



DETERMINATION OF MERGER NOTIFICATION M/16/045 - MONDÉLÉZ/SPEEDY ASSETCO

Section 21 of the Competition Act 2002

Proposed acquisition by Mondelēz International, Inc. of rights and assets relating to a portfolio of *Cadbury* brands for sweet biscuit products

Dated 26 October 2016

Introduction

1. On 20 September 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 Mondelēz International, Inc. (“Mondelēz”) would acquire (a) the rights currently held by Burton’s Foods Limited (“Burton’s”) by virtue of a licence agreement concluded between Cadbury Ltd, Cadbury Schweppes plc, Premier Brands Ltd and Premier Brands UK Ltd on 13 May 1986 (as amended on 18 April 2002) (the “Licence”);¹ and (b) related assets currently owned by Burton’s.
2. Pursuant to the proposed transaction, Mondelēz will acquire the rights currently held by Burton’s under the Licence (together with associated rights and assets). Following implementation of the proposed transaction, Mondelēz will have the right to manufacture, market and sell the following portfolio of sweet biscuit products under the *Cadbury* brand:
 - *Cadbury Fingers*;
 - *Cadbury Animals*;
 - *Cadbury Mellos*;
 - *Cadbury Shorties*;
 - *Cadbury Wheaties*;
 - *Cadbury Special Occasions*;
 - *Cadbury Occasions*;

¹ The Licence was originally granted to Premier Brands by two affiliates of Mondelēz, Cadbury Ltd and Cadbury Schweppes plc (which are now known as Cadbury UK Ltd and Mondelēz UK Holdings & Services Ltd, respectively). Pursuant to a deed of assignment dated 30 April 1998, Premier Brands assigned rights under the Licence to Horizon Biscuit Company Ltd, which merged with Burton’s Gold Medal Biscuits in 2000 to form Burton’s.



- *Cadbury Festive Friends*; and
 - *Cadbury Cookies* (collectively, the “Target Portfolio”).
3. The proposed transaction is to be implemented pursuant to an asset sale agreement dated 12 August 2016 (the “APA”) between Burton’s and a newly-incorporated, wholly-owned subsidiary of Burton’s, Speedy Assetco Limited (“Speedy Assetco”). In accordance with the APA, Speedy Assetco will purchase the following assets from Burton’s:
- the benefit (subject to the burden) of Burton’s’ rights under the Licence;²
 - finished goods which have been manufactured, marketed and/or distributed by Burton’s (or by any affiliate of Burton’s) pursuant to rights granted under the Licence and which are owned by Burton’s (or any affiliate of Burton’s) at the time of completion of the proposed transaction;
 - associated intellectual property rights and know-how relating to the Target Portfolio;
 - the goodwill of Burton’s in relation to the Target Portfolio; and
 - certain plant, machinery and other equipment (collectively, the “Target Assets”).
4. The entire issued share capital of Speedy Assetco will subsequently be purchased by Kraft Foods Česko Holdings B.V. (“Kraft”), a Dutch-incorporated, wholly-owned subsidiary of Mondelēz. The purchase of the entire issued share capital of Speedy Assetco will be implemented pursuant to a share purchase agreement dated 12 August 2016 (the “SPA”) entered into by Burton’s, Kraft and their respective guarantors.³

The Undertakings Involved

Mondelēz

5. Mondelēz is a worldwide producer and supplier of snack foods, which owns brands covering biscuits, chocolate, gum, confectionery, beverages and cheese. Mondelēz’s key brands include *Cadbury*, *LU*, *Tuc*, *Milka*, *Oreo*, *Nabisco*, *Trident* and *Tang*. Mondelēz was incorporated in the United States and is listed on the NASDAQ stock market. Mondelēz was created following the spin-off by Kraft Foods Inc. of its North American grocery business, Kraft Foods Group, Inc., in October 2012.
6. In the State, Mondelēz operates manufacturing facilities in Co. Dublin and Co. Kerry. The former facility manufactures chocolate, while the latter facility manufactures chocolate crumb which is supplied to the Co. Dublin facility and sold in the United

² This will be facilitated by a licence transfer agreement dated 12 August 2016 [...].

