

OFFICE FOR COMPETITION

21 December 2023

COMP-MCCAA/16/2023 – Acquisition of Mortar Limited by BG Consumer & Healthcare 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 dated 1 December 2023 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 Council Regulation (EC) No 139/2004

Whereas,

A. Facts

1. On 1 December 2023, 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 BG Consumer & Healthcare Limited (hereinafter referred to as 'the Notifying Party' or 'BG Consumer') will acquire sole control of Mortar Limited (hereinafter referred to as 'the Acquired Party' or 'Mortar').
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 a notice that appeared in the Government Gazette No. 21,164 on Tuesday 12 December 2023. The Office did not receive any third-party objections.

B. Parties

3. The Notifying Party, BG Consumer, having company registration number C78150, with its office at Busuttil Buildings, Sta Venera Square, Santa Venera, is a limited liability company incorporated under the laws of Malta. It is a holding company that forms part of the group of companies of Francis Busuttil & Sons Limited (C334). The group is involved primarily in the manufacture, distribution and export of food and beverage. It is also an importer and distributor of fast-moving consumer goods.
4. The Acquired Party, Mortar, having company registration number C7113, with its office at 78, Alexander Wilga Street, Paceville, St Julians STJ 3119, is a limited liability company incorporated under the laws of Malta. It is a holding company with shares in Alfred Gera & Sons Limited (C120), Consolidated Packaging Limited (C32596), M.M.V. Limited (C51927) and Melita Retailers Limited (C20835). The companies are involved primarily in the importation and distribution of pharmaceuticals and the operation of pharmacies and in the importation and distribution of retail items such as personal care and food products.

C. Transaction

5. The proposed transaction is an acquisition of sole control of Mortar by BG Consumer through a Purchase and Sale Agreement.
6. The Notifying Party will acquire 100% shareholding in the Acquired Party and, indirectly, approximately 33.3% in each of its subsidiaries. This will lead to BG Consumer to indirectly hold 66.6% in each of the subsidiaries.
7. The completion of the Proposed Transaction is conditional upon, *inter alia*, clearance from the Office.

D. Notifiable Concentration

8. In terms of regulation 2 of the 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.
9. The proposed transaction brings about the acquisition by the Notifying Party of the Acquired Party.
10. Therefore, the proposed transaction constitutes a concentration within the meaning of regulation 2 of the Regulations.

E. Threshold for Notification

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

F. Simplified Procedure

13. Following the examination of the notification, it is considered that the notified concentration falls within the scope of regulation 12(1) of the Control of Concentrations 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%.”

G. Conclusion

14. In view of the above and in terms of Regulations 6 (1) (ii) and 12 (4) of the Control of Concentrations 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.



Melchior Vella

Director

Office for Competition