

# Kluwer Competition Law Blog

## Maltese Office for Competition Blocks Acquisition in Groceries Retail Sector

Adriana Brincat (WH Partners) · Wednesday, October 2nd, 2024

Malta's Office for Competition ("the Office") has issued a [press release](#), noting that on the 18 September 2024, it issued a decision prohibiting the acquisition by Lidl Immobiliare Malta Limited ("Lidl") of property owned by Said Investments Limited and leases belonging to another major supermarket chain on the island ("Scott's") bringing a tentative end to an ongoing saga of attempts by Lidl to acquire Zabbar properties belonging to Scott's.

### Background

On 9 June 2021 the Office issued a [decision](#), further to a Phase II investigation that had been launched under regulation 6(1)(iii) of the [Control of Concentrations Regulations \(Chapter 379.08 of the Laws of Malta\)](#) ("Merger Control Regulations") approving the acquisition by Lidl of properties belonging to Scott's, following Lidl having excluded properties (specifically those based in Zabbar) from its original notification.

A further [Phase II investigation](#) was launched on 10 November 2021 following another notified acquisition by Lidl to purchase the same properties in Zabbar used by Scott's. This acquisition was subsequently abandoned by Lidl and the investigation terminated by means of a [statement issued](#) in February 2022.

On 29 December 2023 another [Phase II investigation](#) was launched following a further notification to the Office by Lidl to purchase properties in Zabbar used by Scott's. Despite the promise of sale for such purchase having been entered into on 24 August 2023 (more than 2 years following the signing of the final deed entered into between the same undertakings on 30 June 2021), the Office considered that the promise of sale was a reiteration of an abandoned promise of sale that had been made between the parties on 22 March 2023. The consequence of this was that the approved acquisitions made by Lidl in 2021 and the proposed acquisition in 2023 were considered to be part of the same concentration, having occurred simultaneously on the 22 March 2023, for the purposes of the Office's assessment. Under regulation 3(2) of the Merger Control Regulations, any transactions that take place within a two-year period between the same persons or undertakings are to be treated as one and the same concentration.

## Substantive Assessment of the Concentration

The Office considered the competitive constraints on Lidl both pre- and post- concentration, using a counterfactual analysis to compare the market outcome of the concentration with the prevailing market environment in its absence. In doing so, it also considered the potential for entry, exit, and expansion by both new entrants and existing market players, the likelihood of such changes materializing, the timeliness of entry and expansion and the meaningful influence of such new competitive constraints on the relevant market.

The product market was defined as that for retail groceries. The Office classified grocery stores imposing a competitive constraint, and therefore within the same product market, as those with a sales area of 200 square meters or more and specifically those stores which were deemed competitive on at least two of set criteria – these being price, range, service and quality.

The geographic market was limited to the south of Malta. The Office considered that the relevant radius within which competitive constraints would be felt would be a 15-minute drive from the properties to be purchased.

The Office found that the acquisition by Lidl of Scotts (Zabbar) would have further strengthened Lidl's already dominant position on the retail grocery market in the south of Malta and result in an increase in concentration on an already concentrated market.

Its assessment led the Office to conclude that the acquisition by Lidl of Scott's properties in Zabbar might lead to the substantial lessening of competition on the grocery retail market in the south of Malta and should therefore be prohibited in line with regulation 8(3) of the Merger Control Regulations.

## Merger Control notification in Malta

The Control of Concentrations Regulations (Chapter 379.08 of the Laws of Malta) ("Merger Control Regulations") make it a legal requirement for all concentrations to be notified to the Office.

A concentration would arise in the following situations:

- The merging of two or more undertakings that were previously independent of each other;
- the acquisition by one or more undertakings or by one or more persons already controlling at least one undertaking of direct or indirect control of the whole or parts of one or more undertakings. This may take place by purchase of securities or assets, by contract or by any other means;
- the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity.

AND where in the previous financial year the aggregate turnover in Malta of the undertakings concerned exceeded **€2,329,373.40** and each of the undertakings concerned had a turnover in Malta equivalent to at least 10 percent of the combined aggregate turnover of the undertakings concerned.

All concentrations are required to be assessed by the Office to determine whether they will lead to

a *substantial lessening of competition* in the Maltese market or part thereof. Concentrations that are deemed to lead to a substantial lessening of competition shall be prohibited under the Merger Control Regulations. A concentration shall not be put into effect without it having been notified to the Office for Competition.

Notification of concentrations is required within 15 days from the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

Failure to notify a concentration may lead to the concentration being unwound and to a fine on any persons, undertakings or association of undertakings of €50,000 or 1% of the total worldwide turnover of the undertaking or association of undertakings concerned in the previous business year, whichever is higher.

### **Next Steps**

The Office will publish the full version of the decision once confidential and business secrets are removed from its original decision. The undertaking concerned, or a third party showing “sufficient interest”, may file an appeal before the Civil Court (Commercial Division) on points of law and, or of fact, within 20 days from being notified or the publication of the decision (respectively). A further appeal on points of law and, or of fact is possible within 20 days of the Civil Court’s judgement to the Court of Appeal.

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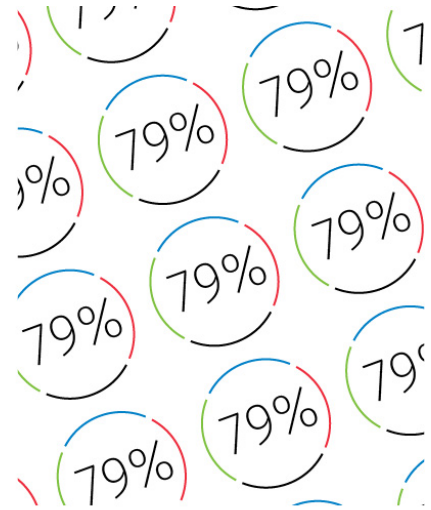
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