



DETERMINATION OF MERGER NOTIFICATION M/19/022 DUNNES STORES JC SAVAGE

Section 21 of the Competition Act 2002

Proposed acquisition by Dunnes Stores Unlimited Company of sole control of J.C. Savage Supermarket Limited.

Dated 30 July 2019

Introduction

1. On 12 July 2019, 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 whereby Dunnes Stores Unlimited Company (“Dunnes”), a wholly owned subsidiary of Dunnes Holding Company Unlimited Company (“Dunnes Holding Company”), would acquire sole control of J.C. Savage Supermarket Limited (“JCSS”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a Share Purchase Agreement (the “SPA”) dated 18 June 2019 between Dunnes and the individual shareholders of JCSS¹.
3. Under the terms of the SPA, Dunnes will acquire the entire issued share capital and thus sole control of JCSS.

¹ Geraldine Savage; Michael Savage; Niall Savage; Robert Savage; Colm Savage; Cronan Savage; Joseph Savage; Michael Savage; Niall Savage; Philomena Savage; Raymond Savage; Robert Savage; and Tara Savage.



The Undertakings Involved

The Purchaser – Dunnes

4. Dunnes is a wholly owned subsidiary of Dunnes Holding Company, which is the ultimate holding company for the Dunnes Stores group of companies (the "Dunnes Stores Group"). The Dunnes Stores Group is active in the sale of groceries, men's, women's and children's clothes and home and garden wares through its retail outlets which are located primarily in the State and Northern Ireland, with a small number of stores in Spain.
5. Dunnes is a multi-category retailer active in the grocery, food service provision and food production sectors. Dunnes operates a network of multi-category retail stores located primarily in the State and Northern Ireland, with a smaller number of stores in Spain. Dunnes also operates a textiles store from Swords Shopping Centre, on a lease from JCSS.
6. Dunnes is active in the provision of food services through:
 - a. Dunnes' in-store restaurant facilities and take-out meals for consumption off premises;
 - b. the Café Sol chain of coffee shops²;
 - c. the Baxter and Greene restaurant in Dunnes Stores on Henry Street, Dublin 1; and
 - d. Neon, an Asian street food restaurant on Camden Street, Dublin 2.³
7. Dunnes is active in food production through:

² Café Sol operate outlets at the following locations: Harcourt Street, Dublin 2; 46 Baggot Street, Dublin 2; 134 Baggot Street, Dublin 2; Hibernian Way, Dublin 2; Lincoln Place, Dublin 2; Hatch Street, Dublin 2; Mater Hospital, Eccles Street, Dublin 7, Level 3; Earlsfort Terrace, Dublin 2 and Harcourt Road Dublin 2; and outlets in Dunnes Stores in Kilnamanagh, Dublin 24, St. Stephen's Green Shopping Centre, Liffey Valley Shopping Centre, Swan Centre Rathmines, Cornelscourt, Swords Pavillion, Childers Road, Bandon Road, Ballyvolane, Blanchardstown Shopping Centre, Newbridge, Donaghmede and Henry Street, Dublin 1.

³ Café Sol Holdings Limited, which operates the Café Sol, Baxter & Greene and Neon businesses, is a wholly-owned subsidiary of Dunnes.



- a. Dunnes' in-house bakery capability, Nevilles Bakery Dublin Unlimited Company, which sells exclusively to Dunnes.
 - b. Dunnes' in-house meat processing capability, Tender Meats Limited ("Tender Meats"), which is a wholly-owned subsidiary of Dunnes Holding Company. For the year to July 2019 over 99% of Tender Meats' sales were to the Dunnes Stores Group, with the remainder being sold to a number of public houses and restaurants;
 - c. Its subsidiary, Newbridge Foods Limited ("Newbridge Foods"), which is active primarily in the production of frozen savoury and sweet pastry product such as sausage rolls, meat pies, fruit turnovers, fruit tarts and pies and meat and vegetarian filled puff pastry slices. Newbridge Foods supplies the majority of its products to purchasers outside of the Dunnes Stores Group.
8. For the period from 23 December 2016 to 29 December 2017, the worldwide turnover of Dunnes was [...], of which [...] was generated in the State.

The Target – JCSS

9. JCSS operates a grocery retail business from its sole store in Swords. This store also sells hot food from an in-store delicatessen for off-premises consumption and does not have any in-store eating area or restaurant/café facility.
10. JCSS owns the premises from which its store operates, which is known as "Swords Shopping Centre". JCSS' store occupies the majority of Swords Shopping Centre. There are also four other units in Swords Shopping Centre (in addition to the premises occupied by Dunnes) which are currently rented to:
 - a. McCabe's Pharmacy (Wembar Company Unlimited Company);
 - b. Linda's Flower Shop
 - c. Fingal County Council (which operates a library from the premises); and
 - d. Boston Barber Bars.



11. For the financial year ending 31 December 2018, JCSS' worldwide turnover was [...] million, all of which was generated in the State.

Rationale for the Proposed Transaction

12. The parties state the following in the notification:

“The Parties believe that the Proposed Transaction will facilitate the grocery retail business currently being operated by JCSS being developed as part of the Dunnes Stores' national grocery retail business”.

