach to defining the relevant product market is to begin with the overlap of products or services of the Notifying Parties in the narrowest plausible candidate market and then to assess whether it can be widened on the basis of demand-side substitution and, in some cases, supply-side factors.
37. The Office considered the downstream supply of passenger fast ferry transport between Valletta, Malta and Mġarr, Gozo; and the upstream supply of ticketing technology services to the two fast ferry operators, including the operation of the same ticketing technology used in the related market of land transport by bus.

## Fast ferry services

38. Fast ferry services between Valletta, Malta and Mġarr, Gozo are supplied by Gozo Fast Ferry Limited and by one other competitor, Virtu Ferries Limited. The service that the two companies offer (hereinafter referred to as the ‘Valletta-Mġarr fast ferry service’) is differentiated from that of others offering transport services between Malta and Gozo on the basis of the location of departure/arrival and type of service.

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<sup>6</sup> See Commission Notice on the definition of the relevant market for the purposes of Community competition law (97/C 372/03), paragraph 2.

<sup>7</sup> See Commission Notice on the definition of the relevant market for the purposes of Community competition law (97/C 372/03), para. 7.

39. The Valletta-Mġarr fast ferry service operators are in the business of transporting passengers but are not authorised to carry vehicles. This is not the case for the carrier that accounts for the majority of passenger movements between the two islands, Gozo Channel (Operations) Ltd. The company is in the business of transporting both passengers and cars, and departs Malta from a different location, Ċirkewwa, Malta.
40. Although there are no regulations that prohibit the entry of new players into the market for the Valletta-Mġarr fast ferry service, significant barriers to entry exist in terms of capacity constraints relating to the available berthing facilities as well as the nature and extent of investment required in order to purchase the vessels required to provide the service.
41. For these reasons, the Office considers the relevant downstream market to consist of the fast-ferry service between Valletta, Malta and Mġarr, Gozo. Both the Notifying Parties and one of the third-party objectors concurred with this definition for the relevant market in their respective submissions to the Office.

### ***Ticketing technology***

42. The two Valletta-Mġarr fast ferry service providers use the ticketing technology supplied by Tallinja Technology Limited. Although alternative ticketing technologies are available on the market, the service supplied by Tallinja Technology Limited is the only one that provides access to over 340,000 Tallinja Card subscribers<sup>8</sup> that (mainly) use the card for land transport by bus. This pool of customers is accessible through a related market in which the single economic unit (of which Ziti Technologies Limited forms part) operates. For this reason, it is the provisional view of the Office that the ticketing technology service supplied by Tallinja Technology Limited has no close substitutes.

### **Geographic Market**

43. The European Commission 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”*.<sup>9</sup>
44. In relation to the geographic scope of this decision, the Office assessed the impact of this concentration at the national level, for the upstream market. Tallinja Technology Limited provides ticketing technology services through the use of Tallinja Card, to different transport companies in Malta, both for land and sea transport, such as Malta Public Transport, Gozo Fast Ferry Limited and Virtu Ferries Limited, amongst others.
45. In the downstream supply of fast ferry passenger transport, the Office believes that for the scope of the Phase I decision, the geographic market to be considered is national territorial waters between Valletta, Malta and Mġarr, Gozo.

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<sup>8</sup> <https://www.publictransport.com.mt/en/news-details/register-for-your-new-tallinja-card-and-get-10-free-credit>

<sup>9</sup> Commission Notice on the definition of the relevant market for the purposes of Community competition law (97/C 372/03), paragraph 8.

46. Furthermore, in their submissions to the Office, the Notifying parties and third-party objectors argued that the relevant geographic market that should be considered for this transaction is the passenger sea transport by fast ferry service between the territorial waters of Malta and Gozo, specifically between Valletta, Malta and Mġarr, Gozo.

### Competitive Assessment

47. As provided in Regulation 4 of the Control of Concentrations Regulations, in assessing whether a concentration leads to a substantial lessening of competition in the Maltese market, the Director General shall consider, *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.”*

48. To set the framework for the analysis of the competitive effects of the concentration, the Office refers to Section 6(III) of the Concentration Notification Form (annexed to the Control of Concentrations Regulation) whereby *affected markets* are defined as 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.

49. The activities of the Parties subject to this concentration have a ‘vertical’ relationship which the European Commission defines as a relationship involving *“companies operating at different levels of the supply chain.”*<sup>10</sup>

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<sup>10</sup> Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07), paragraph 4.

