



DETERMINATION OF MERGER NOTIFICATION M/16/002 – DUNNES/WHELAN/TIPPERARY

Section 21 of the Competition Act 2002

Proposed acquisition of sole control of Whelan Food & Meat Processors and Tipperary Sustainable Food Company Limited by Dunnes Stores

Dated 26 February 2016

Introduction

1. On 18 January 2016, in accordance with section 18(1) of the Competition Act 2002, as amended (“the 2002 Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Dunnes Stores (“Dunnes”) would acquire the entire issued share capital of Whelan Food & Meat Processors (“Whelan Food”) and Tipperary Sustainable Food Company Limited (“Tipperary Food”).

The Proposed Transaction

2. The proposed transaction is to be implemented pursuant to a share purchase agreement (“SPA”), dated 15 January 2016, between Dunnes Stores, Pat Whelan, Lina Whelan, Easi-Build Limited (“Easi-Build”), VSoft Retail Systems Limited (“VSoft”) and Ernie Kenny.¹
3. The effect of the proposed transaction is that Dunnes would acquire the retail business and brands of each of Whelan Food and Tipperary Food described below in paragraphs 11 and 14.²
4. The following non-retail assets located at Garran temple, Co. Tipperary, will be transferred from Whelan Food and Tipperary Food to [...], prior to the implementation of the notified transaction (with the result that these assets will not be acquired by Dunnes):³
 - (a) an abattoir and equipment related to its operation.
 - (b) the leasehold interest in farmland.
 - (c) livestock.

¹ Easi-Build is solely controlled by Ernie Kenny. VSoft is solely controlled by Pat Whelan. [...].

² Dunnes, in correspondence to the Commission dated 10 February 2016, states that [...].

³ Whelan Food and Tipperary Food in correspondence to the Commission dated 8 February 2016, [...].



5. [...].⁴

The Undertakings Involved

Dunnes

6. Dunnes, headquartered in Dublin, is a private unlimited company incorporated in the State. It is a wholly-owned subsidiary of Dunnes Holding Company, which is the ultimate holding company for the Dunnes Stores group of companies (“Dunnes Stores Group”). Dunnes Stores Group is a multi-category retailer active in the sale of groceries, men’s, women’s and children’s clothes, and home and garden wares. Dunnes has over 150 retail outlets which are located primarily in the State (116) and in Northern Ireland (20), Great Britain (9) and Spain (5).⁵
7. Through its wholly-owned subsidiary Tender Meats Limited (“Tender Meats”), which is located in Clondalkin, Dublin, Dunnes Holding Company is involved in the operation of a meat processing facility. Tender Meats does not supply customers outside of the Dunnes Stores Group.⁶
8. For the financial year ending 31 January 2015, the turnover of the Dunnes Stores Group (both worldwide and within the State) was in excess of €50 million.

Whelan Food and Tipperary Food

9. Whelan Food, located in Clonmel, Co. Tipperary, is a private unlimited company, which is majority owned and controlled by Pat Whelan.⁷
10. Whelan Food is involved in the retail sale of meat and related products, including beef, lamb, pork and poultry etc., mainly to customers located in the State. Prior to the proposed transaction, Whelan Food was also involved in the farming and wholesale supply of meat. (However, as explained in paragraph 3, the proposed transaction encompasses the acquisition by Dunnes of Whelan Food’s retail businesses only.)
11. Whelan Food operates the “James Whelan Butchers” store located in Oakville Shopping Centre Clonmel, Co. Tipperary. Whelan Food also supplies meat and related products to customers through on-line sales, a small amount of which are to customers located in the UK.⁸
12. Tipperary Food, located in Clonmel, Co. Tipperary, is a private limited company which is jointly owned and controlled by Easi-Build (which is controlled by Ernie Kenny) and VSoft (which is controlled by Pat Whelan).

⁴ [...].

⁵ For information on Dunnes see <<http://www.dunnesstores.com>>.

⁶ Correspondence from Dunnes to the Commission dated 10 February 2016.

⁷ [...].

