



DETERMINATION OF MERGER NOTIFICATION M/19/039 – BWG/HEANEY MEATS

Section 21 of the Competition Act 2002

Proposed acquisition by BWG Foods Unlimited Company of sole control of Heaney Meats Catering Co. Limited

Dated 10 January 2020

Introduction

1. On 28th November 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 BWG Foods Unlimited Company (“BWG”), a wholly-owned subsidiary of BWG Group Unlimited Company (“BWG Group”), would acquire the wholly issued share capital and thereby sole control of Heaney Meats Catering Co. Limited (“Heaney Meats”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement (“SPA”) between S&K Heaney Limited (“S&K Heaney”), Shayne Heaney and Kenneth Heaney (together, the “Vendors”) and BWG dated 27 November 2019. Pursuant to the SPA, BWG will acquire the entire issued share capital of Heaney Meats from the Vendors and thus sole control of Heaney Meats.
3. The share capital of Heaney Meats is currently held by: (a) Shayne Heaney (5%); (b) Kenneth Heaney (5%); and (c) S&K Heaney (90%). Shayne Heaney owns 50% of the share capital of S&K Heaney with the remaining 50% owned by Kenneth Heaney.

The Undertakings Involved

The Acquirer – BWG

4. BWG is a food retail and wholesale distribution company which operates in the State and the United Kingdom. BWG is a wholly owned subsidiary of BWG Group, which in turn is a wholly-owned subsidiary of TIL JV Limited. TIL JV Limited is 80% owned by the SPAR Group Limited, a quoted plc registered in South Africa, and 20% owned by members of the BWG management team (the “BWG Shareholders”).¹ The BWG Shareholders hold their shares in [...].

¹ The BWG Shareholders are as follows:[...].



5. At the retail level, BWG has the following interests:
 - a. owner and operator of the Spar franchise in the State which includes the *Spar*, *Eurospar* and *Spar Express* brands;
 - b. owner and operator of the Londis franchise in the State which includes the *Londis* brand;
 - c. owner and operator of the *XL* and *Xpress Stop* brands, who are supplied by BWG's cash and carry outlets;
 - d. the right to license the *Mace* brand throughout the State; and
 - e. [...] regarding forecourt retail operations.
6. BWG has 1,095 affiliated retail stores operating under the following brands: *Spar*; *Spar Express*; *Eurospar*; *Mace*; *Londis*; *Gala* and *XL*. 1,085 of the affiliated retail stores are operated by independent franchisees. The remaining ten affiliated retail stores are owned and operated by BWG, via Triode Newhill Management Services Limited. In addition, BWG supplies 66 former *Mace* stores in the process of transitioning to *Maxol* branded stores under Maxol Limited's new brand image in respect of its associated convenience stores.
7. BWG is involved in wholesale food and grocery distribution to its affiliated retail stores and to stores operated by independent retailers in the State. It is also involved in the wholesale distribution of food, including in the supply of meat products (i.e., fresh and processed meat) to the foodservice sector and beverages to foodservice customers and to the licensed trade in the State. BWG operates one distribution centre located in the Kilcarbery Business Park, Nangor Road, Dublin 22. BWG also operates a chain of 20 wholesale cash and carry outlets under the *Value Centre* brand throughout the State, along with two wholesale cash and carry outlets under the *Better Deal* brand in the State.
8. For the financial year ending 30 September 2019, BWG Group's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

The Target Entity – Heaney Meats

9. Heaney Meats supplies fresh and processed meat to approximately [...] foodservice operators across the island of Ireland, including hotels, restaurants, catering operators and some public institutions. Heaney Meats also supplies fresh and processed meat to BWG. The meat products supplied by Heaney Meats include beef, pork, bacon, poultry, lamb, veal, duck, wild Irish game, and cooked meats.
10. Heaney Meats operates a meat production factory in Liosbaun Industrial Estate in Co. Galway and owns an empty warehouse immediately adjacent to this factory. Heaney Meats operates a fleet of 25 refrigerated vans which are used to deliver fresh and processed meat to its customers.
11. For the financial year ending 31 August 2019, Heaney Meats' worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.



