



DETERMINATION OF MERGER NOTIFICATION M/15/064 - ARAMARK / AVOCA

Section 21 of the Competition Act 2002

Proposed acquisition Avoca Handweavers Limited by Aramark Ireland Holdings Limited

Dated 21 December 2015

Introduction

1. On 13 November 2015, in accordance with section 18(1) of the Competition Act 2002, as amended¹ (“the 2002 Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Aramark, through its indirect wholly-owned subsidiary Aramark Ireland Holdings Limited (“Aramark Ireland”), would acquire sole control of Avoca Handweavers Limited and its wholly-owned subsidiaries Avoca Handweavers Shops Limited, Avoca Handweavers NI Limited, and Avoca Handweavers UK Limited (collectively “Avoca”) from Donald Pratt, Hilary Pratt, Ivan Pratt, Simon Pratt, Amanda Pratt and Vanessa Pratt (collectively the “Sellers”).

The Proposed Transaction

2. The proposed transaction is pursuant to a Share Purchase Agreement (“SPA”) dated 11 November 2015 between the Sellers, Simon Pratt as the Sellers’ representative and Aramark Ireland. The proposed transaction does not include the acquisition of Avoca Handweavers Design Limited which is subject to a separate transaction, pursuant to which [...] would acquire sole control of that company.²

The Undertakings Involved

Aramark

3. Aramark is a public company headquartered in Philadelphia, USA and is listed on the New York Stock Exchange. Aramark is involved, mainly in the USA and Canada but also in Europe, in the food service sector,³ in supplying facilities management

¹ It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.

² The parties state that this separate transaction does not meet the financial thresholds in the 2002 Act (as amended) that would require notification of that transaction to the Commission. Notification page 5.

³ The Competition Authority’s determination in M/12/010 – Pallas/Crossgar includes a description of the food service sector (at paragraphs 19-29). See <http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications/Pallas--Crossgar.aspx>.



services and in the supply of uniforms. Aramark's customers are businesses and public sector organisations in various sectors such as education, healthcare, corporations, industry, sports, leisure and corrections.⁴

4. Within the State, Aramark Ireland is headquartered in Dublin City, and is involved mainly in the food service sector as well as, to a lesser extent, in the facilities management, energy and property management sectors.
5. Aramark Ireland supplies outsourced food services, also known as contract catering,⁵ to businesses and organisations within the State. Aramark Ireland's food service customers include [...].⁶
6. For the financial year ended 3 October 2014, Aramark's worldwide turnover was approximately €[...] billion, of which approximately €[...] million was generated in the State.

Avoca

7. Avoca is a private company headquartered at Kilmacanogue, County Wicklow. Avoca is involved, mainly in the State, in the food service sector and also the retail sector, selling a variety of products including clothing, food, gardening, homeware and jewellery products. Some retail products are sold on-line as well as in Avoca's stores.
8. Avoca's food service products are sold directly to the public in each of its 11 stores, 10 of which are located in the State: 4 stores in each of Counties Dublin and Wicklow and 1 store in each of Counties Galway and Kerry. Avoca also operates one store in Belfast.⁷
9. For the financial year ended 31 January 2015, Avoca's worldwide turnover was approximately €[...] million, of which €[...] million was generated within the State.⁸

Rationale for the Proposed Acquisition

10. In the notification, the parties state that:

*"The Proposed Transaction offers Aramark the opportunity to acquire a complementary food service offering to that supplied by Aramark and will allow Aramark to diversify its business and to increase sales by seeking to sell Avoca food products to existing premium customers."*⁹

⁴ For more information on Aramark see <www.aramark.com>.

⁵ In most instances Aramark Ireland's contracts have been awarded pursuant to a tender process.

⁶ Aramark Ireland currently has contracts with approximately [...] customers in the State for the supply of outsourced catering services. For more information on Aramark Ireland see <www.aramark.ie>.

⁷ For more information on Avoca see <<http://www.avoca.com>>.

⁸ These turnover figures exclude the turnover of Avoca Handweavers Design Limited which is not part of the proposed transaction.

⁹ Notification page 6.



11. Aramark Ireland states that [...].¹⁰

Third Party Submissions

12. One submission was received which raised concerns about the impact of the proposed transaction on the retail sale of craft products, particularly to tourists travelling by coach, in County Wicklow. The submission states that:
- (a) Avoca operates a system of offering commission payments to coach drivers to encourage them to stop at Avoca stores, and
 - (b) Aramark Ireland, using its additional financial resources, would be in a position to make Avoca, as part of the merged entity, even more dominant following the completion of the proposed transaction by providing increased payments to coach drivers.
13. The Commission, as part of its review of the proposed transaction, has taken account of the points raised in the third party submission. The Commission does not consider that the issues raised in the third party submission are necessarily specific to the proposed transaction. In any case, the Commission does not consider that the extent of such payments to coach drivers in the Wicklow region, which is the region specifically mentioned in the third party submission, or any increase in payments following the implementation of the proposed transaction, would be of sufficient magnitude to result in a substantial lessening of competition in a potential market for the sale of craft products or any other relevant product market in the State or, specifically, within the Wicklow region.

