



# DETERMINATION OF MERGER NOTIFICATION M/18/054 – CEDARGLADE (MUSGRAVE) / ASSETS COMPRISING SUPERMARKET PREMISES AT FORTUNESTOWN

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## Section 21 of the Competition Act 2002

**Proposed acquisition by Musgrave Group plc, through its wholly-owned indirect subsidiary, Cedarglade Limited, of certain assets constituting a supermarket premises located at Fortunestown, Tallaght, Co. Dublin.**

**Dated 1 August 2018**

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### Introduction

1. On 13 July 2018, 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 whereby Musgrave Group plc (“Musgrave”), through its wholly-owned indirect subsidiary, Cedarglade Limited, would acquire certain assets constituting a supermarket premises at Fortunestown, Tallaght, Co. Dublin (“the Target Asset”) (“the Proposed Transaction”).
2. The Target Asset is currently non-trading, having been damaged in a fire in November 2016. In the period since the fire, no retail activities have been conducted from the Target Asset. Immediately prior to the cessation of trading, the retail store located in the Target Asset had been operated as a SuperValu franchise supermarket by a third party.
3. The notifying party submitted that it considered that there were strong grounds on which the Target Asset would not constitute “*assets that constitute a business to which a turnover can be attributed*” for the purposes of section 16(1) of the Act. For this reason, the notifying party’s legal advisors raised this jurisdictional issue in a pre-notification briefing paper (the “Briefing Paper”) to the Commission. [...]



4. Having reviewed the Briefing Paper, the Commission expressed the preliminary view that:
- The Target Asset has the capability, with investment, to perform the business activities which it performed prior to the fire in 2016.
  - The Briefing Paper suggests that the potential acquirer intends to invest in the Target Asset with a view to conducting the same business activity that was carried on by the Target Asset prior to the fire in 2016.
  - The Commission noted that the Briefing Paper did not provide the turnover that was generated by the Target Asset in 2016 when the Target Asset was trading. The Commission considered that, if the turnover generated by the Target Asset in 2016 met the financial thresholds specified in section 18(1) of the Act, this would suggest that the Proposed Transaction is notifiable to the Commission.
  - Following the Commission's response to the Briefing Paper, the notifying party submitted a merger notification in relation to the Proposed Transaction.

#### **The Proposed Transaction**

5. The Proposed Transaction involves the acquisition by Musgrave, through Cedarglade Limited, of a long-leasehold interest in the Target Asset. The Proposed Transaction is to be implemented by way of a contract of sale agreement between Brendan Lynch Limited (in receivership) (acting by its receiver Tom Kavanagh c/o Deloitte) and Cedarglade Limited dated 12 July 2018.

#### **The Undertakings Involved**

##### *Musgrave*

6. Musgrave is active in grocery and food wholesale distribution on 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*.<sup>1</sup> Musgrave also has a network of cash & carry depots from which it supplies business customers in the State with grocery products.

7. Musgrave, through its subsidiaries, also owns and operates a number of retail grocery stores in the State under either the *SuperValu* or *Centra* brand. 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 Counties Kilkenny, Waterford, Limerick and Laois). Musgrave owns and operates 11 *Centra*-branded stores, four in Dublin, one in Cork, one in Galway and five in Co. Wicklow.
8. For the financial year ended 31 December 2017, Musgrave's worldwide turnover was approximately €3.7 billion, of which approximately €3.1 billion was generated in the State.

#### *The Vendor*

9. The vendor is Brendan Lynch Limited (in receivership), acting by its receiver Tom Kavanagh c/o Deloitte, 29 Earlsfort Terrace, Dublin 2.

#### *Target Asset*

10. The Target Asset comprises a premises located in Fortunestown, Tallaght, Co. Dublin, which operated as a retail supermarket prior to its destruction in a fire in November 2016. In the 20 months since the fire, no retail activities have been conducted from the Target Asset and it remains, as at the date of the notification to the Commission, non-trading. Immediately prior to the cessation of trading, the retail store located in the Target Asset had been operated from May to November 2016 by Najela Stores Limited, which had been appointed by the receiver of Brendan Lynch Limited (in receivership), the previous operator of the retail store and the long-leaseholder of the Target Asset. The sale of the Target Asset is being conducted through Deloitte, the receiver of Brendan Lynch Limited (in receivership).

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<sup>1</sup> 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*.



11. For the financial year ending 2016, the turnover attributable to the retail store operated at the Target Asset exceeded [...], all of which was generated in the State.

