



# DETERMINATION OF MERGER NOTIFICATION M/15/045 – PAT THE BAKER / IRISH PRIDE

## Section 21 of the Competition Act 2002

### Proposed acquisition of certain assets of Irish Pride Bakeries (in Receivership) by Pat the Baker

Dated 18 November 2015

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#### Introduction

1. On 14 August 2015, in accordance with section 18(1) of the Competition Act 2002 as amended<sup>1</sup> (“the 2002 Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Pat the Baker would acquire certain assets, comprising the rights, title and interest in the business, assets and the associated real property of Irish Pride Bakeries (collectively the “Target Assets”), from Irish Pride Bakeries (in Receivership) (“Irish Pride”).

#### The Proposed Transaction

2. On 16 June 2015, Kieran Wallace and Shane McCarthy (KPMG) were appointed as Joint Receivers of Irish Pride.<sup>2</sup> The proposed transaction is pursuant to (i) a business and asset purchase agreement (“APA”) between Pat the Baker, Irish Pride, and Kieran Wallace and Shane McCarthy of KPMG, in their capacity as joint receivers of Irish Pride; and (ii) a Contract for Sale (“CSA”) between Irish Pride and Pat the Baker in respect of the lands, hereditaments and premises known as the Irish Pride Bakery located at Taghmon, County Wexford. Both the APA and the CSA are dated 6 August 2015.

#### The Undertakings Involved

##### *Pat the Baker*

3. Pat the Baker, an unlimited private company, founded in 1953 by Mr Patrick Higgins, is headquartered in Granard, Co Longford.<sup>3</sup> Pat the Baker’s main

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<sup>1</sup> 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.

<sup>2</sup> Prior to the appointment of Messrs Wallace and McCarthy, on 11 June 2015, Declan Taite and Pearse Farrell (Duff & Phelps) were appointed as Joint Receivers of Irish Pride. On 16 June 2015, Declan Taite and Pearse Farrell were discharged as Joint Receivers and Messrs Wallace and McCarthy were appointed.

<sup>3</sup> Pat the Baker is a wholly owned subsidiary of Azeda (Unlimited) [...].



activities within the State, are the manufacture and distribution of bread products to food retailer and food service<sup>4</sup> customers.

4. Pat the Baker manufactures and supplies a wide range of branded bread products including packaged pans<sup>5</sup> (white and non-white),<sup>6</sup> burger buns, baps, finger rolls, bracks and breadcrumbs to food retailer customers. In addition to its own branded bread products Pat the Baker supplies private label bread products to food retailers, (e.g., [...]). Pat the Baker also manufactures and supplies branded bread products to food service customers within the State (e.g., [...]).
5. Pat the Baker distributes both its own branded and private label products bread products to its customers through eight main depots and eight sub-depots at various locations distributed throughout the island of Ireland.<sup>7</sup> In addition, Pat the Baker is also involved in distributing bread products manufactured by [...].
6. For the year ended 29 March 2014 Pat the Baker's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State. Irish Pride and Target Assets

#### *Irish Pride and Target Assets*

7. Irish Pride, an unlimited private company, is headquartered in Rathcoole, County Dublin. Irish Pride is involved, mainly within the State, in the manufacture and distribution of bread products. Irish Pride was originally established in 1989 as the First National Baking Company after the amalgamation of existing regional family bakers. First National Baking Company was renamed Irish Pride Bakeries Limited in 1990.
8. Irish Pride manufactures and supplies a wide range of branded bread products including packaged bread (white and non-white), burger buns, baps, finger rolls, bracks and breadcrumbs to food retailer customers. In addition to its own branded bread products Irish Pride supplies private label bread products to food retailer customers, (e.g., [...]). Irish Pride also manufactures and supplies a wide range of branded bread products to food service customers within the State (e.g., [...]).
9. Irish Pride distributes both its own branded and private label products to its customers through seven main depots, and 20 sub-depots in various locations

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<sup>4</sup> 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>.

<sup>5</sup> Also known, outside of the State, as loaves.

<sup>6</sup> Non-white bread includes the following: whole or sliced bread brown bread, wholemeal bread, granary bread and soda bread.

