



DETERMINATION OF MERGER NOTIFICATION M/16/039 - GOLDCROP/CROPLINK

Section 21 of the Competition Act 2002

Proposed acquisition by Goldcrop Holdings Limited of sole control of Croplink (Ireland) Limited

Dated 21 September 2016

Introduction

1. On 12 August 2016, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby Goldcrop Holdings Limited (“Goldcrop”) would acquire sole control of Croplink (Ireland) Limited (“Croplink”).
2. The proposed transaction is to be implemented pursuant to a share purchase agreement (“SPA”) between James Droney & Associates Limited,¹ James and Mary Droney and Goldcrop Limited.² A copy of a draft SPA was provided to the Commission with the notification. Notwithstanding the fact that the SPA had not been executed at the time of the notification, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii) of the Act.

The Undertakings Involved

Goldcrop

3. Goldcrop, which is owned by John and Bernadette Murphy, is a private limited company, headquartered in Carrigwohill, Co. Cork with three distribution depots located in Dunleer, Co. Louth, Killavullen, Co. Cork and Rush, Co. Dublin. Goldcrop’s principal activity is the importation and distribution of all seed types in the State, including grass, cereal, maize, beet, oilseeds, vegetables and flowers. Goldcrop also sells agri-chemicals (i.e., plant protection products), crop packaging (e.g., silage sheets, bale wraps, etc.), agri-hardware and amenity products. Goldcrop sells these products to retail customers (e.g., agricultural co-operatives, agri-merchants, etc.).
4. For the financial year ending 31 December 2015, Goldcrop had a worldwide turnover of €[...], of which €[...] was generated in the State.

¹ James Droney & Associates Limited, which is owned by James and Mary Droney, currently owns [...] % of the shares in Croplink.

² Goldcrop is the parent company of Goldcrop Limited. Goldcrop holds [...] % of the share capital of Goldcrop Limited.



Croplink

5. Croplink, a private limited company indirectly owned by James and Mary Droney, is a wholesale supplier of plant protection products in the State. Croplink imports plant protection products from manufacturers and uses a third-party logistics company, [...], to store and distribute its products to retail customers in the State.
6. For the financial year ending 31 December 2015, Croplink's worldwide turnover was €[...], of which €[...] was generated in the State.

Rationale for the Proposed Transaction

7. The parties state in the notification:

"[...]"

Third Party Submissions

8. One third party submission was received by the Commission from [...]. Issues raised in the third party submission were investigated as part of the review process.
9. [...] expressed the following concerns in its submission:

"The proposed transaction will have no major impact on [...] because [...]. However, the proposed transaction will lead to higher prices for end users (e.g., farmers). The merger of the two companies will lead to a dominating and anti-competitive market for a number of products on the Irish agri-chemical market. At present Croplink has access to a number of plant protection products, and Goldcrop who are a wholesaler has access to others. By merging the two entities, the fear is that the Croplink products will not be available to any other wholesalers and that Goldcrop will be the sole wholesaler of these products, as well as the products which they already have access to."

Market Enquiries

10. During its investigation, the Commission drew up a questionnaire to be answered by each of the parties' top ten retail customers for plant protection products in the State in 2015. Eighteen retail customers in total (all ten customers of Goldcrop who were contacted and eight of the ten customers of Croplink who were contacted) responded to the Commission's questionnaire.
11. The Commission also drew up a questionnaire to be answered by five competitors of the merging parties who are currently active in the wholesale supply of plant protection products in the State. The Commission received a full response from three of the five competitors.

