



DETERMINATION OF MERGER NOTIFICATION M/19/003– PALLAS FOODS / GHS CLASSIC DRINKS

Section 21 of the Competition Act 2002

Proposed acquisition by Pallas Foods Unlimited Company of sole control of GHS Classic Drinks Limited.

Dated 25 February 2019

Introduction

1. On 28 January 2019, 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 Sysco Corporation (“Sysco”), through its wholly owned subsidiary Pallas Foods Unlimited Company (“Pallas Foods”), would acquire sole control of GHS Classic Drinks Limited (“Classic Drinks”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement dated 23 January 2019 between Pallas Foods, GHS Classic Drinks Holding Company Unlimited Company (the “Seller”)¹ and [...] guarantors² (the “SPA”). Pursuant to the SPA, Pallas Foods will acquire the entire issued share capital and thereby sole control of Classic Drinks.

¹ Classic Drinks is wholly owned by the Seller.

² The [...] guarantors are the joint owners of the Seller: [...].



The Undertakings Involved

The Acquirers – Sysco and Pallas Foods

3. Sysco, a publicly listed company on New York Stock Exchange, is active in the sale, marketing and distribution of food and related products, such as catering equipment and supplies, to foodservice operators. Sysco is primarily active in the United States and Canada. Within the EEA, Sysco is mainly active in the State and Northern Ireland through Pallas Foods and Brakes Group (“Brakes”).³
4. Pallas Foods, a wholly owned subsidiary of Sysco,⁴ is involved, on the island of Ireland, in the selling, marketing and distributing of food and non-food products to foodservice operators such as restaurants, pubs, hotel groups and catering suppliers. Pallas Foods also has customers in the public sector in the State. Pallas Foods has its main warehouse at Killamonan in Dublin. [...]
5. The food products distributed by Pallas Foods include beverages, canned and dried produce, dairy, frozen meat and poultry products, vegetable produce and seafood. The non-food products distributed by Pallas include medical products, paper and disposable products, “supply and equipment” products, and chemical and janitorial products. Brands distributed by Pallas Foods include *Glenown* (dairy ice cream), *Salamander* (patisserie), *Pallas Green*, *Callebaut*, *Silver Hill Farm*, *McCarren & Co.* (pork & bacon), *Brakes*, *Tournafulla* (breakfast range), *Glin Valley* (chicken), and *Sysco*.
6. Brakes is active in the distribution of food and related products to foodservice operators and it also holds separate divisions specialising in catering supplies and equipment in the State. Brakes is a supplier to the foodservice operators primarily in the United Kingdom (including Northern Ireland), France, Sweden and the State. Brakes has a warehouse in Lisburn [...].

³ The European Commission’ decision regarding the acquisition by Sysco of Brakes Group can be accessed at: http://ec.europa.eu/competition/mergers/cases/decisions/m7986_918_4.pdf.

⁴ Sysco is the ultimate owner and controller of Pallas Foods, having acquired it in 2009. This transaction was not notified in Ireland.



7. For the financial year ending [30 June] 2017, Sysco's worldwide turnover was approximately €47.4 billion, of which approximately €[...] million was generated in the State.

The Target – Classic Drinks

8. Classic Drinks, a private limited company, registered in the State, is the trading company of the '*Classic Drinks*' business. Classic Drinks sells, markets and distributes packaged alcohol⁵ (wine, spirits, beer and cider) and non-alcoholic drinks in the State.⁶ Classic Drinks also supplies alcoholic beverages to Pallas Foods, exclusively for sale by Pallas Foods in Northern Ireland. Classic Drinks operates a water cooler business. Classic Drinks operates out of one warehouse in Little Island, Cork City, and supplies customers all over the State.
9. Classic Drinks holds 50% of the issued share capital in Christy's Wine and Spirits Limited ("*Christy's*"), which markets *Classic Drinks* products predominantly in the Cork area. The parties state in their notification that the remaining 50% share of Christy's is currently owned by [...] and "*will be acquired by Pallas as part of this transaction and will then be wholly owned by Pallas (indirectly, through Classic Drinks).*"
10. For the financial year ending 30 June 2017, Classic Drinks' worldwide turnover was approximately €[...] million, almost all of which was generated in the State.

