



DETERMINATION OF MERGER NOTIFICATION M/10/018 -

Moy Park/O'Kane

Section 21 of the Competition Act 2002

Proposed acquisition by Moy Park Limited of O'Kane Poultry Limited

Dated 23 June 2010

Introduction

1. On 28 May, in accordance with section 18 of the Competition Act 2002 (the "Act"), the Competition Authority (the "Authority") received a notification of a proposed transaction whereby Moy Park Limited ("Moy Park") would acquire sole control of O'Kane Poultry Limited ("O'Kane").

The Undertakings Involved

The Acquirer

2. Moy Park is incorporated in the United Kingdom ("U.K.") and has its registered office in Craigavon, County Armagh, Northern Ireland. Moy Park is active in the rearing, slaughter and production of primary¹ and processed² chicken food products.
3. Moy Park sells primary and processed chicken food products at the wholesale level to customers throughout the European Union. In the State, Moy Park sells its primary and processed chicken food products mainly to the retail sector. In the State, approximately [...] % of its primary chicken food products and [...] % of its processed chicken food products are sold under the retailer's own brand. Moy Park also sells primary and processed chicken food products under its own brand name "Moy Park" to the retail sector in the State.
4. Moy Park is a wholly-owned subsidiary of Marfrig Alimentos S.A. ("Marfrig"). Marfrig is a Brazil based publicly traded company active in the production of a diversified range of food products both in Brazil and internationally. Marfrig increased its presence in Europe through the acquisition of the OSI Group Companies, which included Moy Park, in 2008³. In 2009, Marfrig further expanded its involvement in the production of primary and processed chicken food products through its acquisition of Seara Alimentos Ltda⁴ ("Seara").
5. For the financial year ending 2009, Moy Park generated a turnover in the State of €[...]⁵. For the same period, Marfrig generated sales in the

¹ Primary chicken food product refers to raw (fresh and frozen) unprocessed chicken and is defined in paragraph 12 below.

² Processed chicken food product has additional external ingredients added and is not limited to raw product. It is defined in paragraph 13 below.

³ Case No. COMP/M.5322 *Marfrig/OSI Group Companies*, decision on 13/10/2008.

⁴ Case No. COMP/M.5705 – *Marfrig Alimentos/Seara*, decision on 18/12/2009.

⁵ Based on the ECB average exchange rate for 2009 of €1 = £0.8904.

State from the sale of primary and processed chicken food products of approximately €[...].⁶

The Target

6. O’Kane is a family-owned Northern Ireland based company involved in the rearing, slaughter and production of primary and processed chicken and turkey food products. O’Kane sells its chicken and turkey food products at the wholesale level mainly in the U.K. and the State, with a lesser amount elsewhere. In the State, O’Kane sells primary and processed chicken and primary turkey food products to both the food-services⁷ and retail sectors.
7. O’Kane mainly supplies primary chicken food products to the retail sector in the State all of which is sold under the retailer’s own brand. O’Kane supplies only a limited amount of processed chicken food products in the State, which is limited to occasional promotions⁸ (approximately [...] times per year) when the products are sold either under the retailer’s brand or the O’Kane brand.
8. For the financial year ending 2 May 2009, O’Kane generated a turnover of approximately €[...]⁹ from sales to customers in the State.

Rationale for the Proposed Transaction

9. According to the parties¹⁰, the proposed transaction will allow for increased scale and capacity and initiate Moy Park’s entry into the turkey food product market in the State and internationally.

Third Party Submissions

10. No submissions were received.

Analysis

11. The parties state that the proposed transaction concerns the following product markets:
 - (i) the supply of primary chicken in the State, and
 - (ii) the supply of processed chicken in the State.

Relevant product market(s)

Views of the parties

Supply of primary and processed chicken food products

12. Primary chicken food products are defined by the parties as including products sold as a whole bird, on the bone, or as a fillet. These products are raw and have not undergone any further processing.

⁶ Based on the ECB average exchange rate for 2009 of €1 = USD 1.3948.

⁷ The food-services sector encompasses sales made to hotels, restaurants, fast-food and take-away outlets and caterers.

⁸ Occasional promotions may occur if O’Kane are promoting a specific product, which is on special offer or is seasonal in nature, i.e., at Christmas or Easter.

⁹ Based on the average ECB exchange rate from Jan-April 2009 of €1= £0.90588

¹⁰ Joint press release issued on 25 May 2010.