#### **Rationale for the Proposed Transaction**

12. The parties state in the notification that:

*“The Proposed Transaction is in line with Musgrave’s commercial strategy. After making the necessary significant investment required to refurbish and re-fit the Target Asset as a trading supermarket, Musgrave considers that the Target Asset has potential to operate as a successful supermarket given its location and the potential to generate footfall from adjoining businesses.”*

#### **Third Party Submissions**

13. No submission was received.

#### **Competitive Analysis**

##### *Horizontal Overlap*

##### *Retail Sale of Grocery Goods*

14. As described above in paragraphs 2 and 10, the Target Asset is not currently trading as a retail store and has not done so since it was damaged by fire in November 2016. However, immediately prior to November 2016, it traded as a supermarket under the *SuperValu* brand. Following implementation of the Proposed Transaction and the refurbishment and re-fit of the Target Asset, the Target Asset will once again operate as a grocery retail outlet. Therefore, given that the Target Asset previously operated as a grocery retail outlet and the purpose of the Proposed Transaction is to return it to a grocery retail outlet, there is an overlap in the activities of the parties in respect of the retail sale of grocery goods in the State as both Musgrave and the Target Asset are involved in that activity.
15. The Commission has not, in the course of its assessment of the competitive effects of the Proposed Transaction, found reasons to depart from the approach previously adopted by the Commission, or its predecessor, the Competition Authority, in relation



to the retail grocery sector<sup>2</sup>. Accordingly, for the purposes of evaluating the competitive effects of the Proposed Transaction, the Commission considers that the relevant product market is the retail sale of grocery goods.

16. 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 market, i.e., the local area in which the Target Asset is located. The Commission has previously<sup>3</sup> identified possible local markets based on a 10 kilometre or 10 minute drive time from any relevant target location<sup>4</sup>.
17. 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 area (i.e. within a 10 kilometre or 10 minute drive time) of the Target Asset.
18. In comparison to the situation when the Target Asset was previously trading (that is prior to the Target Asset being damaged by fire in November 2016), 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 area of the Target Asset as a result of the Proposed Transaction. Following implementation of the Proposed Transaction, the only change that will occur is that the refurbished grocery retail store operated at the Target Asset will be owned and operated by Musgrave.
19. Information in relation to competitors of the Target Asset at a local catchment area level was provided in a Storecast report<sup>5</sup> commissioned by Musgrave. The report indicates that there are 73 supermarkets within the 10 kilometre local catchment area

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<sup>2</sup> M/17/050 - Joyces/Nestors, M/17/052 - Cedarglade (Musgrave) / Ballybrit Centra & Service Station and M/17/058 - Musgrave / Whelan Centra.

<sup>3</sup> M/17/050 - Joyces/Nestors and M/17/052 - Cedarglade (Musgrave) / Ballybrit Centra & Service Station.

<sup>4</sup> In M/17/058 - Musgrave / Whelan Centra a catchment area radius of 5 miles (approx. 8km) was assessed.

<sup>5</sup> Storecast Report by Emma Lamb dated March 28 2018



surrounding the Target Asset and that there are over 200 convenience stores within the same catchment area. Within 2.5 kilometres of the Target Asset, the Storecast report identified 14 supermarkets, which included one *SuperValu* store at Aylesbury Shopping Centre<sup>6</sup> and a range of competitors, including Tesco, Dunnes Stores, Aldi and Lidl. On this basis, the Commission considers that there will remain a sufficient number of competitors to Musgrave in the local area of the Target Asset following implementation of the Proposed Transaction.

20. 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 area of the Target Asset or for that matter in the State.

#### *Vertical Relationship*

21. 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. Prior to November 2016, Musgrave supplied the Target Asset, as an independent franchisee, which was a *SuperValu*-branded store. Following the implementation of the Proposed Transaction it is proposed that the Target Asset will operate under the *SuperValu* brand and Musgrave will continue to supply it with grocery goods.
22. 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* brand, amongst others), which are currently active in supplying grocery goods to other retailers in the local areas of the Target Asset.
23. For the reasons set out above, the Commission considers that the Proposed Transaction will not result in any vertical competition concerns.

#### *Conclusion*

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<sup>6</sup> Which is independently owned and operated through a franchise agreement with Musgrave



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. 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 Group plc through its wholly-owned indirect subsidiary, Cedarglade Limited, would acquire certain assets constituting a supermarket premises at Fortunestown, Tallaght, Co. Dublin, 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**