



DETERMINATION OF MERGER NOTIFICATION M/16/060 – KEPAK GROUP/JOHN KELLY MEATS

Section 21 of the Competition Act 2002

Proposed acquisition by Kepak Group Unlimited Company of the business, property and assets of John Kelly Meats Unlimited Company

Dated 21 December 2016

Introduction

1. On 16 November 2016, in accordance with section 18(1) 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 Kepak Group Unlimited Company (“Kepak Group”), through its indirectly wholly-owned subsidiary, Kepak Cork Unlimited Company, would acquire the business, property and assets, constituting a meat processing plant located in Lisheen, Ballynacally, Ennis, Co. Clare (the “Target Business”), which is currently owned and operated by John Kelly Meats Unlimited Company (“John Kelly Meats”).

The Proposed Transaction

2. At the date of notification, the parties had not executed a formal written agreement relating to the acquisition by Kepak Group of the Target Business¹. Nonetheless, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purpose of section 18(1A)(b)(ii) of the Act.
3. Following the proposed transaction, the Target Business will be subsumed within Kepak Group.

¹ The parties submitted to the Commission, together with the notification, a copy of a heads of agreement dated 14 November 2016 between John Kelly Meats, Kepak Cork, Heads of Agreement dated 14 November 2016 between the Prospective Seller, Kepak Cork, Verdantglen Limited, Cablemount Limited, Tarmondale Limited, Castledale Company, Cavilford Unlimited Company, John Kelly and Anne Kelly.



The Undertakings Involved

Kepak Group

4. Kepak Group is a private unlimited company which is incorporated and registered in the State, with its head office located in Clonee, Co. Meath. Kepak Group's main business is the primary processing and marketing of a full range of meat proteins in varied formats and presentations. It has eight manufacturing facilities located across the State and the UK. Kepak Group is licensed by the Department of Agriculture, Food and the Marine ("DAFM") to export beef outside of the EU. Kepak Group comprises three business units, namely Kepak Meat Division, Kepak Convenience Foods and Kepak Frozen Division, which have the following activities:

- Kepak Meat Division is the primary processing business unit of Kepak Group. It processes beef, lamb and pork in the State, and processes beef and lamb in the UK². Kepak Meats Division has four beef slaughter lines and three beef boning halls in the State³.
- Kepak Convenience Foods Division produces a range of convenience food products⁴ for the retail and food services markets in Ireland, the UK and Europe. Its offers products marketed under the following brands: FEASTERS, Zugos, Speedy Snacks and Rustlers.
- Kepak Frozen Division comprises of four business units, namely: AgraKepak⁵, Food Service, Frozen Retail⁶ and Ballybay⁷.

5. For the financial year ended 31 December 2015, Kepak Group's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

The Target Business

² It processes approximately [...] cattle, [...] lambs and [...] pigs. Kepak Group offers branded ranges, such as Certified Irish Angus, Kepak Gold, Watergrasshill Beef, John Stone, Hereford and Watergrasshill free range Irish lamb.

³ Kepak Meats Division also has a lamb slaughter line, a lamb boning hall and a pig slaughter and boning plant in the State. It also has a sous vide cooking operation in Cork and operates a beef feedlot in Co. Meath.

⁴ Containing beef, burger, and poultry products.

⁵ AgraKepak specialises in the sourcing and supply of fresh and frozen meat and fish proteins to international customers.

⁶ Frozen Retail markets the branded burgers produced by the Kepak Frozen Division under the 'Big Al' brand.

⁷ Ballybay is Kepak Group's burger manufacturing site.



