



DETERMINATION OF MERGER NOTIFICATION M/14/033 - MUSGRAVE / ALLIED & TALLAGHT COLD STORE

Section 21 of the Competition Act 2002

Proposed acquisition by Musgrave Group plc, through Musgrave Limited, of certain assets of Allied Logistics Limited and Allied Foods Limited and Tallaght Cold Store Limited

Dated 19 December 2014

Introduction

1. On 11 November 2014, in accordance with section 18(1) of the Competition Act 2002, as amended¹ (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Musgrave Group plc (“Musgrave”), through its wholly-owned subsidiary Musgrave Limited (“ML”), would acquire certain assets² of Allied Logistics Limited and Allied Foods Limited (collectively “Allied”) and the entire issued share capital of Tallaght Cold Store Limited (“TCS”). Allied and TCS are subsidiaries of DCC plc (“DCC”).

The Transaction

2. The proposed transaction consists of a conditional asset purchase agreement between Allied, DCC and ML dated 29 October 2014 and a related conditional share purchase agreement dated 29 October 2014 between ML, DCC Funding 2007 Limited and DCC providing for the purchase by ML of the entire issued share capital of TCS.
3. As part of the proposed transaction, Musgrave is to acquire the logistics, warehousing and wholesale distribution of the temperature controlled food products business carried on by Allied in the State, including an Irish registered trade mark used for the sale of frozen potato chips³ (the “Target Business”) and one of the properties from which the Target Business is currently carried on, at Kinsale Road, Cork.
4. In addition, Musgrave is also to acquire control of TCS, whose sole purpose is to hold the other property from which Allied currently carries on the Target Business, which is in Cookstown, Tallaght, Dublin 24.

¹ It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.

² Consisting of a business, assets, trade names, a trade mark and an immovable property.

³ Namely, the “Mister Food” trade mark.



The Undertakings Involved

The Acquirer – Musgrave

5. ML is a company incorporated in Ireland and a wholly owned subsidiary of Musgrave, an Irish incorporated public limited company.⁴
6. Musgrave is active in grocery and food wholesale distribution and is a partner to food retailers in Ireland, the UK and Spain through its various divisions. In the State, Musgrave has two divisions:
 - a. Musgrave Retail Partners: A wholesale food and grocery distribution business servicing a network of SuperValu and Centra supermarkets and convenience stores owned by independent food retailers. This division also operates a number of corporate owned supermarkets under the SuperValu brand which formerly traded under the Superquinn brand.
 - b. Musgrave Wholesale Partners: A network of Cash & Carry outlets, a delivered wholesale business, and a delivered foodservice business. This division also provides a delivered wholesale and a retail support offering for independent retailers operating under the DayToday and the Daybreak brands.
7. Musgrave's worldwide turnover for the year ended 31 December 2013 was €4,832 million, of which €3,138 million was generated in the State.

The Targets – Allied & TCS

8. Allied consists of two companies⁵ registered in Ireland with registered offices at Kinsale Road, Cork. Allied is an ambient and temperature controlled food logistics provider, offering a wide range of supply-chain solutions. Allied offers specialist warehousing and distribution services for temperature controlled food products in the State, operating from two properties, one in Cork (which is adjacent to Musgrave's warehouse premises and is part of the proposed asset acquisition), and another in Cookstown, Tallaght, Dublin 24 which is owned by TCS. TCS is a property holding company whose sole asset is the Cookstown property.⁶
9. Allied's turnover for the financial year ended 31 March 2014 was €[...].⁷ The entirety of this turnover was generated in the State. In January 2014, Musgrave announced a separate transaction whereby it acquired the food service division⁸ of Allied, the turnover of which was approximately €[...].⁹ That transaction was completed in February 2014. The estimated turnover of Allied in 2014, for the purposes of the present proposed transaction, will be approximately €[...].

⁴ [...].

⁵ Namely, Allied Logistics Limited and Allied Foods Limited, neither of which is being acquired by Musgrave and will become non-trading companies after completion of the proposed transaction.

⁶ Allied also rents space within a premises [...] in County Cork [...].

⁷ Allied Logistics Limited accounts for €[...] and Allied Foods Limited accounts for €[...].

⁸ Focusing on the distribution of ambient, chilled and frozen food to restaurants and fast food outlets across Ireland.

⁹ For the period from 1 April 2013 up to the date of sale of the business to Musgrave in January 2014.



