



DETERMINATION OF MERGER NOTIFICATION M/17/051 - ABP/GOOD HERDSMEN

Section 21 of the Competition Act 2002

Proposed acquisition by ABP Food Group Unlimited of sole control of Good Herdsmen Limited

Dated 13 October 2017

Introduction

1. On 5 September 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 transaction (the “Proposed Transaction”) whereby ABP Food Group Unlimited (“ABP”), through its wholly-owned subsidiary [...], would acquire sole control of Good Herdsmen Limited (“GHL”). GHL is currently jointly controlled by ABP and Mr. John Purcell.

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement dated 5 September 2017 between Mr. John Purcell and [...] (the “Share Purchase Agreement”) and a shareholders' agreement to be entered into by Mr. John Purcell, [...] and GHL on completion of the Proposed Transaction (the “Shareholders' Agreement”). ABP currently owns 50% of the issued share capital of GHL and Mr John Purcell owns the remaining 50%. The Proposed Transaction involves the acquisition by ABP (through [...]) of [...] % of the entire issued share capital of GHL from Mr. John Purcell, thereby increasing ABP's shareholding from 50% to [...] % and reducing Mr. Purcell's shareholding to [...] % of the entire issued share capital of GHL. Pursuant to the Shareholders' Agreement, ABP will exercise sole control over GHL following completion of the Proposed Transaction.

The Undertakings Involved

ABP

3. ABP, headquartered in the State [...], is involved in a range of business activities in the beef and lamb procurement and processing sectors worldwide, including animal slaughtering, meat processing and rendering.
4. Anglo Beef Processors Ireland Unlimited Company (“ABP Ireland”), an indirect subsidiary of ABP, is active in the slaughter of live cattle, the processing¹ of animal

¹ Processing is sometimes referred to as “de-boning”.



carcasses to produce fresh beef and lamb meat, and retail packing in the State. ABP Ireland operates six export-approved live cattle slaughtering and beef processing facilities in the following locations in the State:

- Bandon, Co. Cork;
 - Cahir, Co. Tipperary;
 - Nenagh, Co. Tipperary;
 - Ferry Bank, Co. Waterford;
 - Rathkeale, Co. Limerick; and
 - Clones, Co. Monaghan.
5. ABP jointly controls (with Fane Valley Co-operative Society Limited) two meat processing companies: (a) Slaney Foods International Unlimited, which slaughters live cattle² and processes beef in a facility in Co. Wexford; and (b) Irish Country Meats, which slaughters lambs and sheep in three facilities in Co. Wexford, Co. Meath and Liège in Belgium.³ ABP and Fane Valley Co-operative Society Limited also jointly control Linden Foods Limited which is located in Northern Ireland and is active in the slaughter of live cattle, lambs and sheep and the processing of animal carcasses to produce fresh beef and lamb meat.⁴
6. Anglo Beef Processors UK, an indirect subsidiary of ABP, operates 14 slaughtering and beef processing facilities in the United Kingdom, including two facilities in Northern Ireland in Lurgan, Co. Armagh and Newry, Co. Down. Anglo Beef Processors Poland, an indirect subsidiary of ABP, operates two slaughtering facilities and one beef processing facility in Poland.
7. ABP sells fresh beef meat (including frozen beef and minced beef) worldwide, including to grocery retailers, butchers, industrial processors, and customers in the food service sector in the State.
8. ABP operates two rendering plants in the State: Waterford Proteins (a category 1 facility in Co. Waterford) and Munster Proteins (a category 3 facility in Cahir, Co. Tipperary). ABP operates a gel bone production facility which is also located in Cahir, Co. Tipperary. The majority of the bones used in this facility are bovine bones sourced from ABP's meat processing plants in the island of Ireland with the remainder sourced from a number of other meat processors in the State.

² This includes the slaughter of live organic cattle. Unlike Slaney Foods International Unlimited (and GHL), ABP Ireland does not purchase live organic cattle for slaughter in the State.