Third Party Submissions

13. No submission was received.

Competitive Analysis

Horizontal Overlap

14. There is no horizontal overlap between the parties in respect of the provision of commercial rental space within the area surrounding the JCSS store by a 10 kilometre distance (the “JCSS Catchment Area”). While JCSS offers commercial rental space within the JCSS Catchment Area, Dunnes has no commercial property within this area which is either rented to third parties or is available for rental to third parties.
15. There is a horizontal overlap between Dunnes and JCSS in the retail sale of grocery goods in the State. There is also a minor overlap between the parties in the provision of ‘food-to-go’⁴.

⁴ A report published by Bord Bia, dated November 2018, entitled “Irish Foodservice Market Insights”⁴ (“the Bord Bia Report”), defines food-to-go as follows “Includes premade, ready to eat menu items sold through various retail channels and consumed off premises”. The Bord Bia Report can be accessed at



Retail sale of grocery goods

16. In its previous determinations, the Commission, and its predecessor, the Competition Authority, have considered that the relevant product market is the retail sale of grocery goods⁵. The Commission has not, in the course of its assessment of the competitive effects of the Proposed Transaction, found reasons to depart from the approach previously adopted by the Commission in relation to the retail sale of grocery goods. Accordingly, for the purposes of evaluating the competitive effects of the Proposed Transaction, the Commission considers that the relevant product market is the retail sale of grocery goods.
17. 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 defined as local, regional or national. The Commission has previously⁶ identified possible local markets based on a 10 kilometre distance or 10 minute drive time from any relevant target location. However, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to the narrowest potential geographic market, the JCSS Catchment Area.
18. For completeness, the Commission has also analysed the impact of the Proposed Transaction on the retail sale of grocery goods by reference to the broadest potential geographic market, namely, the State.

<https://www.bordbia.ie/globalassets/bordbia.ie/newsevents/speaker-presentations/speaker-presentations-2018/irish-foodservice-seminar-2018/irish-foodservice-presentations/the-irish-foodservice-market---maureen-gahan-bord-bia-and-david-henkes-technomic-min.pdf>

⁵ See [M/11/022 – Musgrave / Superquinn](#), [M/17/050 - Joyces/Nestors](#), [M/17/052 - Cedarglade \(Musgrave\) / Ballybrit Centra & Service Station](#), [M/17/058 - Musgrave / Whelan Centra](#), [M/18/054 – Cedarglade \(Musgrave\) / Assets comprising Supermarket Premises at Fortunestown](#), and [M/18/079 Musgrave / Donnybrook Fair](#).

⁶ See [M/18/079 Musgrave / Donnybrook Fair](#), [M/17/050 - Joyces/Nestors](#) and [M/17/052 - Cedarglade \(Musgrave\) / Ballybrit Centra & Service Station](#).



Local market analysis – retail sale of grocery goods in the JCSS Catchment Area

19. In analysing the local market for the retail sale of grocery goods the Commission has considered, in Table 1 below, the number of leading retailers of grocery goods in the State (as listed in Table 2) that are present in the JCSS Catchment Area.
20. Table 1 below indicates that following completion of the Proposed Transaction, there will remain a sufficient number of competitors that will continue to exert a competitive constraint on Dunnes in respect of the retail sale of grocery goods in the JCSS Catchment Area. As such, the Commission does not consider it necessary to include in its local market analysis the numerous smaller retailers of grocery goods present in the JCSS Catchment Area.
21. Therefore, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in respect of the retail sale of grocery goods within the JCSS Catchment Area.

Table 1: Leading retailers of grocery goods in the State located within the JCSS Catchment Area

Operator	Number of large stores within JCSS	Store Locations	Distance from JCSS
Tesco Ireland Limited	4	Swords Holywell Superstore, Holywell, Swords, Co. Dublin	2.2km
		Swords Express, Forest Rd, Swords, Co. Dublin Malahide	2.2km



		Express, Unit 2, The Green Malahide, Co. Dublin	5.2km
		Clarehall Extra, Northern Cross, Dublin 17	7.5km
Musgrave Supervalu.Centra Limited	3	Pavillions Shopping Centre, Malahide Road, Swords, Co. Dublin	1.2km
		Boroimhe Shopping Centre, Swords, Co. Dublin	1.9km
		Main Street, Malahide, Co. Dublin	5.3km
Lidl Ireland GmbH	2	Rathbeale Road, Swords, Co. Dublin	0.2km
		Dublin Road, Miltonsfields, Swords, Co. Dublin	1.3km
Aldi Stores (Ireland) Limited	1	Seatown Road, Swords, Co. Dublin	0.9km
Dunnes	1	Pavillions' Shopping Centre, Malahide Road, Swords Demesne,	1.2km



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Source: provided by the parties.

