



DETERMINATION OF MERGER NOTIFICATION M/17/002 – SILVEREED/TOMBOLO

Section 21 of the Competition Act 2002

Proposed acquisition by Silvereed Unlimited (formerly Silvereed Limited) of Faughan Foods Limited through Tombolo Limited

Dated 16 February 2017

Introduction

1. On 12 January 2017, 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 (the “Proposed Transaction”) whereby Silvereed Limited (which on 29 December 2016 was re-registered as Silvereed Unlimited)¹ (“Silvereed”) would acquire the entire issued share capital and thus sole control of Tombolo Limited (“Tombolo”) and its wholly-owned subsidiary Faughan Foods Limited (“Faughan Foods”) from Fintan Hogan and Paul Hogan.

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement (“SPA”) dated 23 December 2016 between Fintan Hogan, Paul Hogan, Silvereed and Bronzereed Unlimited Company (“Bronzereed”).²
3. Prior to entering into the SPA, Fintan Hogan and Paul Hogan [...] Hogan’s Turkeys Limited (“Hogan’s Turkeys”) which, in turn, wholly-owned Faughan Foods. On 18 November 2016, Tombolo was incorporated and registered as a private limited

¹ In the notification submitted to the Commission, the acquiring entity was identified as Silvereed Limited. In response to a query raised by the Commission on 14 February 2017, the parties confirmed on 14 February 2017 that Silvereed Limited has been re-registered as an unlimited company. The parties stated that the application to re-register Silvereed Limited as an unlimited company was submitted in late December 2016 but confirmation was not received until 29 December 2016 that the application had been processed by the Isle of Man Companies Office.

² Bronzereed is the holding company of Silvereed and has agreed to guarantee Silvereed’s payment obligations under the SPA.



company in the State and, subsequently, the entire issued share capital of Faughan Foods was transferred from Hogan's Turkeys to Tombolo.³ As a result, Faughan Foods became a wholly-owned subsidiary of Tombolo. As Tombolo was incorporated for the purposes of the Proposed Transaction and holds no interest other than Faughan Foods, the latter together with Tombolo can be seen as the target business for the purposes of the Commission's analysis of the competitive effects of the Proposed Transaction.

4. Following implementation of the Proposed Transaction, Silvereed will own the entire issued share capital of Tombolo and, ultimately, its wholly-owned subsidiary, Faughan Foods.

The Undertakings Involved

Silvereed

5. Silvereed, a private unlimited company incorporated in the Isle of Man, is a wholly-owned subsidiary of Bronzereed. Bronzereed, a private unlimited company incorporated in the State, is owned by William O'Brien, John O'Brien, Niall O'Brien and Orlaith O'Brien.⁴
6. Silvereed owns Goldreed Holdings Unlimited Company ("Goldreed"), which owns O'Brien Fine Foods Unlimited Company ("O'Brien Fine Foods") and Crinkle Fine Foods Unlimited Company. Following implementation of the Proposed Transaction, Tombolo and Faughan Foods will become part of the group of companies controlled and owned by Bronzereed ("Bronzereed Group").
7. O'Brien Fine Foods is the principal operating company within the Bronzereed Group. O'Brien Fine Foods owns two brands, namely, Brady Family and Rudds. The Bronzereed Group is involved in the production and supply of the following products:
 - Brady Family ham (bulk and pre-pack);
 - own-label ham (bulk and pre-pack) for [...]⁵;

³ [...].

⁴ The shareholding allocation in Bronzereed [...].

⁵ [...].



- Rudds breakfast products (sausages, rashers and puddings);
 - own-label breakfast products for [...]; and
 - own-label beef pre-pack products for [...].
8. For the financial year ending 26 December 2015, Bronzereed Group's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

Fintan Hogan and Paul Hogan

9. [...] own each of Hogan's Turkeys, Kells Cold Store Limited ("Kells Cold Store") and Faughan Foods. Following implementation of the Proposed Transaction, [...] will continue to [...] each of Hogan's Turkeys and Kells Cold Store.
10. Hogan's Turkeys rears, slaughters and processes fresh turkeys in Cortown, Kells, Co. Meath. Hogan's Turkeys produces fresh turkey products for retailers in the State. Hogan's Turkeys also sells [...] of cooked ham products under the Hogan's Farm brand to independent retailers.
11. Kells Cold Store caters for Hogan's Turkeys' and Faughan Foods' cold storage requirements and is the main central distribution centre for Hogan's Turkeys and Faughan Foods.