6. The Target Business comprises a meat processing plant located at Lisheen, Ballynacally, Ennis, Co. Clare (the “Plant”), which is currently owned and operated by John Kelly Meats. John Kelly Meats is a private unlimited company which is incorporated in the State. John and Anne Kelly jointly own the entirety of the shares of Cavilford Unlimited Company⁸, which indirectly owns John Kelly Meats.
7. The Plant is approved by Clare County Council to export beef within the EU. John Kelly Meats purchases cattle for slaughter at the Plant and sells beef carcasses to third party processors for deboning. A significant amount of John Kelly Meats’ beef carcasses is sold to Kepak Group’s plant in Watergrasshill in Co. Cork for deboning. In addition to selling beef carcasses to third party processors for deboning, John Kelly Meats also sells by-products of the cattle slaughtering process, namely: offal, fat and hides. It also generates revenue from the provision of contract slaughtering services to third parties.
8. For the financial year ended 31 December 2015, John Kelly Meats’ worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

Rationale for the Proposed Transaction

9. The parties state in the notification:

“The purchase of the Target Business will afford the Kepak Group the opportunity to increase throughput and to grow its business. It will increase the choice of processors available to local farmers and will ensure the continued presence in the area of a competitive processor. Additionally, the increased availability of cattle will bring increased efficiencies to Kepak Group’s existing boning halls.”⁹

Third Party Submissions

10. No submission was received.

Competitive Analysis

⁸ [...].

⁹ Page 5, section 2.7 of the notification.



Horizontal Overlap

11. There is a horizontal overlap between the activities of the parties within the State. Both Kepak Group and John Kelly Meats are involved in the purchase of cattle for slaughter and the supply of by-products of the cattle slaughtering process, namely: offal, fat and hides.
12. Typically, cattle are brought from the farm to an abattoir/slaughter house for slaughter. At this point, the by-products (such as offal, fat and hides) are separated from the in-bone carcass. The in-bone beef carcass is then sent to the deboning hall to be “deboned” in order to produce “primary cuts” of beef. Primary cuts of beef are then exported or further processed by manufacturers of beef products or are further processed into smaller cuts which are appropriate for catering or retail sale.
13. Kepak Group is vertically integrated and has a number of plants with boning halls, while the Plant does not have a boning hall. John Kelly Meats thus sells in-bone beef carcasses to third party beef processors, including Kepak Group, for deboning (see paragraph 29 below). Kepak Group slaughters approximately [...] cattle per annum, while John Kelly Meats slaughters approximately [...] cattle at the Plant per annum.
14. For the reasons given below, the Commission considers that the horizontal overlap in each of the potential market described below is not significant.

Product Market Definition

15. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant markets because the precise product market definition adopted will not materially alter the Commission’s assessment of the competitive impact of the proposed transaction.

Purchase of Cattle for Slaughter

16. In *M/03/029-Dawn Meats/Galtee Meats*, the Commission considered that the market for the procurement of cattle for slaughter was the relevant product market with possible market segments for different types and ages of cattle, and possibly for each



grade therein¹⁰. The Commission considers that there are no reasons to depart from that view in the current case but considers that, ultimately, the precise product market can be left open in this instance as the precise product market definition adopted will not materially alter the Commission's analysis. However, for the purposes of reviewing the competitive effects of the proposed transaction, the Commission's analysis has focused on the purchase of cattle for slaughter.

Supply of Different By-Products

17. The supply of each type of by-product of the cattle slaughtering process (such as offal, fat and hides) could constitute separate product markets. However, there may be specific sub-markets for particular types of by-product. For example, hides may be distinguished on the basis of different ways of processing (e.g. "salt" and "grade" hides). The Commission considers that in this case it is not necessary to define precise product markets for the supply of different types of by-products, given that the increase in Kepak Group's share of supply of each type of by-product as a result of the proposed transaction is not significant. For the purposes of reviewing the competitive effects of the proposed transaction, the Commission's assessment in relation to the supply of by-products has focused on each by-product separately.

Geographic Market Definition

18. In *M/03/029-Dawn Meats/Galtee Meats*, the Commission left the precise geographic market open, although it considered that the market or catchment area of a particular processing plant may be wider than a 100km radius of the processing plant and that the geographic market for procurement of cattle could be national. In this instance, the choice of geographic market will not materially alter the competitive impact of the proposed transaction in the State. Consequently, the Commission considers that the issue of the appropriate geographic market can be left open in this instance.
19. For the purposes of reviewing the competitive effects of the proposed transaction, the Commission assessed: (i) both a national geographic market and a local geographic

¹⁰The Commission further explained that this product market definition does not preclude analysis of market segments for different types and ages of cattle, and possibly for each grade therein.



market (within a 100km radius of the Plant) for the procurement of cattle for slaughter; and (ii) a national market for the supply of each of offal, fat and hides.