Frozen raw product is also captured, according to the parties, within this definition of primary chicken food products.¹¹

13. The parties rely on the European Commission's (the "Commission") definition of processed meat:¹²

...comprising meat from mammals or birds, containing external ingredients such as salt or spices, being raw, dried, smoked or cooked.

Examples of processed chicken products include, chicken goujons, chicken kiev, chicken nuggets, ready-to-cook and ready-to-eat ranges. The parties submit that the relevant product market(s) encompass both fresh and frozen processed chicken food products.

14. The parties state that whilst there may be some differences between the requirements of customers by type, i.e., retailer, food-services and industrial processing¹³ sectors, the market for the supply of primary and processed chicken food products does not need to be subdivided by type of customer.
15. The parties submit that the same veterinary and hygiene standards apply across the range of food products sold to different types of customers. Furthermore, the parties state that the products sold to both the food-services and retailer sectors are manufactured on the same production lines. The main difference, according to the parties, between the products destined for the food-services and retail sectors is the packaging used.

Relevant geographic market(s)

Views of the parties

Supply of primary and processed chicken food product

16. The Commission, in previous decisions, has held that the retail market for primary meat products is national in scope whereas the market for primary meat to the food-services and industrial processing sectors is possibly wider.¹⁴ However, the parties submit that the relevant geographic market(s) for primary chicken food products should be left open in this instance in accordance with subsequent decisions of the Commission.¹⁵
17. The parties submit that a significant proportion of processed chicken food products sold in the State originate from outside the European Economic Area ("EEA"), from countries such as Brazil and Thailand. The parties submit, therefore, that the relevant geographic market(s) is at least as wide as the EEA.

¹¹ The parties rely on previous decisions of the European Commission to support this: Case M/5322 *Marfrig/OSI Group Companies* and Case COMP/M.3337 *Best Agrifund/Nordfleisch*.

¹² Case No. IV/M.1313 *Danish Crown/Vestjyske Slagterier*, paragraph 43.

¹³ Industrial processors process meat. Examples are Dawn Meats and Kepak.

¹⁴ *Supra*, *Marfrig/OSI Group Companies* with references in the decision to *Danish Crown/Vestjyske Slagterier* and *Best Agrifund/Nordfleisch*.

¹⁵ Case No. COMP/M.4257 *Smithfield Oaktree/Sara Lee Foods Europe*.

Views of the Authority

18. The Authority is aware that the Commission has, in previous decisions, distinguished between the supply of primary and processed meat,¹⁶ and between poultry and other varieties of meat¹⁷. Similar to the parties' submissions, the Commission has also considered the markets for primary and processed meat by customer type.¹⁸
19. The Authority considers that two product markets are affected by the proposed transaction, i.e., the market for the supply of primary chicken food products and the market for the supply of processed chicken food products. The Authority also considers that each of these markets may be segmented by type of customer. As regards the relevant geographic market(s), the Authority considers that the supply of primary and processed chicken food products could be wider than the State to include Northern Ireland¹⁹ or the entire European Union.
20. However, the Authority does not consider it necessary to define the relevant product or geographic market(s) with regard to the proposed transaction because irrespective of whether the market(s) are defined in a broad or narrow manner the Authority considers that the proposed transaction does not raise any competition concerns in the State for the reasons set out below.

Competitive Assessment

Views of the parties

21. The parties state that on the basis of the affected markets described by them, namely; the supply of primary and processed chicken in the State, the combined market shares of the parties post transaction for the supply of primary and processed chicken food products to all customer segments in the State would be [5-15]% and [0-10]%, respectively²⁰.
22. If, however, the market(s) were sub-segmented by customer type, the parties state that their activities in the State overlap in the supply of primary and processed chicken food products to the retail sector.
23. The parties estimate their combined market share to be [10-20]% of the supply of primary chicken food products to the retail sector in the State of which approximately [...] % is sold under the retailer's own brand.
24. The parties state that there are a large number of domestic and international suppliers of both primary and processed chicken food products to retailers in the State. The parties state the international suppliers that currently supply the retail sector in the State are: Vion/Grampian, 2 Sisters Food Group, Faccenda Sun Valley (Cargill), Birds Eye and Bernard Matthews. In relation to the supply of

¹⁶ *Supra*, *Marfrig/OSI Group Companies and Marfrig Alimentos/Seara*.

¹⁷ Case No. IV/M.1262 – *Cebecco/Plukon*.

