



DETERMINATION OF MERGER NOTIFICATION M/17/004 - T CUMMINS & D GEOGHEGAN (PRIMELINE)/SHANNON TRANSPORT LIMERICK (JOHNSON BROTHERS)

Section 21 of the Competition Act 2002

Proposed acquisition of joint control by Tim Cummins and Daniel Geoghegan of Shannon Transport Limerick Holdings Limited & Johnson Brothers Unlimited Company.

Dated 16 February 2017

Introduction

1. On 13 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 Tim Cummins and Daniel Geoghegan (collectively, “the Acquirers”) would acquire joint control of Shannon Transport Limerick Holdings Limited (“STLHL”) and its wholly-owned subsidiary Johnson Brothers Unlimited Company (“Johnson Brothers”). The Acquirers will each acquire 50% of the issued share capital of STLHL.¹

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement (“SPA”) entered into between the Acquirers, Michael O’Riordan and Mary O’Riordan (collectively, “the Vendors”) and Shannon Transport Group (Holdings) Unlimited Company (“STGHUC”)² on 23 December 2016, whereby the Acquirers would each acquire 50% of the issued share capital of STLHL.
3. STLHL was incorporated for the purposes of the Proposed Transaction and holds no interest other than the entire issued share capital in Johnson Brothers. In essence, the Acquirers are acquiring Johnson Brothers and as such, Johnson Brothers is the target business for the purposes of assessing the competitive impact of the Proposed Transaction.

¹ STLHL owns the entire issued share capital of Johnson Brothers.

² STGHUC is the holding company within the STL group of companies, which includes STLHL, with the Vendors being shareholders of STGHUC. As such, STGHUC is providing warranties and guarantees for the obligations of the Vendors under the SPA.



The Undertakings Involved

The Acquirers

4. The Acquirers are the controlling shareholders in a portfolio of companies constituting the Primeline group (“the Primeline Group”)³ which provides: (i) logistics and (ii) sales and marketing services in the distribution sector (as an agent or distributor selling and marketing products to retailers on behalf of brand owners).
5. The Primeline Group has its head office in Ashbourne, Co. Meath and operates a total of 750,000 square feet of hi-bay warehousing in the State and the United Kingdom (“UK”), with a transport fleet of more than 200 vehicles. It provides end-to-end supply chain services, including: product receipt; supplier management; wholesale management; order picking; distribution; merchandising; sales order capture; and home deliveries.
6. The Primeline Group provides logistics and sales and marketing services in the distribution sector to customers in the following industries:
 - Fast moving consumer goods;
 - Retail/fashion;
 - Pharmaceutical; and
 - Technology.
7. Brand owners currently represented by the Primeline Group include: Mars, Incorporated; Hain Celestial Group, Inc.; Premier Foods plc; and Mizkan Euro Ltd.
8. For the financial year ending 30 June 2015, the Primeline Group’s worldwide turnover was approximately €[...] of which was generated in the State.⁴

Johnson Brothers

9. Johnson Brothers is a full service distributor located in Walkinstown, Dublin 12. It provides brand owners whom it represents in the State with distribution services, including sales (i.e., merchandising and new product promotions), marketing, supply chain management, account management and financial administration services. Johnson Brothers has three business divisions:
 - a. The Jaymark division which represents a number of brand holders across a range of categories within the fast moving consumer goods sector;
 - b. The NGage division which acts as a sales distributor for Procter & Gamble Ireland; and
 - c. The Prestige division which provides distribution services for fragrance and cosmetic product manufacturers.

³ <http://www.primeline.ie/>

⁴ This comprises approximately €[...] for the provision of logistics services and €[...] for the provision of sales and marketing services.



10. Johnson Brothers does not provide logistics services to its customers but outsources its logistics requirements to DHL and STL Logistics⁵.
11. Brand owners currently represented by Johnson Brothers include: The Procter & Gamble Company; Weetabix Limited; Bayer AG; and Coty Inc.
12. For the financial year ending 31 December 2015, Johnson Brothers' worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

Rationale for the Proposed Transaction

13. The parties state in the notification⁶:

“The Proposed Transaction will expand the Purchaser Group’s market coverage.

