

## **DETERMINATION OF MERGER NOTIFICATION M/18/009 – BWG /4 ACES**

---

### **Section 21 of the Competition Act 2002**

### **Proposed acquisition by BWG Foods Unlimited Company of the entire issued share capital of 4 Aces Wholesale Limited**

**Dated 02 May 2018**

---

#### **Determination**

Pursuant to section 20(3) of the Competition Act 2002, as amended (“the Act”), BWG Foods UC (“BWG”), has submitted to the Competition and Consumer Protection Commission (“the Commission”) the proposals set out below relating to the proposed acquisition by BWG, a wholly owned subsidiary of TIL JV Limited, of the entire issued share capital of 4 Aces Wholesale Limited (“4 Aces”), for the purpose of ameliorating any effects on competition in markets for goods or services, with a view to the proposals becoming binding on BWG.

The Commission has taken the proposals into account and in light of the said proposals (which form part of the basis of its determination) has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby BWG would acquire the entire issued share capital of 4 Aces will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**



**PROPOSALS BY BWG FOODS UNLIMITED COMPANY TO THE COMPETITION AND  
CONSUMER PROTECTION COMMISSION RELATING TO THE PROPOSED ACQUISITION  
BY BWG FOODS UNLIMITED COMPANY OF 4 ACES WHOLESALE LIMITED  
("Proposals")**

**RECITALS**

- a) On 31 January 2018, the proposed acquisition by BWG, a wholly owned subsidiary of TIL JV Limited, of 4 Aces was notified to the Commission under Part 3 of the Act.
- b) 4 Aces is a member of buying group GRSL and, to ensure continued success of GRSL and the Gala brand, it is intended that 4 Aces will remain a member of GRSL following Completion (and thereby continue to use, to the fullest extent possible, existing GRSL suppliers). Along with eight other GRSL members, 4 Aces has one equal share in GRSL and one equal vote.
- c) Pursuant to section 20(3) of the Act, BWG has submitted to the Commission these Proposals relating to the Proposed Transaction for the purpose of ameliorating any possible effect of the Proposed Transaction on competition in markets for goods or services, with a view to the Proposals becoming binding on BWG, and following Completion, on 4 Aces.
- d) The Proposals submitted by BWG are intended to (i) divest 4 Aces' shareholding in Stonehouse; and (ii) prevent the exchange of competitively sensitive information between BWG and GRSL following Completion (arising by virtue of BWG's ownership of 4 Aces), which would constitute a breach of section 4(1) of the Act.

**A. Definitions**

1. For the purpose of the Proposals, the following terms shall have the following meaning:

**"Act"** means the Competition Act 2002, as amended;

**"BWG"** means BWG Foods Unlimited Company, a private unlimited company, incorporated under the laws of Ireland (Registration No. 20469), which has its registered address at BWG House, Greenhills Road, Tallaght, Dublin 24. For the avoidance of doubt, this definition of "BWG" includes all its subsidiaries (which, following Completion, will include 4 Aces);

**"BWG Competitively Sensitive Information"** means any specific disaggregated information concerning BWG where the disclosure of such information (in particular information relating to the current and future strategic intentions of BWG) would constitute a breach of section 4(1) of the Act, in particular information relating to BWG's negotiations with manufacturers and suppliers (including any rebate schemes provided by those manufacturers and suppliers



to BWG) and/or information relating to planned BWG discounts, pricing and promotional activity. For the avoidance of doubt, information that is available in any form to the public by lawful means, other than as a result of a breach of the Proposals, shall not be considered to constitute "BWG Competitively Sensitive Information";

**"BWG Personnel"** means any director, officer, manager, employee, representative, agent, or person holding equivalent functions, of BWG;

**"Commencement Date"** means the date of the Commission's Determination;

**"Commission"** means the Competition and Consumer Protection Commission and its successors;

**"Completion"** means completion of the Proposed Transaction as defined in the share purchase agreement dated 21 December 2017 between BWG, Liam Linden and Paschal O'Brien;

**"Confidentiality Commitment"** means the commitments outlined at Part B paragraph [7] of these Proposals;

**"Determination"** means the Determination of the Commission pursuant to section 21(2)(a) of the Act that the Proposed Transaction may be put into effect;

**"Divestment Commitment"** means the commitments outlined at Part B paragraphs [1] to [4];

**"Firewall Commitment"** means the commitments outlined at Part B paragraphs [5] to [6] of these Proposals;

**"GRSL"** means Gala Retail Services Limited, a private limited company incorporated under the laws of Ireland (Registration 288855), which has its registered address at Summit House, Embassy Office Park, Kill, Co Kildare W91 VKOT;

**"GRSL Competitively Sensitive Information"** means any specific disaggregated information concerning GRSL or any of its members where the disclosure of such information (in particular information relating to the current and future strategic intentions of GRSL or its members) would constitute a breach of section 4(1) of the Act, in particular information relating to GRSL's or its members' negotiations with manufacturers and suppliers (including any rebate schemes provided by those manufacturers and suppliers to GRSL) and/or information relating to planned GRSL discounts, pricing and promotional activity. For the avoidance of doubt, information that is available in any form to the public by lawful means, other than as a result of a breach of the Proposals, shall not be considered to constitute "GRSL Competitively Sensitive Information";

**"GRSL Personnel"** means any director, officer, manager, employee, representative, agent, or person holding equivalent functions, of GRSL.

