



# DETERMINATION OF MERGER NOTIFICATION M/18/094 – NORTH CORK / NEWTOWNSANDES

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## Section 21 of the Competition Act 2002

**Proposed acquisition by North Cork Co-operative Creameries Limited of sole control of Newtownsandess Co-operative Dairy Society Limited.**

**Dated 21 January 2019**

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### Introduction

1. On 13 December 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 North Cork Co-operative Creameries Limited (“North Cork”) would acquire the entire issued share capital, and thereby sole control, of Newtownsandess Co-operative Dairy Society Limited (“Newtownsandess”) (the “Proposed Transaction”).

### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to an agreement between the board of North Cork and the board of Newtownsandess whereby North Cork offers to buy 100% of the issued share capital of Newtownsandess from the Newtownsandess shareholders. This includes the purchase of all of the issued shares of the Newtownsandess qualifying milk supplier members<sup>1</sup> (“Qualifying Members”) and in return the Qualifying Members will be issued new shares in North Cork.
3. Notwithstanding the fact that a formal written agreement had not yet been executed at the time of the notification, the Commission notes that an offer document (the “Offer”) was sent to the Newtownsandess’ Qualifying Members on 30 November 2018<sup>2</sup>.

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<sup>1</sup> [...] of the [...] shareholders of Newtownsandess are qualifying milk supplier members.

<sup>2</sup> The parties state in the notification that in order for the Proposed Transaction to proceed at least 75% of the Newtownsandess Qualifying Members must accept the offer. The necessary member approvals to facilitate the



The Commission considers that this Offer demonstrates to it a good faith intention to conclude an agreement for the purposes of section 18(1A)(b) of the Act.

### **The Undertakings Involved**

#### *The Acquirer – North Cork*

4. North Cork is an agri-business co-operative society, owned by [...] shareholders. North Cork's principal business activity is the production of fresh dairy products, a range of milk powders and casein. In carrying out these activities, North Cork:
  - i. collects, pasteurises and supplies liquid milk as either branded or own-label milk;
  - ii. processes the cream that is separated from milk to manufacture butter, which is exported worldwide;
  - iii. produces branded butter for retail consumers under the *North Cork Creamery* brand, own-label butter for retailers such as [...], and cream; and
  - iv. operates a milk drying facility which produces high quality milk powders for food manufacturing, as well as casein, which are exported worldwide.
5. North Cork procures raw milk from its milk supplying members and other co-operatives, including Newtownsandies. North Cork processes all of its raw milk internally and does not supply milk to other dairy processors. North Cork also processes raw milk on behalf of third party processors which require additional capacity. North Cork sells its milk and dairy products to retail customers such as [...].
6. In addition, North Cork operates two agri-retail outlets selling animal feed, hardware and other farm inputs, located in Kanturk and Cullen, Co. Cork.
7. For the financial year ending 31 December 2017, North Cork's worldwide turnover was approximately [...], of which approximately [...] was generated in the State.

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Proposed Transaction, referred to in the offer document, were satisfied by each of North Cork and Newtownsandies at their respective Special General Meetings held on 12 December 2018.



### *The Target – Newtownsand es*

8. Newtownsand es is an agri-business co-operative society owned by [...] shareholders. Newtownsand es' principal activity is the sale of raw manufacturing milk to dairy processors. Newtownsand es collects and sells raw milk of manufacturing quality. It collects the raw milk from its members who are located primarily in Kerry and, to a limited extent, in Limerick.
9. Newtownsand es collects and sells approximately [...] million litres of manufacturing milk per year. Since spring 2018, all of this quantity of milk is supplied to North Cork.
10. Newtownsand es has a small agri-store located at Moyvane. This store sells animal feed, hardware and other farm inputs. The turnover of these stores is principally attributable to the sale of "agricultural inputs" to farmers (e.g., feed, seed, grain, agri-chemicals, agri-medicines, fencing, silage wrap and fertiliser).
11. For the financial year ending 31 December 2017, Newtownsand es' worldwide turnover was approximately [...], all of which was generated in the State.

### *Milk Supply Agreements*

12. The Offer to each Newtownsand es Qualifying Member is conditional upon the Qualifying Member signing a Milk Supply Agreement ("MSA") with North Cork. The MSA places an obligation on North Cork to purchase all of the milk produced by the Qualifying Member and requires the Qualifying Member not to supply raw milk to any other person or entity other than North Cork without its consent. The term of the MSA is [...]. The MSA can be terminated on [...] notice after the expiry of the [...] year term.
13. North Cork requires [...] of the Newtownsand es Qualifying Members to sign up to the MSA. The parties consider *"this to be a fundamental aspect of the Proposed Transaction as North Cork acquiring the milk supply business of Newtownsand es. North Cork could not be certain of acquiring the supply without the milk supply members signing a MSA. The acquisition of the supply constitutes the essence of the Proposed Transaction and so the Milk Supply Agreements form a fundament part of the transaction."*



14. The Commission notes that the term of the MSA is within the maximum permitted with regard to the duration of an MSA<sup>3</sup>. The competitive analysis of the Proposed Transaction (detailed below), in this instance, is unaffected by the existence of such agreements.