The Vendor

10. Both Allied and TCS are subsidiaries of DCC, an Irish incorporated public limited company whose shares are listed on the London Stock Exchange.
11. DCC currently consists of five divisions: Energy, Technology, Healthcare, Environmental and Food & Beverage.

Rationale for the Proposed Acquisition

12. The notification states:

“The Proposed Transaction will allow Musgrave to ensure that a key part of its logistics supply chain remains available to support the frozen food element of its grocery business going forward.

DCC seeks to divest the Business¹⁰ as it wishes to focus on its core businesses both in Ireland and abroad.”

13. In response to questions by the Commission, seeking further clarification, DCC stated:¹¹

“Contributing around 4% of annual group operating profit, the Food & Beverage division is the smallest of DCC’s five divisions. This division’s activities are also confined to the island of Ireland. Accordingly, completing the sale of the Business coupled with the proposed sale of Robert Roberts and Kelkin to Valeo¹² will allow DCC to focus resources on its Energy, Technology, Healthcare and Environmental divisions both in Ireland and elsewhere. The proposed sale of the Business would free up both capital and management time to concentrate on these core businesses.

DCC expects the Business to continue to grow and develop under Musgrave’s ownership in a manner which would not be possible under its own ownership.”

Third Party Submissions

14. No submission was received.

Competitive Analysis

15. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant markets.
16. Allied was founded in 1989 by means of a management buyout, backed by DCC, from Musgrave. Musgrave remained one of the key customers of Allied, which involves Allied providing significant support to Musgrave’s warehousing and distribution of temperature controlled food products in the State. Allied is in essence a core supply

¹⁰ The Target Business.

¹¹ In a written response dated 8 December 2014.

¹² “This proposed sale is currently under review by the [Commission]. See Merger Notification M/14/026 – Valeo/Wardell/Robert Roberts.”



chain partner to Musgrave and Musgrave accounted for [...] %¹³ of the annual income of Allied for the twelve months ending 31 March 2014. The parties state¹⁴ that the proposed transaction will result in pro-competitive vertical integration, where an increased level of vertical integration will reduce logistical, transactional and negotiation costs associated with the pre-merger situation of arms-length contracting between independent entities. Furthermore the parties argue that reductions in these upstream costs can, at least to some extent, be expected to be passed on to downstream customers/consumers.

17. Musgrave is vertically integrated with respect to its supply to its food service and retail customers and has a wholly integrated logistics operation which it owns and operates for the sole and exclusive benefit of its own supply chain. However, Musgrave relies on temperature controlled logistics services from Allied to supply its foodservice and retail customers with frozen temperature controlled products, as it does not own any frozen warehouse storage facilities. The proposed transaction is in essence a vertical merger, where Musgrave is attempting to increase its level of vertical integration.¹⁵

18. A potential anti-competitive effect sometimes associated with vertical integration is foreclosure. Although the Commission is not defining a precise relevant market in this matter, for the purposes of the competitive analysis and taking into account the activities of the parties, there appear to be two possible levels of potential vertical foreclosure, i.e. upstream in the storage / distribution market and downstream in the grocery wholesaling / retailing market.

a. Upstream vertical foreclosure – storage / distribution market

The Commission has discussed the proposed transaction with a number of food suppliers and they had no concerns about foreclosure at the upstream storage and distribution level, given that a large number of providers of such services are active in the State, among them large distributors such as Molloy & Sherry, Oakland International, Pallas Foods and Crossgar. In addition, Musgrave already provides a significant portion of its own storage and distribution needs and in addition accounts for [...] % of Allied's business.

b. Downstream vertical foreclosure – grocery wholesaling / retailing market

All of Musgrave's major retail competitors, such as Tesco, Aldi, Lidl and BWG, either have either their own vertically integrated grocery warehousing and transportation operations or have access to established competitors of Allied, such as Sam Dennigan¹⁶ (which is used by Dunnes Stores for its logistical needs¹⁷). The same applies to food services¹⁸, where entities take supplies from

¹³ The [...] % relates to the total gross profit/contract income generated by Allied in the financial year 2014.

¹⁴ Musgrave's Proposed Acquisition of Allied – An Economics Policy Perspective, Professor Francis O'Toole, Department of Economics, Trinity College Dublin, 11 November 2014.