³ [...] has agreed to guarantee the obligations of Burton’s under the SPA and [...] has agreed to guarantee the obligations of Kraft under the SPA.



Kingdom, Canada and the United States. Mondelēz-owned brands which are sold to the retail sector in the State include *Cadbury*,⁴ *Milka*, *Oreo* and *Toblerone*.

7. For the financial year ending 31 December 2015, Mondelēz's worldwide turnover was approximately €26.7 billion, of which approximately €[...] was generated in the State.

Speedy Assetco

8. Speedy Assetco is a newly-incorporated, wholly-owned subsidiary of Burton's which, pursuant to the APA, will purchase the Target Assets from Burton's. It currently has no business activities and has published no financial reports to date. Burton's is active in the manufacture and sale of sweet and savoury biscuits and snacks. As well as currently manufacturing sweet biscuit products in the Target Portfolio under the Licence, Burton's owns and manufactures brands such as *Wagon Wheels*, *Jammie Dodgers*, *Maryland* and *Fish 'n' Chips*.

The Target Portfolio

9. As described in paragraph 2 above, the Target Portfolio comprises a number of *Cadbury* sweet biscuit products, which are currently manufactured under the Licence by Burton's in the United Kingdom. While the majority of sales of products in the Target Portfolio in 2015 was generated in the United Kingdom and in the State, such products are also sold internationally, most notably in Canada, France and the United States. In the State, the products in the Target Portfolio are supplied to retailers such as Dunnes Stores, Tesco Ireland and Aldi Ireland.
10. For the financial year ending 2 January 2016, the Target Portfolio's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

Rationale for the Proposed Transaction

11. The parties state in the notification:

"Ownership of the Licence offers Mondelēz an opportunity to accelerate global growth and innovation, and expand its position globally and in Europe. The transaction will help Mondelēz to unify and expand its global Cadbury biscuits' portfolio in key markets and enable the development of new products by using its chocolate and biscuit innovation platforms. The sale will enable Burton's to implement a transformational growth plan across its core brands, including Maryland, Jammie Dodgers, Wagon Wheels and Fish 'n' Chips, and continue to invest in innovation to grow in both branded and private label business."

Third Party Submissions

12. No submission was received.

⁴ Mondelēz sells a range of non-biscuit products under the *Cadbury* brand in the State. For more information, please see footnote 5.



Competitive Analysis

13. There is a horizontal overlap between the parties' activities in the State since both Mondelēz and the Target Portfolio generate turnover from the supply of sweet biscuits to the retail grocery sector. The retail grocery sector encompasses large supermarkets known as "multiples" (such as Dunnes Stores, SuperValu and Tesco, as well as Aldi and Lidl, who are sometimes referred to as 'discounters'), medium-sized shops which are usually part of a "symbol" group (such as Centra, Londis and Spar), and smaller convenience shops and independent retailers. Mondelēz supplies the following three sweet biscuit brands to retailers in the State: *Oreo*, *beVita* and *Cadbury Snack*.⁵ The Target Portfolio comprises *Cadbury*-branded sweet biscuits (see paragraph 2 above) which are currently supplied by Burton's to the retail sector in the State.⁶
14. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.
15. With respect to the relevant product market, in this instance the Commission does not need to reach a definitive view as to whether the supply of sweet biscuits to the retail sector constitutes a separate and distinct product market or is forms part of a broader market encompassing the supply of all types of biscuits to the retail sector. The precise product market definition will not materially alter the Commission's assessment of the competitive impact of the proposed 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 supply of sweet biscuits to the retail sector.⁷
16. With respect to the geographic boundaries of the relevant product market, the Commission considers that the State is the appropriate geographic area in which to assess the competitive impact of the proposed transaction. This is in line with previous merger determinations by the Commission involving undertakings active in the supply of food products to the retail sector.⁸ In any case, the Commission considers that in this instance it is not necessary for the Commission to reach a definitive view as to the precise scope of the geographic market since the Commission's assessment of the competitive impact of the proposed transaction would be the same regardless of the precise geographic market definition adopted.
17. For the reasons set out below, the Commission considers that the proposed transaction raises no competition concerns in the potential market for the supply of sweet biscuits to the retail sector in the State.
18. First, the estimated market shares of Mondelēz and the Target Portfolio for the supply of sweet biscuits to the retail sector in the State are relatively low and the increase in

