



EUROPEAN COMMISSION  
DG Competition

***Case M.10656 - FLUTTER  
ENTERTAINMENT / SISAL***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 4(4)  
Date: 1/7/2022



## EUROPEAN COMMISSION

Brussels, 1.7.2022  
C(2022) 4776 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Flutter Entertainment plc  
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**Subject: Case M.10656 – FLUTTER ENTERTAINMENT / SISAL  
Commission decision following a reasoned submission pursuant to  
Article 4(4) of Regulation No 139/2004<sup>1</sup> for referral of the case to Italy  
and Article 57 of the Agreement on the European Economic Area<sup>2</sup>.**

**Date of filing: 31.05.2022**

**Legal deadline for response of Member States: 22.06.2022**

**Legal deadline for the Commission decision under Article 4(4): 06.07.2022**

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the ‘Merger Regulation’). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (‘TFEU’) has introduced certain changes, such as the replacement of ‘Community’ by ‘Union’ and ‘common market’ by ‘internal market’. The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the ‘EEA Agreement’).

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE  
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Dear Sir or Madam,

## **1. INTRODUCTION**

- (1) On 31 May 2022, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the acquisition of sole control over Sisal S.p.A by Flutter Entertainment plc. The parties request the operation to be examined in part by the competent authority of Italy.
- (2) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which presents all the characteristics of a distinct market.
- (3) A copy of this Reasoned Submission was transmitted to all Member States on 31 May 2022.
- (4) By e-mail of 24 June 2022, the Autorità Garante della Concorrenza e del Mercato, (the ‘AGCM’) as the competent authority of Italy informed the Commission that Italy agrees with the proposed referral.

## **2. THE PARTIES**

- (5) Flutter Entertainment plc (‘Flutter’, Ireland) is a public limited company and the holding company of the Flutter group, which is a global sports betting, gaming and entertainment provider. Flutter operates through a range of international brands and operations, including Paddy Power, Betfair, PokerStars, Sky Bet, Sportsbet, FOX Bet, FanDuel, TVG, Tombola, Junglee Games and Adjarabet. In Italy, Flutter is active in online betting and online gaming, through its subsidiaries Betfair S.r.l., REEL Italy Ltd. and Tombola International Malta plc, which hold local licences issued by the Italian Customs and Monopolies Agency (Agenzia delle Dogane e dei Monopoli – ‘ADM’), which is the Italian authority overseeing this sector. Flutter does not have any brick-and-mortar retail gaming operations in Italy.
- (6) Sisal S.p.A (‘Sisal’, Italy) is a joint stock company active in gaming, betting and lotteries both in the online and brick-and-mortar retail channels. Sisal is predominantly active in Italy, with operations also in Spain, Morocco and Turkey. In Italy, Sisal offers a portfolio of gambling products, including (i) gaming machines; (ii) betting, (iii) lottery and (iv) online games.
- (7) Flutter is referred to as the ‘Notifying Party’ and together with Sisal the ‘Parties’.

## **3. THE OPERATION AND CONCENTRATION**

- (8) The transaction in question involves the acquisition by Flutter of the entire issued share capital of Sisal. Pursuant to a Share Purchase and Transfer Agreement (‘SPTA’), which was entered into on 23 December 2021, Flutter will acquire 100% of the issued share capital of Sisal (the ‘Transaction’).

#### **4. EU DIMENSION**

- (9) The Transaction has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.
- (10) In 2020, the Parties had a combined aggregate world-wide turnover of more than EUR 5 000 million (Flutter: EUR 5 921 million; Sisal: EUR 524 million). Each of them had an EU-wide turnover of more than EUR 250 million (Flutter: EUR [...]; Sisal: EUR [...]), and they did not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

#### **5. ASSESSMENT**

- (11) On the basis of a preliminary assessment of the information provided by the Parties in the Reasoned Submission, the Transaction could be an appropriate candidate for a partial pre-filing referral from the Commission to the AGCM in accordance with Article 4(4) of the Merger Regulation.
- (12) Following a preliminary assessment, the Transaction appears to meet the legal requirements set out in Article 4(4) of the Merger Regulation. The Transaction is a concentration within the meaning of Article 3 of the Merger Regulation, it has an EU dimension and it may significantly affect competition in Italy, which presents all characteristics of a distinct market.
- (13) In particular, the Transaction results in horizontal overlaps in Italy and gives rise to affected markets on the online gaming markets and a number of sub-segments defined by type of games/activities.

#### **5.1. Relevant product markets**

##### *5.1.1. Online gaming*

##### *5.1.1.1. Relevant product market*

- (14) In some of its precedents, the Commission left open the question of whether different types of gambling activities (such as betting and gaming as well as individual games) could constitute separate product markets.<sup>3</sup> Moreover, in one of its precedents the Commission has defined separate relevant product markets for bingo and gaming machines.<sup>4</sup> In a more recent decision of 21 November 2017, the Commission left open the question of whether the gaming and betting market could be segmented by the different types of gaming and betting activities (e.g., casino, poker etc.).<sup>5</sup>
- (15) In past cases, the AGCM has considered that all gaming and betting activities (including bingo, Lotto, lotteries, gaming and entertainment machines such as amusement with prizes ('AWP') and video lottery terminals ('VLT'), and other games sold through both physical and online channels) belong to a single product

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<sup>3</sup> Case M.8058, 05.09.2016 – Novomatic/Lottomatica/JV; Case M.4114, 19.05.2006 – Lottomatica/GTECH.

