



DETERMINATION OF MERGER NOTIFICATION M/15/023 – GLANBIA / COLD CHAIN

Section 21 of the Competition Act 2002

Proposed acquisition of Cold Chain Food Distributors Limited by Glanbia Foods Ireland Limited

Dated 11 June 2015

Introduction

1. On 6 May 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 Glanbia PLC, through its wholly owned subsidiary Glanbia Foods Ireland Limited (“Glanbia Foods”), would acquire the entire issued capital of Cold Chain Food Distributors Limited (“Cold Chain”).

The Proposed Transaction

2. The proposed transaction is to be completed pursuant to a Share Purchase Agreement dated 6 May 2015 between Glanbia Foods and the current owners of Cold Chain: Messrs Martin Kiernan, David Kiernan and Gerard Kiernan and Donegal Investment Group plc (the “Vendors”)². The Vendors have agreed to sell, and Glanbia Foods has agreed to purchase, the entire issued share capital of Cold Chain.³

Glanbia PLC and Glanbia Foods

3. Glanbia PLC, headquartered in Kilkenny, Co. Kilkenny is a public company listed on the London and Irish stock exchanges.⁴ Glanbia PLC is involved in various dairy product sectors including liquid milk (i.e., milk for human consumption in liquid form), cream, cheese, whey proteins, milk powders, sports nutrition products and micro-nutrients. Glanbia PLC’s products are distributed in the State and worldwide in over 130 countries.

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 Mr Martin Kiernan owns [...]% of Cold Chain ordinary shares, Messrs David and Gerard Kiernan each hold [...]% and Donegal Investments Limited holds [...]%. Donegal Investments Limited also holds cumulative preference shares.

³ The parties state that there is [an existing usage] of the brand by Clona Dairy Products Limited (“Clona Dairy”), a dairy company based in Clonakilty Co. Cork. The parties state that the proposed transaction does not affect Clona Dairy’s existing arrangements (e.g., customer lists and use of brand name). Notification page 17.

⁴ Glanbia PLC is 41.2% owned by Glanbia Co-Operative Society Limited (Glanbia Coop). Glanbia Foods states that there are proposals currently being considered by the members of Glanbia Coop to reduce their interest to 36.5%. Please see: <<http://www.glanbia.com/media/press-releases/2015>>.



4. Glanbia Foods,⁵ a wholly owned subsidiary of Glanbia PLC, also headquartered in Kilkenny, Co. Kilkenny, is the most relevant part of Glanbia PLC for the purposes of reviewing the proposed transaction. In the State, Glanbia Foods is involved in the manufacture, sale and distribution of dairy products (e.g., milk, cream, butter, dairy spreads and cheese). Glanbia Foods has a range of consumer brands including Avonmore, Premier, Kilmeaden, Snowcream, Wexford, Mooju and CMP.
5. In addition, Glanbia Foods also provides certain selling, warehousing and distribution services to business units within Glanbia PLC, e.g., Glanbia Performance Nutrition (for sports nutrition products) and to other parties e.g., Innocent (for juices and smoothies).⁶
6. For the year ended 31 December 2014, Glanbia plc's worldwide turnover was approximately €2.583 billion, of which approximately €749 million was generated in the State. For the year ended 31 December 2014 the worldwide turnover of Glanbia Foods was €[...] million of which €[...] million was generated within the State.

Cold Chain

7. Cold Chain is headquartered in Finglas, Co. Dublin and is a private company involved mainly in the wholesale distribution of dairy products and to a lesser extent the wholesale distribution of non-dairy products⁷. Cold Chain is active primarily in Counties Carlow and Dublin⁸. It carries on business under the trade name Dairyland Cuisine and primarily distributes Dairyland Cuisine branded products and to a lesser extent other branded products.⁹
8. Cold Chain is not involved in the manufacture of the products it sells nor does it sell products to final consumers. For example, Cold Chain buys packed liquid milk from processors (such as Glanbia and Glenisk). Cold Chain then sells packed liquid milk, under the Dairyland Cuisine brand, to retailers and food service¹⁰ operators. Approximately [...] % of Cold Chain's business is in the food service sector and the remaining [...] % of its business is in the retail sector.

