



# DETERMINATION OF MERGER NOTIFICATION M/15/068 - LISAVAIRD / GLENMAR

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## Section 21 of the Competition Act 2002

### Proposed acquisition of sole control of Glenmar Shellfish Limited by Lisavaïrd Co-operative Creamery Limited

Dated 22 December 2015

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#### Introduction

1. On 27 November 2015, in accordance with section 18(1) of the Competition Act 2002, as amended<sup>1</sup> (“the 2002 Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Lisavaïrd Co-operative Creamery Limited (“Lisavaïrd”), through its wholly-owned subsidiary Lisavaïrd Food Group Limited (“Lisavaïrd Food”), would acquire sole control of Glenmar Shellfish Limited (“Glenmar”).

#### The Proposed Transaction

2. The proposed transaction is to be entered into pursuant to a Share Purchase Agreement (“SPA”) between Bendon Fish Exports Limited (“Bendon Fish”), Mel Bendon and Lisavaïrd Food for the purchase of [...] % of the issued share capital of Glenmar.<sup>2</sup> In the notification, the parties provided a copy of a recent draft of the SPA.<sup>3</sup> [...].
3. Section 18(1A)(b)(ii) of the Act allows for parties to make a notification to the Commission where the parties have demonstrated to the Commission a good faith intention to conclude an agreement. In this case, 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.

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<sup>1</sup> 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.

<sup>2</sup> Bendon Fish and Mel Bendon have shareholdings in Glenmar of [...] % and [...] %, respectively.

<sup>3</sup> Since the filing of the notification, the parties have informed the Commission that the SPA was signed by Bendon Fish, Mel Bendon and Lisavaïrd Food on 15 December 2015.



## The Undertakings Involved

### *Lisavaird and Lisavaird Food*

4. Lisavaird, headquartered at Clonakilty, County Cork, is a co-operative society involved, mainly within the State, in the dairy processing sector. Lisavaird is also involved in various other sectors and operates the following eight business divisions:
- (a) Dairy Processing - Lisavaird collects milk from its dairy farmer members for processing, mainly by Carbery Food Ingredients Limited and also by Clona Dairies.<sup>4</sup>
  - (b) Animal feed manufacturing - Lisavaird produces:
    - (i) a range of ruminant feed suitable for different types of cattle, e.g., young stock, finishing stock, cows, bulls etc., and
    - (ii) bulk feed products, mainly for pigs and also for sheep and poultry.
  - (c) Retailing - Lisavaird owns and operates a network of seven retail stores in West Cork selling a range of household goods, groceries, DIY goods, building materials and farming supplies.
  - (d) Cooked meats - Lisavaird, through its wholly-owned subsidiary Glen Aine Foods Ltd., produces and supplies meat products for sale, mainly in the State and also in Northern Ireland, to:
    - (i) the food retail sector (e.g., [...]), and
    - (ii) food service sector customers (e.g., [...]).
  - (e) Bakery - Lisavaird, through its wholly-owned subsidiary Coolmore Fresh Foods Ltd., manufactures cakes and muffins for sale to food retailer customers, mainly in the State and also in Northern Ireland.
  - (f) Pig and Dairy Farms - Lisavaird operates two piggeries<sup>5</sup> and one dairy farm.
  - (g) Wind energy - Lisavaird, through its joint venture with Brookfield Renewable Energy Group, owns and operates a windfarm in Owenreagh in County Tyrone.

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<sup>4</sup> Lisavaird has shareholdings in Carbery Food Ingredients Limited and Clona Dairies of approximately [...] % and [...] %, respectively.

<sup>5</sup>[...].



- (h) Property - Lisavaird holds investment properties in Clonakilty and also Frankfurt, Germany.<sup>6</sup>
- 5. Lisavaird Food, a wholly owned subsidiary of Lisavaird, is a newly incorporated company created for the purpose of implementing the proposed transaction.
- 6. For the financial year ended 31 December 2014, Lisavaird's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

### *Glenmar*

- 7. Glenmar is a private limited company, headquartered in Union Hall, County Cork. Glenmar is involved, internationally and within the State, in the processing, packaging and supply of "white fish" (including cod, whiting, salmon [...] and shellfish (including prawns, oysters and razor clams). Glenmar does not operate vessels but rather purchases seafood from third parties operating vessels in the Irish Sea and near Porcupine Bank off the west coast of Ireland.<sup>7</sup> Glenmar operates its main processing and distribution facility at Union Hall, County Cork and operates another facility at Blanchardstown, County Dublin.
- 8. Glenmar's business is structured into the following four divisions:
  - (a) Fresh and Frozen Seafood - Glenmar, primarily through its packing facility at Union Hall, County Cork:
    - (i) processes, grades and packs fresh white fish and fresh prawns for sale internationally and within the State, and
    - (ii) packs frozen shellfish (mainly prawns) caught and frozen at sea for export mainly to [...].
  - (b) Food Service - through its processing and distribution centre at Blanchardstown, County Dublin, Glenmar supplies fresh and frozen seafood to approximately 200 food service customers, all of which are located in the State, including hotels, restaurants, food distributors and corporate canteens.
  - (c) Live Export - through its processing and distribution centre located, at Blanchardstown, County Dublin, Glenmar processes shellfish from the east coast of Ireland (mainly [...]) for export in live form, mainly to customers in [...].
  - (d) International Trading - Glenmar trades live [...] from South Africa, as well as containers of frozen shellfish throughout the world, which are then sold to [...].

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<sup>6</sup> For more information on Lisavaird see <<http://www.lisavairdco-op.ie>>.

<sup>7</sup> [...]. For more information on Glenmar see <<http://www.glenmarshellfish.com/index.php/en/company-about>>.



9. For the financial year ended 31 December 2014, Glenmar's worldwide turnover was approximately €[...] million, of which €[...] million was generated within the State.

### **Rationale for the Proposed Acquisition**

10. In the notification, the parties state that:

“[...]”<sup>8</sup>

### **Third Party Submissions**

11. No submission was received.

### **Competitive Analysis**

12. 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 since there is no significant overlap in the activities of the parties within the State. Within the State, Lisavaird is not involved in the processing, packaging and supply of seafood products whereas Glenmar, the target in the proposed transaction, is only involved, within the State, in processing, packaging and supply of seafood products.
13. It could be argued that there is a horizontal overlap in the parties' activities with respect to the broader food service sector. However, while Lisavaird and Glenmar are each involved in supplying products to the food service sector, this does not, of itself, mean that the proposed transaction will give rise to competition concerns. Lisavaird and Glenmar supply quite different product offerings (i.e., the former supplies beef, dairy and pork products whereas the latter supplies seafood products), and are clearly not close competitors. Consequently, in this instance, any horizontal overlap between them does not raise any competition concerns.
14. There is no vertical relationship between Lisavaird and Glenmar and the proposed transaction does not raise vertical competition concerns.

### **Conclusion**

15. 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**

16. The proposed SPA contains a number of restrictive obligations on Bendon Fish and Mel Bendon. None of these restrictive obligations exceeds the maximum

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<sup>8</sup> Notification page 5.



duration acceptable to the Commission.<sup>9</sup> The Commission considers that these obligations are directly related to and necessary for the implementation of the proposed transaction.

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<sup>9</sup> 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 Lisavaird Co-operative Creamery Limited, through its wholly owned subsidiary Lisavaird Food Group Limited, would acquire sole control of Glenmar Shellfish 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**