Rationale for the Proposed Transaction

11. The parties state in the notification that:

"The Proposed Transaction is intended to improve Pallas's position in the sale of alcoholic drinks, where it has a small share of business relative to its competitors in other segments of the foodservice sector. Pallas's key competitors, especially in the State, offer an extensive alcohol range and related value-added services. Pallas already distributes a small amount of packaged alcohol to its foodservice

⁵ Classic Drinks sells a negligible number of Christmas hampers each year as part of its alcoholic beverages business.

⁶ Classic Drinks has a small number of sales outside of the State.



customers, albeit with a very limited range and low volume of sales compared to its foodservice competitors. [...].”

Third Party Submissions

12. No submission was received.

Horizontal overlap

13. There is a horizontal overlap in the activities of the parties within the State. Both Pallas Foods and Classic Drinks are foodservice distributors. In particular, both Pallas Foods and Classic Drinks are active in the supply of beverage products to foodservice operators in the State.⁷

Market Definition

14. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.
15. In its *M/12/010 Pallas/Crossgar* decision,⁸ the Commission’s predecessor the Competition Authority (the “Authority”) did not come to a definitive view on the precise relevant product market. For the purpose of reviewing that transaction, however, it considered it possible to define product markets within the foodservice sector in terms of the different product categories, different customer categories and different modes of transportation.⁹
16. The Commission sees no reason to deviate from its *M/12/010 – Pallas/Crossgar* approach in respect of the product market definition and, accordingly, does not need to come to a definitive view on the precise relevant product market. For the purpose

⁷ The parties state in the notification that “*Classic Drinks sells a small number of Christmas hampers each year as part of its alcohol sales business. The value of these hampers is approximately, €[...] per year (including the value of both food and alcohol in the hampers) and it is the only non-beverage product sold by Classic Drinks.*” Therefore, the Commission considers that the overlap between the parties in respect of the supply of non-beverage food products is minimal and of no substantive concern.

⁸ The determination in case *M/12/010 – Pallas Foods/Crossgar* is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-12-010-Pallas-Crossgar.pdf>

⁹ Namely delivered wholesale, cash and carry, wheels only and direct supply.



of examining the Proposed Transaction, the Commission will follow its previous approach and assess the potential competitive effects of the Proposed Transaction, in terms of different product categories and different customer categories,¹⁰ i.e., the supply of alcoholic beverages and non-alcoholic beverages to foodservice operators.

17. In its *M/12/010 – Pallas/Crossgar* decision, the Authority did not come to a definitive view on the precise relevant geographic market. For the purpose of reviewing that transaction, however, it considered the relevant geographic market to be the island of Ireland. Similarly, in this instance the Commission sees no reason to deviate from its approach in case *M/12/010 – Pallas/Crossgar* in respect of the relevant geographic market.
18. Thus, for the purpose of determining whether the Proposed Transaction might result in a substantial lessening of competition, the Commission assessed the competitive effects of the Proposed Transaction in respect of the potential market for (i) the supply of alcoholic beverages to foodservice operators on the island of Ireland, and (ii) the supply of non-alcoholic beverages to foodservice operators on the island of Ireland.¹¹

Competitive Assessment

19. Pallas Foods supplies alcoholic beverages (wine, spirits, beer and cider) alongside its predominantly food-focussed offering to foodservice operators.¹² The parties state in the notification that, in 2017, sales of alcoholic beverage represented approximately [0-5]% of Pallas Foods' sales on the island of Ireland.¹³ The majority of Pallas Foods' customers [85-95]% did not purchase any alcohol beverage from Pallas Foods. Classic Drinks principally supplies alcoholic beverages (wine, spirits beer and cider) to foodservice operators.¹⁴ In 2017 and 2018, alcoholic beverages represented over [85-95]%¹⁵ of Classic Drinks' sales, by value.

¹⁰ Different modes of transportation is not relevant for assessing the Proposed Transaction.

¹¹ Classic Drinks is currently not directly active in the sale of any food or food-related products to Northern Ireland, however, it currently supplies a small amount of alcoholic beverages to Pallas Foods, exclusively for sale by Pallas Foods in Northern Ireland.

¹² Pallas Foods' product lists can be accessed at: <https://collect.pallasfoods.com/food-drink/alcohol.html>. Brakes' product lists can be accessed at: <http://www.brake.eu/>

¹³ Approximately €[...] million.

¹⁴ Classic Drinks' product list can be accessed at: <http://portal.classicdrinks.ie>.

