



EUROPEAN COMMISSION
DG Competition

***Case M.11379 - LOTTOMATICA /
SKS365***

Only the English text is available and authentic.

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

Article 4(4)
Date: 31/01/2024



EUROPEAN COMMISSION

Brussels, 31.1.2024
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Lottomatica S.p.A.
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Italy

Italian Competition Authority
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00198 Rome
Italy

**Subject: Case M.11379 – LOTTOMATICA / SKS365
Commission decision following a reasoned submission pursuant to
Article 4(4) of Regulation No 139/2004¹ for referral of the case to the
Italy and Article 57 of the Agreement on the European Economic Area².**

Date of filing: 20.12.2023

Legal deadline for response of Member States: 19.01.2024

Legal deadline for the Commission decision under Article 4(4): 02.02.2024

¹ 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.

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

Dear Sir or Madam,

1. INTRODUCTION

- (1) On 20 December 2023, 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 transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities 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 a transaction with a Union dimension may request that their transaction be referred in whole or in part from the Commission to a Member State where the concentration may significantly affect competition in a market within that Member State, and which presents all the characteristics of a distinct market.
- (3) A copy of this Reasoned Submission was transmitted to all Member States on 20 December 2023.
- (4) Italy did not respond to the Reasoned Submission within 15 working days and is therefore deemed to have agreed to the referral.³

2. THE PARTIES

- (5) Lottomatica S.p.A ('Lottomatica', Italy) is active in the market for gaming and betting services in Italy. It is ultimately controlled by the Apollo group, a global alternative asset manager headquartered in New York City.
- (6) SKS365 Malta Holding, LTD ('SKS365', Malta) is active in the market for gaming and betting in Italy.
- (7) Lottomatica and SKS365 are referred to below as the 'Parties'.

3. THE OPERATION AND CONCENTRATION

- (8) The operation in question involves the acquisition of sole control over SKS365 by Lottomatica. Pursuant to a Share Sale and Purchase Agreement of 1 November 2023, Lottomatica, through its wholly owned holding vehicle GBO S.p.A, will purchase the whole share capital of SKS365 (the 'Transaction').

4. EU DIMENSION

- (9) This acquisition has an EU dimension within the meaning of Article 1(2) of the Merger Regulation. In 2022, the Parties had a combined aggregate world-wide turnover of more than EUR 5 000 million (Lottomatica (Apollo Group): [...] million; SKS365: [...] million). Each of them had an EU-wide turnover of more than EUR 250 million (Lottomatica (Apollo Group): [...] million; SKS365: [...] million). The Parties do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

³ Merger Regulation, Article 4(4), second paragraph.

5. ASSESSMENT

- (10) On the basis of assessment of the information provided by the Parties in the Reasoned Submission, the Transaction is an appropriate candidate for a pre-filing referral in its entirety from the Commission to the Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato, the ‘AGCM’) in accordance with Article 4(4) of the Merger Regulation.
- (11) The Transaction meets the legal requirements set out in Article 4(4) of the Merger Regulation. The Transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation, it has an EU dimension and it may significantly affect competition in Italy.
- (12) In view of the foregoing, the assessment suggests that the principal effects of the proposed operation would be restricted to Italy. Further, the markets in question present all the characteristics of distinct national markets.

5.1. Relevant product markets

- (13) The Parties’ activities overlap in the overall market for betting and gaming services in Italy and in particular in the following sub-markets:
- (a) gaming machines, including AWP⁴ and VLT⁵;
 - (b) betting services, including bets on sports, horseracing and virtual games (e.g., simulation of football matches or Formula One, horse and dog races);
 - (c) online games (poker, casino, bingo, and skill games).
- (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.⁶ Moreover, in one of its precedents the Commission has defined separate relevant product markets for bingo and gaming machines.⁷ In a more recent decision, 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.).⁸
- (15) In past cases, the AGCM considered that all gaming and betting activities (including bingo, Lotto, lotteries, gaming and entertainment machines such as AWP⁴ and VLT⁵, and other games sold through both physical and online channels) belong to a single product market.⁹ 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.
- (16) However, in a line of recent decisions, the AGCM considered that the gambling market could be segmented in (i) AWP and VLT services, (ii) betting services (that

⁴ Amusement with prize machines (‘AWPs’) are mechanical slot machines that provide some level of player interaction.

⁵ Video lottery terminals (‘VLTs’) are electronic (rather than mechanical) gaming machines.

⁶ Case M.8058 – Novomatic/Lottomatica/JV; Case M.4114 – Lottomatica/GTECH.

⁷ Case M.3109 – Candover/Cinven/Gala.

⁸ Case M.8640 – CVC/Blackstone/Paysafe.