Rationale for the Proposed Transaction

12. The notifying parties state the following in the notification:

“The Proposed Transaction provides BWG Foods with an opportunity to expand its foodservice offering to include meat to its existing and to an expanded customer base including hotels, restaurants and other foodservice providers.”

Third Party Submissions

13. No submission was received.

Competitive Analysis

Horizontal Overlap

14. There is a horizontal overlap between the notifying parties’ activities in the State since both BWG and Heaney Meats are active in the supply of meat products (i.e., fresh and processed meat) to the foodservice sector.²

Market Definition

Views of the notifying parties

15. In the notification the notifying parties state *“in keeping with previous CCPC decisions, we respectfully submit that for the purposes of the Proposed Transaction it is not necessary for the CCPC to define a precise relevant product market as the competitive effects of the Proposed Transaction are unaffected whether the relevant market is defined broadly (the distribution of all types of products to all types of foodservice customers) or narrowly (in terms of product category, customer category or mode of distribution).”*

Views of the Commission

16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.
17. With respect to the relevant product market, the European Commission has previously left open the question as to whether the distribution of food products to foodservice customers should be segmented by: (a) mode of supply; (b) category of customer (e.g., national versus independent customers); or (c) product category.³
18. In the Commission’s determination in *M/18/077 – BWG/Roadfield*, the Commission did not come to a definitive view on the precise relevant product market. The Commission

² For a detailed description of the foodservice sector in the State, please see paragraphs 19-29 of the determination by the Commission’s predecessor, the Competition Authority (“the Authority”), in *M/12/010 – Pallas/Crossgar*, which can be accessed at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-12-010-Pallas-Crossgar.pdf>

³ See European Commission decision in *M.7986 – Sysco/Brakes*, which can be accessed at https://ec.europa.eu/competition/mergers/cases/decisions/m7986_918_4.pdf



assessed the competitive impact of that proposed transaction with respect to: (a) the supply of food and drink products collectively to the foodservice sector; and (b) the supply of poultry products, dairy products, fruit and vegetable products, bread and bakery products and ambient products, respectively, to the foodservice sector.⁴

19. The Commission 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 relevant product market is defined narrowly (e.g., by individual meat product category) or more broadly to encompass a single market for all meat product categories. For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest potential product markets, i.e., the supply of each meat product category (i.e., beef, poultry, bacon, pork, and lamb) to the foodservice sector.
20. Similarly, the Commission does not need to come to a definitive view with respect to the relevant geographic market in this instance since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant market is defined narrowly (i.e., the State) or more broadly (i.e., the island of Ireland). For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest potential geographic market, i.e., the State.

Competitive Assessment

21. There is a horizontal overlap between BWG and Heaney Meats with respect to the supply of beef, poultry, bacon, pork, and lamb products, respectively, to the foodservice sector in the State.
22. Table 1 below sets out the sales of BWG and Heaney Meats to the foodservice sector in the State in 2019 for each category of meat product.

Table 1: BWG and Heaney Meats' sales to the foodservice sector for each category of meat product in the State, 2019

Meat Product Category	BWG	Heaney Meats
Beef	€[...]	€[...]
Poultry	€[...]	€[...]
Bacon	€[...]	€[...]

⁴ See Commission decision in *M/18/077 – BWG/Roadfield*, which can be accessed at <https://www.cpc.ie/business/wp-content/uploads/sites/3/2018/09/Public-M-18-077-BWG-Roadfield-Determination.pdf>



Pork	€[...]	€[...]
Lamb	€[...]	€[...]

Source: The Commission based on information provided by the notifying parties.

23. Table 2 below provides market share estimates for BWG and Heaney Meats for the supply of each category of meat product to the foodservice sector in the State in 2019.

Table 2: BWG and Heaney Meats' estimated market shares in the Supply of each category of meat product to the foodservice sector in the State, 2019⁵

Meat Category	Product	BWG	Heaney Meats	BWG Post-Proposed Transaction
Beef		[0-10]%	[0-10]%	[0-10]%
Poultry		[0-10]%	[0-10]%	[10-20]%
Bacon		[0-10]%	[0-10]%	[0-10]%
Pork		[0-10]%	[0-10]%	[0-10]%
Lamb		[0-10]%	[10-20]%	[10-20]%

Source: The Commission based on information provided by the notifying parties.