50. In their submission, the Notifying Parties argued that although there is a certain vertical overlap between the activities carried out by Tallinja Technology Limited (subsidiary of Ziti Technologies Limited) and Gozo Fast Ferry Limited, this is only to a limited extent.
51. However, on the basis of the definition presented in paragraph 49 of this decision, the Office considers the Parties involved in the concentration, that is, Gozo Fast Ferry Limited and Ziti Technologies Limited, to be vertically related. Ziti Technologies Limited, (the upstream firm), through its subsidiary company Tallinja Technology Limited, provides ticketing technology services to Gozo Fast Ferry Limited (the downstream firm), so that fast ferry service customers can pay with Tallinja Card.
52. In assessing any competitive concerns regarding the proposed concentration, the Office considers whether the market situation that would prevail with the proposed concentration is likely to be characterised by any of the below anti-competitive effects:
- a. **Vertical effects arising through input foreclosure<sup>11</sup>**: these occur where, as a result of the concentration, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the concentration, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the concentration. Input foreclosure could thus result in increases in prices in the downstream market, thus impeding effective competition.
  - b. **Other non-coordinated effects**: by vertically integrating, Parties in this concentration may gain access to commercially sensitive information regarding the upstream or downstream activities of rivals and their importance to competing rivals.
53. The Office's approach in assessing vertical theories of harm is to analyse:
- i. **Ability to foreclose access to inputs**: would the merged entity have the ability to harm rivals, for example, by raising prices or refuse to supply inputs to competitors on the market?
  - ii. **Incentive to foreclose access to inputs**: would it be profitable to do so?
  - iii. **Effect on competition**: would the effect of any action taken by the merged entity be sufficient to reduce competition in the affected market to the extent that, in the context of the market in question, it gives rise to a substantial lessening of competition?
54. The Office discusses each of these aspects in more detail below.

#### **Ability to foreclose access to inputs**

55. The European Commission Guidelines on the assessment of non-horizontal mergers states that, in assessing the likelihood of an anticompetitive input foreclosure scenario, it considers whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs. In this regard, the Office considered whether the merged entity can affect the terms available on the (upstream) market from which downstream rivals may purchase the input in a way that significantly impacts their operations.

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<sup>11</sup> References to 'foreclosure' in this decision should be read as references to input foreclosure. The term 'foreclosure' refers to either partial or total foreclosure unless stated otherwise.

56. Being the only ticketing technology service provider with access to over 300,000 Tallinja card subscribers, it is the provisional view of the Office that Tallinja Technology Limited can influence both the price and the quality of the ticketing technology used by downstream firms in the market for the Valletta-Mġarr fast ferry services.
57. Although alternative ticketing technologies are available on the market, the Office notes that no other service provider gives direct access to the pool of Tallinja card customers in the market for land transport by bus. Effectively, there is no alternative supplier offering a similar product on only marginal inferior terms to those currently offered by Tallinja Technology Limited.
58. The Office also notes that the technology supplied by Tallinja Technology Limited constitutes an important input in the provision of the Valletta-Mġarr fast ferry services. Indicative estimates suggest that [§] of the fast ferry users purchase the service using Tallinja card.
59. For the reasons set out above, the Office is of the opinion that the merged entity would have the ability to impose cost increases or degrade the quality of competing service providers in the downstream market, and that those competitors would have a limited ability to substitute to alternative ticketing technology. Therefore, the Office believes that the merged entity would have the ability to harm its downstream competitors through this input foreclosure strategy.

#### **Incentive to foreclose access to inputs**

60. The incentive to foreclose depends on the degree to which foreclosure would be profitable. As postulated in the European Commission Guidelines on the assessment of non-horizontal mergers *“The vertically integrated firm will take into account how its supplies of inputs to competitors downstream will affect not only the profits of its upstream division, but also of its downstream division. Essentially, the merged entity faces a trade-off between the profit lost in the upstream market due to a reduction of input sales to (actual or potential) rivals and the profit gain, in the short or longer term, from expanding sales downstream or, as the case may be, being able to raise prices to consumers.”*<sup>12</sup>
61. In this case, the possible foreclosure strategy would imply a loss of profits in the upstream market, as a result of lower (or no) sales of ticketing technology services by Ziti Technologies Limited (through its subsidiary Tallinja Technology Limited) to Gozo Fast Ferry Limited’s competitors; and a larger profit gain in the downstream market, as a result of higher sales by Gozo Fast Ferry Limited in the market for Valletta-Mġarr fast ferry services.
62. On the basis of its initial assessment, the Office is of the opinion that by raising rivals’ input costs (i.e. the cost of ticketing technology services), or restricting the overall provision of the ticketing technology to existing rivals following the expiration of the existing collaboration agreements, the profit gained by the joint venture from expanding sales downstream outweighs the profit lost from reduced input sales.

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<sup>12</sup> Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07), paragraph 40.

63. In response to price increases or degradation in quality of the service by competitors to the concentration some affected customers may switch from the competitor to the Notifying Parties' provision of the fast ferry service. If this is the case, Ziti Technologies Limited (through its subsidiary Tallinja Technologies Limited) would lose the commission from the tickets sold by the competitors in the downstream market using Tallinja Card. However, it would gain profits from the sale of additional fast ferry tickets using Tallinja Card by Gozo Fast Ferry Limited. From its initial assessment, the Office is of the view that the profits gained in the downstream market would be higher than the profits lost in the upstream market, thus making the incentive to foreclose inputs profitable. This is even more so the case, given that there are two competitors in the market.
64. Third Parties Objectors argued that depriving them, as competitors, of access to Tallinja Card, would drive customers to the only other operator in the market that offers fast ferry services through Tallinja Card, i.e. the proposed joint venture.

