



DETERMINATION OF MERGER NOTIFICATION M/17/058 – MUSGRAVE / WHELAN CENTRA

Section 21 of the Competition Act 2002

Proposed acquisition by Musgrave Limited of sole control of six trading companies of Whelan Centra Group Limited which trade as “Centra” grocery retail stores in the Wicklow area.

Dated 7 December 2017

Introduction

1. On 3 November 2017, 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 acquisition (“the Proposed Transaction”) whereby Musgrave Limited (“Musgrave”) would acquire the entire issued share capital and thus sole control of each of six trading companies of Whelan Centra Group Limited (“the Vendor”) which trade as “Centra” grocery retail stores in the Wicklow area, namely Dreamcaster Limited, Two Hoots Limited, The Ferry Store Limited, Ballybrack Stores Limited, DKC Stores Limited and Never Better Limited (collectively “the Target Companies”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of six share purchase agreements (collectively “the Agreements”) each dated 1 November 2017 between the Vendor and Musgrave.¹ Pursuant to the Agreements, Musgrave will acquire the entire issued share capital and thus sole control of the Target Companies from the Vendor.

¹ There is a separate sales purchase agreement for each of the six target companies.



3. Following implementation of the Proposed Transaction, the Target Companies will continue to trade under the *Centra* brand,[...].

The Undertakings Involved

Musgrave

4. Musgrave, a private limited company incorporated in the State, is a wholly-owned subsidiary of Musgrave Group plc (“Musgrave Group”). Musgrave Group is active in grocery and food wholesale distribution in the island of Ireland and in Spain. Musgrave is principally a wholesaler-franchisor in the State and operates through franchise agreements with independently-owned retail stores which are operated under the following Musgrave-owned fascia (brands): *Supervalu*, *Centra*, *Day-Today* and *Daybreak*.² Musgrave also has a network of cash & carry depots from which it supplies business customers in the State with grocery products.
5. Musgrave, through its subsidiaries, also owns and operates a number of retail grocery stores in the State under either the *SuperValu*³ or *Centra*⁴ brand.
6. For the financial year ended 31 December 2016, Musgrave Group’s worldwide turnover was approximately €3.7 billion, of which approximately €3.1 billion was generated in the State.

The Vendor

7. The Vendor is an Irish incorporated company having its registered office at Oldcourt Villa, Off Vevay Road, Bray, Co. Wicklow. The Vendor is 100% owned by Mr. David Whelan.

² The wholesaler-franchisor model which Musgrave operates in the State with its franchisees was described by the Commission’s predecessor, the Competition Authority, in *M/11/022 - Musgrave/Superquinn*.

³ Musgrave owns and operates three *SuperValu*-branded stores (two in Dublin and one in Kilkenny) and twenty-two former *Superquinn*-branded stores which are now operated under the *SuperValu* brand, the majority of which are located in the Greater Dublin Area (a further two are located in Co. Wicklow and one is located in each of Kilkenny, Waterford, Co. Limerick and Co. Laois).

⁴ Musgrave owns and operates five *Centra*-branded stores (four are located in Dublin and one is located in Cork). Musgrave also recently acquired Ballybrit Service Station which consists of a retail motor fuel service station and an associated forecourt convenience store operating under the *Centra* brand, located at Ballybrit, Co. Galway which was subject of merger notification *M/17/052*.



Target Companies

8. The Target Companies, which are currently owned by the Vendor, consist of six trading companies which operate as *Centra-branded* stores. Details of each of the Target Companies are as follows;
- i. Dreamcaster Limited at 35B Vevay Road, Bray, Co Wicklow.
 - ii. Two Hoots Limited at Units 4, 5, 6, 7 and 8 Boghall Road Shopping Centre, Boghall Road, Bray, Co Wicklow.
 - iii. The Ferry Store Limited at Church Road, Greystones, Co. Wicklow.
 - iv. Ballybrack Stores Limited at 19 Church Road, Ballybrack, Co. Wicklow.
 - v. DKC Stores Limited at Lugduff, Tinahely, Co. Wicklow.
 - vi. Never Better Limited at Kevin Street, Tinahely, Co. Wicklow.
9. In addition to retailing grocery goods, each of the stores operated by the Target Companies provides additional services, namely, in relation to the National Lottery, Payzone and off-licences. The Ferry Store Limited also sells petrol and diesel and provides car wash facilities and DKC Stores Limited also sells petrol, diesel, kerosene and marked gas oil.
10. The Target Companies' individual turnovers for the financial year ended 30 September 2016 is presented in Table 1 below, all of which was generated in the State.