Competitive Effects

20. The parties submit that the overlaps between the parties' activities in respect of (i) the purchase of cattle for slaughter; (ii) the supply of offal; (iii) the supply of fat; and (iv) the supply of hides are negligible, given that John Kelly Meats purchases a small number of cattle for slaughter in the context of the overall number of cattle purchased for slaughter nationally.

Purchase of Cattle for Slaughter

21. Approximately 1.55 million cattle are purchased for slaughter in the State annually, of which approximately [0-10]% of the national beef kill is attributed to 200 local authority-approved abattoirs in the State. The Plant is one of such local authority-approved plants.¹¹ Table 1 below shows the estimated shares of purchasing of cattle for slaughter of the major beef processors active in the State on a national basis.

Table 1: The purchase of cattle for slaughter nationally

Name	Approximate number of cattle slaughtered per annum ¹²	Share of purchasing ¹³
ABP	[...]	[30-20]%
Dawn	[...]	[10-20]%
Kepak Group ¹⁴	[...]	[10-20]%
Liffey	[...]	[0-10]%
Donegal Meats	[...]	[0-5]%
John Kelly Meats (the Plant)	[...]	[0-5]%

Source: The Parties

22. Table 1 indicates that the proposed transaction will result in a [0-5]% increase in Kepak Group's share of the market for the purchase of cattle for slaughter nationally. Post-transaction, the merged entity will have a share of [10-20]% of the national market for

¹¹ There are 30 DAFM export-approved processing plants in the State. Such plants account for an estimated [90-100]% of national beef kill. Kepak Group is one of the DAFM export-approved processors.

¹²The potential competitor's number of cattle slaughtered per annum is the parties' estimate.

¹³The share of purchasing number is the parties' estimate.

¹⁴ Kepak Group's share is based on published information in relation to cattle slaughter in export approved plants.



the procurement of cattle for slaughter. Although the proposed transaction will consolidate the position of Kepak Group as the third largest player in the State for the purchase of cattle for slaughter, the merged entity will continue to face competition from other major processors active nationally as outlined in Table 1 above.

Table 2: The purchase of cattle by DAFM-licenced plants for slaughter within a 100km radius of the Plant¹⁵

Name	Distance from Ennis in miles	Approximate number of cattle slaughtered per annum
ABP Rathkeale	69	[...]
ABP Cahir	103	[...]
ABP Nenagh	82	[...]
Dawn Meats Charleville	79	[...]
Liffey Meats Ballinasloe	84	[...]

Source: The Parties

23. Kepak Group does not have a processing plant located within a 100km radius of the Plant. Therefore, if the Commission were to consider the geographic market to be local in scope, i.e. within a 100km radius, there would be no horizontal overlap between the parties' activities for the purchase of cattle for slaughter. In any case, Table 2 above shows that, at the local level, there are several alternative export-approved beef processing plants located within a 100km radius of the Plant which compete with the Plant for the purchase of cattle for slaughter. The parties further submit that, since each of the plants referred to in Table 2, is currently operating at [...] % capacity (with the exception of [...], which is estimated by the parties to be slightly higher), those plants present a competitive constraint to the Plant.

Supply of Different By-Products

24. The parties submit that their market positions in relation to the supply of offal, fat and hides are directly commensurate with their size in the national market for the procurement of cattle for slaughter. Given that the increase in market concentration resulting from the proposed transaction in the national market for the purchase of cattle for slaughter is limited, the increase in market concentration for the supply of each of (i) offal; (ii) fat; and (iii) hides are also likely to be minimal. Table 3 below

¹⁵ Source: parties. Data for local authority-licensed plants are not available.



provides the parties' sales revenues generated from the supply of each of offal, fat and hides. Given the limited revenues generated by John Kelly Meats from the supply of each type of by-product, the Commission considers that the proposed transaction is not likely to have a significant impact on competition for the supply of each such by-product in the State.