³ The acquisition by ABP and Fane Valley Co-operative Society of joint control of Slaney Foods Joint Venture and Slaney Proteins was cleared by the European Commission on 7 October 2016. The European's Commission's decision in *Case M.7930 – ABP Group/Fane Valley Group/Slaney Foods* can be accessed at http://ec.europa.eu/competition/mergers/cases/decisions/m7930_764_3.pdf

⁴ The acquisition by ABP and Fane Valley Co-operative Society Limited of joint control of Linden Foods was cleared by the European Commission on 29 September 2017. The European Commission's press release in relation to *Case M.8481 – ABP Food Group/Fane Valley/Linden Foods* can be accessed at http://europa.eu/rapid/press-release_IP-17-3582_en.htm



9. ABP also has business activities in the renewable energy, pet food and protein sectors. ABP's renewable energy business, Olleco, manufactures biodiesel and other renewable fuels from used cooking oil and food waste.
10. ABP owns [a majority of] C&D Petfood Group, a manufacturer and supplier of private label pet food in eight facilities located throughout Europe.
11. ABP operates a joint venture with Frylite Limited, which supplies fresh oil and dripping to customers and collects waste cooking oil in the State and Northern Ireland.
12. For the financial year ending 31 March 2017, ABP's worldwide turnover was approximately €2.7 billion, of which approximately €[...] was generated in the State.

GHL

13. GHL, a private limited company incorporated in the State, is jointly owned by ABP and Mr John Purcell who each hold 50% of the issued share capital of GHL. GHL operates an organic beef and lamb meat processing plant in Cahir, Co. Tipperary. GHL purchases live organic cattle for slaughter from organic-certified farms in the State.⁵ GHL also owns [...] organic cattle herds (which are reared on [...] rented organic farms located in counties Tipperary and Limerick) from which GHL also sources live organic cattle for slaughter.
14. GHL does not own or operate any slaughtering or de-boning facilities. The live organic cattle purchased and reared by GHL are slaughtered, de-boned and cut by ABP⁶ at the latter's facilities in Cahir and Clones. Approximately [...]% of GHL's beef meat is processed and packed at ABP's facility in Cahir. The remaining [...]%, which at this stage consists of large pieces of vacuum-packed beef, is transferred by refrigerated trucks to GHL's facility in Cahir for further processing and packing.
15. GHL is also active in the downstream sale of fresh organic beef meat to grocery retailers and industrial processors in the State, the United Kingdom and Europe.⁷ Approximately [...]% of GHL's fresh beef meat is sold as private label to customers such as Lidl Ireland, Aldi Ireland and Tesco Ireland. Approximately [...]% of GHL's fresh beef meat is processed into minced beef and sold as an ingredient for the production of organic baby food in Germany. Approximately [...]% of GHL's fresh beef meat is sold to grocery retailers and industrial processors under the *Good Herdsmen* brand.
16. For the year ending 31 December 2016, GHL's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

Rationale for the Proposed Transaction

17. The parties state the following in the notification:

"[Mr. John Purcell] wishes to release equity from his shareholding in [GHL]. ABP already owns and controls 50% of [GHL] and decided

⁵ GHL does not purchase any live non-organic cattle for slaughter in the State.

⁶ ABP does not slaughter live cattle on behalf of any other beef processors in the State.

⁷ GHL also makes minimal sales of fresh lamb meat to industrial processors in the State.



to purchase an additional [...] % interest in [GHL] from [Mr. John Purcell] resulting in it having a [...] % controlling interest in [GHL]. Given the existing relationship and vertical links between ABP and [GHL], the proposed transaction will simplify decision making and control within [GHL] and provide an opportunity for [GHL] to develop opportunities with existing and new partners."

Third Party Submissions

18. No submission was received.

Competitive Analysis

Horizontal Overlap

19. The business activities of the parties overlap horizontally in the State in the purchase of live cattle for slaughter⁸ and the processing of live animal carcasses to produce fresh beef and lamb meat for sale to grocery retailers and industrial processors.⁹
20. Specifically, ABP and GHL overlap horizontally in the following business activities in the State:
- The purchase of live cattle for slaughter in the State;¹⁰
 - The sale of fresh beef meat to grocery retailers in the State;
 - The sale of fresh beef meat to industrial processors in the State; and
 - The sale of fresh lamb meat to industrial processors in the State.