Table 1: Target Companies' Turnover for financial year ended 30 September 2016

Target Companies	Turnover (€)
Dreamcaster Limited	[...]
Two Hoots Limited	[...]
DKC Stores Limited	[...]
The Ferry Store Limited	[...]
Ballybrack Stores Limited	[...]
Never Better Limited	[...]

Source: the Parties provided this information to the Commission in the notification.



Rationale for the Proposed Transaction

11. The parties state in the notification:

“[...]”⁵

Third Party Submissions

12. No submission was received.

Competitive Analysis

Horizontal Overlap

Retail Sale of Grocery Goods

13. There is a horizontal overlap between the activities of the parties in respect of the retail sale of grocery goods in the State as both the Target Companies and Musgrave are involved in that activity.
14. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission and its predecessor, the Competition Authority, has on a number of occasions⁶ considered that the retail grocery sector encompasses a wide spectrum of large supermarkets known as “*multiples*” (such as *Dunnes Stores*, *SuperValu* and *Tesco*, as well as *Aldi* and *Lidl*, who are sometimes referred to as ‘*discounters*’), medium-sized shops which are usually part of a “*symbol*” group (such as *Centra*, *Londis* and *Spar*) and smaller stores, categorised as “*convenience*” stores (such as *Daybreak*, *MACE* and smaller *Londis* and *Spar* stores and independent retailers).
15. With respect to the retail sale of groceries, the Commission and the Competition Authority have taken the view that the appropriate product definition for groceries is

⁵ [...].

⁶ M/11/22 Musgrave/Superquinn; see: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m11022-musgrave-superquinn/>
M/15/09 BMG/Londis; see: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m15009-bwg-londis/>
and M/16/02 Dunnes/Whelan/Tipperary; see: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m16002-dunnes-whelan-tipperary/>



the retail sale of grocery goods, i.e., the retail sale of “*food and drink for human consumption and household necessities*”⁷. Furthermore, the Competition Authority in *M/11/022 - Musgrave/Superquinn* and the Commission in *M/15/09 -BMG/Londis* did not define product markets either in terms of types of shopping behaviour (e.g., ‘*one stop*’, ‘*top-up*’ or ‘*convenience*’) or in terms of business models (e.g., independent, franchise or vertically integrated).

16. The Commission has not, in the course of its analysis of the Proposed Transaction, or of other recent transactions⁸ found reasons to depart from the approach previously adopted by the Commission or the Competition Authority. Accordingly, for the purposes of evaluating the competitive effects of the Proposed Transaction, the Commission considers that the potential relevant product market is the retail sale of grocery goods.
17. The Commission does not need to come to a definitive view on the precise relevant geographic market in this instance since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant geographic market is defined as local, regional or national. However, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to the narrowest potential geographic markets, i.e., the local areas in which each of the six Target Companies’ *Centra*-branded stores are located. The Commission has previously⁹ identified possible local markets with competing retail outlets within a 10 kilometre or 10 minute drive time from any relevant target location.
18. For the reasons set out below, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in the potential relevant market for the retail sale of grocery goods within the local areas of each of the Target Companies.

⁷ Please see paragraph 84 of the Competition Authority’s determination in *M/11/022 - Musgrave/Superquinn*.

⁸ *M/17/050 - Joyces/Nestors* and *M/17/052 - Cedarglade (Musgrave) / Ballybrit Centra & Service Station*.

⁹ *M/17/050 - Joyces/Nestors* and *M/17/052 - Cedarglade (Musgrave) / Ballybrit Centra & Service Station*.



19. There will be no change in the number of retail fascia in the potential market for the retail sale of grocery goods within the local areas of each of the Target Companies as a result of the Proposed Transaction and there will remain a sufficient number of competitors to Musgrave in each local area.
20. The Target Companies' stores currently operate under the *Centra* brand and this will continue to be the case following implementation of the Proposed Transaction. [...]
21. Information in relation to competitors of each of the Target Companies' stores, at an individual store catchment area level, was provided in a report by Foresite¹⁰, commissioned by Musgrave and summary details and assessment are as follows:
 - **Dreamcaster Limited - Centra, Vevay Road, Bray, Co Wicklow** - Within the catchment area of this store, there will be a wide range and significant number of competitors following implementation of the Proposed Transaction, including (with the number of stores indicated) Tesco (6), Aldi (2), Dunnes Stores (1), Lidl (2), Mace (2), Spar (5), Londis (1), Centra (2) and Supervalu (1) and other outlets such as Applegreen (1) and Topaz (4). There is also one Musgrave-owned store located at Castle Street Shopping Centre, Castle Street, Bray.
 - **Two Hoots Limited - Centra, Boghall Road, Bray, Co Wicklow** - Within the catchment area of this store, there will be a wide range and significant number of competitors following implementation of the Proposed Transaction, including (with the number of stores indicated) Tesco (5), Aldi (2), Dunnes Stores (1), Lidl (2), Mace (2), Spar (4), Londis (1) Daybreak (1), Centra (2) and Supervalu (1) and other outlets such as Applegreen (1) and Topaz (4). There are also two Musgrave-owned stores located at Castle Street Shopping Centre, Castle Street, Bray and Charlesland Centre Greystones.
 - **The Ferry Store Limited - Centra, Church Road, Greystones, Co Wicklow** - The two Musgrave-owned stores located at Castle Street Shopping Centre, Castle Street, Bray and Charlesland Centre, Greystones are also located within