24. The Commission considers that the Proposed Transaction raises no horizontal competition concerns in the State for the following reasons.
25. First, as illustrated in Table 2 above, BWG will have a relatively small market share in the supply of each meat product category to the foodservice sector in the State following completion of the Proposed Transaction. BWG's market share will range from [0-10]% in the supply of bacon products to the foodservice sector in the State to [10-20]% in the supply of lamb products to the foodservice sector in the State.
26. Second, following completion of the Proposed Transaction, BWG will continue to face a competitive constraint from a number of other suppliers of meat products to the foodservice sector in the State, including Pallas Foods Unlimited Company, Musgrave

⁵ The market share estimates provided by the notifying parties are based on information in a report by Bord Bia entitled *Irish Foodservice Channel Insights Report* dated November 2019 and the notifying parties' annual sales to the foodservice sector in the State.



Group Public Limited Company, Lynas Foodservice Ireland Limited, Henderson Foodservice Limited and Aryzta Food Solutions Ireland Unlimited Company.

27. Third, in previous merger decisions and determinations, both the Competition Authority⁶ and the European Commission⁷ respectively have characterised the foodservice sector in the State as one where switching by foodservice operators between different suppliers is easy and frequent due to low switching costs.
28. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the potential markets for the supply of beef, poultry, bacon, pork and lamb, respectively, to the foodservice sector in the State.

Vertical Relationship

29. There is a vertical relationship between BWG and Heaney Meats in the State since the latter supplies BWG with meat products, which BWG supplies to foodservice operators in the State.
30. For the financial year ending 31 August 2019, BWG's purchases of meat products from Heaney Meats amounted to €[...]. BWG purchases of each category of meat product from Heaney Meats were as follows:
 - Beef: €[...];
 - Poultry: €[...];
 - Bacon: €[...];
 - Pork: [...]; and
 - Lamb: €[...].
31. The Commission considers that the Proposed Transaction raises no vertical competition concerns in the State for the following reasons.
32. First, the Proposed Transaction will not give BWG the ability to foreclose its competitors in the supply of each meat product category (i.e. beef, poultry, bacon, pork, and lamb) to the foodservice sector in the State. As illustrated in Table 2 above, BWG will have a relatively small market share in the supply of each meat product category to the foodservice sector in the State following completion of the Proposed Transaction. Following completion of the Proposed Transaction, BWG's competitors in the State will be able to purchase supplies of each meat product category from a wide range of suppliers, including Pallas Foods Unlimited Company, Musgrave Group Public Limited Company, Lynas Foodservice Ireland Limited, and Henderson Foodservice Limited.
33. Second, the Proposed Transaction will not give BWG the ability to foreclose suppliers of meat products in the State that compete with Heaney Meats due to the latter's minimal

⁶ See Competition Authority decision in *M/12/010 – Pallas/Crossgar*, paragraphs 47-48 which can be accessed at <https://www.ccpic.ie/business/wp-content/uploads/sites/3/2017/04/M-12-010-Pallas-Crossgar.pdf>;

⁷ See European Commission decision in *M.7986 – Sysco/Brakes*, paragraphs 34, 49-52, and 70, which can be accessed at https://ec.europa.eu/competition/mergers/cases/decisions/m7986_918_4.pdf



share in the supply of each meat product category to the foodservice sector in the State. Following completion of the Proposed Transaction, there will remain a number of other wholesalers, such as Pallas Foods Unlimited Company, Musgrave Group Public Limited Company, and Lynas Foodservice Ireland Limited, through whom suppliers of each meat product category can supply foodservice operators in the State.

34. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

35. 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

36. No ancillary restraints were notified.



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 BWG Foods Unlimited Company, a wholly-owned subsidiary of BWG Group Unlimited Company would acquire sole control of Heaney Meats Catering Co. 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