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

15. The parties state in the notification that:

*“The Boards of North Cork and Newtownsandess believe that a merger of the two co-operative societies will bring benefits to both societies by increasing the scale of the combined milk pool and thereby improving efficiencies and cost synergies and that this will ensure the continued growth and success of North Cork and Newtownsandess in a competitive market.”*

#### **Third Party Submissions**

16. No submission was received.

#### **Horizontal overlap**

17. North Cork does not sell raw milk to third party milk processors, therefore no horizontal overlap arises with respect to the supply of raw milk in the State.
18. Newtownsandess does not process raw milk, therefore no horizontal overlap arises between the parties in the processing of dairy products in the State.
19. There are two horizontal overlaps in the State between the parties’ business activities: (i) the procurement of raw milk; and (ii) the retail sale of agricultural inputs to farmers.

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<sup>3</sup> General exemptions under both EU and Irish law permit exclusive milk supply agreements of up to five years’ duration where certain conditions are met. These include, for example, a condition that the market shares of the supplier in the market in which it sells, and of the buyer in the market in which it purchases, must not exceed 30%, as well as conditions providing that the agreements must not contain certain other restrictive clauses (such as resale price maintenance or a ban on passive sales). Please see REGULATION (EU) No 261/2012 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:094:0038:0048:EN:PDF> and the Commission’s predecessor, the Competition Authority’s (the “Authority”) 2013 annual report page 20 <https://www.ccpc.ie/consumers/wp-content/uploads/sites/2/2017/03/Annual-Report-2013.pdf>.



## Market Definition

20. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.

### *The procurement of raw milk*

21. In its *M/18/012 North Cork / Feale Bridge* determination<sup>4</sup>, the Commission found that it was not necessary to precisely define the product and geographic market in respect of the procurement of raw milk, but assessed the competitive effects of the merger on the basis of the potential market for “*procurement of raw milk in the counties of Limerick, Cork, and Kerry, and in Munster.*”
22. The parties state the following in the notification:

*“The parties submit that the narrowest possible geographic market is the Munster region. The parties submit that a market limited to the counties in which the parties directly overlap in procurement, would not accurately reflect the conditions of competition in Munster and the region within which a supplier of Newtownsandess could source an alternative milk purchasing customer.”*

23. In this instance, the Commission disagrees with the parties and will follow its approach in the *M/18/012 North Cork / Feale Bridge* determination and assess the likely impact of the Proposed Transaction in the relevant counties and in Munster. Thus, for the purpose of determining whether the Proposed Transaction might result in a substantial lessening of competition, the Commission assessed the competitive impact of the Proposed Transaction on the potential market for the procurement of raw milk in the counties of Limerick, Cork, and Kerry, and in Munster.

### *The retail sale of agricultural inputs*

24. In *M/18/012 North Cork / Feale Bridge decision*, the Commission found that it was not necessary to define precisely the relevant markets in respect of the supply of agricultural inputs, but assessed the competitive effect of the merger on the potential

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<sup>4</sup> <https://www.ccpic.ie/business/wp-content/uploads/sites/3/2018/02/M-18-012-North-Cork-Feales-Bridge-and-Headleys-Bridge-Public-1-3.pdf>



market for the retail supply of agricultural inputs at a regional level (using 100km distance as a reference point).

25. The parties state the following in the notification:

*“The market for the retail supply of agricultural inputs to farmers at a regional level (using 100km distance as reference point).”*

26. The Commission sees no reasons to deviate from its approach in *M/18/012 North Cork / Feale Bridge*. Thus, for the purpose of determining whether the Proposed Transaction might result in a substantial lessening of competition, the Commission assessed the competitive impact of the Proposed Transaction on the potential market for the retail supply of agricultural inputs at a regional level (using 100km distance as a reference point).

### **Competitive Assessment**

#### *The procurement of raw milk*

27. In 2017, North Cork procured [...] litres of raw milk<sup>5</sup> (this includes [...] million litres procured from Newtownsandess). Newtownsandess procured [...] litres of raw milk over the same period. In the absence of complete data on competitors’ milk procurement, Table 1<sup>6</sup> below lists the parties’ total volume of milk procurement as percentages of the total milk procured in the State, Munster and the counties of Limerick, Cork and Kerry.

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<sup>5</sup> [...] litres of whole milk equivalent. This figure includes milk procured from processors who may in turn have procured milk outside of Munster.

<sup>6</sup> Supplied by the parties from ICOS (Irish Cooperative Organisation Society), whose analysis is derived from data provided by the Central Statistics Office, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, the National Milk Agency, Teagasc and the Irish Cattle Breeding Federation.