Table 3 – Parties' sales revenues with respect to offal, fat and hides¹⁶

Total Sales Revenue	Kepak Group ¹⁷ (€)	John Kelly Meats ¹⁸ (€)
Supply of offal	[...]	[...]
Supply of fat	[...]	[...]
Supply of hides	[...]	[...] ¹⁹

Source: The Parties

25. In light of the above, the Commission considers that the proposed transaction does not give rise to any horizontal competition concerns in relation to the purchase of cattle for slaughter or the supply of by-products of the cattle slaughtering process (offal, fat and hides).

Vertical Issues

26. There are vertical relationships between the parties with regard to the supply of beef carcasses and potential vertical relationships between the parties in relation to the provision of contract slaughtering services.

The supply of beef carcasses

27. John Kelly Meats does not have a boning hall. It currently sells beef carcasses to third party processors for deboning. Approximately [...] % of John Kelly Meats' beef carcasses are currently sold to Kepak Group for deboning in its plant in Watergrasshill in Co. Cork.²⁰ Therefore, there is an existing vertical relationship between the parties in the supply of beef carcasses. The proposed transaction will not result in changes to the

¹⁶ Source-parties

¹⁷ Kepak Group data provided for the financial year ended 31 December 2015.

¹⁸ John Kelly Meats data provided for the financial year end 30 April 2016.

¹⁹ The parties estimate that the total sale revenue of all suppliers of hides in the State was €[...] million.

²⁰ Approximately [...] % of John Kelly Meats' carcasses are sold to [...]. The remaining [...] % of supply of beef carcasses by John Kelly Meats comprises individual once-off sales.



existing vertical relationship between the parties for the supply of beef carcasses in the State.

28. As part of its assessment of the competitive effects of the proposed transaction, the Commission considered whether the proposed transaction would provide the merged entity with the ability and incentive to foreclose rival boning halls from the market by, for example, limiting supplies of beef carcasses to rival boning halls.
29. The parties submit that there is little information available regarding the volume of supply of beef carcasses in the state, given that stand-alone boning halls are now rare and the majority of meat processors are vertically integrated in terms of slaughtering and de-boning.²¹ Vertically integrated plants self-supply beef carcasses for de-boning. Therefore, the merged entity would not have the ability to implement an input foreclosure strategy in relation to vertically integrated boning halls. In addition, the proposed transaction is unlikely to result in input foreclosure with respect to stand-alone boning halls either, given that prior to implementation of the proposed transaction the majority of John Kelly Meats' beef carcasses are already sold to Kepak Group for deboning.
30. Furthermore, John Kelly Meats' sale of beef carcasses in the State accounts for only €[...] which is minimal in the context of the overall supply of fresh unprocessed beef in the State.²²
31. In light of the above, the Commission considers that vertical effect of the proposed transaction in relation to the supply of beef carcasses is not significant.

Contract slaughtering services

32. John Kelly Meats currently provides contract slaughtering services for cattle and lamb to local farms and butchers. Therefore, there could be a potential vertical link between the parties, i.e., John Kelly Meats could provide contract slaughtering services to Kepak Group and/or to Kepak Group's potential competitors. However, the parties submit that

²¹ All five DAFM export-approved processing plants identified in Table 2 are vertically integrated plants.

²² The total value of the export market for the supply of beef from the island of Ireland is approximately €[...]billion.



the revenues generated by John Kelly Meats from the provision of contract slaughtering services is approximately €[...]. Thus, the Commission considers that this potential vertical relationship is not significant, given that the other processing plants identified in Table 2 in the area surrounding the Plant can also compete with the Plant to provide local contract slaughtering services²³.

33. The Commission therefore considers that the proposed transaction will not raise any vertical competition concerns in the State.

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.

Ancillary Restraints

35. No ancillary restraints were notified.

²³ As stated in paragraph 23 above, the Commission notes the parties' submission that each of the plants identified in Table 2 is operating at [...] % capacity, with the exception of [...], which estimated to be slightly higher.



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 transaction, whereby Kepak Group Unlimited Company, through its indirectly wholly-owned subsidiary, Kepak Cork Unlimited Company, would acquire the business, property and assets, constituting a meat processing plant located in Lisheen, Ballynacally, Ennis, Co. Clare, which is currently owned and operated by John Kelly Meats Unlimited Company, 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

Patrick Kenny
Member
Competition and Consumer Protection Commission