



## DETERMINATION OF MERGER NOTIFICATION M/16/003 - MUSGRAVE/C.J. O'LOUGHLIN & SONS

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### Section 21 of the Competition Act 2002

### Proposed acquisition by Musgrave Limited of sole control of Rosway Investments Limited and C.J. O'Loughlin & Sons (Courtown) Limited

Dated 1 March 2016

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#### Introduction

1. On 22 January 2016, in accordance with section 18(1)(a) of the Competition Act 2002, as amended ("the Act"), the Competition and Consumer Protection Commission (the "Commission") received a notification of a proposed transaction whereby Musgrave Limited ("Musgrave") would acquire the entire issued share capital and, thus, sole control of Rosway Investments Limited ("Rosway") and its subsidiary C.J. O'Loughlin & Sons (Courtown) Limited ("C.J. O'Loughlin").
2. The proposed transaction is to be implemented pursuant to a share purchase agreement ("SPA") dated 19 January 2016.<sup>1</sup>

#### The Undertakings Involved

##### *Musgrave*

3. 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 State and in Spain. Musgrave Group is a wholesale-franchisor and operates through agreements with independently owned retail stores which are operated under the following Musgrave fascias (brands): SuperValu, Centra, Day Today and Daybreak.
4. Musgrave Group has four business divisions:
  - Musgrave Retail Partners Ireland (Republic of Ireland) – a wholesale food and grocery distribution business servicing a network of independently owned SuperValu and Centra supermarkets and convenience stores in the State. This division also operates a number of corporate owned supermarkets under the SuperValu and Centra brands;

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<sup>1</sup> In correspondence with the Commission dated 23 February 2016, the parties informed the Commission that, following the completion of the proposed transaction, in accordance with clause 12.13 of the SPA, Musgrave intends to assign its rights under the SPA to [...], which is another wholly-owned subsidiary of Musgrave Group plc.



- Musgrave NI (Northern Ireland) - a wholesale food and grocery distribution business servicing a network of independently owned SuperValu, Centra, Day Today and Mace supermarkets and convenience stores in Northern Ireland;
  - Musgrave Wholesale Partners (Republic of Ireland) - a network of cash and carry outlets, a delivered wholesale business and a delivered foodservice business in the State. This division also provides delivered wholesale and a retail support offering to independently owned convenience stores operating under the Daybreak and Day Today brands in the State; and
  - Musgrave España - a wholesale and retail franchise business in south-eastern Spain with a small network of cash and carry outlets. The business serves a network of both independently owned and company owned retail stores operating under the SuperValu, Dialprix and Dicost brands.
5. For the financial year ending 2 January 2016, Musgrave Group's worldwide turnover was €[...], of which €[...] was generated in the State.

*Rosway/C.J. O'Loughlin*

6. Jaguar Capital Asset Management Limited, a private limited company incorporated in the State, currently owns the entire issued share capital of Rosway. Rosway does not carry on any business other than the provision of management services to its subsidiary, C.J. O'Loughlin. [...] <sup>2</sup>
7. C.J. O'Loughlin, a private limited company incorporated in the State, is a distribution company that supplies chilled, frozen ambient and non-food products<sup>3</sup> to approximately [...] foodservice customers located primarily in the south-east of Ireland.
8. For the financial year ending 30 June 2015, C.J. O'Loughlin's worldwide turnover was €[...], all of which was generated in the State.

**Rationale for the Proposed Transaction**

9. The parties state in the notification:

*"[C.J. O'Loughlin] is a foodservice provider supplying chilled, frozen ambient and non-food products to its customer base in the south-east of Ireland and it operates within that geographical location, an area where Musgrave has had relatively little penetration to date with respect to foodservice customers. From Musgrave's perspective, the proposed transaction affords Musgrave an opportunity to grow its business in the south-east of the country and to supply operators in the foodservice channel in that geographic area where it currently has had relatively few customers to date. The proposed transaction will enable [C.J.*

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<sup>2</sup> [...]

<sup>3</sup> Specifically, bread; confectionery; dairy and eggs; desserts; fish; fruit and vegetables; grocery; ice cream; sorbet and yogurt; meat and poultry; ethnic foods; party food; pastry and pies; pizza and ready meals; potato; stocks; sauces; oil and cooking wine; and, food packaging and disposables.



*O'Loughlin] to access a greater product range and availability of supply, to give improved service to [C.J. O'Loughlin]'s existing and growing customer base and to provide an improved, more efficient warehousing, logistics and administration backup to its business. The increased scale and operational efficiency of [C.J. O'Loughlin] following completion of the proposed transaction will allow customers to access a wider product range and should ensure they receive more competitive pricing of products."*

