



## Determination

Pursuant to section 20(3) of the Competition Act 2002, as amended (the “Act”), BWG Foods Unlimited Company (“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 Tuffy Wholesale Limited (the “Target”), for the purpose of ameliorating any effects of the proposed acquisition on competition in markets for goods or services in the State, 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 the Target 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 TUFFY WHOLESALE LIMITED (“Proposals”)**

**RECITALS**

- a) On 28 February 2023, the proposed acquisition by BWG Foods Unlimited Company (“**BWG**”), a wholly owned indirect subsidiary of TIL JV Limited, of the entire issued share capital of Tuffy Wholesale Limited (the “**Target**”), a newly incorporated company which owns the business previously carried on by, and certain assets previously owned by, Padraic Tuffy Limited (the “**Tuffy Business**”)(the “**Proposed Transaction**”), was notified to the Competition and Consumer Protection Commission (the “**Commission**”) under Part 3 of Competition Act 2002, as amended (the “**Act**”).
- b) 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 effect of the Proposed Transaction on competition in markets for goods or services in the State, with a view to the Proposals becoming binding on BWG, and, following Completion, on the Target if the Commission takes the Proposals into account and states in writing that the Proposals form the basis or part of the basis of a Determination (as hereinafter defined).
- c) The Target is a member of the Stonehouse Marketing Limited (“**Stonehouse**”) and Gala Retail Services Limited (“**GRSL**”) buying groups. The Proposals submitted by BWG to the Commission are intended to (i) divest the Target’s shareholdings in Stonehouse and GRSL; and (ii) prevent the exchange of competitively sensitive information between BWG, Stonehouse and/or GRSL following Completion (arising by virtue of BWG’s ownership of the Target and by extension, the Tuffy Business, which would constitute a breach of section 4(1) of the Act).
- d) The binding commitments submitted to the Commission by BWG and which formed part of the basis of: (i) the Commission’s determination dated 2 May 2018 in respect of merger notification M/18/009 – BWG /4 Aces (the “**4 Aces Commitments**”) and (ii) the Commission’s determination dated 7 November 2022 in respect of merger notification M/22/047 – BWG / McCarrick Brothers Wholesale (the “**McCarricks Commitments**”) remain in force in all respects. For the avoidance of doubt, the term “GRSL Competitively Sensitive Information” as used in the 4 Aces Commitments is to be interpreted so as to include competitively sensitive information in respect of the Target’s GRSL Business (as hereinafter defined).

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, and all its subsidiaries (which, following Completion, will include the Target);

**“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 28 February 2023 between (1) BWG and (2) John Tuffy, Brian Tuffy and Seamus Tuffy;

**“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;

**“GRSL”** means Gala Retail Services Limited, a private limited company incorporated under the laws of Ireland (Registration No. 288855), which has its registered address at Summit House, Embassy Office Park, Kill, Co. Kildare, W91 VK0T;

**“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”;

**“McCarricks Commitments”** means the binding commitments submitted to the Commission by BWG and which form part of the basis of the Commission’s



determination dated 7 November 2022 in respect of merger notification M/22/047 – BWG / McCarrick Brothers Wholesale;

“**Proposed Transaction**” means the proposed acquisition by BWG of the entire issued share capital of the Target as notified to the Commission on 28 February 2023;

“**Stonehouse**” means Stonehouse Marketing Limited, a private limited company incorporated under the laws of Ireland (Registration No. 316849), which has a registered address at 16 Priory Office Park, Stillorgan, Dublin, A94 RH10;

“**Target**” means Tuffy Wholesale Limited, a private limited company incorporated under the laws of Ireland (Registration No. 730182), which owns the business previously carried on by, and certain assets previously owned by, Padraic Tuffy Limited, and which has its registered address at Collooney Roundabout, Collooney, Sligo, F91 FY7A;

“**Target’s GRSL Business**” means the Target’s business involved in or related to GRSL including in particular the Target’s activities in respect of existing GRSL branded *Gala* and *Your Stop* retail outlets which the Target currently supplies;

“**Target’s Historic Stonehouse Business**” means the Target’s business involved in or related to Stonehouse prior to Completion;

“**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 No. 102166), which has its registered address at BWG House, Hibernian Industrial Estate, Greenhills Road, Tallaght, Dublin 24, D24 Y722;

“**4 Aces Commitments**” means the binding commitments submitted to the Commission by BWG and which form part of the basis of the Commission’s determination dated 2 May 2018 in respect of merger notification M/18/009 – BWG /4 Aces;

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

“**4 Aces Manager**” means the person appointed by BWG to undertake the day-to-day management of the 4 Aces business and the McCarricks’ GRSL Business (in accordance with the 4 Aces Commitments and the McCarricks Commitments respectively), and who has now been appointed to manage the Target’s GRSL Business and the matters referred to in paragraph 7 of these Proposals, and his successors in this role; and

