

OFFICE FOR COMPETITION

11 January 2023

COMP-MCCAA/16/2022- Acquisition of Phixen SAS by Gland Pharma 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 21 December 2022 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 21 December 2022, the Office for Competition (hereinafter referred to as “the Office”) received a notification of a proposed acquisition pursuant to Regulation 5 of the Control of Concentrations Regulations (hereinafter referred to as “the Regulations”), whereby Gland Pharma Limited (hereinafter referred to as “the Notifying Party”) will acquire indirectly Phixen SAS (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, on the Malta Competition and Consumer Affairs Authority’s website and in the Government Gazette No.20,983 on 30 December 2022. No third-party objections were received.

Parties

3. The direct acquiring firm is Gland Pharma International Pte. Ltd., a private company limited by shares incorporated under the laws of Singapore, which is

wholly and directly owned by the Notifying Party. The Notifying Party, Gland Pharma Limited, is a public limited liability company incorporated under the laws of India which is ultimately controlled by Fosun International Holdings Ltd., a private limited company incorporated under the laws of the British Virgin Islands. Fosun International Holdings Ltd. is the ultimate holding company of a privately-owned multinational conglomerate group (hereinafter referred to as "Fosun Group"). The Fosun Group has three main branches of activities, namely (i) pharmaceuticals, medical services, and health, (ii) tourism, leisure, fashion, and consumer products, and (iii) insurance, finance, and investment. The Notifying Party is a contract development and manufacturing organisation (hereinafter referred to as "CDMO"), which provides drug development and manufacturing services on behalf of third parties i.e., pharmaceutical companies. Furthermore, it provides its services mainly to pharmaceutical companies based in India and in the United States of America and to a much lesser extent in Europe. It operates from eight facilities, all located in India. The Notifying Party's services include synthetic and analytical chemistry, formulation, analytical, method and packaging development, amongst others. It also develops and manufactures sterile injectables, oncologic and ophthalmic injectables, and other injectables on behalf of pharmaceutical companies. [REDACTED], it neither leads drug discovery nor drug marketing and as a contract manufacturer it does not directly supply any drugs.

4. The Acquired Party, Phixen SAS is a private limited company incorporated under the laws of France, which is the ultimate holding company of [REDACTED] French and [REDACTED] Belgian subsidiaries (hereinafter together referred to as the "Cenexi Group"), which is active as a CDMO and operates from four facilities, located in France and Belgium. Cenexi Group's services include formulation, analytical development, process development and optimization, commercial manufacturing and ramp-up manufacturing and optimisation (including technical transfer and validation, stability testing, regulatory support, and product life cycle management). Furthermore, it develops and manufactures pre-filled syringes, vials, injectables, ampoules, hormone solid forms, tablets, syrups, creams, drops, and gels on behalf of pharmaceutical companies. Cenexi Group does not participate in drug discovery and drug marketing and does not own any intellectual property rights for drugs and as contract manufacturer, does not supply any drugs to the market.
5. In Malta, both the Notifying Party and the Acquired Party, provide CDMO services on behalf of their own respective customer.

Transaction

6. Pursuant to a Put Option Agreement and a Share Purchase Agreement, the Notifying Party through Gland Pharma International Pte. Ltd., will indirectly acquire the Acquired Party.

7. More specifically, the Notifying Party will acquire 100% of the Acquired Party's share capital and voting rights. Thus, Gland Pharma will acquire sole control over Phixen SAS, within the meaning of Regulation 2 of the Regulations on Control of Concentrations
8. The completion of the Proposed Transaction is conditional upon, *inter alia*, clearance from the Office.

Notifiable Concentration

9. 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.
10. The proposed transaction brings about an indirect acquisition by the Notifying Party of the Acquired Party.
11. Therefore, the proposed transaction constitutes a concentration within the meaning of Regulation 2 of the Control of Concentrations Regulations.

Threshold for Notification

12. The aggregate turnover of the undertakings concerned in the preceding financial year exceeds €2,329,373.40 and each of the parties had a turnover in Malta equivalent to at least 10% of the combined aggregate turnover in Malta of the undertakings concerned.
13. The notified concentration, therefore, meets the notification threshold as set out in Regulation 2 of the Regulations.

Simplified Procedure

14. 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...:

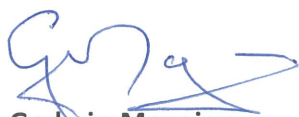
(iii) two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking and two or more of the parties

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

15. 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