National market analysis – retail sale of grocery goods in the State

Table 2: National market shares of the leading retailers of grocery goods in the State

Retailer	Market Share
Dunnes Stores	22.2%
Tesco	21.8%
Musgraves/SuperValu	21.4%
Aldi	11.9%
Lidl	11.5%
Other Outlets (including JCSS)	11.2% (0.0019%)

Source: TNS UK Limited, trading as Kantar⁷

22. Table 2 indicates the national market shares of the leading retailers of grocery goods in the State. As shown above, the Proposed Transaction will result in Dunnes acquiring JCSS' 0.0019% share of the total retail grocery goods market in the State. Given this minor increment, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in respect of the retail sale of grocery goods in the State.

⁷ <https://www.kantarworldpanel.com/ie/grocery-market-share/ireland>



Sale of food-to-go

23. The Bord Bia Report considers the retail channels of food-to-go to constitute the following:

“This segment includes convenience stores, supermarkets, and petrol stations with forecourt convenience stores.”⁸

24. The parties state, in response to Commission queries, that competition within the market for the sale of food-to-go is broader still and would include specialist delicatessens, cafés and small restaurants (which often include an eat-in facility but will provide food to be consumed away from the premises) and fast food/take-away outlets.
25. The Commission and its predecessor, the Competition Authority⁹, have previously considered the foodservice sector and decided that it was not necessary to precisely define relevant markets¹⁰. In those cases, the Commission and the Competition Authority considered that the conclusion concerning the competitive effects of those proposed transactions would be unaffected whether the relevant product markets in the foodservice sector were defined broadly or narrowly.
26. In this instance, it is not necessary for the Commission to define precise relevant markets. The Commission’s conclusion concerning the competitive effects of the Proposed Transaction would be unaffected whether the relevant markets in the foodservice sector are defined broadly or narrowly.
27. Accordingly, the Commission has assessed the competitive effects of the Proposed Transaction with regard to the potential market for the supply of food-to-go in the JCSS Catchment Area by the leading retailers of grocery goods (as listed in Table 1), smaller retailers of grocery goods, petrol stations, specialist delicatessens, cafés and small restaurants.
28. The majority of the leading retailers of grocery goods identified in Table 1 offer some form of in-store delicatessen with some food-to-go offering. However, the Lidl and Aldi

⁸ Page 41, the Bord Bia Report.

⁹ In 2014, the Commission was established following an amalgamation of the Competition Authority and the National Consumer Agency pursuant to the Competition and Consumer Protection Act 2014.

¹⁰ See M/17/067 – Musgrave / La Rousse, M/15/040 – Aryzta / La Rousse and M/12/010 – Pallas / Crossgar



stores within the JCSS Catchment Area are currently not offering food-to-go. The Commission also notes that there are a large number of other food-to go providers within the JCSS Catchment Area including numerous convenience stores (referred to in footnote 7), forecourt facilities, other large retail outlets and numerous specialist delicatessens, cafés, small restaurants and fast food/take-away outlets which will continue to exert a competitive constraint on Dunnes following completion of the Proposed Transaction.

29. Therefore, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in respect of the sale of food-to-go within the JCSS Catchment Area.

Vertical Relationship

30. There is a vertical relationship between the parties. As mentioned in paragraph 5 herein, Dunnes currently operates a textile store from Swords Shopping Centre and holds a 999 year lease on the premises from JCSS.
31. While Dunnes does not currently supply JCSS, there is also a potential vertical overlap between Dunnes' food production business and JCSS' retail business. The Commission therefore assessed whether this potential vertical overlap is likely to result in foreclosure concerns.

The supply of commercial retail space

32. As mentioned in paragraph 14, Dunnes is not currently active in the supply of commercial rental space in the JCSS Catchment Area but will acquire the property known as Swords Shopping Centre, as described in paragraph 10 above, as a result of the Proposed Transaction.
33. However, given the large amount of commercial rental space available in the JCSS Catchment Area including the Pavilion's Shopping Centre, Airside Retail Park, Swords Central Shopping Centre, River Valley Shopping Centre and Clarehall Shopping Centre, the Commission considers that the Proposed Transaction is unlikely to raise any



competition concerns in respect to the supply of commercial rental space in the JCSS Catchment Area.

Food production

34. While there are currently no sales made between Dunnes' food production business and JCSS, as Dunnes' food production activities primarily focus on supplying its own vertically integrated downstream retail operations, a potential vertical overlap exists between Dunnes' food production business and JCSS' retail business.
35. However, even in the event that Dunnes becomes the sole supplier of JCSS the Commission considers that the Proposed Transaction is unlikely to result in customer foreclosure as a significant number of potential customers will remain available to food producers following completion of the Proposed Transaction, including those listed in Table 1.
36. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

37. 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

38. Clauses 12.2.1 to 12.2.5 of the SPA contain non-compete and non-solicitation obligations on the individual shareholders of JCSS. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission¹¹. The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction, insofar as they do not prevent the individual shareholders of JCSS from purchasing or holding shares in a competing company purely for financial investment purposes, without granting them, directly or indirectly, management functions or any material influence in the competing company.

¹¹ In 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” [2005] OJ C56/03 (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XC0305%2802%29>).



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 acquisition whereby Dunnes Stores Unlimited Company, a wholly owned subsidiary of Dunnes Holding Company Unlimited Company, would acquire sole control of J.C. Savage Supermarket 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

Brian McHugh
Member
Competition and Consumer Protection Commission