Industry Overview – The Wholesale Supply of Plant Protection Products



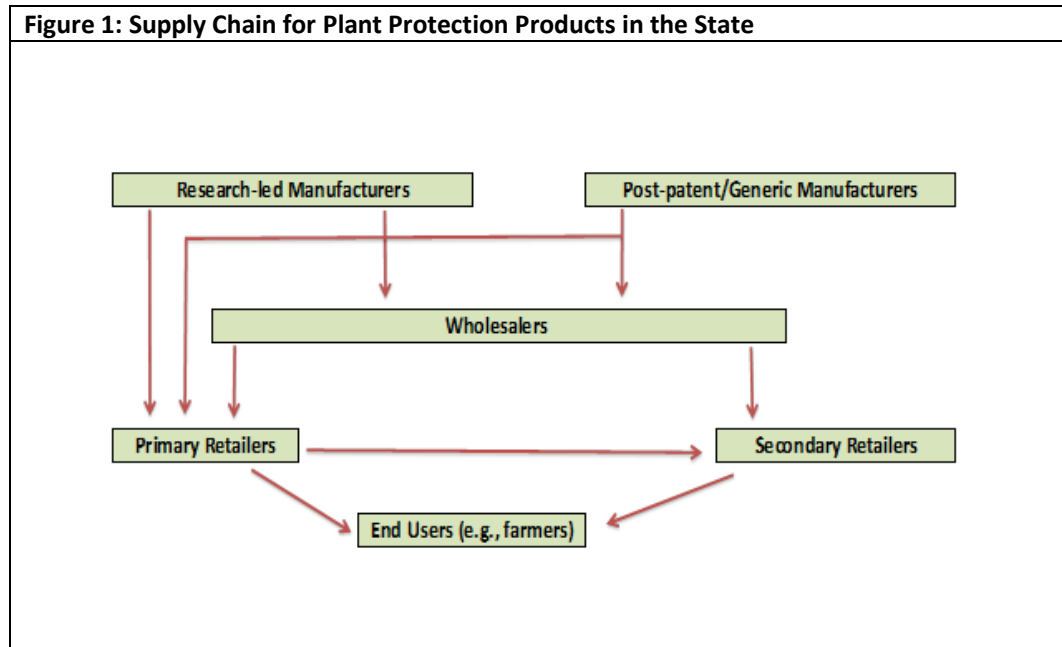
12. The Department of Agriculture, Food and the Marine defines a plant protection product as “a formulation which is designed to protect plants from damaging influences such as weeds, diseases or insects.”³ Such products can only be distributed and used in the State if they have been authorised by the Department of Agriculture, Food and the Marine.
13. Plant protection products are primarily used in the agricultural sector as well as in forestry, horticulture, amenity areas and in home gardens. The parties informed the Commission that around 62% of plant protection products used in the State by end users is on arable/tillage land, while 9% is used on potatoes, 8% is used on grassland and the remainder is used for forestry, amenities (e.g., golf courses) and fruit and vegetable production.
14. Plant protection products can be divided into three broad categories:
 - Herbicides: also commonly known as weed killers, these are chemical substances used to control unwanted plants. Selective herbicides control specific weed species, while leaving the desired crop relatively unharmed, while non-selective herbicides kill all plant material with which they come into contact;
 - Fungicides: these are chemical compounds or biological organisms used to kill fungi or fungal spores;
 - Insecticides: these are chemical substances used to kill insects.
15. Plant protection products are manufactured by research-led manufacturers and post-patent/generic manufacturers. Manufacturers formulate plant protection products using an active ingredient or mixture of active ingredients depending on the required outcome. In general, research-led manufacturers have patents on the active ingredient(s) used in each of their plant protection products which can last approximately 20-25 years after which knowledge of the active ingredient(s) becomes available to all manufacturers. Examples of research-led manufacturers currently selling plant protection products in the State include Monsanto Ireland Limited, Syngenta Ireland Limited, Bayer Limited, BASF Ireland Limited, E.I. du Pont de Nemours and Company and Dow AgroSciences LLC.
16. Once the patent on a plant protection product expires, generic manufacturers can produce substitute products. Generic plant protection products fulfil the same quality requirements but are often cheaper than the original patented product. Generic plant protection products are often referred to as “off-patent products”. Examples of generic manufacturers currently selling plant protection products in the State include Adama Agricultural Solutions Limited, FMC Corporation, Arysta LifeScience Limited, Barclay Chemicals Ireland Limited, Nufarm Ireland Limited and Hygeia Chemicals Limited.
17. The introduction in 2011 of the “Mutual Recognition” system, whereby the holder of an existing authorisation for a plant protection product in another Member State in the European Union may apply for mutual recognition of authorisation of the same plant