Competitive Analysis

14. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case; in this instance, it is not necessary for the Commission to define precise relevant markets.
15. There is a horizontal overlap between the parties' activities in relation to the supply of food services in the State. However, the Commission's conclusion concerning the competitive effects of the proposed transaction would be unaffected whether the relevant product markets in either the food retail and food service sectors are defined:
- (a) Broadly, e.g., the supply of food and beverages by all food service operators, or
 - (b) Narrowly, e.g., separate markets for different categories of food service operators and/or customers, such as:

¹⁰ Correspondence, dated 4 December 2015, from Aramark Ireland to the Commission.



- (i) Outsourced catering services supplied to businesses and other organisations, or
 - (ii) Cafes and restaurants supplying food and beverages directly to the public.
16. For the purposes of its analysis, the Commission has reviewed the impact of the transaction in the State. However, the choice of geographic market (e.g., a national market or a local, provincial or county-wide markets) will not materially alter the competitive impact of the notified transaction in the State and consequently, the Commission is of the view that the precise scope of the geographic market can be left open in this instance.
17. Within a broadly defined food service market involving all food service operators in the State, Aramark Ireland and Avoca generate turnover from their food service operations of €[...] million and €[...] million, respectively. These figures imply market shares for Aramark Ireland and Avoca of approximately [...] % and [...] %, respectively,¹¹ and imply an insignificant overlap in the activities of the parties in such a potential market.
18. In light of the above, the Commission considers that the proposed acquisition would not lead to a substantial lessening of competition in a broadly defined market (i.e., a market which includes all food service operators in the State).
19. The parties state that within a potential narrower market for the supply of outsourced catering services, Aramark Ireland would have a market share of approximately [...] %.¹² In contrast, Avoca does not supply outsourced catering services in the State or elsewhere. Therefore, there would be no overlap between the parties' activities in such a potential market. (Also, there are now, and will continue to be following the completion of the proposed transaction, significant competitors in the outsourced food service sector in the State which will continue to exert a competitive constraint on the merged entity, including Compass Group Ireland, Sodexo Ireland, Kylemore Services Group, Baxterstorey Ireland and Corporate Catering Services.) Similarly, if the relevant market were to be defined more narrowly as the market for cafes and restaurants supplying food and beverages directly to the public, there would be no overlap since Aramark Ireland is not present in this potential market.
20. In light of the above, the Commission considers that the proposed acquisition would not lead to a substantial lessening of competition in a narrowly defined market, such as a market for the supply of outsourced catering services in the State.

¹¹ These market share figures are calculated on the basis a Bord Bia estimate of a total food service sector within the State of €6.1 billion in 2014. See, at page 16, <<http://www.bordbia.ie/industry/events/SpeakerPresentations/2014/FoodServiceSeminar2014Reports/2014%20Bord%20Bia%20Irish%20Foodservice%20Channel%20Insights.pdf>>.

¹² The parties cite "*The Contract Caterer Monitor 2013 Ireland*" which states, at pages 17 and 21, that in 2013 there were 1,042 outsourced catering contracts in the State and Aramark Ireland was a contractor in [...] locations in the State. The market share (by value) is estimated on the basis of total outsourced food service sector turnover in the State of €331.4 million in 2013.



21. The proposed transaction does not raise any vertical competition concerns.

Conclusion

22. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

23. The SPA contains a number of restrictive obligations on the Sellers.¹³ None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.¹⁴ The Commission considers that these obligations are directly related to and necessary for the implementation of the proposed transaction.

¹³ The obligations in respect of [...] do not restrict [...] operating the Avoca Handweavers Design Limited business which, as described in paragraph 2, is subject to a separate transaction.

¹⁴ In this respect, the Commission follows the approach adopted by the EU Commission in paragraph 20 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2005). For more information see <[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)>.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed acquisition whereby Aramark, through its indirect wholly-owned subsidiary Aramark Ireland Holdings Limited, would acquire sole control of Avoca Handweavers Limited and its wholly-owned subsidiaries Avoca Handweavers Shops Limited, Avoca Handweavers NI Limited, and Avoca Handweavers UK 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

Gerald FitzGerald
Member
Competition and Consumer Protection Commission