⁸ Whelan Food’s on-line sales generated total turnover of approximately €[...] for the financial year ended 31 December 2014. Notification page 8. For more information on Whelan Food including online sales see <www.jameswhelanbutchers.com> or <jameswhelanbutchers.ie>.



13. Tipperary Food is involved in the retail sale of meat and related products, ranging from beef, lamb, pork and poultry etc., to customers located in the State. Prior to the proposed transaction, Whelan Food was also involved in the farming and wholesale supply of meat. (However, as explained in paragraph 3, the proposed transaction encompasses the acquisition by Dunnes of Tipperary Food's retail businesses only.)
14. Tipperary Food operates concessions in three Avoca stores under the "James Whelan Butchers" brand. The three Avoca stores are located in Monkstown and Rathcoole, County Dublin and Kilmacanogue, County Wicklow.
15. The Commission considers that, for the purposes of its analysis of competitive effects of the proposed transaction, Whelan Food and Tipperary Food comprise a single target.
16. For the financial year 31 December 2014, the combined worldwide turnover of Whelan Food and Tipperary Food was approximately €[...] million, all of which was generated in the State.⁹

Rationale for the Proposed Acquisition

17. The parties state in the Notification:

"The Parties each have a track record of innovation and high quality standards in respect of meat processing and preparation on their respective scales of operation and believe that the Proposed Transaction will facilitate an enhanced product and service offering going forward. In particular, Dunnes Stores believes that the innovative and highly respected approach to the cultivation, processing and preparation of meat which the Target Undertaking has taken in those local markets in which it has been active pre-transaction will be of benefit to consumers nationwide post-transaction."¹⁰

Third Party Submissions

18. One submission was received which expressed concerns about [...].
19. The Commission, as part of its review of the proposed transaction, has taken account of the points raised in the third party submission to the extent that they are concerns about competitive effects.

Competitive Analysis

20. There is a horizontal overlap in the activities of the parties in the State with respect to the retail sale of meat and related products.¹¹ However, the extent of

⁹ The turnover for each of Whelan Food and Tipperary Food was €[...] million and €[...] million, respectively. [...].

¹⁰ Notification page 5.

¹¹ Whelan Food, through its retail butcher shop in Oakville Shopping Centre in Clonmel, is involved in the sale of pre-prepared ready-to-eat food products. Dunnes is also involved in the sale of pre-prepared ready-to-eat food products. Given the limited extent of this overlap, the competitive effects of this horizontal overlap are not discussed further in this Determination.



any horizontal overlap is not significant in relation to the overall size of the market.

Market Definition

21. 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 product markets. The Commission's conclusion concerning the competitive effects of the proposed transaction would be unaffected whether the relevant product market is:
 - (a) comprised of a single market for all meat and related products for sale to retail customers; or
 - (b) distinguished into separate markets for each different type of meat product (e.g., beef, lamb, pork, poultry etc.) for sale to retail customers; or
 - (c) distinguished into separate markets for different types of retail premises.¹²
22. For the purposes of reviewing the proposed transaction, and in the absence of evidence to suggest that a narrower definition would be more appropriate, the Commission will consider a product market that comprises the retail sale of all meat and related products.
23. Similarly, it is also not necessary for the Commission to define precise relevant geographic markets in this case. Whether the relevant market is defined as a single national market or separate local markets will not materially alter the competitive impact of the notified transaction in the State. However, for the purposes of reviewing the proposed transaction, the Commission has examined the competitive effects of the proposed transaction in local markets as discussed in paragraphs 26-30.

Competitive Effects

24. The small turnover of Whelan Food and Tipperary Food indicate that Whelan Food and Tipperary Food do not currently provide a significant competitive constraint on Dunnes in the retail meat sector, either nationally or in local markets.
25. Kantar data¹³ indicates that Dunnes has a national market share of approximately 23% for the retail sale of fresh and chilled food products (including meat).¹⁴

¹² On the basis of this approach to market definition, there would be no overlap between the party's activities as Dunnes does not operate specialist butchers stores whereas Whelan Food and Tipperary Food only operate specialist butcher stores.

¹³ Kantar World Panel Irish Monthly Retail Review Data to 8 November 2015.