³ For more information on plant protection products, see: <http://www.pcs.agriculture.gov.ie/plantprotectionproducts/>



protection product in the State, has significantly increased the number of generic plant protection products currently available for sale in the State.⁴

18. Figure 1 below illustrates the typical supply chain for plant protection products in the State.



Source: The Competition and Consumer Protection Commission

19. Manufacturers of plant protection products (both research-led and post-patent/generic) sell their products to wholesalers who in turn sell to downstream retailers (e.g., agricultural co-operatives, agri-merchants, crop specialists, etc). The parties informed the Commission that there are two broad categories of downstream retailers: primary and secondary. The former tend to be large retailers with a network of branches located throughout the State, who purchase plant protection products from both manufacturers directly and wholesalers.⁵ Secondary retailers tend to be smaller and they purchase supplies of plant protection products from wholesalers directly and from primary retailers.⁶ Retailers (both primary and secondary) sell plant protection products to end users, which are primarily farmers.

⁴ By way of example, the parties informed the Commission that Trinexapac-ethyl, a synthetic plant growth regulator used to control the growth on various grass species and crops, was only available under two branded products in the State in 2012. Following the introduction of “Mutual Recognition”, there are currently thirteen branded products of Trinexapac-ethyl now available in the State.

⁵ A number of retailers contacted by the Commission confirmed that they purchase supplies of plant protection products both from manufacturers directly and from wholesalers. For retailers who sell a large volume of plant protection products, it makes economic sense, where possible, to purchase directly from manufacturers rather than buying through a wholesaler. Furthermore, a number of research-led manufacturers of plant protection products (e.g., Syngenta Ireland Limited, Bayer Limited, BASF Ireland Limited) have their own sales teams in the State that sell directly to both wholesalers and primary retailers. Some manufacturers, however, only sell their plant protection products in the State through wholesalers.

⁶ Goldcrop informed the Commission that it estimates that secondary retailers purchase around 20% of their supplies of plant protection products from primary retailers with the remaining 80% sourced from wholesalers. It does not make economic sense for manufacturers to sell directly to secondary retailers since the latter only purchase small volumes of plant protection products.



Competitive Analysis

20. There is both a horizontal and vertical overlap between the activities of the parties in the State.

Horizontal Overlap

21. There is a horizontal overlap between the parties since both Goldcrop and Croplink are active in the wholesale supply of plant protection products to retail customers in the State.

Relevant Product and Geographic Market

22. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.
23. With respect to the relevant product market, in this instance the Commission does not need to come to a definitive view as to whether the wholesale supply of specific types of plant protection products (e.g., herbicides, fungicides, insecticides, etc) constitute separate and distinct product markets or are part of a broader market encompassing the wholesale supply of all types of plant protection products. The precise product market definition will not materially alter the Commission's assessment of the competitive impact of the notified transaction. In order to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission assessed its impact on competition by reference to the wholesale supply of all types of plant protection products. Given that all wholesalers currently active in the supply of plant protection products in the State supply all types of plant protection products to retail customers, the Commission considers this to be the most appropriate approach in this instance.
24. With respect to the relevant geographic market, the Commission does not need to come to a definitive view in this instance since its assessment of the competitive impact of the proposed transaction will be unaffected whether the relevant geographic market is defined as local, regional or national. Since most wholesalers currently active in the supply of plant protection products in the State operate on a nationwide basis, the Commission assessed the impact of the proposed transaction on competition in the potential market for the wholesale supply of plant protection products in the State. Given that the vast majority of retail customers contacted by the Commission expressed the view that transport costs are not a significant factor when choosing a supplier of plant protection products, the Commission considers this to be the most appropriate approach in this instance.
25. In conclusion, for the purpose of its competitive assessment, the Commission examined the competitive impact of the proposed transaction in the potential market for the wholesale supply of plant protection products in the State.