<sup>7</sup> The eight main depots are located in Counties Cork, Donegal, Dublin, Galway, Kilkenny, Kerry, Limerick and Longford. Seven of the sub-depots are located within the State and one is located in County Derry.



distributed throughout the State.<sup>8</sup> In addition, Irish Pride is also involved in distributing bread products manufactured by third parties, (e.g., [...]).

10. The Target Assets to be acquired, are detailed in the APA and CSA. The APA identifies certain moveable assets, intellectual property, the benefit of certain contracts, motor vehicles, stock, trailers, goodwill and business.<sup>9</sup> As stated above in paragraph 2, the CSA concerns lands, hereditaments and premises known as the Irish Pride Bakery located at Taghmon, County Wexford.
11. For the year ended 29 March 2014 2014, Irish Pride's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated within the State.

### Rationale for the Proposed Acquisition

12. The parties state that they have complimentary distribution networks for bread products across the State. The parties also state that

*"[Pat the Baker] wishes to expand its network and create synergies in production, logistics and distribution. .... In addition, the Transaction will enable "[Pat the Baker to better compete with Brennans which is the closest competitor to both PTB and [Irish Pride] and the market leader before and after the Transaction." <sup>10</sup>*

### Third Party Submissions

13. No submission was received.

### Market Enquiries

14. The Commission conducted market enquiries which involved contacting a number of competitors of and suppliers to both of the merging parties. Some respondents considered that the proposed transaction could be beneficial to the extent that the merged entity would, be a stronger competitor within the State to the market leader. Some respondents indicated, however, possible competition concerns regarding private label products including the distribution of private label products (discussed further in paragraphs 45-53). However, none of the third parties contacted by the Commission indicated that the proposed transaction would be likely to lead to a substantial lessening of competition ("SLC").

### Requirement for Further Information

15. The Commission required further information from the parties to assist with its investigation into the likely effects of the proposed transaction. On 22

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<sup>8</sup> The seven main depots are located in Counties Cork, Donegal, Dublin, Galway, Limerick Mayo and Wexford. All 20 sub-depots are located within the State. Notification Annex 4.

<sup>9</sup> Notification page 4. The APA lists, for the avoidance of doubt, various "excluded assets" i.e., assets not included in the proposed transaction.

<sup>10</sup> Notification page 9.



September 2015, the Commission therefore served Requirements to provide Further Information (“RFI”) pursuant to section 20(2) of the Act on both Pat the Baker and Irish Pride.

16. Pat the Baker and Irish Pride complied with the Requirements for Further Information on 7 October 2015. The issuing of the RFI adjusted the deadline within which the Commission had to conclude its assessment in Phase I. The “appropriate date” was therefore automatically amended, as per section 19 (6)(b)(i) of the Act, to 7 October 2015.

### **Consumer Survey**

17. The Commission engaged Behaviour and Attitudes Ltd. (“B&A”) to undertake a consumer survey with respect to bread products. A representative sample of 1000 adults (i.e., aged 16 or over) were contacted by telephone interview in October 2015.

### **External Econometrician**

18. The Commission engaged the services of Professor Patrick Paul Walsh of University College Dublin to review the statistical and econometric analysis of bread products in the State undertaken for Pat the Baker by Oxera Consulting LLP (“Oxera”) using AC Nielsen data.

### **Competitive Analysis**

19. The Commission’s analysis of the proposed transaction focused on the competitive effects that might arise as a result of the overlap in the activities of Pat the Baker and Irish Pride. This included an analysis of:
  - (a) Relevant product and geographic markets (i.e., the markets where competitive effects are most likely to arise), and
  - (b) How Pat the Baker and Irish Pride compete with each other and with other suppliers of bread products (including an analysis of market shares and the closeness of competition between Pat the Baker and Irish Pride).
20. The purpose of this analysis was to assess whether the proposed transaction would result in an SLC.
21. There is a horizontal overlap within the State in the activities of the parties in both the production and distribution of bread products to (i) food retail sector customers and (ii) food service<sup>11</sup> sector customers respectively. The overlapping products include

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<sup>11</sup> The Commission’s analysis of the proposed transaction focused on competitive effects in the retail sector. The competitive effects on the food service sector are discussed in paragraphs 54-56.