⁵ Glanbia Foods Ireland Limited also trades as Glanbia Consumer Foods.

⁶ Glanbia also sells Kerrygold branded butter products under license from the Irish Dairy Board and purchases a limited amount of non-dairy products under its own brands (e.g., Avonmore juice) and sells them to customers. For more information on Glanbia plc and Glanbia Foods see <<http://www.glanbia.com>>.

⁷ Approximately [...] % of *Cold Chain's* business is in dairy products and approximately [...] % of its business is in non-dairy products. Non-dairy products distributed by Cold Chain include bread, eggs, juice, sauces and jams. For more information on Cold Chain, trading as Dairyland Cuisine, see <www.dairylandcuisine.com/1>.

⁸ The parties state that Dairyland Cuisine also distributes in [other parts of Leinster].

⁹ Other brand products would include Low brand butter portions, Squeez brand orange juice and Blenders brand sauces. Correspondence with Cold Chain dated 18 May 2015.

¹⁰ The food service sector, in this context, refers to the preparation of food outside of residential premises for sale by food service operators. Consumption of food may take place inside the food service operator's premises, or inside residential premises (or elsewhere) as might occur for "takeaway" food. 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>>.



9. Cold Chain uses a fleet of [...] trucks to deliver produce primarily within the Dublin ([...] trucks) and Carlow ([...] trucks) areas.
10. For the year ended 1 November 2014, Cold Chain's worldwide turnover was approximately €[...] million, all of which was generated within the State.

Rationale for the Proposed Acquisition

11. Glanbia Foods states that

*"The Proposed Transaction will allow Glanbia to broaden both its product range for customers in the growing foodservice channel ... and its customer base. Additionally, Glanbia expects to achieve cost savings in distribution by using its existing warehousing systems and distribution network already in place from Font Hill, Co Dublin. Administrative cost reductions are also expected by using Glanbia's centralized sales and administrative functions in Citywest, Co Dublin."*¹¹

12. Cold Chain states that

*"The Vendors seek to realise value from their investment in Dairyland Cuisine and the Vendors consider that the Proposed Transaction will best benefit the Dairyland Cuisine business into the future."*¹²

Third Party Submissions

13. No submission was received.

Competitive Analysis

Market Definition

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.

Horizontal Overlap

15. There is a horizontal overlap in the activities of the parties as both Glanbia Foods and Cold Chain are involved in the distribution of dairy products (and to a lesser extent non-dairy products) to both the food service and the retail sectors. As set out below, the overlap in the food service sector is more significant than in the retail sector. However, in neither the retail sector nor the food service sector is the overlap between Glanbia Foods and Cold Chain of sufficient magnitude to indicate that the proposed transaction would result in a substantial lessening of competition.

¹¹ Notification page 7.

¹² Ibid. page 7.



Food Service Sector

16. The Commission acknowledges that independent market share data at the wholesale level is not readily available. The parties, however, estimate that Glanbia Foods's market share of the supply of dairy products to the food service sector within the State is of the order of [...]%.¹³ and Cold Chain's market share is no more than [...]%.¹⁴
17. There is competition in the food service sector from food wholesalers such as BWG Foodservice, Cuisine de France, Lynas, Musgrave, and Pallas. The competitive constraint exerted by these firms on Glanbia Foods will remain unchanged after the completion of the proposed transaction.
18. The parties argue further that foodservice customers have at least some buyer power, e.g. options with respect to tendering for their business.¹⁵ The extent of buyer power may, however, vary between food service customers depending on their particular circumstances.
19. In summary, the market share estimates, the presence of significant competitors in the food service sector and the bargaining power of at least some food service operators indicate that the proposed transaction will not lead to a substantial lessening of competition in the supply of dairy products in the food service sector.