The Wholesale Supply of Plant Protection Products in the State

Market Structure



26. The parties state in the notification:

“No trade body or organisation collects up to date, complete and verifiable details on the size of the Irish [wholesale] plant protection market. However, we estimate the value to be in the region of €113 million valued at end-user prices.”

27. Based on the parties’ market size estimate, the parties state that Goldcrop had an estimated share of [5-10]% in the wholesale supply of plant protection products in the State in 2015 with Croplink having a [5-10]% share. Thus, Goldcrop will have an estimated share of approximately [15-20]% post-transaction in the wholesale supply of plant protection products in the State. No estimated market share figures were provided by the parties for competing wholesalers of plant protection products currently active in the State.

Competitive Effects Analysis

28. For the reasons set out below, the Commission considers that the proposed transaction raises no competition concerns in the potential market for the wholesale supply of plant protection products in the State.

29. First, no retail customer that responded to the Commission’s questionnaire raised any competition concerns about the proposed transaction.⁷ Furthermore, four customers expressed the view that the proposed transaction may have a positive impact on competition in the market and potentially on end users. It is worth considering in detail their views.

30. One retail customer expressed the following view:

“If terms and pricing are not affected and there is a use of synergies to deliver a more competitive offering then the transaction will be beneficial or have little consequence. Overall, the wholesale business allows businesses like ours to compete with the bigger companies and co-operatives who have direct accounts and established relationships with manufacturers. It may be that this transaction may allow for a better product offering and more competitive pricing. End consumers should not be at all affected by the transaction. It is already a very competitive market place. The presence of the co-operatives and big retailers with direct accounts [with manufacturers] ensures that the end consumer will be left unaffected.”

31. One retail customer expressed the following view:

“Both these companies will actually complement each other and ensure a greater range of product is available

⁷ As detailed above, eighteen retail customers in total (ten for Goldcrop; eight for Croplink) responded to the Commission’s questionnaire.



following the merger. I would think the new company will result in a more competitive force in the Irish pesticide supply chain, culminating in a more competitive price to end users."

32. One retail customer expressed the following view:

"The proposed transaction will help rationalise the distribution chain and reduce costs."

33. One retail customer expressed the following view:

"There may be additional positive impacts by dealing with a larger company with greater access to a broader product range."

34. Second, no competitor that responded to the Commission's questionnaire raised any competition concerns about the proposed transaction. One competitor expressed the view that Goldcrop and Croplink currently compete with both wholesalers and manufacturers that sell directly to retailers and that any attempt by Goldcrop to raise the price of its plant protection products post-transaction will result in it losing market share.

35. Third, Goldcrop will continue to face a competitive constraint post-transaction from wholesalers of plant protection products currently active in the State, including: DHM Agrochemicals Limited, Whelehan Group,⁸ Hygeia Chemicals Limited⁹ and Unichem Limited.

36. Fourth, Goldcrop will also continue to face a competitive constraint post-transaction from manufacturers of plant protection products who, in addition to supplying wholesalers, also supply directly to primary retailers in the State.¹⁰ Primary retailers of plant protection products, in addition to purchasing supplies from wholesalers, also purchase supplies directly from manufacturers (both research-led and generic).¹¹ Therefore, in addition to having the ability post-transaction to switch (or threaten to switch) to competing wholesalers of plant protection products,¹² primary retailers will also have the ability to resist any possible price rise by Goldcrop post-transaction by increasing (or threatening to increase) purchases of plant protection products directly from manufacturers.¹³

⁸ Whelehan Group informed the Commission that it is a distributor (rather than a wholesaler) of plant protection products to retail customers in the State on behalf of manufacturers such as Dow AgroSciences LLC, Belchim Crop Protection N.V., Certis Europe B.V., Arysta LifeScience Limited, DeSangosse S.A.S. and Headland Agrochemicals Limited.