⁹ Case C7360 - Snai/Rami Di Azienda, AGCM decision of June 24, 2012; case C8489 - Sisal/Ramo d’azienda di Geko AGCM decision of May 17, 2007.

could be sub-divided in sports, horseracing and virtual games) and (iii) online gaming.¹⁰

- (17) The Parties' activities also overlap to a limited extent in the management of gaming halls. Gaming halls offer gaming and betting services, typically sourced from third party concessionaires.¹¹ The AGCM considered the management of gaming halls as a distinct product market.¹²

5.2. Relevant geographic market

- (18) 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 characteristics.¹³ In particular, from a supply-side perspective, the Commission considered that the market was national in scope due to different national regulations¹⁴ and the different systems for managing concessions to operators, which are still mainly national.¹⁵
- (19) In recent decisions, the AGCM also considered that a national geographic market definition was appropriate for online gaming and betting services, since, according to the Italian Customs and Monopolies Agency (Agenzia delle Dogane e dei Monopoli – 'ADM')¹⁶ rules, concessionaires for gambling services in Italy may offer services to Italian residents only.¹⁷ The AGCM confirmed the national scope of the market also with respect to gaming machines, including AWP's and VLTs and betting services.¹⁸
- (20) The AGCM considered the geographic scope of the market for the management of gaming halls to be local due to the difference in regional and municipal regulations pertaining to the operation of gaming halls.¹⁹

¹⁰ Case C12546 – Lottomatica/Ricreativo B, AGCM decision of September 14, 2023; case C12505 – Lottomatica/Betflag, AGCM decision of December 6, 2022; case C12465 – Flutter Entertainment/Sisal, AGCM decision of July 19, 2022; case C12424 – BCP Acquisitions/Ramo di azienda Lottery di Scientific Games Corporation, AGCM decision of February 8, 2022; Case C12371 – Gamenet Group/Lottomatica Videolot Rete - Lottomatica Scommesse, AGCM decision of May 4, 2021.

¹¹ Form RS, paragraph 45.

¹² Case C12546 – Lottomatica/Ricreativo B, AGCM decision of September 14, 2023.

¹³ Case M.8058 – Novomatic/Lottomatica/JV, paragraph 16; see also Case M.4114 – Lottomatica/GTECH, paragraph 14.

¹⁴ 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.

¹⁵ Case M.8058 – Novomatic/Lottomatica/JV, paragraph 16; see also case M.4114 – Lottomatica/GTECH, paragraph 14.

¹⁶ The ADM is the Italian authority overseeing this sector.

¹⁷ Case C12188 - Gamenet/Goldbet, AGCM decision of 13 September, 2018, paragraph 8; Case C12371 – Gamenet Group/Lottomatica Videolot Rete - Lottomatica Scommesse, AGCM decision of May 4, 2021, paragraphs 83-85, 91, 93.

¹⁸ Case C12546 – Lottomatica/Ricreativo B, AGCM decision of September 14, , 2023, paragraphs 15 and 18.

¹⁹ Case C12546 – Lottomatica/Ricreativo B, AGCM decision of September 14, 2023.

5.3. Assessment of the referral request

5.3.1. Legal requirements

- (21) According to the Commission Notice on case referral²⁰ ('Notice') 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(s).²¹
 - (b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.²²
- (22) Pursuant to point 17 of the Notice, 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 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.²³
- (23) Furthermore, pursuant to point 20 of the Notice, 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.
- (24) 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.

5.3.2. The concentration may significantly affect competition

- (25) On the basis of the information provided in the Reasoned Submission, the Transaction would give rise to horizontally affected markets in the markets for betting services and online gaming in Italy.²⁴
- (26) In the overall market of betting services in Italy, the Parties' market shares in 2020-2022 were as follows:²⁵
- (a) [20-30]% for 2020 (Lottomatica: [20-30]%; SKS365: [5-10]%)

²⁰ Commission Notice on Case Referral in respect of concentrations, OJ C 56, 5.3.2006, p. 2.

²¹ Further developed in point 17 of the Notice.

²² Further developed in point 18 of the Notice.

²³ Footnote 21 of the Notice.

²⁴ The Parties also noted that in the market for gaming machines (AWPs and VLTs) in Italy, Lottomatica has a market share of about [30-40]%. SKS365 does not hold concessions to operate in this market and only operates on behalf of third parties holding concessions. The Parties therefore argue that no market shares should be attributed to SKS365 in this market. In any case, SKS365 activities in gaming machines is negligible, representing about [0-5]% of the total market in Italy. Form RS, Table 4 and footnote 33.

²⁵ Form RS, Table 5.