- (a) Packaged white bread - whole or sliced bread made from wheat flour from which the bran and the germ layers have been removed to leave a white or light colour packaged in, for example, wrapped paper or a plastic bag.
- (b) Packaged non-white bread - whole or sliced bread such as brown bread, wholemeal bread, granary bread and soda bread packaged in, for example, wrapped paper or a plastic bag.
- (c) Burger buns, baps and finger rolls - packaged in, for example, wrapped in paper or a plastic bag.
- (d) Bracks.<sup>12</sup>
- (e) Breadcrumbs.<sup>13</sup>

### *Product Market Definition*

22. The Commission defines product markets to the extent necessary depending on the particular circumstances of a given case. The overlap in the activities of the parties, indicate a range of possible relevant product markets. Both Pat the Baker and Irish Pride are involved in the manufacture and supply of bread products (both branded and, in some instances, private label),<sup>14</sup> to food retailers and food service customers.
23. The parties argue, with reference to EU Commission and UK Office of Fair Trading (“OFT”) decisions, that the relevant product market should be defined broadly as an ‘overall market for packaged bread’ which includes white and non-white pans and other products such as baps buns, rolls but which excludes specialty breads<sup>15</sup> and also excludes bracks or breadcrumbs.
24. The Commission does not consider that the relevant product market is necessarily the overall market for packaged bread as defined by the parties. The Commission’s market enquiries, together with its consumer survey and its review of the parties’ econometric analysis of scanner data, indicate a number of

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<sup>12</sup> There is an insignificant overlap in the activities of the Pat the Baker and Irish Pride for the supply of bracks. The parties own estimates are that Irish Pride has a [...] % market share of a market for the supply of bracks within the State and Pat the Baker has a market share of [...] %. There are numerous suppliers of bracks in the State. The Commission considers that any overlap with respect to bracks would not be significant and consequently the proposed transaction will not lead to an SLC in the State.

<sup>13</sup> Pat the Baker and Irish Pride are involved in the supply of breadcrumbs but only to the extent that they generate minimal turnover from the resale of breadcrumbs purchased from the same supplier Mr Crumb. Breadcrumbs are delivered by Mr Strong, Mr Messy and Little Miss Tidy. The Commission considers that any overlap with respect to breadcrumbs would not be significant and consequently the proposed transaction will not lead to an SLC in the State.

<sup>14</sup> Private Label refers to packaged bread supplied to customers for retail sale by the customers under the customers’ name or associated brand.

<sup>15</sup> The parties refer in particular to the OFT’s decision *Geest / New Primebake*, of 27 June 2006, which states that “*Specialty breads differ from traditional breads due to different shapes, flavours and influences from European or international trends*” and that “*Specialty breads include breads such as Vienna rolls, French baguettes, pain de campagne, ciabatta and focaccia, naan and chapatti, pitta, soda bread, tortillas and wraps and US-style sourdough bread, and functional breads including newer type breads such as low-carbohydrate, low-salt, gluten-free and nutrient-enriched breads.*” Notification page 23. Neither Pat the Baker nor Irish pride are involved in the manufacture or distribution of so-called specialty breads.



possible narrower markets such as those listed in paragraph 26 below that would distinguish between different bread products.

25. It is not necessary, however, for the Commission to define precise relevant markets for the different bread products such as those identified in paragraph 26 below. Rather, the precise product market can be left open as the Commission's conclusion concerning the competitive effects of the proposed transaction would be unaffected by whether a packaged bread product market is defined broadly (e.g., to include both white and brown packaged bread) or narrowly (e.g., distinct markets for packaged white bread and packaged brown bread and for buns, baps and rolls).
26. The Commission has, for the purposes of reviewing the proposed transaction, considered the potential competitive effects within the most likely relevant product markets (i.e., the markets where competitive effects are most likely to arise) namely:
  - (a) A single combined market for the manufacture and supply of packaged white and non-white pans.
  - (b) Separate product markets for the manufacture and supply of
    - (i) Packaged white pans, and
    - (ii) Packaged non-white pans.
  - (c) A separate market for baps, buns and rolls.

### *Geographic Market Definition*

27. The Commission defines geographic markets to the extent necessary depending on the particular circumstances of a given case. In this instance the choice of geographic market (e.g., national, regional or local markets such as County Longford and County Wexford)<sup>16</sup> will not materially alter the competitive impact of the notified transaction in the State.
28. Contractual arrangements between the parties and their food retailer customers are typically national in scope.<sup>17</sup> For example, although there is regional competition for branded bread products from regional bakeries it is also the case that regional bakeries compete with Irish Pride and Pat the Baker for private label bread products within a national market.<sup>18</sup>

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<sup>16</sup> Counties Longford and Wexford are highlighted, for illustrative purposes. They are the local areas most associated with the Pat the Baker and Irish Pride respectively by virtue of the location of bread manufacturing facilities.