The purchase of live cattle for slaughter in the State

21. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.
22. In its merger determination in *M/17/035 – Dawn Meats/Dunbia*, the Commission assessed the competitive impact of the acquisition by Dawn Meats Ireland Unlimited Company of sole control of each of Dunbia (Ireland) Limited and Dunbia (Slane) in “*the potential market for the purchase of live cattle for slaughter in the State*”.¹¹ In light of the recent decisional practice of the Commission and the absence of any evidence to the contrary in the Commission’s market investigation, the Commission considers that

⁸ GHL does not operate any slaughtering facilities in the State. GHL purchases live cattle from certified organic farms which are slaughtered by ABP at the latter’s slaughtering facilities in Cahir and Clones.

⁹ See paragraphs 34-50 of the Commission’s determination in *M/17/035 – Dawn Meats/Dunbia* for a detailed discussion of the typical chain of production for beef and lamb meat in the State. This can be accessed at <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m17035-dawn-meatsdunbia/>

¹⁰ There is no horizontal overlap between the parties in the purchase of live lambs and sheep for slaughter in the State since GHL does not purchase live lambs or sheep for slaughter.

¹¹ See paragraphs 73-78 of the Commission’s merger determination in *M/17/035 – Dawn Meats/Dunbia* for a detailed discussion of product and geographic market definition in relation to the purchase of live animals for slaughter. This can be accessed at <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m17035-dawn-meatsdunbia/>



there is no reason to depart from its view on the relevant product and geographic market in *M/17/035 – Dawn Meats/Dunbia*.

23. As noted above, GHL only purchases live organic cattle for slaughter in the State. The Commission is not aware of any evidence to suggest that the purchase of live organic cattle for slaughter occupies a distinct and separate product market from the purchase of live non-organic cattle for slaughter. As noted by the European Commission in its 2016 decision in *Case M.7930 – ABP Group/Fane Valley Group/Slaney Foods* (the “2016 Decision”), all cattle slaughterhouses in the State have the ability to slaughter and process all types and breeds of live cattle; slaughterhouses do not require special equipment to slaughter and process different types and breeds of live cattle.¹²
24. Thus, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition in the State, the Commission has analysed its competitive impact by reference to the potential market for the purchase of live cattle for slaughter in the State.¹³
25. For the reasons set out below, the Commission considers that the Proposed Transaction raises no competition concerns in the potential market for the purchase of live cattle for slaughter in the State.
26. First, the Proposed Transaction will lead to a minimal increase in ABP’s share of the potential market for the purchase of live cattle for slaughter in the State. The parties estimate in the notification that ABP had a [25-30]%¹⁴ share of the potential market for the purchase of live cattle for slaughter in the State in 2016, with GHL having a [0-5]% share.¹⁵
27. Second, the Proposed Transaction will not lead to any increase in the number of slaughterhouses owned and operated by ABP in the State. As noted above, GHL does not own or operate any slaughtering facilities in the State. The live organic cattle purchased by GHL are slaughtered by ABP at the latter’s slaughtering facilities in Cahir and Clones.
28. Third, switching by farmers between beef processors in the State does appear to occur frequently and there do not appear to be any significant costs or impediments to switching.¹⁶

¹² See paragraphs 79-93 of the European Commission’s decision in *Case M.7930 – ABP Group/Fane Valley Group/Slaney Foods* for a detailed discussion of product market definition in relation to the purchase of live animals for slaughter. The European Commission’s decision can be accessed at

http://ec.europa.eu/competition/mergers/cases/decisions/m7930_764_3.pdf

¹³ Given that GHL purchases live organic cattle for slaughter throughout the State, does not own or operate any slaughtering facilities in the State and has a negligible share ([0-5]%) in the potential market for the purchase of live cattle for slaughter in the State, the Commission did not consider it necessary to also assess the competitive impact of the Proposed Transaction in any narrower potential geographic market for the purchase of live cattle for slaughter.

¹⁴ This includes purchases of live cattle in the State by the slaughterhouse operated by Slaney Foods International in Co. Wexford which, as noted above, is jointly controlled by ABP and Fane Valley Co-operative Society Limited.