### Third Party Submissions

10. No submission was received.

### Competitive Analysis

11. There is both a horizontal and a vertical overlap between the parties' activities in the State.

#### *Horizontal Overlap*

12. There is a horizontal overlap between the parties' activities in the State with respect to the distribution of food and non-food products within the foodservice sector. Foodservice customers offer prepared food for consumption on their own premises or as a takeaway. There are a wide variety of foodservice customers in the State including, for example, pubs, hotels, fast-food outlets, restaurants, hospitals and prisons.<sup>4</sup>
13. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. As noted by the Commission's predecessor, the Competition Authority, in paragraph 22 of its merger Determination in *M/12/010 – Pallas/Crossgar*, the foodservice sector covers a diverse range of product categories (e.g., beverages, frozen food, meat, etc) and customer categories (e.g., hotels, pubs, restaurants, etc).
14. The Commission does not need to come to a definitive view on the precise relevant product market in this instance since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant product market is defined narrowly (e.g., in terms of specific product categories or customer categories) or more broadly to encompass the distribution of all types of products to all types of foodservice customers.
15. Similarly, 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 relevant geographic market is defined as local, regional or national. In order, however, to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission assessed its impact in the narrowest possible geographic market, namely the market for the distribution of foodservice products to customers in Co. Wexford, since this is the area of the State where C.J. O'Loughlin carries out a

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<sup>4</sup> See paragraphs 19-29 of the former Competition Authority's merger determination in *M/12/010 – Pallas/Crossgar* for a detailed description of the foodservice sector in the State.



significant proportion of its foodservice business as described further in paragraph 18 below.

16. Musgrave Group and C.J. O’Loughlin generated turnover of approximately €[...] and €[...], respectively, from sales to foodservice customers in the State in 2015.
17. Musgrave Group is active throughout the State in the foodservice sector. It has a centralised distribution facility located in Blanchardstown, Dublin 15 and seven cash and carry depots that are used by both retail outlets and foodservice operators to purchase products. Three of these depots are located in Dublin and one depot is located in each of counties Cork, Limerick, Waterford and Galway.
18. C.J. O’Loughlin has two distribution facilities which are located in Gorey, Co. Wexford and Kilkenny City. The parties state in the notification that the majority of C.J. O’Loughlin’s foodservice business is generated in the south-east of Ireland. [...]% of C.J. O’Loughlin’s turnover in 2015 was generated from sales to foodservice customers located in the following three counties: Wexford ([...]% of 2015 turnover), Wicklow ([...]% of 2015 turnover), and Kilkenny ([...]% of 2015 turnover).<sup>5</sup> In contrast, only [...]% of Musgrave Group’s foodservice turnover in 2015 was generated from sales to foodservice customers located in these three counties. The parties state in the notification that “*Musgrave has had relatively little penetration to date with respect to foodservice customers*” in the south-east of Ireland.

#### The Distribution of Foodservice Products in Co. Wexford

19. With respect to estimates of the parties’ market shares in the foodservice sector in Co. Wexford, an economic report prepared by Professor Francis O’Toole of Trinity College Dublin on behalf of the parties and submitted to the Commission with the notification states the following:

*“In terms of the narrowest possible relevant regional/local market of County Wexford, it is at the least very difficult to estimate the size of any hypothetical “market” (and customers can in general of course access produce from outside the proposed local geographic “market”). One possible approach is to assume that County Wexford’s proportion of the foodservice market would be similar to County Wexford’s proportion of the population. Such an approach leads to the following estimated market shares: Musgrave [...] per cent; C.J. O’Loughlin [...] per cent; and, combined entity after the proposed acquisition [...] per cent.”*

20. For the reasons set out below, the Commission considers that the proposed transaction will not substantially lessen competition in the potential market for the distribution of foodservice products to customers in Co. Wexford.
21. First, there are a large number of undertakings currently active in the distribution of foodservice products in Co. Wexford which will act as a competitive constraint on the

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<sup>5</sup> [...]% of C.J. O’Loughlin’s approximately [...] foodservice customers in the State are located in these three counties.



merged entity post-transaction. These include the following: Pallas Foods, BWG Foodservice, Brakes, Lynas Foodservice, Henderson Foodservice, Aryzta Food Solutions Ireland and Scallans Food Service (which is located in Clonard, Co. Wexford).

22. Second, as noted above, Musgrave Group has a relatively small presence in the foodservice sector in the south-east of Ireland. Only [...] % of its foodservice turnover in 2015 was generated from sales to customers located in Co. Wexford and only [...] % of its foodservice turnover in 2015 was generated from sales to customers located in counties Wexford, Wicklow and Kilkenny.

#### *Vertical Overlap*

23. There is a vertical relationship between the parties since C.J. O'Loughlin currently purchases food and non-food products from Musgrave Group. The value of these purchases, however, amounted to approximately only €[...] in 2015. Given the minimal extent of the vertical relationship between the parties, the Commission considers that the proposed transaction will not raise any vertical foreclosure concerns.
24. 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**

25. In the notification, the parties provided a copy of the SPA between the parties to the proposed transaction, which contains a number of restrictive obligations on the sellers. These include non-compete and non-solicitation clauses. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.<sup>6</sup> The Commission considers these restrictions to be directly related to and necessary for the implementation of the proposed transaction.

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<sup>6</sup> In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 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 transaction whereby Musgrave Limited would acquire the entire issued share capital and, thus, sole control of Rosway Investments Limited and its subsidiary C.J. O'Loughlin & Sons (Courtown) 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

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