**TABLE 1: The parties total volume of raw milk procured as a percentage of the total volume of raw milk produced in 2017<sup>7</sup>**

Region	North Cork <sup>8</sup>	Newtownsandnes	Combined
The State	[0-5%]	[0-5%]	[0-5%]
Munster	[0-5%]	[0-5%]	[0-5%]
Limerick	[0-5%]	[0-5%]	[0-5%]
Cork	[0-5%]	[0-5%]	[0-5%]
Kerry	[5-10%]	[0-5%]	[10-20%]

Source: The Commission, based on information provided by the parties

28. Table 1 shows that North Cork and Newtownsandnes' combined milk procurement as percentages of the total raw milk produced in 2017, in each of the geographic areas listed above, are low, i.e., [0-5%] for Munster, [0-5%] for County Cork, [0-5%] for County Limerick and [10-20%] for County Kerry.
29. Furthermore, following completion of the Proposed Transaction, North Cork will continue to face competition in the procurement of raw milk in Munster, from larger dairy processors, such as Dairygold Co-operative Society Limited, Kerry Group, Tipperary Co-op, Arrabawn and Carbery Group Ltd. These competitors procure milk throughout Munster, County Limerick, County Kerry and County Cork.
30. In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concern in respect of the procurement of raw milk in any of the assessed geographic areas, i.e., Munster, County Limerick, County Cork and County Kerry.

#### *The retail sale of agricultural inputs to farmers*

31. Both parties are involved in the retail supply of agricultural inputs to farmers. The Proposed Transaction involves the acquisition of Newtownsandnes' single agri-trade retail store located in Moyvane, Co. Kerry. North Cork has four agri-retail stores located

<sup>7</sup> Republic of Ireland production based on 2017 CSO data. Regional figures for Munster and selected counties are estimates based on ICBF data for dairy cow population per county in 2017 and Teagasc National Farm Survey Data on average yield per cow in 2017.

<sup>8</sup> The parties used the number of litres of raw milk processed by North Cork as a proxy for the number of litres of raw milk procured. As noted in paragraph 5, North Cork processes the raw milk it procures as well as raw milk on behalf of third parties, therefore, the figures present in Table 1 could be greater than the actual figure.



in Kanturk, Co. Cork, Cullen, Co. Cork, Abbeyfeale, Co. Limerick and Headley's Bridge, Co. Kerry.

32. Following implementation of the Proposed Transaction, North Cork will continue to face competition from 19 agri-retail outlets that operate within 100km of the five outlets<sup>9</sup>. This includes outlets run independently and by co-operatives such as Dairygold Superstore and Kerry Agri.

### Vertical relationship

33. There is a vertical relationship between the parties in the State as Newtownsandess supplies raw milk of manufacturing quality to North Cork. The Commission considers that the Proposed Transaction is unlikely to raise any vertical competition concerns, for the following reasons:

- Table 1 shows that Newtownsandess accounts for a very small proportion of the total volume of raw milk procured in Munster or the counties of Limerick, Cork, or Kerry.
- All of Newtownsandess raw milk is currently supplied to North Cork. Therefore, the Commission considers that following implementation of the Proposed Transaction, it is unlikely that any dairy processor would be foreclosed from accessing milk suppliers in Munster or the counties of Limerick, Cork, or Kerry.
- As mentioned in paragraph 29 above, following the implementation of the Proposed Transaction, many larger dairy processors, such as Dairygold Co-operative Society Limited, Kerry Group, and Carbery Group Ltd, will continue to operate in Munster and in the counties of Limerick, Cork and Kerry.

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<sup>9</sup> This includes: Dairygold Superstore Mallow, Cork; Dairygold Superstore Ardagh, Limerick; Dairygold Superstore Raheen, Limerick; Dairygold Superstore, Buttevant; Kerry Agri Rathmore; Kerry Agri Charleville; Kerry Agri Newmarket; Dan O'Connor; McDonnell Brothers, Rathdaggan; Kerry Agri Business Mountcollins' O'Connor Hardware Duagh; Browne's Hardware Castleisland; Sheehy's Hardware Abbeyfeale; Kerry Agri Castleisland; Kelliher's Agri Tralee; Barrons Causeway; Crecora Mills agri-retail Castlemahon; Crecora Mills agri-retail Listowel; Mac Fuels and General Supplies Listowel.





34. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns.

### **Conclusion**

35. 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**

36. As discussed in paragraphs 12 to 14 above, the MSA is a fundamental part of the Proposed Transaction and the Commission has formed the view that this is an ancillary restraint necessary for the implementation of the Proposed Transaction.



### **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 North Cork Co-operative Creameries Limited would acquire the entire issued share capital, and thereby sole control, of Newtownsandess Co-operative Dairy Society 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**