¹⁵ Approximately €[...] million.



20. Pallas Foods supplies non-alcoholic beverages, including soft drinks, juices, smoothies, coffee, tea and bottled water. Pallas Foods sold €[...] million worth of non-alcoholic beverage for its financial year 2017. Classic Drinks supplies energy drinks, water, syrups and bitters, and mixers and minerals. However, the non-alcoholic beverages supplied by Pallas Foods are supplied as an ancillary product alongside a predominantly food-focussed offering to foodservice operators. Similarly, Classic Drinks provides non-alcoholic beverages purely as an ancillary product to its alcoholic beverages distribution offering.¹⁶ Classic Drinks generated turnover of approximately €[...] and €[...] million from sale of non-alcoholic beverages in 2017 and 2018, respectively.
21. Table 1 below indicates that overlap between the parties' activities on the island of Ireland is minimal, in respect of the supply of alcoholic beverages to foodservice operators and the supply of non-alcoholic beverages to foodservice operators. Following completion of the Proposed Transaction, the combined estimated market share of the parties in the supply of alcoholic and non-alcoholic beverages to foodservice operators on the island of Ireland is approximately [0-5]% and [0-5]%, respectively.

Table 1: Estimated market shares of Pallas Foods and Classic Drinks in respect of the potential market for alcoholic and non-alcoholic beverages to foodservice operators on the island of Ireland, 2017¹⁷				
	Estimated Total Market Size (millions)	Estimated Market Share-Pallas Foods¹⁸	Estimated Market Share-Classic Drinks	Estimated Combined Market Share
Alcoholic Beverages	[...] ¹⁹	[0-5]%	[0-5]%	[0-5]%

¹⁶ The range of non-alcoholic drinks distributed by Pallas Foods can be accessed at: <https://collect.pallasfoods.com/food-drink/hot-cold-beverages.html>. Classic Drinks' non-alcoholic drinks range is listed on its website, <http://portal.classicdrinks.ie>.

¹⁷ The parties state in the notification that the total value of sales of food and alcoholic beverages was identified by reference to Euromonitor's *Report on Alcoholic Drinks in Ireland* (June 2018).

¹⁸ Reference to Pallas Foods here include Brakes Brand.

¹⁹ The parties state in the notification that the total alcoholic drinks market figure relate to the State only and as such underestimate the total market size of the island of Ireland, in turn resulting in an overestimation of the parties' shares of supply of alcoholic drinks.



Non-Alcoholic Beverages	434 ²⁰	[0-5]%	[0-5]%	[0-5]%
Total Beverages	[...]	[0-5]%	[0-5]%	[0-5]%

Source: The Parties

22. The Commission considers that following completion of the Proposed Transaction, Pallas Foods will continue to face competition in the supply of alcoholic and non-alcoholic beverages to foodservice operators on the island of Ireland from Diageo Ireland, C&C Group Plc, Findlater & Co. Limited, Musgraves Marketplace, and BWG Group.
23. In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in respect of the supply of beverages to foodservice operators in the State.

Vertical relationship

24. There is no vertical relationship between the parties in the State. However, the Commission notes that Classic Drinks currently supplies a small amount of alcoholic beverages to Pallas Foods, exclusively for sale by Pallas Foods in Northern Ireland. The Commission considers that this vertical relationship between the parties is minimal²¹ and is exclusive to Northern Ireland, therefore, it is unlikely that the Proposed Transaction will raise any vertical competition concerns in the State.
25. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

²⁰The parties state in the notification that the total value of sales of non-alcoholic beverages to foodservice operators on the island of Ireland was identified by reference to the Board Bia's *2018 Irish Food Market Insights Report*.

²¹The parties state in the notification that the total value of alcoholic beverages which Classic Drinks supplied to Pallas Foods was approximately €[...] in 2018.



26. 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

27. Clause 18 of the SPA contains non-compete and non-solicitation obligations on the Seller and the Guarantors. The duration of these restrictive covenants does not exceed the maximum duration acceptable to the Commission.²² The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction, insofar as they related to the State.

²² In this respect, the CCPC 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] OJ C56/03 (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XC0305%2802%29>).



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 Sysco Corporation, through its wholly owned subsidiary Pallas Foods Unlimited Company, would acquire sole control of GHS Classic Drinks 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