



DETERMINATION OF MERGER NOTIFICATION M/15/040– ARYZTA / LA ROUSSE

Section 21 of the Competition Act 2002

Proposed acquisition of La Rousse Foods Limited and Marc Amand Chocolat Limited by Aryzta Food Solutions Ireland

Dated 1 September 2015

Introduction

1. On 22 July 2015, in accordance with section 18(1) of the Competition Act 2002, as amended¹ (“the 2002 Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Aryzta AG, through its wholly owned indirect subsidiary Aryzta Food Solutions Ireland (“Aryzta Ireland”), would acquire La Rousse Foods Limited (“La Rousse Foods”) and Marc Amand Chocolat Limited (“Amand Chocolat”) from La Rousse Holdings Limited (“La Rousse Holdings”).
2. The proposed transaction is pursuant to a Share Purchase Agreement dated 21 July 2015 between Aryzta Ireland, La Rousse Holdings, Mr Marc Amand and Ms Mary Massy.

The Undertakings Involved

The Acquirer – Aryzta AG and Aryzta Ireland

3. Aryzta AG, headquartered in Zurich, Switzerland, is a public company listed on the Swiss Stock Exchange and also having a secondary listing on the Irish Stock Exchange.
4. Aryzta AG is involved primarily in the manufacture and supply of bakery products for sale to food retailers and food service operators.² Aryzta AG’s product range of baked sweet and savoury goods includes: artisan breads, buns and rolls, muffins, frozen cookie dough, laminated dough, donuts, continental pastries, sweet and savoury reception goods and a variety of savoury pizzas and tarts.³

¹ It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.

² The food service sector, in this context, refers to the preparation of food outside of residential premises for sale by food service operators. Consumption of food may take place inside the food service operator’s premises, or inside of residential premises (or elsewhere) as might occur for “takeaway” food. The Competition Authority’s determination in M/12/010 – Pallas/Crossgar includes a description of the food service sector (at paragraphs 19-29). See <<http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications/Pallas--Crossgar.aspx>>.

³ For more information on Aryzta AG see <<http://www.aryzta.com/>>.



Aryzta AG is active primarily in Europe and North America and also to a lesser extent in South America, South East Asia, Australia and New Zealand.

5. Aryzta Ireland, [...] headquartered in Dublin, is a wholly-owned indirect subsidiary of Aryzta AG.⁴ Within in the island of Ireland, Aryzta Ireland is involved primarily in the manufacture and supply of bakery products and also poultry products.⁵ Aryzta Ireland operates two divisions: a food retail division and a food service division. Aryzta Ireland's food retail customers include [...]. Its most recognised retail brand is Cuisine de France. Aryzta Ireland's food service provider customers include cafes, caterers, hotels and restaurants.
6. Aryzta Ireland supplies food retailer customers directly and indirectly. For example, Aryzta Ireland delivers products directly to individual retailer stores or to retailers' central (national or regional) distribution depots. Aryzta Ireland also supplies food retailer customers indirectly (i.e., via food wholesalers for subsequent supply to food retailers).
7. Similarly, Aryzta Ireland supplies food service operators directly and also indirectly via wholesalers, such as [...].⁶
8. For the year ended 31 July 2014, the world-wide turnover of the Aryzta group of companies was approximately €4.8 billion of which €[...] million was generated in the State.⁷

The Vendor – La Rousse Holdings

9. La Rousse Holdings, a privately owned company based in Dublin, is jointly owned and controlled by Marc Amand and Mary Massy. La Rousse Holdings owns La Rousse Foods and Amand Chocolat. La Rousse Holdings also owns La Rousse Investments Limited which is not being acquired as part of the proposed transaction.

The Target – La Rousse Foods and Amand Chocolat

10. La Rousse Foods, headquartered in Dublin, is a private company ultimately owned and controlled by Marc Amand and Mary Massy. La Rousse Foods' wholly-owned subsidiary, La Rousse Foods (NI) Limited, is based in Belfast. La Rousse Foods describes itself as "*created by chefs for chefs*".⁸ La Rousse Foods is involved in the island of Ireland in the supply of premium quality and specialist products to food service operators in Ireland, in particular hotels and restaurants. La

⁴ Aryzta Ireland is [...].

⁵ The most significant poultry product supplied by Aryzta to its food service customers is breaded chicken goujons. Notification page 7.

⁶ Aryzta Ireland states, in correspondence to the Commission dated 18 August 2015, that its billing and management systems allow its deliveries of products to be made to single or multiple locations, for invoices to be issued for single or multiple deliveries and for invoices to be issued individually or to central billing recipients.

⁷ This is comprised of approximately €[...] million generated from sales to the food retail sector and approximately €[...] million generated from sales to the food service sector.

⁸ See <<http://www.laroussefoods.ie/about.html>>.