¹⁵ "Non-horizontal mergers are generally less likely than horizontal mergers to generate competitive concerns as there is no direct loss of competition between firms in the same market." Guidelines for Merger Analysis adopted by the Competition and Consumer Protection Commission on 31 October 2014, p.24, available at:

<http://www.tca.ie/images/uploaded/documents/CCPC%20Merger%20Guidelines.pdf>

¹⁶ Sam Dennigan has over 30 years experience in temperature-controlled logistics and provides a complete logistics and distribution solution for all fresh produce, meat and dairy, as well as for ambient products. Please see website: <http://www.samdennigan.ie/>

¹⁷ Allied lost the Dunnes Stores' contract to Sam Dennigan in 2011.

¹⁸ Restaurants, pubs, hotels and canteens.



a wide range of suppliers including retail supermarkets, cash and carries, and local suppliers, as well as specialist suppliers such as Pallas Foods and Cuisine de France, which have their own temperature controlled facilities.

19. Allied provides storage services and supply chain solutions to a number of customers. Competitive tenders for the provision of such services are a regular feature of the temperature-controlled logistics sector, where contracts are generally awarded for periods of up to three year once a tender is accepted. For example, Allied was awarded the Musgrave business following a competitive tender and also won contracts with Rosderra [...] and [...] Burger King [...].¹⁹
20. There is a minor horizontal overlap in the activities of the parties within the State as far as the market for frozen potato chips²⁰ is concerned. Musgrave currently sources frozen chips from a number of suppliers²¹ and annual sales through Musgrave affiliated retailers and through its Wholesale Partners division amounted to approximately €[...] in 2014, which represents approximately [...] % of the total frozen chips market. Allied owns the 'Mister Food' brand of frozen potato chips.²² Allied uses [...] to manufacture and package frozen potato chips in four different stock-keeping units (SKUs) for sale by Allied under the 'Mister Food' trade mark. The annual sales of frozen chips under the 'Mister Food' brand amount to approximately €[...], which represents under [...] % of Allied's annual turnover of approximately €[...] and less than [...] % of the national frozen chip market. In addition, Allied has sold [...] % of the annual volume (and value) of its sales of 'Mister Food' frozen chips to Musgrave. The horizontal overlap between Musgrave and Allied in these products is therefore minimal.
21. With regard to the vertical aspects of the proposed transaction, it will not, in the Commission's view, result in foreclosure for the reasons already explained, in particular because, in both the upstream storage/distribution market and the downstream grocery wholesaling/retailing market, there are a number of large competitors whose presence will constrain the activities of the merged entity post-transaction.
22. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

23. The proposed transaction contains covenants restricting the two remaining, non-trading, companies referred to in footnote 5 above (i.e. Allied Logistics Limited and Allied Foods Limited) and the vendor (DCC) from carrying on any business which competes with the Target Business for a period of two years following completion of the transaction.

¹⁹ For [...], Allied also provides an additional service whereby it purchases product from [...] designated suppliers and onward sells such products to [...] outlets. [...]. The parties refer to this as a theoretical or technical overlap with the business of Musgrave and the Commission has confirmed with suppliers of [...] that this is in fact the arrangement in place. Allied does not provide a similar service to any party other than [...].

²⁰ The parties estimate the total market for frozen chips in the State to be worth €85 million, being serviced via two principal channels; supermarkets (approx. €45m) and foodservices (approx. €40m).

²¹ Including Allied [...]. Purchases of 'Mister Food' products from Allied represents only approximately [...] % of Musgrave's total frozen chip purchases in 2014.

²² This was the only remaining frozen/chilled food product traded/sold by Allied on a commercial basis after the acquisition by Musgrave of Allied's food service business in January 2014.



24. The vendor and the two companies in question are also restricted from soliciting the custom of any existing customer or supplier and/or offering employment to any existing employee of the Target Business, for a period of two years following completion of the transaction.
25. The parties state that the covenants are typical of a transaction of the nature of the proposed transaction, i.e. transferring a business as a going concern, in order to protect the full value of the business, goodwill and trade names being transferred.
26. The Commission considers these restrictions to be directly related and necessary to 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, has determined that, in its opinion, the result of the proposed acquisition whereby the Musgrave Group plc, through its wholly-owned subsidiary Musgrave Limited, would acquire certain assets of Allied Logistics Limited and Allied Foods Limited and the entire issued share capital and thus sole control of Tallaght Cold Store 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