<sup>17</sup> The parties state that the relevant geographic market, for the purposes of analysing the proposed transaction, is the State notwithstanding that some bread products are imported into the State from the UK. Notification page 29. The parties also present market share data for four regional markets, namely: Dublin, Rest of Leinster, Munster and Connaught/Ulster.

<sup>18</sup> Regional bakeries include O'Hara's in County Mayo, Stafford's in County Wexford, Gallagher in County Donegal, McCloskey's in County Louth, Stapletons in County Tipperary and Hovis in Belfast.



29. It is not necessary in this instance to precisely define a geographic market or markets for the retail sale of bread products. For the purposes of reviewing the notified transaction, the Commission considers that the relevant geographic market for the retail sale of bread products is national, i.e., within the State.

#### *Competitive Effects*

30. Table 1 shows the market shares by value of the retail sales<sup>19</sup> of Pat the Baker, Irish Pride and their largest competitors in an overall market for packaged bread, i.e., for the product market as defined by the parties in paragraph 23.

**Table 1: Market Share by Value - Overall Market for Packaged Bread in the State, 2015**

Bakery	June 2015 <sup>20</sup>
Brennans	25.4%
<b>Pat the Baker</b>	<b>8.7%</b>
<b>Irish Pride</b>	<b>9.6%</b>
<b>Combined</b>	<b>18.3%</b>
JMOB	5.8%
McCambridge	3.2%
Staffords	2.4%
O'Hara's	2.5%
McCloskey's	1.9%
Private Label	22.7%
All Others	17.9%

Source - Information supplied from the Parties<sup>21</sup>

31. The market shares set out in Table 1 indicate that the proposed transaction involves the merging of the second and third largest brands in an overall market for the sale of packaged bread (white and non-white and including buns, baps and rolls). The merged entity would have a market share of 18.3%, more than double Pat the Baker's current share of 8.7%. The merged entity would remain

<sup>19</sup> Neither Pat the Baker nor Irish Pride sell directly to the final consumers of bread products (i.e., food retail customers). Rather the immediate customers are food wholesalers or food retailers who purchase products for resale ultimately to retail customers. Consequently, the retail market provides a reliable indicator of (i) the market shares and the relative market strength of bread producers and (ii) possible competitive impacts on food retailer customers and a final consumers.

<sup>20</sup> The market share figures in Table 1, and also in Tables 2 and 3, are calculated on the basis of moving annual totals (i.e., the previous twelve month period) including June 2015.

<sup>21</sup> These figures are based on scanner data for all stores other than Dunnes Stores and in-store bakeries (define – bakeries within stores). Note that the Private Label figure includes the parties' estimates of the market shares of so-called "discounters" Aldi and Lidl, as part of the overall Private Label market share.



smaller than market leader Brennans, which has a market share of 25.4%, but would be larger than the remaining competitors. For example, Johnson Mooney and O'Brien would become the third largest brand with a market share of 5.8%.

32. The parties argue on the basis of an econometric analysis by Oxera in 2013 for Pat the Baker that Pat the Baker and Irish Pride are not each other's closest competitors. Rather, the parties argue that Brennans is the closest competitor of each of Pat the Baker and Irish Price and this would remain the case subsequent to the implementation of the proposed transaction.<sup>22</sup>
33. The figures in Table 1 indicate also that Private Label, with a market share of 22.9% would provide a competitive constraint on the merged entity to the extent that retailers offer their own private label products for sale.
34. The factors listed above indicate that the proposed transaction will not lead to an SLC in a market within the State for all packaged pans and buns, baps and rolls. This does not, however, necessarily imply that there would be no competition concerns in distinct product markets for white pans; non-white pans or buns; baps and rolls (discussed at paragraphs 36 to 44 below).
35. The Commission's consumer survey indicated that of those respondents who purchase white or non-white pans, 47% consider white and non-white pans to be substitute products.<sup>23</sup> For "white bread only" buyers, the proportion is only slightly lower at 46%. In contrast for "non-white bread only" buyers, the proportion falls significantly to 30%. Consequently, the Commission's analysis, including its analysis of market shares presented in Tables 2 and 3 below, focuses on four potential relevant product markets:
  - (a) All packaged pans (i.e., white and non-white).
  - (b) White packaged pans.
  - (c) Non-white packaged pans.
  - (d) Buns, baps and rolls.