Rousse Foods is also involved, to a lesser extent, in the supply of products to a small number of food retailers, e.g., [...].

11. La Rousse Foods sources most of its products from producers in the State and elsewhere. It does, however, have some manufacturing and preparation capacity particularly with respect to meat butchery and cheese making. Products supplied by La Rousse Foods include bread, charcuterie, game, meat, poultry and salads and herbs.⁹
12. All La Rousse Foods products are supplied directly to food service operators and food retail customers.
13. Amand Chocolat has been in operation since 2010 operating under the Cocoa Atelier brand. Amand Chocolat is involved in the manufacturing and supply of luxury chocolates to food service wholesalers and also sells chocolate directly to retail customers from its dedicated retail store in Dublin.
14. For the year ended 31 October 2014, the worldwide turnover of La Rousse Foods and Amand Chocolat was approximately €31.1 million¹⁰ of which €[...]¹¹ million was generated in the State.

Rationale for the Proposed Acquisition

15. Aрызta states that

“[T]he commercial objective of Aрызta in entering the Proposed Transaction is to diversify its business and to increase sales by seeking to cross-sell La Rousse premium food products to existing customers of Aрызta’s bakery business and vice versa”.¹²

16. The vendors are seeking to realise their investment in La Rousse Foods and Amand Chocolat.

Third Party Submissions

17. No submission was received.

⁹ See <<http://www.laroussefoods.ie/brochure.html>>.

¹⁰ This is comprised of approximately:

- (i) €[...] million generated by La Rousse Foods and
- (ii) €[...] generated by Amand Chocolat.

¹¹ This is comprised of approximately:

- (i) €[...] generated by La Rousse Foods of which almost all is generated from sales to food service customers and only approximately €[...] is generated from sales to food retail customers, and
- (ii) €[...] generated by Amand Chocolat - of which approximately €[...] is generated from sales to food retail customers and approximately €[...] is generated from sales to food service customers.

¹² Notification page 4.



Competitive Analysis

Market Definition

18. 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.
19. The Commission's conclusion concerning the competitive effects of the proposed transaction would be unaffected whether the relevant product markets in either the food retail and food service sectors are defined
 - Broadly, e.g., the supply of all food products either directly or indirectly (i.e. via wholesalers) to customers; or
 - Narrowly, e.g., separate markets for
 - Different categories of food products such as meat, bread, dairy or chocolate products.
 - Different categories of food service customer (e.g. cafes, caterers, hotels, restaurants).
 - Direct sales and indirect sales (i.e., via wholesalers) to food retailers and food service operators.
20. For the purposes of its analysis, the Commission has reviewed the impact of the transaction, in the State, in the most relevant sectors in which Aryzta Ireland, La Rousse Foods and Amand Chocolat are currently active, and in which there may be some overlap, namely, the food retail and food service sectors.

Food Retail

21. The horizontal overlap in the activities of Aryzta Ireland and La Rousse Foods in the food retail sector, within the State, is not significant. For the reasons set out below, the Commission considers that the proposed transaction would not lead to a substantial lessening of competition ("SLC") in the food retail sector.
22. La Rousse sells only a limited range of products to a small number of food retailer customers in comparison to the broader range of products sold by Aryzta Ireland to food retailer customers. Also La Rousse Foods' turnover in the food retail sector is relatively low (approximately €[...]),¹³ which does not indicate that it currently exerts a significant competitive constraint on Aryzta Ireland in the food retail sector.
23. The overlap in the activities of Aryzta Ireland and Amand Chocolat in the food retail sector, within the State, is not significant as Aryzta Ireland and Amand

¹³ La Rousse Foods states, in correspondence dated 20 August 2015, that for the year ended 31 October 2014 it had only [...] food retail customers: [...].



Chocolat are not close competitors, i.e., Amand Chocolat is involved in the manufacture and sale of chocolate products (at wholesale and retail level) and Aryzta Ireland neither manufactures nor sells chocolate products. Also, Amand Chocolat's turnover in the food retail sector is low (approximately €[...])¹⁴ which does not indicate that it currently exerts a significant competitive constraint on Aryzta Ireland in the food retail sector.

24. In addition, the Commission's market enquiries, involving competitors, customers and suppliers, do not indicate that the proposed transaction will lead to an SLC in the food retail sector.

Food Service

25. Aryzta Ireland, La Rousse Foods and Amand Chocolat (to a much lesser extent) are involved in supplying food service operators within the State. However, the horizontal overlap is not significant in the context of the overall food service sector (or within segments of the food service sector). For the reasons set out below, the Commission considers that the proposed transaction would not lead to an SLC in the food service sector.
26. The parties provided market share estimates for the year 2014 set out below in Table 1¹⁵ for the overall food service sector and also for the product or customer categories in which there is a horizontal overlap between the parties' activities. The parties identify restaurants and hotels as the food service operator sectors in which there is greatest overlap and also identify the bakery and poultry categories as the product categories in which there is greatest overlap.