### **Effect on competition**

65. The effect of the concentration foreclosing ticketing technology services to competitors in the downstream market could result in increases in prices in the downstream market thus impeding overall effective competition. This would, in turn, weaken competitors and increase further the concentration's market power as it would account for a larger share of the downstream market. Moreover, the undertaking that would in this case be subject to input foreclosure is a close competitor.
66. Effective competition may be also impeded by raising barriers to entry to potential competitors. In assessing whether the 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.
67. 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."*
68. Following the assessment of potential anti-competitive effects, the Office would then proceed with assessing whether any efficiency claims, brought forward by the Notifying Parties, outweigh the anti-competitive effects that could potentially be associated with this concentration. After thoroughly 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.
69. In their submissions, the Notifying Parties argued that the concentration would give access to Gozo Fast Ferry Limited to equal financial support provided by Ziti Technologies Limited as a shareholder. Moreover, Ziti Technologies would provide technical expertise with the experience it has in mass transport services, which would ultimately benefit consumers at large as Gozo Fast Ferry Limited would be able to provide a better service to its customers.

70. Although these arguments have their merits, the Office opines that at this stage of the assessment, the efficiencies substantiated by the Notifying Parties are not strong enough to outweigh the anti-competitive effects resulting from the concentration. The Office will examine any efficiency arguments brought forward by the Notifying Parties.

#### **Other anti-competitive effects**

71. The Office understands that the Parties to the concentration may gain access to commercially sensitive data relating to passenger numbers and trends collected through the use of Tallinja Card, given that Tallinja Technology Limited (subsidiary of Ziti Technologies Limited) is the supplier of ticketing technology services to both Gozo Fast Ferry Limited, and its main competitor, Virtu Ferries Limited. This concern has been also raised in the third-party objections received by the Office.
72. In their submissions to the objections raised, Ziti Technologies Limited argued *inter alia* that regarding the Tallinja Card data, collected by the Malta Public Transport (Operations) Limited and accessed by Tallinja Technology Limited, both Malta Public Transport (Operations) Limited and Tallinja Technology Limited are bound by a legal obligation under the General Data Protection Regulation to not disclose such data. Furthermore, it was noted that only Malta Public Transport (Operations) Limited and Tallinja Technology Limited can see the data collected through the Tallinja Card in their totality. It has been further argued that other companies have none, or only limited access, to this data, and where any access is granted it is only to data that as much as possible is devoid of any information and that only relates to that company itself. These restrictions also apply to Ziti Technologies Limited, which in fact has no access nor visibility of the data collected by Malta Public Transport (Operations) Limited and Tallinja Technology Limited
73. However, the Office's provisional point of view is that some information might still be accessed post-concentration by the Parties concerned, which would put rivals at a competitive disadvantage. The Office will be analysing this point in more detail in the Phase II investigation.

#### **Conclusion**

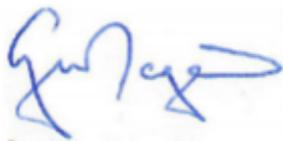
74. In view of the above arguments, the Office opines that there is a possibility of substantial lessening of competition. *A priori*, the Office believes that the undertakings forming part of this concentration may have the ability and incentive to engage in an input foreclosure strategy, in relation to the supply of tallinja ticketing technology services to competitors in the downstream Valletta-Mġarr fast ferry market in Malta. This would have the effect of increasing rivals' costs, resulting in significant competition concerns in the downstream market. Secondly the Office considers that there are competition concerns regarding potential information sharing between the Notifying Parties.
75. However, at the stage, the Office believes that it is premature to reach a definite conclusion and that a detailed investigation is warranted in order to verify the concerns that the proposed concentration may bring about.

### **Third-Party Views**

76. To date, the Office has received two third-party objections, which raised competition concerns regarding the effects of this concentration. There was a third party that argued that the Notifying Parties to this concentration already enjoy a high degree of market power in their respective markets, and that by joining forces, they would be increasing their overall strength in the market, with the risk of lessening competition. Another third-party competitor in the downstream market argued that the proposed concentration will result in foreclosure effects that will hinder its ability to operate in the market. This could result in consumer harm in the form of an increase in price and/or less consumer choice.
77. Some of these submissions have already been referred to briefly in this decision. Other submissions, not addressed in detail in this decision, will be considered in the Office's Phase II investigation. The Office will remain in contact with third parties and they also have further opportunities to elaborate on their views during the phase II investigation. The Office will also be analysing, in more detail in the Phase II investigation, the replies submitted by the Notifying Parties in response to the third-party objections submitted thus far. All these arguments will help the Office make its decision on whether these point to serious doubts of substantial lessening of competition.

### **Decision**

78. On the basis of the analysis and assessment presented above, the Director General of the Office for Competition opines that a deeper assessment is warranted and therefore will be initiating proceedings in accordance with regulation 6(1)(iii) of the Control of Concentrations Regulations.



Mr. Godwin Mangion,  
Director General