### Packaged Pans

36. Table 2 shows the market shares by value of the retail sales of Pat the Baker, Irish Pride and their largest competitors in markets for (i) the retail sale of all packaged pans (i.e., white and non-white pans combined) (ii) white packaged pans and (iii) non-white packaged pans.<sup>24</sup>

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<sup>22</sup> Notification page 14.

<sup>23</sup> 30% of respondents described white and non-white bread as close substitutes (i.e., they would regularly/freely substitute white and non-white bread) and 17% of respondents described white and non-white bread as distant substitutes (i.e., they would occasionally substitute white and non-white bread).

<sup>24</sup> The figures in Tables 2 and 3, are taken from "Packaged Bread Report" and "Buns, Rolls and Baps Report"; two reports commissioned by Pat the Baker from AC Nielsen. The figures are based on scanner data for all stores other than Dunnes Stores, Aldi and Lidl and hence underestimate the market share of Private Label relative to the figures in Table 1.





**Table 2: Market Share by Value - All Pans, White Pans, Non-White Pans in the State, June 2015**

<b>Bakery</b>	<b>All Packaged Pans June 2015</b>	<b>White Packaged Pans June 2015</b>	<b>Non-White Packaged Pans June 2015</b>
Brennans	32.8%	40.5%	25.9%
<b>Pat the Baker</b>	<b>9.6%</b>	<b>8.4%</b>	<b>10.6%</b>
<b>Irish Pride</b>	<b>11.1%</b>	<b>11.5%</b>	<b>10.4%</b>
<b>Combined</b>	<b>20.7%</b>	<b>19.9%</b>	<b>21.0%</b>
JMOB	6.6%	7.2%	5.4%-
McCambridge <sup>25</sup>	4.2%	-	8.0%
Staffords, O'Hara's and McCloskey's <sup>26</sup>	8.6%	-	-
Private Label	8.3%	9.4%	7.3%
All Others	18.8%	23.0%	32.3%

Source - Information supplied from the Parties

37. The market shares in Table 2 indicate that the proposed transaction involves the merging of the second and third largest brands in each of the above market segments (i.e., in each of an all packaged pans, white packaged pans and non-white packaged pans). The merged entity would be more than double the size of Pat the Baker's current share for all packaged pans and for white packaged pans and almost double Pat the Baker's current share for non-white packaged pans.
38. The market shares in Table 2 do not, however, imply that the effect of the proposed transaction would be for the merged entity to have sufficient market power to unilaterally increase prices or otherwise adversely affect retailer customers or final consumers. Although the proposed transaction would result in an increase in concentration in all the packaged bread segments discussed above, the merged entity's market share would be approximately 20% and would remain smaller than market leader Brennans, in each of the above segments.
39. In addition, while the merged entity would be larger than the remaining competitors, there would be a significant number of these offering a wide range of brands. Johnson Mooney and O'Brien would become the third largest brand for all packaged pans (6.6%) and white pans (7.2%) McCambridge would become the third largest brand for non-white packaged pans (8.0%). The broad range of available branded products would continue to provide considerable consumer

<sup>25</sup> The market share for McCambridge for white pans is included in the All Others category.

<sup>26</sup> The market shares for Staffords, O'Hara's and McCloskey's for white and non-white pans are included in the All Others category.



choice and would act as a competitive constraint on the merged entity subsequent to the implementation of the proposed transaction.