Tombolo and Faughan Foods

12. As stated in paragraph 3 above, Tombolo is a private limited company that has been incorporated for the purposes of the Proposed Transaction. Faughan Foods operates a processing facility in Rathcairn, Athboy, Co. Meath and produces the following products:
- cooked bulk poultry;
 - pre-packed cooked turkey and chicken; and
 - pre-packed cooked beef.⁶

⁶ A negligible amount of cooked bulk beef is processed by Faughan Foods. Sales by Faughan Foods for the financial year ending 31 March 2016 with respect to roast beef in bulk and sliced beef in bulk were €[...] and €[...], respectively..



13. Faughan Foods supplies the aforementioned products to retailers in the State. The average output of Faughan Foods is 27,000 packs a day. 90% of Faughan Foods' output is produced for Irish retailers' own-label range of products.⁷ In addition, a small portion of bulk cooked meats is sold into the foodservice sector.⁸ Faughan Foods also supplies [...] processed ham under the Hogan's Farm brand.⁹
14. For the financial year ending 31 December 2015, the worldwide turnover of Faughan Foods was approximately €[...] million, of which approximately €[...] million was generated in the State.

Rationale for the Proposed Transaction

15. The parties state in the notification:

"Silvereed intends that ultimately it will operate the main FFL [Faughan Foods] factory at Rathcairn, Co. Meath.

The Bronzereed Group view the acquisition by Silvereed of Tombolo as a strategic acquisition for the Group's business, [...]

Fundamental to the Bronzereed Group's interest in the proposed acquisition is the [...]. Interaction with the Hogan family to date leads the Bronzereed Group to believe that from a cultural and values perspective, the businesses are a good fit, which will allow them to leverage each other's knowledge, skills and relationships to ensure a smooth and successful transition, and to enhance the independent growth of both businesses."¹⁰

16. The Commission sought clarification from Bronzereed as to why the Proposed Transaction "[...]" Bronzereed provided the following response:

[...]"¹¹

Third Party Submissions

⁷ The parties submit that, following implementation of the Proposed Transaction, products sold under the Hogan's Farm brand will continue to be supplied to customers as required. However, this brand will not be promoted as Bronzereed's primary white meat brand and will not be further developed.

⁸ [...]

⁹ [...]

¹⁰ Page 5, section 2.7 of the notification.

¹¹ Email to the Commission dated 10 February 2017.



17. No submission was received.

Competitive Analysis

Horizontal Overlap

18. There is a horizontal overlap between the activities of the parties in the State. Both of Bronzereed and Faughan Foods are involved in the production and supply of cooked bulk beef and pre-packed beef products to wholesalers and retailers in the State.¹² For the reasons set out below, the Commission considers that the Proposed Transaction will not substantially lessen competition in the production and supply of cooked bulk beef and pre-packed beef products to wholesalers and retailers in the State.

Market Definition

19. As part of the notification, the parties submitted a report by COMPECON Limited (the “Compecon Report”)¹³ which states that “*the relevant product in the present case is the market for the supply of own label non-poultry cooked meats to the main multiple supermarket groups*”¹⁴, and “*thus it seems clear that the relevant geographic market is the State*”.¹⁵
20. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The narrowest potential product market affected by the Proposed Transaction is the production and supply of cooked bulk beef and pre-packed beef products to wholesalers and retailers. The Commission, however, does not need to come to a definitive view on the precise relevant product market in this instance, since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is either narrow (e.g. the

¹² The notification states that Faughan Foods produces a negligible amount of ham, amounting to only [0-1]% of its overall turnover in 2016. The Commission therefore considers that Faughan Foods’ ham products represent a negligible proportion of the estimated total value of ham produced in the State annually (Parties submit that value of ham produced in the State annually to be approximately €195million in total, comprising €150 million pre-packed cooked meats and €45 million deli products). On this basis, the Commission considers that the impact of the Proposed Transaction on competition for the supply of ham products in the State is unlikely to be significant and is not discussed further in this Determination.

¹³ *Silverreed/Tombolo-Economic Analysis of the Relevant Market(s)*, COMPECON-COMPTITION ECONOMICS; 10th January 2017.

¹⁴ Paragraph 23, page 8 the Compecon Report

¹⁵ Paragraph 24, page 9, the Compecon Report.



production and supply of cooked bulk beef and pre-packed beef products) or broader (e.g. the production and supply of non-poultry cooked meats). In order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest potential relevant product market (being the potential market for the production and supply of cooked bulk beef and pre-packed beef products to wholesalers and retailers). For the sake of completeness, the Commission has also analysed the impact of the Proposed Transaction by reference to the production and supply of non-poultry cooked meats.

21. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market in this instance since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant geographic market is the State or broader to include the island of Ireland. However, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest possible relevant geographic market, i.e., the State.

Non-Poultry Cooked Meats

22. The estimated market shares in 2016 for each of Bronzereed and Faughan Foods in the potential market for the production and supply of non-poultry cooked meats in the State was approximately [0-10]% and [0-10]%, respectively. Thus, the increase in Bronzereed's existing market share following implementation of the Proposed Transaction will be minimal. Furthermore, the Bronzereed will continue to face competition from Kerry Group Public Limited Company and Carroll Cuisine Unlimited Company in relation to the production and supply of non-poultry cooked meats in the State. Therefore, the Commission considers that the Proposed Transaction will not substantially lessen competition in the potential market for the production and supply of non-poultry cooked meats in the State.

Cooked Bulk Beef and Pre-Packed Beef Products



23. With respect to the potential market for the production and supply of cooked bulk beef and pre-packed beef products in the State, the parties submit that the estimated turnover in 2016 for the supply of cooked bulk beef and pre-packed beef products in the State for each of Bronzereed and Faughan Foods was only approximately €[...] million and €[...] million, respectively. Furthermore, the parties submit that Bronzereed's customers for cooked bulk beef and pre-packed beef products include [...] while Faughan Foods' customers for cooked bulk beef and pre-packed beef products include [...]. On foot of this information, the Commission considers that both of Bronzereed and Faughan have a strong presence in producing cooked bulk beef and pre-packed beef products and supplying those products to major wholesalers, vertically integrated multiples and retailers in the State.¹⁶
24. In light of this, the Commission contacted Faughan Foods' key customers in the State to ascertain their views on the competitive impact of the Proposed Transaction. None of Faughan Foods' customers who were contacted by the Commission raised any competition concerns regarding the Proposed Transaction. The market survey conducted with Faughan Foods' customers in the State confirmed the Commission's view that:
- Wholesalers and retailers generally tender for supplies of own-label cooked bulk beef and pre-packed beef products, whereby the wholesaler or retailer in question will invite interested suppliers to submit a proposal. Customers informed the Commission that there are a number of alternative suppliers of cooked bulk beef and pre-packed beef products, including Kepcar Investments Limited¹⁷ and Glen Aine Foods Limited.
 - Furthermore, there are no significant switching costs for customers when changing between suppliers of own label cooked bulk beef and pre-packed beef products.

¹⁶ The parties submit that the majority of Faughan Foods' products are produced for Irish retailers' own-label range of products, while a small amount of cooked beef are supplied under the Hogans Farm brand name. The Parties further submit that sales by Faughan Foods for the financial year ending 31 March 2016 with respect to cooked beef under the Hogans Farm brand is approximately €[...]. On this basis, the Commission's analysis in paragraph 24 below focuses on the view of Faughan Foods' cooked bulk beef and pre-packed beef products customers, i.e., own-label cooked bulk beef and pre-packed beef products customers.

¹⁷ Kepcar Investments Limited currently supplies own-label cooked beef products to Tesco.



Wholesalers and retailers have the ability to easily switch to alternative suppliers of own-label cooked bulk beef and pre-packed beef products.

25. The Commission considers that post-transaction Bronzereed will continue to face competition from competitors such as Kepcar Investments Limited and Glen Aine Foods Limited in relation to the production and supply of own-label cooked bulk beef and pre-packed beef products in the State. Furthermore, Bronzereed will also face competition from branded cooked beef suppliers, including Pallas Foods Unlimited Company, Branagan's and Dawn Farm Foods Limited.
26. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition the potential market for the production and supply of cooked bulk beef and pre-packed beef products in the State.

Vertical Overlap

27. There is no vertical relationship between the parties and the Proposed Transaction does not raise any vertical competition concerns.

Conclusion

28. 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

29. Clause 7.3 of the SPA contains restrictive covenants on [...] and [...], in particular non-compete and non-solicitation obligations. The duration of these restrictive covenants does not exceed the maximum duration acceptable to the Commission and the Commission considers that these restraints are directly related and necessary to the implementation of the proposed transaction.¹⁸

¹⁸In this respect, the CCPC 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" (2002). For more information see [http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.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 Silverreed Unlimited (formerly Silverreed Limited) would acquire the entire issued share capital and thus sole control of Tombolo Limited and its wholly-owned subsidiary Faughan Foods Limited from Fintan Hogan and Paul Hogan, 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

Patrick Kenny
Member
Competition and Consumer Protection Commission