<sup>4</sup> Case No M.3109, 14.03.2003 – Candover/Cinven/Gala.

<sup>5</sup> Case M.8640, 21.11.2017 – CVC/Blackstone/Paysafe.

market.<sup>6</sup> The AGCM found that the different types of gaming and betting activities are variations of the same type of game services supplied, which constitute a “continuum” that is not appropriate to segment. However, in a recent precedent, the AGCM considered that the gambling market could be segmented in (i) AWP and VLT services, (ii) betting services and (iii) online gaming.<sup>7</sup>

#### 5.1.1.2. Relevant geographic market

- (16) Both the Commission and the AGCM have concluded that the relevant geographic scope of the relevant market(s) for gaming and betting services is national, considering both the supply side and the demand side. In previous decisions, the Commission considered that demand for gaming services had national particularities.<sup>8</sup> In particular, from a supply-side perspective, the Commission considered that the market was national in scope due to different national regulations<sup>9</sup> and the different systems for managing concessions to operators, which are still mainly national.<sup>10</sup>
- (17) In recent decisions, the AGCM also considered that a national geographic market definition was appropriate for online gaming and betting services, since, according to ADM’s rules, concessionaires for gambling services in Italy may offer services to Italian residents only.<sup>11</sup>

## 5.2. Assessment of the referral request

### 5.2.1. Legal requirements

- (18) According to the Commission Notice on case referral, in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled:
- (a) there must be indications that the concentration may significantly affect competition in a market or markets;<sup>12</sup> and
  - (b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.<sup>13</sup>
- (19) Pursuant to point 17 of the Commission Notice on case referral, for there to be indications that the concentration may significantly affect competition in a market or markets, the Parties are in essence required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market in a Member State, which may prove to be significant, thus deserving closer scrutiny. While the Parties are not required to demonstrate that the effect on competition is likely to be

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<sup>6</sup> ICA, case C7360, 26.04.2012 - Snai/Rami Di Azienda; case C8489, 17.05.2007 - Sisal/Ramo d’azienda di Geko.

<sup>7</sup> ICA, case C12371, 04.05.2021 - Gamenet Group/Lottomatica Videolot Rete-Lottomatica.

<sup>8</sup> M.8058 – Novomatic/Lottomatica/JV, paragraph 16; see also M.4114 – Lottomatica/GTECH, paragraph 14.

<sup>9</sup> Also, gambling activities are outside the scope of the Services Directive (Article 2 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market) so that there is no EU regime for cross-border gambling.

<sup>10</sup> M.8058 – Novomatic/Lottomatica/JV, paragraph 16; see also M.4114 – Lottomatica/GTECH, paragraph 14.

<sup>11</sup> See ICA, case C12371, paras. 83-85, 91, 93.

<sup>12</sup> Further developed in point 17 of the Commission Notice on Case Referrals.

<sup>13</sup> Further developed in point 18 of the Commission Notice on Case Referrals.

an adverse one, they should point to indicators that are generally suggestive of the existence of some competitive effects stemming from the transaction. In this context, the existence of ‘affected markets’ within the meaning of the Form RS is generally considered sufficient to meet the requirements of Article 4(4) of the Merger Regulation.<sup>14</sup>

- (20) Furthermore, pursuant to point 20 of the Commission Notice on case referral, concentrations the effects of which are likely to be confined to, or have their main economic impact in a single Member State, are the most appropriate candidate cases for referral to that Member State.
- (21) On the basis of the information provided by the Parties in the Reasoned Submission, the Commission considers that the Transaction is an appropriate candidate for pre-filing referral from the Commission to the AGCM in accordance with Article 4(4) of the Merger Regulation.
- (22) First, the relevant markets present all the characteristics of distinct markets. As outlined above, the Parties are active in relevant geographic markets that have been assessed as national in Commission’s precedents as well as in the AGCM’s precedents, in particular due to differences in national regulations and systems for managing concessions to online gaming and betting operators.
- (23) Therefore, the first legal requirement set forth in Article 4(4) of the Merger Regulation appears to be met.
- (24) Second, on the basis of the information provided in the Reasoned Submission, the Transaction would give rise to affected markets in the markets of online gaming in Italy, as well as in certain segments defined by type of game/activity, including in particular in the segments of online bingo and online poker.
- (25) In the overall market of online gaming in Italy, the Parties’ market shares for the last three years were as follows:
- (a) [20-30]% for 2019 (Flutter: [10-20]%; Sisal: [5-10]%)
  - (b) [20-30]% for 2020 (Flutter: [10-20]%; Sisal: [5-10]%)
  - (c) [20-30]% for 2021 (Flutter: [10-20]%; Sisal: [5-10]%).
- (26) When individual games are considered, the Transaction gives rise to affected markets in the markets for online bingo, online poker and online casino. The Parties’ combined market shares for the last three years in these segments were as follows:
- Online bingo
    - (a) 2019: [40-50]% (Flutter: [30-40]%; Sisal: [5-10]%)
    - (b) 2020: [40-50]% (Flutter: [30-40]%; Sisal: [5-10]%)
    - (c) 2021: [40-50]% (Flutter: [30-40]%; Sisal: [5-10]%).