40. Econometric evidence<sup>27</sup> indicates that neither Pat the Baker nor Irish Pride is each other's closest competitors for any of all packaged pans, white packaged pans and non-white packaged pans.<sup>28</sup> For example, for all packaged bread, a 10% increase the price of Irish Pride products would result in an increase in the market share of Pat the Baker products of less than 1%. Similarly, a 10% increase in the price of Pat the Baker products would yield an increase of less than 1% in Irish Pride's market share.<sup>29</sup> These results are consistent with the consumer survey results which indicated that at most approximately 10% would switch to Pat the Baker in the event of a 5-10% increase in the price of Irish Pride Products and *vice versa*.<sup>30</sup>
41. Significantly in this instance, the econometric analysis and the consumer survey evidence and market enquiries all indicate that Brennans, the market leader, exerts the strongest competitive constraint on Pat the Baker and Irish Pride and could be expected to continue to do so on the merged entity. For example, the consumer survey indicated that for a 5-10% increase in either Pat the Baker or Irish Pride products approximately 20% would switch to Brennans.<sup>31</sup>
42. Private label market shares - 8.3%, for all packaged pans, 7.3% white packaged pans and 9.4% for non-white packaged pans – also indicate the presence of non-branded options for consumers and a credible competitive constraint on the merged entity that would continue subsequent to the implementation of the proposed transaction. (Private label bread products are discussed further in paragraphs 45-53).

### Buns, Baps and Rolls

43. Table 3 shows the market shares by value of the retail sales of Pat the Baker, Irish Pride and their largest competitors in a markets for buns, baps and rolls.

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<sup>27</sup> The Commission, in its RFI to Pat the Baker, requested an econometric analysis using 2015 data to update the analysis based on 2013 data.

<sup>28</sup> Being closest competitors is not a necessary condition for competition concerns to arise and conversely not being closest competitors does not imply necessarily an absence of competition concerns. Consequently, depending on the circumstances, it is possible for competition concerns to arise even when merging parties are not closest competitors.

<sup>29</sup> Professor Paul Walsh's report to the Commission "*The Proposed acquisition by Pat the Baker of Irish Pride Bakeries*" concluded that the relevant market shares are similar in an overall packaged bread market and a white packaged bread market and hence the effects of changes in white bread prices can be expected to be similar to those in an all packaged bread market, particularly where white packaged bread is a larger market segment than non-white packaged bread. For non-white packaged bread, the analysis indicates that the lower market share of Brennans (i.e., approximately 26% compared with its overall packaged bread market share of approximately 41%) may mean that the merged entity (with a market share of approximately 21%) may impose a greater competitive constraint than at present on market leader Brennans.

<sup>30</sup> "*B&A Bread Market Barometer Research*" prepared for the Competition and Consumer Protection Commission October 2015. Almost half of respondents surveyed indicated that they would not switch to another brand in the event of a 5-10% price rise for either Pat the Baker or Irish Pride products.

<sup>31</sup> The survey did not show a marked difference in switching preferences between white and non-white packaged bread.



**Table 3: Market Share by Value - Packaged Buns, Baps and Rolls<sup>32</sup> in the State, 2015**

	June 2015
Private Label	68.6%
Irish Pride	7.4%
Pat the Baker	0.3%
<b>Combined</b>	<b>7.7%</b>
JMOB	5.9%
Brennans	0.9%
Panelto	1.9%
Allied Bakeries	1.0%
O'Hara's	1.1%
Gallagher	0.7%
Hovis	0.3%
McCloskey's	0.3%
All Others	11.3%

Source - Information supplied from the Parties

44. The market shares in Table 3 imply that there is a *de minimus* overlap with respect to buns, baps and rolls due to the small market share of Pat the Baker (i.e., 0.3%). The proposed transaction will not, therefore, lead to an SLC in a market within the State for buns, baps and rolls.

#### Private Label

45. Tables 1-3 above all show that private label products, in aggregate, have a significant presence in the retail bread product market. For example, following the implementation of the proposed transaction, private label, if treated as a single competitor, would be the third largest competitor (after Brennans and the merged entity) in a market for all packaged pans and packaged white pans, the fourth largest competitor in a market for non-white pans and the market leader in a market for buns, baps and rolls.
46. The competitive constraint on the merged entity from private label products differs from the competitive constraint applied by branded products, most obviously because private label products are branded differently depending on

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<sup>32</sup> The parties state that a Pat the Baker sandwich alternative product is recorded by AC Nielsen and that this has a distorting effect on market share calculations for buns, baps and rolls. Pat the Baker states that sandwich alternative bread is not a distinct relevant product market but is part of the overall packaged bread market and that sales of those products should be considered as part of the overall packaged bread market. Notification page 25.



the retailer selling the private label products to consumers.<sup>33</sup> Nevertheless, for the reasons described in paragraphs 47-53, private label products provide a credible competitive constraint on the merging parties now and will continue to provide a credible competitive constraint on the merged entity following the implementation or the proposed transaction.