⁹ Hygeia Chemicals Limited, based in Co. Galway, is both a manufacturer and wholesaler of plant protection products.

¹⁰ It is significant in this regard that all three wholesalers of plant protection products who responded to the Commission's questionnaire stated that they compete with both wholesalers and manufacturers.

¹¹ The vast majority of retailers who responded to the Commission's questionnaire indicated that they purchase supplies of plant protection products from both wholesalers and manufacturers.

¹² The vast majority of retailers who responded to the Commission's questionnaire indicated that it is easy to switch supplier of plant protection products.

¹³ This will not be an option, however, in the case of manufacturers who only sell their plant protection products in the State through wholesalers.



37. While this option is not available to secondary retailers,¹⁴ such retailers, in addition to having the ability to switch (or threaten to switch) to competing wholesalers of plant protection products, will also have the ability post-transaction to switch (or threaten to switch) to primary retailers of plant protection products in response to a price rise by Goldcrop.¹⁵
38. In conclusion, the Commission considers that the proposed transaction will not substantially lessen competition in the potential market for the wholesale supply of plant protection products in the State described above.

Vertical Overlap

39. There is a vertical relationship between the parties in the State. In 2015, Croplink made sales of plant protection products to Goldcrop amounting to €[...] while Goldcrop made sales of plant protection products amounting to €[...] to Croplink.
40. In its assessment of the proposed transaction, the Commission considered whether the proposed transaction would provide Goldcrop with the ability and incentive to foreclose rival wholesalers of plant protection products from the market by, for example, limiting supplies of plant protection products to rival wholesalers in order to restrict their ability to supply plant protection products to retail customers in the State. For the following reasons, the Commission considers that Goldcrop will not have the ability post-transaction to foreclose rival wholesalers of plant protection products.
41. First, Goldcrop will not have sufficient market power in the wholesale supply of plant protection in the State such that it would have the ability to foreclose rival wholesalers of plant protection products post-transaction. As noted above in paragraph 27, Goldcrop will have an estimated share of approximately [15-20]% post-transaction in the wholesale supply of plant protection products in the State.
42. Second, competing wholesalers currently active in the State purchase the vast majority of their supplies of plant protection products from manufacturers rather than from competing wholesalers.¹⁶ Goldcrop will therefore have no ability to foreclose competing wholesalers of plant protection products following the proposed transaction.
43. Third, no competing wholesaler expressed any concerns to the Commission about possible foreclosure issues arising post-transaction.
44. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

¹⁴ Due to the relatively small volume of plant protection products purchased by secondary retailers, manufacturers do not sell directly to secondary retailers.

¹⁵ As noted above, Goldcrop informed the Commission that it estimates that secondary retailers purchase around 20% of their supplies of plant protection products from primary retailers with the remaining 80% sourced from wholesalers.

¹⁶ This was confirmed to the Commission by the parties. Less than [...] % of Goldcrop's total sales of plant protection products in the State in 2015 were made to competing wholesalers. [...]



45. In the notification, the parties provided a copy of the draft SPA, which contains a number of restrictive obligations on [...] and [...]. These include non-compete and non-solicitation obligations restricting each of [...] and [...] for a specified period from competing with the business of Croplink and from soliciting existing customers of Croplink.
46. The Commission considers that these restrictive obligations do not exceed the maximum duration acceptable to the Commission and that they are directly related to and necessary for the implementation of the proposed transaction.¹⁷

¹⁷ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 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 transaction whereby Goldcrop Holdings Limited would acquire sole control of Croplink (Ireland) 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