**"Stonehouse"** means the wholesaler-owned Irish marketing and buying group, Stonehouse Marketing Limited, a private limited company incorporated under



the laws of Ireland (Registration 316849), which has a registered address at 12 Dundrum Business Park, Dundrum, Dublin 14, D14 FX68.

**“Proposed Transaction”** means the proposed acquisition by BWG of the entire issued share capital of 4 Aces as notified to the Commission on 31 January 2018.

**“Term”** means the period beginning on the Commencement Date and ending on the Termination Date;

**“Termination Date”** means the date on which 4 Aces disposes of its shareholding in GRSL;

**“4 Aces”** means 4 Aces Wholesale Limited, a private limited company incorporated under the laws of Ireland (Registration 102166), which has its registered address at Clonminam Industrial Estate, Portlaoise, Co. Laois R32 EC93;

**“4 Aces Personnel”** means any director, officer, manager, employee, representative, agent, or person holding equivalent functions, of 4 Aces;

**“4 Aces Manager”** means the person, [...], who has been appointed by BWG to undertake the day-to-day management of 4 Aces following Completion, and his successors in this role; and

**“4 Aces Management Team”** means a restricted group of 4 Aces Personnel (i) who directly support the 4 Aces Manager in administering that part of the 4 Aces business that requires access to GRSL Competitively Sensitive Information and (ii) who, to fulfil properly their role and functions, must have access to GRSL Competitively Sensitive Information; provided that, in all events, the 4 Aces Management Team is kept at all times to the least number of 4 Aces Personnel possible (consistent with good commercial practice).

## B. Undertakings by BWG

### ***Divestment Commitment***

1. On Completion, BWG undertakes (within one month of Completion) to:
  - a. divest fully of 4 Aces’ shareholding in Stonehouse; and
  - b. ensure the resignation of [...] as a director of Stonehouse.
2. For the avoidance of doubt, the divestment in paragraph 1 (a) will involve the sale or cancellation of 4 Aces shareholding in Stonehouse to a member or members of Stonehouse. On Completion, BWG undertakes not to sell 4 Aces’ shareholding in Stonehouse to any party who is not a member of Stonehouse, save with the prior notification to, and consent of, the Commission.
3. On Completion, BWG undertakes to inform the Commission in writing within one (1) month of having complied with the requirements of paragraph 1 (a) and (b).



4. On Completion, BWG undertakes that it shall not (whether via any holding company, subsidiary or otherwise) attempt to acquire a shareholding (or otherwise acquire an interest) in Stonehouse, save with the prior notification to, and consent of, the Commission.

***Firewall Commitment***

5. On Completion, BWG undertakes that:
  - a. BWG shall appoint the 4 Aces Manager to undertake the day-to-day management of 4 Aces.
  - b. BWG shall ensure that [...] resigns as a director of GRSL, save if the Commission decides otherwise.
  - c. BWG shall (within one month of Completion) provide to the Commission in writing the name and contact details of each member of the 4 Aces Management Team.
6. During the Term, BWG undertakes that:
  - a. BWG shall ensure that only the 4 Aces Manager, and no other 4 Aces Personnel (apart from the 4 Aces Management Team) or BWG Personnel, will have access to GRSL Competitively Sensitive Information. BWG shall procure that 4 Aces inform GRSL that the 4 Aces Manager shall be the sole recipient within BWG of GRSL Competitively Sensitive Information.
  - b. BWG shall take all reasonable steps to ensure that the position of 4 Aces Manager is not vacant at any time.
  - c. BWG shall ensure that only the 4 Aces Manager will exercise 4 Aces' voting right in GRSL.
  - d. BWG shall not, and shall ensure 4 Aces shall not, exercise its right to nominate or elect any person to serve on the GRSL board (or any subcommittee thereof), save with the prior notification to and consent of the Commission.
  - e. BWG shall ensure that no BWG Personnel exert influence on the 4 Aces Manager with respect to exercising 4 Aces' voting right in GRSL.
  - f. BWG shall ensure that no BWG Personnel and no 4 Aces Personnel, including for the avoidance of doubt the 4 Aces Manager and the 4 Aces Management Team, will be involved in GRSL's day-to-day operational activities, save with the prior consent of the Commission.



- g. BWG shall not participate in the formulation, determination or direction of any business decision of GRSL (including, but not limited to, GRSL negotiations with manufacturers and suppliers and/or GRSL plans for rebates, promotional and discounting strategies and plans).
- h. The 4 Aces Manager shall not serve simultaneously as an officer, director, representative, agent or persons holding equivalent functions of BWG.
- i. BWG shall ensure that no BWG Personnel and no 4 Aces Personnel serve simultaneously as an officer, director, representative, agent or persons holding equivalent functions of GRSL, save with the prior consent of the Commission.