47. The competitive constraint imposed by private label may vary in nature from direct intra-store competition (i.e., when a retailer stocks both branded and private label bread products) to indirect inter-retailer competition (i.e., when a retailer stocks only private label bread products). Direct instore competition presents consumers with a choice between a variety of branded products and private label products. Where there is direct intra-store competition a private label product is one of many products available to consumers.
48. Where there is indirect inter-retailer competition, bread products are part of a broader competition between food retailers for retail customers. Consequently, the effect of indirect inter-retailer competition on a given product market, such as the market for the retail sale of bread products, depends on the overall strength of retailers that sell mainly private label products within the wider grocery sector, such as Aldi and Lidl. Market share data for the overall grocery retail sector indicates that Aldi and Lidl have increasing market shares, to an extent that indicates that the indirect competition they provide constitutes a credible competitive constraint on branded products and would continue to do so after the implementation of the proposed transaction.<sup>34</sup>
49. Pat the Baker and Irish Pride are involved in the manufacture and supply of private label packaged bread products for food retailer customers. The merged entity would generate approximately €[...] million, or [...]%, of its total turnover, in the sale of packaged bread, from sales of private label packaged bread.<sup>35</sup> The merged entity's revenue from the sale of private label packaged bread, and the proportion relative to total revenue, would not, however, create an incentive for the merged entity to compete less vigorously in the supply of branded products, for example by reducing the price of its private label products relative to its branded products. At the retail level while some consumers might switch to the merged entity's private label product others might switch to competitor branded products. The presence of competing branded products and the switching by consumers to competitor products would reduce the overall revenues earned by the merged entity.

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<sup>33</sup> To illustrate, even in a situation where case of the same bakery supplies private label products to different retailers, the products will be sold under different labels and product specifications are not likely to be the same. In contrast branded goods sold to different retailers would carry the same brand.

<sup>34</sup> It is part of the business model of discounter supermarkets, such as Aldi and Lidl, to promote their private label products across a range of products, including bread products. Kantar World Panel data indicates a combined Aldi/Lidl market share in the overall grocery retail market of approximately 15% for January 2015 and 17% in June 2015.

<sup>35</sup> Calculated on the combined turnover figures for Pat the Baker and Irish Pride for the year ended 31 December 2014. Pat the Baker's total turnover in the State from sales of private label packaged bread represents approximately [...]% of its total turnover, while Irish Pride generates approximately [...]% of its total turnover in the State from sales of private label packaged bread. Approximately [...]% of the merged entity's turnover would be attributable to sales of private label white packaged bread and approximately [...]% would be attributable to sales of private label non-white packaged bread.



50. Also the supply of private label bread products is a bidding market in which retailers and/or wholesaler customers typically contract with suppliers by way of tender, usually for a period of 12 months. There is competition now for the supply of private label products from larger and regional bakeries that would, in most cases continue after the implementation of the proposed transaction.<sup>36</sup>
51. In addition to the above two points, during the course of its market enquiries the argument was made to the Commission that a bakery's logistical capacity was an important factor in its ability to compete for private label business. In other words, it was argued that an inability of a bakery to distribute private label products to retailer customers would inhibit a bakery's ability to compete for private label business.
52. The Commission, does not consider that distribution and logistics present a barrier to smaller regional bakeries competing for the supply of private label products. While an effective distribution system is essential for any bakery wishing to get its products (branded or private label) to market, this does not imply that a bakery must have the capacity itself to distribute all of its branded or private label products. In addition, larger retailers and wholesalers (i.e., the largest purchasers of private label goods) have central distribution systems which can reduce the time and distance required to transport private label products from bakery to customer. Another option available to bakeries is the use back haul arrangements whereby the customer collects the private label products from the bakery. It does not appear, therefore, that limited distribution capacity is an unsurmountable barrier that would prevent bakeries from supplying private label products.
53. In summary, the Commission's market enquiries, econometric evidence and consumer survey evidence all indicate that private label packaged bread products provide a credible competitive constraint on Pat the Baker and Irish Pride now and would continue to provide a credible competitive constraint on the merged entity following the implementation of the proposed merger.