The Purchaser Group will also generate cost savings as a result of the Proposed Transaction due to [...]. The Target currently outsources [...] cases per annum to DHL’s warehouse in Ballymount. DHL deliver[s] to all locations in Leinster.

The Purchaser Group will distribute the Target’s business through their existing supply chain.”

14. In addition to the logistics business that Johnson Brothers outsources to DHL, as mentioned above, it also outsources [...] cases per annum to STL Logistics' warehouses in Limerick and STL Logistics delivers to customers in the South West region.⁷

Third Party Submissions

15. No submission was received.

Competitive Analysis

16. There is a horizontal overlap between the parties' activities with respect to the provision of sales and marketing services in the distribution sector in the State.
17. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission, however, does not need to come to a definitive view on the precise relevant market definition in this instance, since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant market is defined narrowly (e.g., the provision of sales and marketing services in the distribution sector in the State) or more broadly (e.g., to encompass the provision of logistics and sales and marketing services in the distribution sector in the State). 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 relevant product market (being the potential market for the provision of sales and marketing services in the distribution sector in the State.)

⁵ STL Logistics is another subsidiary company within the STL group of companies.

⁶ In this paragraph references to the Purchaser Group refers to the Primeline Group and references to the Target refers to Johnson Brothers.

⁷ The Commission requested additional information in relation to the rationale for the Proposed Transaction, which the parties submitted to the Commission on 31 January 2017.



18. In its Determination relating to M/15/067 - PRL/CP⁸, the Commission considered a similar potential product market, which the notifying parties in that case termed 'sales related services' but which involved the provision of similar types of services to those provided by the Primeline Group and Johnson Brothers, such as acting as an agent or distributor on behalf of clients and providing services including order capture; credit control; field sales management; merchandising of product in-store; and financial management services. Although the Commission did not need to come to a definitive view on the precise relevant market in that matter, it did identify a number of undertakings that were active in the provision of 'sales related services' in the State, including the Primeline Group and Johnson Brothers. Similarly, in this instance, the parties have identified a number of competitors currently providing sales and marketing services in the distribution sector in the State, most of whom were also identified in the notification mentioned above (M/15/067). Competitors in this sector include Allegro Limited, SHS Sales & Marketing Limited, Stafford Lynch Limited, PRL Limited, Valeo Foods Unlimited Company, Richmond Marketing Unlimited Company and Boyne Valley Unlimited Company. The parties estimate that the Primeline Group and Johnson Brothers had market shares in 2015 of [...] % and [...] %, respectively, in the potential market for the provision of sales and marketing services in the distribution sector in the State.
19. Furthermore, the Commission contacted key customers of Johnson Brothers, who informed the Commission that they do not have any competition concerns about the Proposed Transaction because:
 - a. contracts for the procurement of sales and marketing services are normally put out to tender and distributors are appointed for periods of between one to three years; and
 - b. there will remain a number of competitors active in the provision of sales and marketing services in the distribution sector in the State⁹ following the implementation of the Proposed Transaction.
20. In addition, a number of large retailers, such as Lidl, Aldi, Tesco and Musgrave, for the most part, source products directly from the UK. The parties state that it is relatively easy for a retailer/wholesaler to switch their business to an alternative distributor (of competing products).
21. For the reasons set out in paragraphs 18-20 above, the Commission considers that the Proposed Transaction will not substantially lessen competition in the potential market for the provision of sales and marketing services in the distribution sector in the State.
22. There is no vertical relationship between the parties and the Proposed Transaction does not raise vertical competition concerns.
23. 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.

⁸ <http://www.ccpic.ie/enforcement/mergers/merger-notices/m15067-prl-cp>

⁹ Some of the competitors named are listed in paragraph 18 above. Additional competitors that were mentioned by customers of Johnson Brothers contacted by the Commission were: Tennant & Ruttle Distribution Limited and Brandshapers Limited.



Ancillary Restraints

24. The SPA between the parties contains a number of restrictive obligations on the Vendors. These include non-compete and non-solicitation clauses. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.¹⁰ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction as far as they relate to the State.

¹⁰ 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, as amended, has determined that, in its opinion, the result of the proposed transaction, whereby Tim Cummins and Daniel Geoghegan would acquire joint control of Shannon Transport Limerick Holdings Limited and its wholly-owned subsidiary Johnson Brothers Unlimited Company, 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