



DETERMINATION OF MERGER NOTIFICATION M/17/038 - LISAVAIRD FOOD/JDS FOODS

Section 21 of the Competition Act 2002

Proposed acquisition by Lisavaird Food Group Limited of sole control of JDS Foods Limited

Dated 1 August 2017

Introduction

1. On 4 July 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 Lisavaird Food Group Limited (the “Purchaser”), a wholly-owned subsidiary of Lisavaird Co-operative Creamery Limited (“Lisavaird”), would acquire sole control of JDS Foods Limited (the “Target”).

The Proposed Transaction

2. The Proposed Transaction will be effected by way of the following steps:
 - A share purchase agreement (the “SPA”) dated 9 June 2017 between Jimil Unlimited Company¹ (the “Vendor”), the Purchaser, Charlie Fleury, Maggie Fleury and Lisavaird, whereby the Purchaser will acquire [...]% of the issued share capital of the Target;
 - [...]²; and
 - [...].

¹ Charlie and Maggie Fleury are the sole shareholders of Jimil Unlimited Company.

² The Vendor will hold the remaining [...]% of the Target following completion of the Proposed Transaction, in which are ultimately owned by Charlie Fleury, Maggie Fleury.



3. The parties have stated in the notification that the Proposed Transaction will result in the Purchaser acquiring sole control of the Target.
4. Subsequent to the completion of the Proposed Transaction, a Put and Call Option Agreement will be entered into between the Vendor, the Purchaser, Charlie Fleury, Maggie Fleury and Lisavaird for the sale and purchase of the remaining [...]% of the issued share capital of the Target.

The Undertakings Involved

The Purchaser

5. The Purchaser is a wholly owned subsidiary of Lisavaird, an agricultural co-operative society incorporated under the Industrial & Provident Societies Acts. Lisavaird is currently involved in the following business activities:
 - The collection of milk from dairy farmers and the sale of milk to Carbery Food Ingredients Limited and Clona Dairy Products Limited (“Clona”)³;
 - The production of certain foods including cooked meat (through Glen Aine Foods Limited, a wholly owned subsidiary of Lisavaird), fish (through Glenmar Shellfish Limited (“Glenmar”), a wholly owned subsidiary of Lisavaird) and bakery products (through Coolmore Fresh Foods Limited, a wholly owned subsidiary of Lisavaird);
 - The operation of pig and dairy cow farm units;
 - The manufacture of ruminant and bulk animal feeds;
 - The sale of farming supplies, household goods, groceries, DIY and building materials in its six retail stores in Co. Cork; and
 - The operation of a windfarm in County Tyrone.⁴

³ Lisavaird currently owns a [...]% shareholding in Clona and [...] of the [...] board members of Clona are appointed by Lisavaird.

⁴ This is a joint venture with [...].



6. For the financial year ended 31 December 2016, Lisavaird's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

The Target

7. The Target is a limited company incorporated under Irish law currently active in the manufacture and sale of dairy and non-dairy spreads, margarines and cooking fats in the State and in the United Kingdom. The Target is specifically involved in the following business activities:

- The production of a range of branded spreads, butters and cooking fats such as *Dairymaid, Frytex, Garli Gold, and Just Like Butter*;
- The supply of a range of "own label" dairy and specialist spreads to retailers; and
- The supply of a range of spreads and margarines to the foodservice sector and to bakeries;

8. For the financial year ending 25 September 2016, the Target's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

Rationale for the Proposed Transaction

9. The parties state in the notification:

"..... From the perspective of Lisavaird, the Proposed Transaction offers it an opportunity to diversify its business interests and establish a footprint in the spreads sector where it has not previously had a presence."

Third Party Submissions

10. No submission was received.

Competitive Analysis



11. 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 because doing so will not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State.

Horizontal Overlap

12. There is a negligible horizontal overlap between the business activities of the parties in the State. The Target is active in the manufacture and sale of dairy and non-dairy spreads, margarines and cooking fats in the State. Lisavaird generates minimal revenue (approximately €[...]per annum in 2016) in the State from the sale of branded dairy spreads to consumers in its retail stores. Following the Proposed Transaction, Lisavaird will continue to face competitive constraints from significant competitors, such as Kerry Foods Limited (*Dairygold* and *LowLow*) and Unilever Ireland Limited (*Flora*).
13. The Commission therefore considers that the Proposed Transaction raises no competition concerns in the State with respect to the manufacture and sale of dairy spreads.

Vertical Relationship

14. The following vertical relationships currently exist between the Target and Lisavaird in the State:
 - The Target supplies garlic butter to Glenmar, a wholly owned subsidiary of Lisavaird. The annual value of this supply is approximately €[...], which represents approximately [0-5]% of the sales of the Target in 2016 in the State.
 - The Target supplies the following products to Clona: Frytex Bulk [...]; Dairymaid Premium [...]; Golden Summer [...]; Besure [...]; Dairymaid Premium [...]; Marigold Cook & Bake [...]; Garlic Gold [...]; Frytex Cooking Fat [...]; and Marigold Cook & Bake [...]. The annual value of these supplies is approximately €[...], which represents approximately [0-5]% of the sales of the Target in 2016 in the State.



- Clona supplies the Target with cream (with an annual value of approximately €[...]), which represents approximately [0-5]% of the sales of Clona in 2016 in the State. The Target also sources cream from other suppliers in the State such as [...].
15. The Commission considers that the above vertical relationships between the parties are minimal and are unlikely to raise any vertical competitive concerns in relation to the manufacture and sale of the products listed in paragraph 14 above.
 16. Furthermore, the parties also supply some of the products listed in paragraph 14 above to other participants in the industry including retailers, foodservices operators and food producers. Following the Proposed Transaction, the Purchaser will continue to supply these other industry participants.
 17. In the light of the above, the Commission considers that the Proposed Transaction does not raise any vertical foreclosure concerns in the State.

Conclusion

18. 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

19. The SPA contains restrictive covenants on the Vendor, Charlie Fleury and Maggie Fleury, in particular non-compete and non-solicitation obligations. The Commission considers that these restraints are directly related and necessary to the implementation of the Proposed Transaction.



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 Lisavaird Food Group Limited, a wholly-owned subsidiary of Lisavaird Co-operative Creamery Limited would acquire sole control of JDS 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