⁵ Mondelēz also supplies a number of other *Cadbury*-branded food products, including *Cadbury Timeout* or *Cadbury brunch bar*, to the retail sector in the State. A list of these products can be found at <https://www.cadbury.ie/products>. Mondelēz expressed the view to the Commission that it does not consider *Cadbury Timeout* or *Cadbury brunch bar* to be sweet biscuits since "both of these products have a very different taste profile, manufacturing requirements and consumption occasion to sweet biscuits."

⁶ *Cadbury Snack* is not part of the Target Portfolio.

⁷ The same approach was taken by the Commission's predecessor, the Competition Authority, in its merger determination in *M/11/028 – Valeo Foods/Jacob Fruitfield* which can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m11028-valeo-foodsjacob>. See paragraph 21 of that determination for a discussion of the relevant product market.

⁸ See, for example, paragraph 90 of the Commission's merger determination in *M/14/026 – Valeo/Wardell/Robert Roberts* which can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m14026-valeo-wardell-robert-roberts>.



market share following the proposed transaction will not be significant. The parties estimate that Mondelēz had a share of supply of sweet biscuits to the retail sector in the State of [5-10]% by value in 2015, while the Target Portfolio had an estimated share of supply of sweet biscuits to the retail sector in the State of [0-5]% by value.⁹ Post-transaction, Mondelēz will have a share of supply of sweet biscuits to the retail sector in the State of just under [10-15]% by value.

19. Second, Mondelēz will continue to face a competitive constraint post-transaction from other sweet biscuit brands supplied to the retail sector in the State, such as *Jacob's* (owned by Valeo Foods UK Limited), *McVitie's* (owned by United Biscuits (Ireland) Limited) and *Fox's* (owned by 2 Sisters Food Group). During its investigation, the Commission sent a questionnaire to the parties' main retail customers for sweet biscuits in the State. Three of the four retail customers that responded to the Commission's questionnaire¹⁰ expressed the view that each of the *Jacob's* and *McVitie's* sweet biscuit brands are close competitors to both Mondelēz and the Target Portfolio.
20. Third, no retail customer that responded to the Commission's questionnaire raised any competition concerns about the proposed transaction. One retailer expressed the following view:

"Combined Mondelēz business, including the Burton's portfolio, will not impact on the ranking of the No.1 and No.2 suppliers in the market being Jacob's and United Biscuits. These suppliers are still the market leaders by some distance."

21. The proposed transaction does not raise any vertical competition concerns.
22. 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

23. In the notification, the parties provided a copy of the SPA and a copy of an agreed form contract manufacturing agreement,¹¹ both of which contain a number of restrictive covenants on Burton's. The parties state in the notification that the restrictive covenants are directly related and necessary to protect the value of the goodwill and know-how being transferred to Kraft pursuant to the proposed transaction.

⁹ No estimated market shares for competitors in the supply of sweet biscuits to the retail sector in the State were provided to the Commission by the parties.

¹⁰ The Commission prepared a questionnaire to be answered by each of the parties' top five retail customers for sweet biscuits in the State in 2015. Since four retail customers were common to both parties' top five retail customers for sweet biscuits in the State, six customers in total received a questionnaire from the Commission. Four retail customers in total responded to the Commission's questionnaire.

¹¹ [...]



24. 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.¹²

¹² 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 Mondelēz International, Inc. would acquire (a) the rights currently held by Burton's Foods Limited by virtue of a licence agreement concluded between Cadbury Ltd, Cadbury Schweppes plc, Premier Brands Ltd and Premier Brands UK Ltd on 13 May 1986 (as amended on 18 April 2002); and (b) related assets currently owned by Burton's Foods 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

Fergal O'Leary
Member
Competition and Consumer Protection Commission