¹⁰ The Foresite Retail Catchment Report applied a more conservative catchment area radius of 5 miles (approx. 8km).



catchment area of this store in Greystones. Following implementation of the Proposed Transaction, there will also be a wide range and number of competitors within this catchment area, including Tesco (4), Dunnes Stores (2), Lidl (2), Aldi (2), Londis (1), Mace (1), Centra (2), Daybreak (1), Supervalu (1) and also Topaz (4).

- **Ballybrack Stores Limited - Centra, Church Road, Ballybrack, Co Wicklow -** There are three Musgrave Stores located within the catchment area of this store, namely at Blackrock Shopping Centre, Blackrock; Castle Street Shopping Centre, Bray; and Ballally Shopping Centre, Sandyford. Following implementation of the Proposed Transaction, there will also be a wide and varied number of competitors within the catchment area of this store including, Dunnes Stores (4), Tesco (7), Lidl (4), Aldi (2), Londis (5), Mace (3), Centra (12), Supervalu (3) and Spar (17), in addition to stores operated by Applegreen (3) and Topaz (5).
- **DKC Stores Limited - Centra in Lugduff and Never Better Limited - Centra in Tinahely Co Wicklow** – These two stores are located in rural locations, approximately 1.2km apart. There is a Gala store in Tinahely and a Londis store in Aughrim, which is approximately 9 miles from Tinahely . Although there is limited competition in the narrow geographic region, there will be no change in the situation following implementation of the Proposed Transaction from that which existed pre-transaction in that the same fascia will be present.

22. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in the potential market for the retail sale of grocery goods within the local areas of each of the Target Companies or in the State.

Retail Sale of Motor Fuel

23. Two of the Target Companies, The Ferry Store Limited and DKC Stores Limited, are involved in the retail sale of motor fuel, i.e., the operation of retail motor fuel service stations at Church Road, Greystones, and at Lugduff, Tinahely, Co. Wicklow.



24. In previous determinations, the Commission has followed the approach to geographic market definition adopted by its predecessor, the Competition Authority, which previously found that there are local markets in relation to the retail sale of motor fuels, which vary in size depending on whether the retail motor fuels forecourt is located in an urban or a rural location (i.e., a radius of 2 miles/3.2km from a retail motor fuel forecourt in an urban location and a radius of 5 miles/8km in a rural location).
25. There is no overlap between the activities of the parties in respect of the retail sale of motor fuel in any of these local markets. Therefore, the Commission considers that the Proposed Transaction is unlikely to raise any competition concerns in respect of the operation of retail motor fuel service stations in the State.

Vertical Relationship

26. While Musgrave has a number of company-owned and company-operated retail grocery stores in the State, Musgrave principally operates a wholesaler-franchisor model in the State, pursuant to which its franchisees source most of their grocery goods from Musgrave. Musgrave currently supplies the Target Companies' stores, which are all *Centra*-branded stores. As each store will continue to trade under the *Centra* brand and Musgrave will continue to supply it with grocery goods, following implementation of the Proposed Transaction, there will be no change to the pre-transaction status quo. There are a number of significant competitors to Musgrave, such as Dunnes Stores, Tesco and BWG Foods Unlimited Company (which owns the *Spar* brand and *Londis* brands, amongst others), which are currently active in supplying grocery goods to other retailers in the local areas of each of the Target Companies.
27. For the reasons set out above, the Commission considers that the Proposed Transaction will not result in any vertical competition concerns.

Conclusion

28. 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

29. 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 Musgrave Limited would acquire the entire issued share capital and thus sole control of each of six trading companies of Whelan Centra Group Limited, namely Dreamcaster Limited, Two Hoots Limited, The Ferry Store Limited, Ballybrack Stores Limited, DKC Stores Limited and Never Better 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