

DETERMINATION OF MERGER NOTIFICATION --M/22/029 - BGF / GALWAY NATURAL HEALTH SALES

Section 21 of the Competition Act 2002

Proposed acquisition by BGF Investments LP and BGF Ireland 1A LP of joint control of Galway Natural Health Sales Company Limited.

Dated: 23 June 2022

1. On 7 June 2022 in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the "Act"), the Competition and Consumer Protection Commission received a notification of a proposed acquisition whereby BGF Investments LP and BGF Ireland 1A LP (together "BGF"), as funds managed or advised by BGF Investment Management Limited ("BIML"), would acquire a 32.55% equity stake in Galway Natural Health Sales Company Limited (trading as *Revive Active*) (the "Target") (the "Proposed Transaction").
2. The business activities of the undertakings involved are:
 - BGF is an investor of equity capital in growing SME companies, backing entrepreneurs and innovators in the State and the United Kingdom. BGF invests in companies including earlier stage businesses, growth-stage businesses and quoted companies across multiple sectors including technology, consumer products & e-commerce, industrial, business & support services, life sciences, green growth, retail, leisure & hospitality, construction, health & education, media & marketing, infrastructure, transport & logistics, and energy & resources.
 - The Target is an Irish founded vitamin, mineral and supplement ("VMS") manufacturer and supplier. It operates out of a manufacturing plant based in Mullingar, Co. Westmeath and offices in Galway City, Co Galway. It supplies the VMS products to retail customers (mainly pharmacies and health food stores) and online (direct-to-consumers) in the State, and internationally.
3. After examination of the notification, the Commission has considered 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 since there is no horizontal or vertical overlap between BGF's portfolio companies which generate turnover in the State and the Target.

4. 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

5. In the notification form the parties notified Clause 13 of the Investment Agreement and Clause 14 of the Share Purchase Agreement as ancillary restraints. Following assessment by the Commission, the parties were informed that certain aspects of the notified clauses were not considered as non-compete and non-solicitation clauses. The parties withdrew the notification of Clauses 13.3.5 (b), 13.3.5(c) 13.4, 13.5 and 13.6 of the Investment Agreement and Clause 14 of the SPA as ancillary restraints.
6. Clauses 13.1, 13.2, 13.3.1-13.3.3, and 13.3.5 (a) of the Investment Agreement impose non-compete and non-solicitation obligations on [...]¹. The Commission considers that Clauses 13.1, 13.2, 13.3.1-13.3.3, and 13.3.5 (a) of the Investment Agreement are limited in scope and do not exceed the maximum duration acceptable to the Commission and are therefore directly related and necessary to the implementation of the Proposed Transaction.
7. Clause 13.3.4 of the Investment Agreement states that "[...]". The Commission considers clause 13.3.4 of the Investment Agreement not to be a 'non-compete' or 'non-solicitation' clause. For this reason, the Commission considers that this is not an ancillary restraint and therefore will not benefit from the protections offered by sections 4(8) and 5(3) of the Act.

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

¹ Following the implementation of the Proposed Transaction the Target will be jointly controlled by BGF and by [...] through his ability to exercise decisive control of [...].

acquisition whereby BGF Investments LP and BGF Ireland 1A LP, as funds managed or advised by BGF Investment Management Limited, would acquire a 32.55% equity stake in Galway Natural Health Sales Company Limited 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



Ibrahim Bah
Director
Competition Enforcement and Mergers