¹⁵ The parties’ market share estimates are in line with the market share estimates presented in Table 3 of European’s Commission’s decision in *Case M.7930 – ABP Group/Fane Valley Group/Slaney Foods* which can be accessed at

http://ec.europa.eu/competition/mergers/cases/decisions/m7930_764_3.pdf

¹⁶ See paragraphs 101-106 of the Commission’s merger determination in *M/17/035 – Dawn Meats/Dunbia* for a detailed discussion of the possibilities of switching by farmers between beef processors in the State. This can be accessed at

<https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m17035-dawn-meatsdunbia/>



29. Fourth, following completion of the Proposed Transaction, ABP will face competition from three multi-abattoir beef processors (Dawn Meats Ireland Unlimited Company, Kepak Group Unlimited Company and Liffey Meats Unlimited Company) and a number of single-abattoir beef processors currently active in the State (e.g., Kildare Chilling Company, Moyvalley Meats, Foyle Food Group Limited and Ashbourne Meat Processors Limited).
30. Finally, slaughterhouses in the State appear to have spare capacity such that they could purchase more live cattle for slaughter if ABP offered lower prices to farmers for live cattle following completion of the Proposed Transaction.¹⁷

The sale of fresh beef meat in the State

31. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.
32. In the 2016 Decision, the European Commission noted the following in relation to the relevant product market for the sale of fresh beef meat:

“...the product markets that are relevant for the assessment for the present case consist of the market for sale of fresh beef meat to supermarkets, the market for sale of fresh beef meat to caterers and the market for sale of fresh beef meat to industrial processors.”¹⁸

33. In the 2016 Decision, the European Commission noted the following in relation to the relevant geographic market for the sale of fresh beef meat:

“...the Commission considers that the geographic market definition of the relevant markets for sale of fresh beef to each of (i) retailers/supermarkets, (ii) caterers; and (iii) industrial processors can be left open...”¹⁹

34. The Commission will assess the competitive impact of the Proposed Transaction in the State. This is likely to be the narrowest geographic market affected by the Proposed Transaction.
35. Thus, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission assessed its competitive impact by reference to the following two potential markets:

- The sale of fresh beef meat to grocery retailers in the State; and

¹⁷ See paragraphs 107-109 of the Commission’s merger determination in *M/17/035 – Dawn Meats/Dunbia* for a discussion of spare capacity in the live cattle slaughtering sector in the State. This can be accessed at <https://www.ccpic.ie/business/mergers-acquisitions/merger-notifications/m17035-dawn-meatsdunbia/>

¹⁸ See paragraphs 124-148 of the European Commission’s decision in *Case M.7930 – ABP Group/Fane Valley Group/Slaney Foods* for a detailed discussion of product market definition in relation to the sale of fresh beef meat.

¹⁹ See paragraphs 149-156 of the European Commission’s decision in *Case M.7930 – ABP Group/Fane Valley Group/Slaney Foods* for a detailed discussion of geographic market definition in relation to the sale of fresh beef meat.



- The sale of fresh beef meat to industrial processors in the State.²⁰

The sale of fresh beef meat to grocery retailers in the State

36. The Proposed Transaction will lead to a minimal increase in ABP's share of the potential market for the sale of fresh beef meat to grocery retailers in the State. The parties estimate in the notification that ABP had a [15-20]%²¹ share (by value) of the sale of fresh beef meat to grocery retailers in the State in 2016, with GHL having a [0-5]% share. Following completion of the Proposed Transaction, ABP will compete with a number of suppliers of fresh beef meat in the State including Kepak Group Unlimited Company, Liffey Meats Unlimited Company, Hilton Foods Ireland Limited, Dawn Meats Ireland Unlimited Company and Tendermeats. In light of the above and considering GHL's minimal share in this potential market, the Commission considers that the Proposed Transaction raises no competition concerns in the potential market for the sale of fresh beef meat to grocery retailers in the State.

The sale of fresh beef meat to industrial processors in the State

37. Both ABP and GHL supply fresh beef meat to industrial processors (e.g., manufacturers of products such as hamburgers and canned food) in the State. ABP made sales of approximately €[...] to industrial processors in the State in 2016. GHL made sales of approximately €[...] to industrial processors in the State in 2016. The parties estimate in the notification that ABP had an [15-20]%²² share (by value) of the sale of fresh beef meat to industrial processors in the State in 2016, with GHL having a [0-5]% share.
38. For the reasons set out below, the Commission considers that the Proposed Transaction raises no competition concerns in the potential market for the sale of fresh beef meat to industrial processors in the State.
39. First, the Proposed Transaction will lead to a minimal increase in ABP's share of the potential market for the sale of fresh beef meat to industrial processors in the State.
40. Second, ABP will face competition from several suppliers of fresh beef meat to industrial processors in the State following completion of the Proposed Transaction. These include Dawn Meats Ireland Unlimited Company, Kepak Group Unlimited Company, Hilton Foods Ireland Limited, Liffey Meats Unlimited Company and Martin Jennings Wholesale Limited.
41. Third, the European Commission, in its 2016 Decision, noted that:

"...most respondents (industrial processors) consider that they have sufficient buyer power vis-à-vis suppliers of fresh beef meat."²³

²⁰ GHL is not active in the sale of fresh beef meat to caterers in the State; thus, there is no horizontal overlap between ABP and GHL in this potential market.

²¹ This includes sales of fresh beef meat to grocery retailers in the State by Slaney Foods International and Linden Foods, both of which are jointly controlled by ABP and Fane Valley Co-operative Society Limited.

²² This includes sales of fresh beef meat to industrial processors in the State by Slaney Foods International Unlimited and Linden Foods, both of which are jointly controlled by ABP and Fane Valley Co-operative Society Limited.

²³ Paragraph 396 of the European Commission's decision in *Case M.7930 – ABP Group/Fane Valley Group/Slaney Foods*.



The sale of fresh lamb meat in the State

42. There is a negligible horizontal overlap between the parties in the State for the sale of fresh lamb meat to industrial processors. GHL generated turnover of approximately €[...] from sales of fresh lamb meat to industrial processors in the State in 2016, representing only [...] % of its total turnover in the State. GHL does not supply fresh lamb meat to any other types of customers (e.g., grocery retailers, caterers, etc.) in the State. ABP is active in the sale of fresh lamb meat in the State through its joint control (with Fane Valley Co-operative Society Limited) of Irish Country Meats, which sells fresh lamb meat to industrial processors in the State. Given GHL's negligible sales of fresh lamb meat to industrial processors in the State and the presence of several competitors such as Kepak Group Unlimited Company, Kildare Chilling Company and Dawn Meats Ireland Unlimited Company,²⁴ the Commission considers that the Proposed Transaction raises no competition concerns in the potential market for the sale of fresh lamb meat to industrial processors in the State.

Vertical Relationship

43. There is an existing vertical relationship between the parties in the State. As noted above, GHL rears organic cattle and purchases live organic cattle from certified organic farms which are slaughtered and de-boned by ABP at the latter's slaughtering facilities in Cahir and Clones.²⁵ Approximately [...] % of GHL's beef meat is processed and packed at ABP's facility in Cahir. The remaining [...] % is transferred by refrigerated trucks to GHL's facility in Cahir for further processing and packing.
44. The Proposed Transaction does not raise any vertical foreclosure concerns in the State. ABP will not have the ability to foreclose competing beef processors in the State following completion of the Proposed Transaction. As noted above, ABP does not slaughter live cattle on behalf of any beef processors in the State other than GHL. Most beef processors currently active in the State are vertically integrated and operate their own slaughtering facilities. Furthermore, as noted in paragraph 29 above, there are a number of multi-abattoir and single-abattoir beef processors currently active in the State which will compete with ABP in the potential market for the purchase of live cattle for slaughter in the State following completion of the Proposed Transaction. Finally, GHL has a negligible share ([0-5]%) in the potential market for the purchase of live cattle for slaughter in the State.

Conclusion

45. In the 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

46. The Shareholders' Agreement contains a number of restrictive obligations on Mr. John Purcell. These include non-compete obligations and non-solicitation obligations

²⁴ See Table 13 and paragraph 413 of the European's Commission's decision in *Case M.7930 – ABP Group/Fane Valley Group/Slaney Foods* which can be accessed at http://ec.europa.eu/competition/mergers/cases/decisions/m7930_764_3.pdf

²⁵ GHL does not operate any slaughtering facilities in the State.



regarding employees, customers and suppliers. The duration of these restrictive obligations does not exceed the maximum duration acceptable to the Commission. The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.



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 transaction whereby ABP Food Group Unlimited, through its wholly-owned subsidiary Omeath Unlimited, would acquire sole control of Good Herdsmen 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