“**4 Aces Management Team**” means the restricted group of 4 Aces Personnel (i) who directly support the 4 Aces Manager in administering those parts of the 4 Aces business and the McCarricks business that require 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 to immediately take the steps necessary to:
  - a. divest fully of the Target's shareholding in Stonehouse;
  - b. divest fully of the Target's shareholding in GRSL;
  - c. ensure the resignation of John Tuffy as a director of Stonehouse; and
  - d. ensure the resignation of Brian Tuffy as a director of GRSL.
2. For the avoidance of doubt, the divestments in paragraph 1(a) and 1(b) of the Proposals will involve the purchase by Stonehouse and GRSL respectively of the Target's shareholdings in both Stonehouse and GRSL respectively.
3. BWG undertakes to inform the Commission in writing upon receipt of confirmation from Stonehouse and GRSL that the purchase of the Target's shareholdings in both Stonehouse and GRSL, respectively, has been effected.
4. BWG undertakes that it shall not exercise any rights that arise by virtue of the Target's shareholding in either GRSL or Stonehouse during the period following Completion and prior to confirmation that the divestments in paragraph 1(a) and 1(b) have been effected.
5. Subject to paragraphs 6 and 7, BWG undertakes that it shall not engage with Stonehouse or GRSL in respect of the Target's shareholding in each respective entity, other than to arrange the divestments in paragraph 1(a) and 1(b), respectively.
6. On Completion, any communication with GRSL in relation to the Target's GRSL Business shall be managed in accordance with paragraph 9 below.
7. In the period following Completion and prior to the divestment in paragraph 1(a) being effected, and notwithstanding that it is not anticipated, to the extent that any communication is received from Stonehouse in relation to the Target's Historic Stonehouse Business, this shall be managed by the 4 Aces Manager.



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

***Firewall Commitment***

9. On Completion, BWG undertakes that:
  - a. The Target's GRSL Business will be managed by BWG's 4 Aces Management Team.
  - b. BWG shall ensure that the 4 Aces Manager shall, in addition to managing the 4 Aces business and the McCarricks' GRSL Business (as required under the 4 Aces Commitments and the McCarricks Commitments respectively), manage the Target's GRSL Business.
  - c. BWG shall, within one month of Completion, confirm to the Commission in writing that the name and contact details of each member of the 4 Aces Management Team, as previously provided to the CCPC on 30 May 2018 consistent with the McCarricks Commitments, has not changed.

C. Compliance

10. BWG undertakes to inform both BWG Personnel and 4 Aces Personnel of their responsibilities pursuant to these Proposals and shall provide training to them in that regard.
11. BWG shall, within five working days of Completion, notify the Commission in writing of the date of Completion.
12. BWG shall submit to the Commission one year from Completion, and thereafter at intervals of one year from the date of the previous certificate submitted to the Commission by BWG pursuant to the 4 Aces Commitments, 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.
13. BWG shall procure that the 4 Aces Manager submit to the Commission one year from Completion, and thereafter at intervals of one year from the date of the previous certificate submitted to the Commission by the 4 Aces Manager pursuant



to the 4 Aces Commitments, a written certificate in the form set out in the Schedule hereto (a “**Compliance Certificate**”), signed by the 4 Aces Manager, confirming that BWG has complied with its obligations set out in these Proposals.

14. 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.
15. 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.
16. 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.
17. 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 within one month of Commencement 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.
18. These Proposals will, with the exception of paragraphs 3 to 7 of Part B, come into effect on the Commencement Date and will remain in force during the Term. Paragraphs 3 to 7 of Part B will come into force on Completion. 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/23/010 – BWG / Tuffy Wholesale**

Dear Mr Bah,

I refer to Merger Notification M/23/010 in relation to the proposed acquisition by BWG Foods Unlimited Company (“BWG”) of the entire issued share capital of Tuffy Wholesale Limited, a company which owns the business previously carried on by, and certain assets previously owned by, Padraic Tuffy Limited (the “Tuffy Business”), which was notified to the Competition and Consumer Protection Commission (the “Commission”) on 28 February 2023 (“the Proposed Transaction”).

The Commission issued its Determination approving the Proposed Transaction on 3 May 2023.

In accordance with the terms of the proposals given by BWG to the Commission on [ ] [ • ] 2023 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 compliance with the terms of the Commitments during the period commencing on [date of Completion of the Proposed Transaction] / [date of the previous certificate issued by BWG] / [date of the previous certificate issued by 4 Aces Manager] and ending on the date hereof.

Yours faithfully,

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[Name]

[CEO BWG] [4 Aces Manager]