¹⁸ *Supra*, *Best Agrifund/Nordfleisch* and Case COMP/M.3968 *Sovion/Sudfleisch*.

¹⁹ For example, Crossgar Foods based in County Down was recently awarded a contract with the HSE for the supply of poultry products to Dublin Hospitals. Other Northern Irish suppliers include McKeown Fine Foods, Cloughbane Farm, Rockvale Poultry and Kearns Poultry.

²⁰ These figures take account of the sales of primary and processed chicken food products by Marfrig and Seara in the State.

processed chicken food products, the parties state that the country of origin is of less importance to consumers and thus these and other international suppliers²¹ provide credible alternative suppliers to retailers and the food-service industry.

25. The parties also state that short term supply contracts are a feature of the market(s), which permit retailers to easily switch suppliers.

Views of the Authority

26. In the State there is horizontal overlap in the activities of Moy Park and O’Kane. Both companies are active in the production and supply of primary and processed chicken food products to the Irish retail sector. The analysis that follows, therefore, focuses on the supply of primary and processed chicken food products to the retail sector in the State as this is the area where the parties’ activities overlap.
27. The parties supply primary and processed chicken food products to large retailers in the State, namely: Tesco Ireland, Dunnes Stores, Musgrave, Superquinn, Lidl and Marks & Spencer. Both Moy Park and O’Kane supply primary and processed chicken food products to Tesco Ireland and Dunnes Stores. O’Kane is the main supplier to Marks & Spencer in the State for both primary and processed chicken food products.
28. Neither Moy Park nor O’Kane supplies a retailer on an exclusive basis. Tables 3 and 4 below provide an overview of the main retailers in the State and their suppliers of primary and processed chicken food products for their own brand requirements.

Table 3: Suppliers of primary chicken products to retailers in the State for their own brand requirements.

Category	Tesco	Dunnes	Musgrave	Superquinn	Aldi	Lidl	M&S	Independents
Primary Chicken Food Products	Moy Park	Moy Park	[...]	[...]	[...]	Moy Park	O’Kane	[...]
	[...]	O’Kane	[...]			[...]	[...]	
		[...]						
	O’Kane	[...]						
		[...]						
		[...]						

Source: Based on Moy Park sources

²¹ BRF Foods S.A., Frango-Sul, C Vale Cooperative Agro-industrial, Diplomata S.A., Agricola Jandelle S.A., Big Frango Agro-industrial, Charoen Pokphand and Cargill Meats Thailand.

Table 4: Suppliers of processed chicken products to retailers in the State for their own brand requirements.

Category	Tesco	Dunnes	Musgrave	Superquinn	Aldi	Lidl	M&S	Independents
Processed Chicken Food Products	Moy Park	Moy Park	Moy Park	Moy Park	[...]	Moy Park	O’Kane	Moy Park
	O’Kane	O’Kane	[...]	[...]		[...]	[...]	O’Kane
	[...]	[...]						[...]
	[...]	[...]						[...]

Source: Based on Moy Park sources

29. The Authority considers that the proposed transaction does not raise competition concerns in the supply of primary and processed chicken food products to the retail sector in the State for the following reasons:

- (i) The increment in the market share of the merged entity post transaction in relation to both the supply of primary and processed chicken food products in the State will not be significant.
- (ii) None of the retailers, supplied by the parties, contacted by the Authority expressed a concern about the proposed transaction.²² From its market enquiries, the Authority confirmed that the parties are not the exclusive suppliers of chicken food products to their customers. The Authority also confirmed that, post transaction, the retailers would be in a position to credibly switch to alternative suppliers, if the merged entity were to increase its prices. Some of those alternative suppliers include:

- Carton Brothers (operating under the brand name “Manor Farm”),
- Western Brand Group Limited,
- Shannonvale Poultry,
- Co-op Poultry Products Limited (operating under the brand name “Cootehill”).
- Cappoquinn Poultry, recently acquired by Derby Poultry Processors.

30. In light of the above, the Authority considers that the proposed merger does not raise any competition concerns in the markets for the supply of primary and processed chicken food products in the State.

²² The retailers contacted by the Authority account for a significant proportion of the parties sales of primary and processed chicken food products in the State.

Determination

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by Moy Park Limited of O’Kane Poultry Limited will not be to substantially lessen competition in markets for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition Authority**Dr. Stanley Wong****Member of the Competition Authority**