



## DETERMINATION OF MERGER NOTIFICATION M/21/077 – BGF / AUBREN LIMITED (JV)

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### Section 21 of the Competition Act 2002

### Proposed acquisition by BGF Investments LP and BGF Ireland 1A LP of joint control of Aubren Limited

Dated 06 January 2022

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1. On 22 December 2021, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed acquisition whereby BGF Investments LP and BGF Ireland 1A LP (together “BGF”), both managed by BGF Investment Management Limited, would acquire joint control of Aubren Limited (“Aubren”) with Mr. Aubrey Nuzum (“the Proposed Transaction”).
2. The Proposed Transaction is to be implemented pursuant to an Investment Agreement dated 22 December 2021 between Aubren, the Managers of Aubren<sup>1</sup>, Paul Lynch, BGF, Moynard Unlimited Company and BGF Investment Management Limited (“Investment Agreement”).
3. Following the implementation of the Proposed Transaction, Aubren will be jointly controlled by BGF and Mr. Aubrey Nuzum<sup>2</sup>.

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<sup>1</sup> Aubrey Nuzum (Managing Director), Mary Ahearne (Financial Director) and Raymond O’Connor (Operations Director).

<sup>2</sup> Following the implementation of the Proposed Transaction, the shareholding of current CEO Mr. Aubrey Nuzum in Aubren will change from 100% to 60.3%, with BGF acquiring a 29.1% stake in Aubren. Two other investors will acquire a 9.9% stake and 0.7% stake respectively, but will not acquire joint control of Aubren



4. The business activities of the undertakings involved are:

**BGF:** BGF Investments LP and BGF Ireland 1A LP are English limited partnerships. Both funds are managed by BGF Investment Management Limited, which is a UK registered company. The two funds are ultimately part of the BGF Group. BGF is an investor of equity capital in SME companies across multiple sectors in the UK and Ireland, including but not limited to technology, consumer products, life sciences, retail, hospitality, construction and energy. BGF has control in 9 Irish businesses which operate in the aviation, healthcare, childcare, technology, real estate and security sectors, as detailed in Table 1 below.

**Table 1 – BGF controlled companies in the State in 2021.**

Company	Company Description
Croom Precision Tooling Limited	A precision engineering business specialising in designing and manufacturing precision components for the medical device industry.
Action Integrated Security Systems Limited	A domestic and commercial provider of security solutions, with a focus on monitored intruder alarms and CCTV systems.
Ambisense Limited	An IoT (internet of things) and AI (artificial intelligence) environmental analytics business.
Edgescan Limited	A cybersecurity software and consultancy services business specialising in vulnerability management.
Ostoform Limited	Provides medical devices focused on ostomy care. The company offers a device that aims to manage peristomal skin complications for patients with ostomy conditions.
Team Accessories Limited	An aerospace maintenance, repair & overhaul (MRO) provider.
Tigers Childcare Limited	An established provider of full day care services, school wrap around childcare and early years care.
Vasorum Limited	A high growth medical device business specialising in sophisticated devices used to close arterial punctures in vascular, cardiology, radiology and neuro-radiology procedures.
Lota View Holdings Limited (t/a Winterbrook)	An established, family-owned residential housebuilder.

*Source: Information provided in the notification*

**Aubren:** Aubren is a contract manufacturer and sub-supplier of air handling systems, mainly focused on medical, data centre and telecoms markets. Aubren manufactures



all products in a factory in Portlaoise, Co. Laois. Aubren produces air handling fans, cooling units, air purification devices and modular fan boxes.

5. After examination of the notification, the Commission has concluded that the Proposed Transaction falls within the scope of paragraph 2.1 of the Simplified Merger Notification Procedure Guidelines for assessing certain notifiable mergers or acquisitions under section 18(1)(a) of the Act as BGF (and BGF controlled companies) and Aubren have no horizontal or vertical overlap in any market in the State.
6. In light of this, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

#### **Ancillary Restraints**

7. The parties submit that Clause 11 of the Investment Agreement contains restrictive covenants on the Managers of Aubren which the parties consider to be directly related and necessary to the implementation of the Proposed Transaction.
8. The Commission notes that Clauses 11.3.1, 11.3.2, 11.3.3 (a), 11.3.3(c)-(d) contain a number of non-compete and non-solicitation restrictions. The Commission notes that these restrictions are limited in scope, and do not exceed the maximum duration acceptable to the Commission<sup>3</sup>. The Commission considers these non-solicitation and non-compete obligations to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.
9. The Commission notes that Clause 11.3.3(b) of the Investment Agreement contains an obligation upon the Managers of Aubren not to [...]. The Commission notes that this non-solicitation clause is not restricted to any particular employee of Aubren and appears to go beyond the scope of the affected business. The Commission considers that Clause 11.3.3(b) of the Investment Agreement contains a restrictive obligation which is not directly related and necessary to the Proposed Transaction.

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<sup>3</sup> In this respect, the CCPC follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” [2005] OJ C56/03 (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XC0305%2802%29>).



## **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby BGF Investments LP and BGF Ireland 1A LP, both managed by BGF Investment Management Limited, acquire joint control of Aubren Limited with Mr. Aubrey Nuzum, 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, subject to the provisions of section 28C(1) of the Competition Act 2002, as amended<sup>4</sup>.

For the Competition and Consumer Protection Commission

**Ibrahim Bah**  
**Director**  
**Competition Enforcement and Mergers Division**  
**Competition and Consumer Protection Commission**

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<sup>4</sup>Section 28C(1) of the Competition Act 2002, as inserted by section 74 of the Competition and Consumer Protection Act 2014.