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<sup>14</sup> Footnote 21 of the Commission Notice on case referral.

- Online poker
    - (a) 2019: [50-60]% (Flutter: [50-60]%; Sisal: [5-10]%)
    - (b) 2020: [60-70]% (Flutter: [50-60]%; Sisal: [5-10]%) and
    - (c) 2021: [50-60]% (Flutter: [40-50]%; Sisal: [5-10]%).
  - Online casino
    - (a) 2020: [20-30]% (Flutter: [10-20]%; Sisal: [5-10]%) and
    - (b) 2021: [20-30]% (Flutter: [10-20]%; Sisal: [5-10]%).
- (27) In addition, the Transaction will also give rise to affected markets in Spain. However, Flutter has not requested a referral for these aspects of the Transaction. Accordingly, the Commission will retain jurisdiction over the assessment of the Spanish markets.
- (28) As a consequence, the preliminary assessment suggests that the Transaction may significantly affect competition by creating horizontally affected markets in the market for online gaming in Italy where the Parties' combined market shares would exceed 20% and in certain sub-segments of this market corresponding to type of game/activity where the Parties' combined market shares would reach approximately between [40-50]% and [60-70]%. The existence of high market shares in these sub-segments may give rise to significant horizontal competition concerns in Italy.
- (29) Therefore, the second legal requirement set forth by article 4(4) of the Merger Regulation also appears to be met.
- 5.2.2. *Additional factors*
- (30) In addition to the verification of the legal requirements, point 19 of the Notice provides that it should also be considered whether referral of the case is appropriate, and in particular *'whether the competition authority or authorities to which they are contemplating requesting the referral of the case is the most appropriate authority for dealing with the case'*.
- (31) In addition, point 23 of the Notice states that *'Consideration should also, to the extent possible, be given to whether the NCA(s) to which referral of the case is contemplated may possess specific expertise concerning local markets, or be examining, or about to examine, another transaction in the sector concerned'*.
- (32) First, with regard to the locus of the competitive effects, the Transaction would give rise to, among others, several affected markets that are not wider than national in scope and that are located in Italy.
- (33) Second, the AGCM is the most appropriate authority for dealing with the Italian aspects of the case thanks to its expertise on cases dealing with the affected markets. These cases include notably the acquisition by Gamenet S.p.A. of Goldbet S.r.l., a company active in the online gambling sector, also through the

management of a network of retail outlets.<sup>15</sup> The Commission also recently referred various cases in the gaming sector to the AGCM.<sup>16</sup> In its referral decision in case M.10126, the Commission noted that ‘*the AGCM had in-depth experience reviewing the market for gaming and betting services, so that it was well-equipped to deal with the case*’.<sup>17</sup>

### 5.2.3. *Conclusion on referral*

- (34) Based on the information provided by the Parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State, which presents all the characteristics of a distinct market. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that (i) the principal impact of the concentration will be on the market for online gaming and its potential sub-segments by type of games/activities in Italy; (ii) these markets present all characteristics of distinct and national markets; (iii) the concentration gives rise to horizontal overlaps between the Parties on the market of online gaming and certain sub-segments by type of games/activities in Italy; (iv) the concentration gives rise to affected markets in these market(s) with combined market shares of between [40-50]% and [60-70]% in certain sub-segments and therefore a potential risk that competition in these sub-segments would be significantly affected in Italy; and (v) a referral is appropriate on that basis.

## 6. CONCLUSION

- (35) For the above reasons, and given that Italy has expressed its agreement, the Commission has decided to refer the assessment of the effects of the Transaction on the relevant markets in Italy to be examined by the competent authority of Italy. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*  
*Olivier GUERSENT*  
*Director-General*

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<sup>15</sup> Case C12188, 13.09.2018 – Gamenet/Goldbet.

<sup>16</sup> E.g., Case M.8058 – Novomatic/Lottomatica/JV / ICA case C12069 – Admiral Entertainment/Lottomatica Holding/Newco, which concerned the establishment of a joint venture between Novomatic and Lottomatica (IGT Group) in the gambling sector and which followed a referral under Article 4(4) of the EUMR from the Commission to the ICA and Case M.10126 – Apollo Management/Lottomatica Videolot Rete/Lottomatica Scommese / ICA Case C12371 – Gamenet Group/Lottomatica Videolot Rete/Lottomatica, which concerned the acquisition of sole control by the Gamenet Group over Lottomatica Videolot Rete S.p.A. and Lottomatica Scommese S.r.l.

<sup>17</sup> See recital 28.