### Food Service Sector

54. The overlap in the activities of the parties in the food service customer is not significant. Irish Pride generates approximately €[...] million turnover from sales of bread products to the food service sector whereas Pat the Baker generates approximately €[...] million. These turnover figures imply market shares for Irish Pride and Pat the Baker of approximately [...] % and [...] % respectively.<sup>37</sup>

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<sup>36</sup> The Commission's experience in reviewing mergers in the food retail sector, as well as market enquiries in this instance, indicate that private label customers prefer to have more than one supplier of private label products at any one time. This practice would further mitigate competition concerns about the private label sector arising from the size of the merged entity.

<sup>37</sup> Correspondence from Irish Pride and Pat the Baker dated 11 and 12 November 2015 respectively and Notification page 30. These market shares are supplied by the parties on the basis of Bord Bia data, for the year ended January 31 2014, Bord Bia estimates a total foods service market for a bread and morning goods within the State of approximately €393.4 million of which approximately €86.6 million can be attributed to bread products. See



55. Also, in the food service sector larger customers (e.g., hotels, catering companies, hospitals and prisons) often purchase bread products through national and/or regional tender processes.<sup>38</sup> Contracts are typically for a one or two year period and food service customers can and do switch between different suppliers. The Commission has not identified evidence in the course of its market enquiries to indicate that the proposed transaction would lead to competition concerns in the supply of bread products in the food service sector. There are currently various regional and national bakeries in competition with Pat the Baker and Irish Pride, and this competitive constraint will continue following the implementation of the proposed transaction.
56. The factors listed above indicate that the proposed transaction will not lead to an SLC in a market within the State in the food service sector.

### *Vertical issues*

57. There is a vertical relationship between the parties to the extent that Pat the Baker supplies Irish Pride with bread products for use in manufacturing and supplying [...].<sup>39</sup>
58. Pat the Baker and Irish Pride also supply, purchase and distribute bread products from competitor bakeries. For example, [...] supply bread products to and purchase bread products from Pat the Baker. [...] supplies bread products to and [...] purchases bread products from Irish Pride. Pat the Baker is involved in distributing [...] bread products and Irish Pride is involved in distributing [...] bread products.<sup>40</sup>
59. Chapter 5 of the Commission's Merger Guidelines sets out the framework for the Commission's analysis of vertical effects. The Commission's analysis of vertical effects focuses on:
- (a) Input foreclosure whereby the merged entity harms downstream competitors - i.e., whether, in this instance, the merged entity, upon completion of the proposed transaction, has the ability and incentive to reduce or eliminate the ability of competitor bread product distributors to supply bread products to food retailer and food service customers; and
  - (b) Customer foreclosure whereby the merged entity harms upstream competitors - i.e., whether in this instance the merged entity, upon completion of the proposed transaction, has the ability and incentive to reduce or eliminate the ability

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<http://www.bordbia.ie/industry/manufacturers/insight/publications/bbreports/Documents/Consumer%20Bakery%20Research.pdf>.

<sup>38</sup> Customers, including smaller customer, also have the option of purchasing from food service wholesalers such as BWG, Musgrave, and others.

<sup>39</sup>The parties state that (i) [...] and (ii) [...]. Notification Annex 4.2

<sup>40</sup> Notification Annex 4.2.



for competitor bakeries to have their bread products distributed to food retailer and food service customers.

60. A credible theory of harm for either input or output foreclosure requires that, the merged entity will have (i) an ability and (ii) an incentive to foreclose, whether upstream or downstream. The ability to foreclose competitors requires that the merged entity has market power in one or both of the markets. The incentive to foreclose competitors depends on the expected return to the merged entity from doing so.
61. The Commission considers that the merged entity would have neither the ability nor the incentive to engage in either input or customer foreclosure for the following reasons: (i) the presence of alternative national and regional bakeries, including those listed above in Table 1 and Table 2, (ii) the availability of alternative national or regional distributors and (iii) the variety of delivery options available, including those discussed in paragraph 52, with respect to the distribution of private label products.

### **Conclusion**

62. 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.

### **Ancillary Restraints**

63. No ancillary restraints were notified.



## **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 Pat the Baker would acquire certain assets, comprising the rights, title and interest in the business and assets and the associated property of Irish Pride Bakeries, from Irish Pride Bakeries (in Receivership) 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

**Gerald FitzGerald**  
**Member**  
**Competition and Consumer Protection Commission**