¹⁴ The product category includes products such as fish and dairy products and excludes processed meat products. The Kantar data does, however, provide a credible indication of market shares in the supply of retail meat and related products.



Dunnes' strongest competitors comprise the so-called "multipliers" (e.g., Tesco and Supervalu), "discounters" (e.g., Aldi and Lidl) and "symbols" (e.g., Centra and Spar), which account for a combined national market share of the same products of approximately 72%. Combined with Dunnes' market share this implies that the remaining supply of fresh and chilled food products (including meat), of approximately 5%, is supplied by all other retailers including Whelan Food and Tipperary Food. Therefore both Whelan Food and Tipperary Food have a minimal market share of a national market for these products. The low national market shares of Whelan Food and Tipperary Food, and the resulting low increment to Dunnes' national market share, indicate that the proposed transaction will not significantly affect the market structure and will not result in a substantial lessening of competition within a national market for the retail sale of meat and related products.

26. The Commission has also examined possible local effects in areas where Dunnes and either of Whelan Food and Tipperary Food are both located. (i.e., areas surrounding Clonmel, Kilmacanogue, Monkstown and Rathcoole). The Commission considers that the proposed transaction will not result in a substantial lessening of competition in any of these local areas for the reasons discussed below.¹⁵
27. In Clonmel and surrounding area, the merged entity will continue to face competition from other supermarkets, such as Tesco, Supervalu, Aldi and Lidl, and from specialist butcher shops, such as McNamara Meats, Premier Meats and Southern Meats.
28. In Kilmacanogue and surrounding area, the merged entity will continue to face competition from other supermarkets, such as Tesco Supervalu and Lidl (each located in Bray and Greystones), and Aldi (in Bray), and from specialist butcher shops, such as Reddens (in Boghall) and Frank Doyle and the Albert Avenue Post Office and Butcher (both located in Bray.)
29. In Monkstown and surrounding area, the merged entity will continue to face competition from other supermarkets, such as Tesco (at Dun Laoghaire and Stillorgan) and Supervalu (in Blackrock and Deansgrange), and from specialist butcher shops, such as FX Buckley (in Deansgrange) and Hicks and Kearneys (both located in Dun Laoghaire).
30. In Rathcoole and surrounding area, the merged entity will continue to face competition from other supermarkets, such as Tesco (in Rathcoole and Tallaght) Lidl and Supervalu (both located in Tallaght), and from specialist butcher shops,

¹⁵ The parties identify possible local markets with a 10 kilometre or 10 minute drive time from the relevant Whelan Food or Tipperary Food location with reference to the determination of the Commission's predecessor, the Competition Authority, in *M/11/022 – Musgrave-Superquinn*. See <http://www.ccpc.ie/enforcement/mergers/merger-notices/m11022-musgrave-superquinn>. The Commission in *M/15/009 – BWG/Londis* acknowledged that a longer distance or drive time might be appropriate in certain circumstances e.g.: (i) locations that are outside of major urban areas (such as Clonmel or Kilmacanogue in this instance), or (ii) where a not insignificant proportion of customers reside outside of the local area (such as in Kilmacanogue and Rathcoole (in this instance). See <http://www.ccpc.ie/enforcement/mergers/merger-notices/m15009bwglondis>.



such as Donovans Butchers (in Rathcoole), Slade Castle Butchers (in Saggart) and Seezers and Sears (located in Citywest Shopping Centre.)

31. The proposed transaction does not give rise to vertical competition issues within the State.

Conclusion

32. 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

33. The SPA contains restrictive obligations on the directors of Tipperary Food.¹⁶ None of these restrictive obligations exceeds the maximum duration acceptable to the Commission. Given the particular nature of the proposed transaction, the Commission considers that these obligations are directly related to and necessary for the implementation of the proposed transaction.¹⁷

¹⁶ {...].

¹⁷ 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 Dunnes Stores would acquire the entire issued share capital of Whelan Food & Meat Processors and Tipperary Sustainable Food Company Limited will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Gerald FitzGerald
Member
Competition and Consumer Protection Commission