### ***Confidentiality Commitment***

- 7. During the Term, BWG undertakes that:
  - a. BWG shall procure that the 4 Aces Manager and the 4 Aces Management Team shall not discuss or provide GRSL Competitively Sensitive Information to BWG or any BWG Personnel.
  - b. BWG shall not (and shall not permit BWG Personnel to) solicit, directly or indirectly, GRSL Competitively Sensitive Information from GRSL or any GRSL Personnel or from the 4 Aces Manager or 4 Aces Management Team.
  - c. BWG shall take all reasonable steps to ensure that neither GRSL Personnel, the 4 Aces Manager nor the 4 Aces Management Team shall provide GRSL Competitively Sensitive Information to BWG or to any BWG Personnel.
  - d. BWG shall not directly or indirectly (and shall not permit BWG Personnel to) pass-on BWG Competitively Sensitive Information to GRSL Personnel.
  - e. BWG undertakes to inform both BWG Personnel and 4 Aces Personnel of their responsibilities pursuant to the Proposals and shall provide training to them in that regard.
  - f. These Proposals shall not prevent any disclosure of GRSL Competitively Sensitive Information to BWG (or to any BWG Personnel) which is required in order for BWG to comply with any applicable law or regulation, or judicial or arbitral process of competent jurisdiction, or required by a competent authority.

## **C. Compliance**



8. BWG shall submit to the Commission within twelve (12) months of the Commencement Date, and, at intervals of one year thereafter during the Term, a written certificate in the form set out in the Schedule hereto (a “Compliance Certificate”), signed by the CEO of BWG confirming that BWG has complied with its obligations set out in these Proposals in the preceding period.
9. BWG shall procure that 4 Aces submit to the Commission within twelve (12) months of the Commencement Date, and, at intervals of one year thereafter during the Term, a written certificate in the form set out in the Schedule hereto (a “Compliance Certificate”), signed by the 4 Aces Manager, confirming that 4 Aces has complied with its obligations set out in paragraphs 6a, 6g, and 7a of the Proposals in the preceding period.
10. The Commission reserves the right to require BWG to provide to the Commission, at any time and on reasonable notice, such additional information as the Commission requires which is necessary in order for the Commission to verify BWG’s compliance with its obligations set out in these Proposals. BWG shall promptly provide to the Commission all such information in its possession.
11. The Commission may provide with reasonable notice and on reasonable terms such written directions to BWG from time to time as needed to require compliance with these Proposals. BWG shall comply promptly with any written direction issued by the Commission pursuant to these Proposals.
12. BWG shall provide written notice to the Commission in advance of any change to 4 Aces’ membership of, shareholding in, or participation in GRSL. BWG shall take all reasonable steps to provide such written notice one month in advance of any change.
13. BWG shall provide written notice to the Commission in advance of any change of the 4 Aces Manager or the 4 Aces Management Team and shall promptly provide to the Commission the name and contact details of any person who is to replace the prior nominated 4 Aces Manager or a member of the 4 Aces Management Team. BWG shall take all reasonable steps to provide such written notice one month in advance of any change.
14. BWG shall nominate an executive who will have responsibility for monitoring compliance by BWG with these Proposals and for responding to any request for information received from the Commission in connection with these Proposals. BWG shall provide the name and contact details of such executive to the Commission and shall promptly inform the Commission of any change of executive nominated pursuant to this paragraph of the Proposals and shall promptly provide to the Commission the name and contact details of any executive who is to replace the prior nominated executive.



15. These Proposals, with the exception of the Divestment Commitment (paragraphs 1 to 4) and paragraph 5 of the Firewall Commitment, will come into effect on the Commencement Date and will remain in force during the Term. Paragraphs 1 to 5 will come into force on Completion. Paragraph 2 will remain in force indefinitely. For the avoidance of doubt, the Proposals shall have no retrospective effect.



## SCHEDULE TO THE PROPOSALS

[BWG Headed Paper]

[date]

Ibrahim Bah  
Competition Enforcement and Mergers Division  
Competition and Consumer Protection Commission  
Bloom House  
Railway Street  
Dublin 1

### **Merger Notification M/18/009 BWG/4 Aces**

Dear Mr. Bah,

I refer to Merger Notification M/18/009 in relation to the proposed acquisition by BWG of the business of 4 Aces which was notified to the Competition and Consumer Protection Commission (“Commission”) on 31 January 2018 (“the Proposed Transaction”).

The Commission issued its Determination approving the Proposed Transaction on [ ] 2018.

In accordance with the terms of the proposals given by BWG to the Commission on [ ] March 2018 in relation to the Proposed Transaction which, in accordance with section 20(3), section 26(1) and section 26(4) of the Competition Act 2002, as amended, have become commitments binding upon BWG (“the Commitments”), I hereby confirm [BWG’s][4 Aces] compliance with the terms of the Commitments during the period commencing on [the date of the Determination] / [date of the previous certificate issued by BWG/4 Aces] and ending on the date hereof.

Yours faithfully,

---

[Name]

[CEO BWG][4 Aces Manager]