Retail Sector

20. While there is some horizontal overlap in the supply of milk and other products to the retail sector, the degree of overlap is not significant. The parties estimate a market share of [...]% for Glanbia Foods for the 12 month period up to November 2014.¹⁶ In contrast, the Cold Chain market share is trivial. As stated by the parties:

“Dairyland Cuisine is a very minor supplier of milk (and other products) into the retail convenience channel in the Dublin and Carlow areas. Dairyland Cuisine's market share figure barely show up in the AC Nielsen market share statistics (even for Dublin and/or Rest of Leinster). For example, for the 12 months to 20 November 2014, Dairyland Cuisine's market share figures for milk (by value) for Ireland (i.e. Republic of

¹³ Francis O'Toole "Glanbia's Proposed Acquisition of Dairyland Cuisine: An Economics of Competition Policy Report" page 4. Submitted with the Notification documents.

¹⁴ Ibid page 4. The parties argue also that a more accurate estimate for the market share of Glanbia Foods is no more than [...]% once Glanbia branded products distributed by third parties other than Glanbia Foods are subtracted. These estimates are based on market size figures estimated by Bord Bia. See <<http://www.bordbia.ie/industry/events/SpeakerPresentations/2014/FoodServiceSeminar2014Reports/2014%20Bord%20Bia%20Irish%20Foodservice%20Channel%20Insights.pdf>>.

¹⁵ Ibid page 4.

¹⁶ Ibid. page 4.



Ireland), Dublin and Rest of Leinster were [...] per cent, [...] per cent and [...] per cent, respectively.”¹⁷

21. The increase in market share after the implementation of the proposed transaction would be minimal and indicates that the proposed transaction would not lead to a substantial lessening of competition in the supply of dairy products in the retail sector.

Vertical Relationship

22. There is a vertical relationship between the parties since Glanbia is a supplier of dairy products to Cold Chain. The proposed transaction would vertically integrate Cold Chain, a dairy product distributor, with the supplier of the vast majority of its dairy products (namely Glanbia Foods). The parties state that

“Glanbia is already a principal supplier of milk to Dairyland Cuisine. Dairyland Cuisine buys milk from Glanbia and then sells this milk on to its own customer list. Glanbia already supplies approx. [...] % of Dairyland Cuisine’s supply of milk and cream product.”¹⁸

23. The Commission’s analysis of vertical effects focuses on (i) input foreclosure (e.g., the merged entity reducing or eliminating supplies of milk to competitors of Cold Chain) and (ii) customer foreclosure (e.g., the merged entity reducing or eliminating purchases of milk from milk processing competitors of Glanbia Foods). The proposed transaction would not, however, give rise to vertical competition concerns for the reasons set out below.
24. The merged entity would not, subsequent to the implementation of the proposed transaction, have an incentive to engage in input foreclosure (i.e., to reduce the supply or, or refuse to supply, dairy products to competitors of Cold Chain) not least because Cold Chain is a very small customer of Glanbia Foods.
25. The merged entity would not, subsequent to the implementation of the proposed transaction, have an incentive to engage in customer foreclosure (i.e., to reduce or eliminate purchases of milk from milk processing competitors of Glanbia Foods). Furthermore, any reduction in purchases by the merged entity from competitors of Glanbia Foods would have a trivial competitive effect because Cold Chain already purchases the vast majority of its milk and dairy products from Glanbia Foods.

¹⁷ Ibid. page 4.

¹⁸ Notification page 14. The parties identify [...] as the second largest supplier supplying [...] per cent.



Conclusion

26. 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

27. The Share Purchase Agreement between Glanbia Foods and the Vendors contains a number of restrictive obligations on the Vendors. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.¹⁹ 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.

¹⁹ 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 Glanbia PLC, through its wholly owned subsidiary Glanbia Foods Ireland Limited, would acquire the entire issued capital of Gold Chain Food Distributors 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