- (b) [20-30]% for 2021 (Lottomatica: [20-30]%; SKS365: [5-10]%;)
- (c) [30-40]% for 2022 (Lottomatica: [20-30]%; SKS365: [5-10]%).
- (27) When individual types of betting are considered, the Transaction gives rise to affected markets in the markets for sports and virtual games where the Parties' combined market shares are above 25%. In the market for bets on horseracing the Parties' combined market shares were between 20 to 25% in 2021.
- (28) The Parties' combined market shares in 2020-2022 were as follows:²⁶
- Sports
 - (a) [20-30]% for 2020 (Lottomatica: [10-20]%; SKS365: [5-10]%;)
 - (b) [20-30]% for 2021 (Lottomatica: [10-20]%; SKS365: [5-10]%;)
 - (c) [20-30]% for 2022 (Lottomatica: [10-20]%; SKS365: [5-10]%).
 - Horseracing
 - (a) [10-20]% for 2020 (Lottomatica: [10-20]%; SKS365: [0-5]%;)
 - (b) [20-30]% for 2021 (Lottomatica: [10-20]%; SKS365: [0-5]%;)
 - (c) [10-20]% for 2022 (Lottomatica: [10-20]%; SKS365: [0-5]%).
 - Virtual games
 - (a) [40-50]% for 2020 (Lottomatica: [40-50]%; SKS365: [0-5]%;)
 - (b) [40-50]% for 2021 (Lottomatica: [40-50]%; SKS365: [5-10]%;)
 - (c) [40-50]% for 2022 (Lottomatica: [30-40]%; SKS365: [5-10]%).
- (29) In the overall market of online gaming in Italy, the Parties' market shares in 2020-2022 were as follows:²⁷
- (a) [10-20]% for 2020 (Lottomatica: [10-20]%; SKS365: [0-5]%;)
 - (b) [10-20]% for 2021 (Lottomatica: [10-20]%; SKS365: [0-5]%;)
 - (c) [20-30]% for 2022 (Lottomatica: [10-20]%; SKS365: [5-10]%).
- (30) When individual games are considered, the Transaction gives rise to markets in which the Parties' combined shares are between 20 and 25% in the markets for online bingo and online casino. The Parties' combined market shares for 2020-2022 were as follows:²⁸
- Online bingo
 - (a) [10-20]% for 2020 (Lottomatica: [10-20]%; SKS365: [0-5]%;)
 - (b) [10-20]% for 2021 (Lottomatica: [10-20]%; SKS365: [0-5]%;)
 - (c) [20-30]% for 2022 (Lottomatica: [20-30]%; SKS365: [0-5]%).

²⁶ Form RS, Annex 4.4.1.

²⁷ Form RS, Table 6.

²⁸ Form RS, Annex 4.4.2

- Online casino
 - (a) [10-20]% for 2020 (Lottomatica: [10-20]%; SKS365: [5-10]%)
 - (b) [20-30]% for 2021 (Lottomatica: [10-20]%; SKS365: [5-10]%)
 - (c) [20-30]% for 2022 (Lottomatica: [10-20]%; SKS365: [5-10]%).
- (31) In addition, the Parties have identified vertically affected markets between their upstream activities in gaming machines (Lottomatica's market share: [30-40]% in 2022) and betting services (the Parties' combined market share: [30-40]% in 2022) and their activities in the management of gaming halls in Rome where the Parties manage [less than 5] (Lottomatica, [0-5] and SKS365, [0-5]) gaming halls out of a total of 622 establishments in Rome.²⁹
- (32) In view of the foregoing, the Transaction may significantly affect competition in Italy by creating horizontally affected markets in which the Parties' combined market shares are above 25% on the markets for betting services in Italy. In addition, the Transaction will give rise for markets where the Parties' combined shares are between 20 and 25% in the markets for online gaming. Finally, the Transaction may also significantly affect competition by creating vertically affected markets between the markets for gaming machines and betting services in which the Parties combined market shares are above 30% and the market for the management of gaming halls downstream.
- (33) Therefore, the first legal requirement set forth by article 4(4) of the Merger Regulation also appears to be met.

5.3.3. *Distinct markets within a Member State*

- (34) 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 and national or local in the AGCM's precedents, in particular, due to differences in national and local regulations and systems for managing concessions.
- (35) Therefore, the second legal requirement set forth in Article 4(4) of the Merger Regulation appears to be met.

5.3.4. *Additional factors*

- (36) 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*'.
- (37) 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.*'

²⁹ Form RS, section 3.2 and paragraph 72 et seq.

- (38) First, with regard to the locus of the competitive effects, the Transaction is likely to significantly affect competition in markets that are not wider than national in scope and that are located in Italy.
- (39) Second, the AGCM is the most appropriate authority due to its expertise in assessing markets in the relevant sector at hand. The Commission also recently referred various cases in the gaming sector to the AGCM.³⁰ 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’*.³¹ The same reasoning applies to the Transaction.
- (40) Therefore, the AGCM is well equipped to assess the impact of the Transaction on competition in the markets in question.

5.3.5. *Conclusion on referral*

- (41) On the basis of 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 market(s) within a Member State which presents all the characteristics of a distinct market.
- (42) Moreover, the requested referral would be consistent with points 19–23 of the Notice, in particular, because the AGCM is the most appropriate authority to examine the Transaction.

6. CONCLUSION

- (43) For the above reasons, and given that Italy has expressed its agreement, the Commission has decided to refer the Transaction in its entirety to be examined by the AGCM. 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

³⁰ Case M.8058 – Novomatic/Lottomatica/JV; Case M.10126 – Apollo Management/Lottomatica Videolot Rete/Lottomatica Scommesse; Case M.10656 - Flutter Entertainment/Sisal.

³¹ See paragraph 28.