Table 1: Market Shares - Food Service Sector in Ireland 2014

	Total Food Service Market	Food Service Customer		Food Service Product	
		Hotels	Restaurants	Bakery	Poultry
Aryzta Ireland ¹⁶	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
La Rousse & Amand Chocolat	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Combined	[0-5]%	[10-15]%	[5-10]%	[0-5]%	[0-5]%

Source – Information supplied by the Parties¹⁷

¹⁴ Correspondence between Marc Amand and the Commission, dated 20 August 2015.

¹⁵ Notification pages 17 and 18.

¹⁶ These market share figures are for Aryzta Ireland's Food Service Division only.

¹⁷ The market share figures are estimates for the island of Ireland based on the Bord Bia Irish Foodservice Channel Insights Report 2014. See



27. The market shares in Table 1 above do not indicate that the proposed transaction would lead to an SLC. The market share for the combined entity in the supply of food products to the hotel sector is approximately [10-15]% and the incremental increase in market share is not significant (less than [0-5]%). Also, there are now, and will continue to be upon completion of the proposed transaction, significant competitors in the food service sector in the State (in supplying and/or distributing) such as BD Foods, Brakes, Green Isle Foods, Greencore, Kerry Group, Lynas, Musgrave Foodservice, Odaios, Pallas Foods and Redmond Fine Foods.
28. Furthermore, the parties do not appear to be close competitors in terms of the products they supply in the food service sector. As described above, in paragraphs 5 and 12, Aryzta Ireland is primarily involved in the manufacture and sale of bakery goods whereas La Rousse Foods sells a much wider range of products in addition to bread products.
29. Aryzta Ireland and La Rousse Foods also do not appear to be close competitors in terms of their food service sector customers. Aryzta Ireland is primarily involved in supplying cafes and contract caterers – which account for a combined [60-65]% of Aryzta Ireland's food service sector sales. In comparison, the vast majority of La Rousse Foods' food service sector sales are to restaurants and hotels.¹⁸ The parties state that La Rousse Foods markets its products to premium grade food service operators [...] ¹⁹ [...].²⁰
30. The overlap in the activities of Aryzta Ireland and Amand Chocolat in the food service sector, within the State, is not significant and would not lead to an SLC. Aryzta Ireland and Amand Chocolat are not close competitors, i.e., Amand Chocolat is involved in the manufacture and sale of chocolate products (at wholesale and retail level) and Aryzta Ireland neither manufactures nor sells chocolate products. Also Amand Chocolat's turnover in the food service sector is low (approximately €[...]) which does not indicate that it currently exerts a significant competitive constraint on Aryzta Ireland in the food service sector.
31. In addition, the Commission's market enquiries involving the parties' competitors, customer and suppliers do not indicate that the proposed transaction will lead to an SLC in the food service sector.

Vertical Issues

32. The proposed transaction does not raise vertical competition concerns.

<<http://www.bordbia.ie/industry/events/SpeakerPresentations/2014/FoodServiceSeminar2014Reports/2014%20Bord%20Bia%20Irish%20Foodservice%20Channel%20Insights.pdf>>.

The parties state that they "provided market share figures for all key customer sectors and product categories where there is an overlap between the activities of the Merger Parties in the island of Ireland." Notification page 17. In this instance, and in the absence of readily available alternative independent information, the Commission considers that all-Ireland figures provide a reasonable approximation of market share figures within the State.

¹⁸ The parties estimate that that out of a combined total of approximately [...] customers only approximately [...] [5-10]% are customers of both Aryzta Ireland and La Rousse Foods. Notification page 6.

¹⁹ [...].

²⁰ Notification page 8. The Notification (in Annexes 7 and 8) includes [...] in its list of top five food service customers for La Rousse Foods and lists [...] in its list of top five food service customers for Aryzta Ireland.



Ancillary Restraints

33. The Share Purchase Agreement between Ayzta Ireland, La Rousse Holdings, Mr Marc Amand and Ms Mary Massy contains a number of restrictive obligations on each of [...]. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.²¹ The Commission considers that these obligations are directly related to and necessary for the implementation of the proposed transaction.

Conclusion

34. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

²¹ In this respect, the Commission follows the approach adopted by the EU Commission in paragraph 20 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, has determined that, in its opinion, the result of the proposed acquisition whereby Aryzta AG, through its wholly owned indirect subsidiary Aryzta Food Solutions Ireland, would acquire La Rousse Foods Limited and Marc Amand Chocolat Limited from La Rousse Holdings 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

Isolde Goggin
Chairperson
Competition and Consumer Protection Commission