



**DETERMINATION OF MERGER NOTIFICATION M/10/038 – BARNETT/ORIGIN/HALL**

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**Section 22 of the Competition Act 2002**

**Proposed acquisition by W&R Barnett Limited and Origin Enterprises plc of joint control over R&H Hall Limited**

**Dated 21/01/2011**

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## **SECTION ONE: INTRODUCTION**

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### **Executive Summary**

- 1.1 The proposed transaction concerns the acquisition whereby W&R Barnett Limited ("W&R Barnett") would acquire joint control of R&H Hall Limited ("R&H Hall") by acquiring 50% of the outstanding share capital of R&H Hall from Origin Enterprises plc ("Origin").
- 1.2 The Competition Authority (the "Authority") has concluded that the following are the narrowest possible relevant markets affected by the proposed acquisition:
  - The sale of grain<sup>1</sup> in the north of the State<sup>2</sup>; and
  - The sale of non-grain feed ingredients ("NGFI")<sup>3</sup> in the north of the State.
- 1.3 The Authority has formed the opinion that the proposed acquisition raises no competition concerns in either of these two markets.

### **The Notification**

- 1.4 On 11 November 2010, in accordance with section 18 of the Competition Act 2002 (the "Act"), the Authority received a notification of a proposed acquisition whereby W&R Barnett would acquire joint control of R&H Hall by acquiring 50% of the outstanding share capital of R&H Hall from Origin.
- 1.5 Origin currently owns 100% of the share capital of R&H Hall. Following completion, Origin and W&R Barnett would jointly control R&H Hall. W&R Barnett and R&H Hall will, however, continue to trade as separate entities post-acquisition.

### **The Undertakings Involved**

#### ***Origin***

- 1.6 Origin is controlled by ARYZTA AG ("ARYZTA") which is active in the food sector. ARYZTA has two main food divisions, Food Europe and Food North America<sup>4</sup>:
  - Food Europe is active in the specialty bakery market in the State, Switzerland, Germany, Poland, the UK, and France. In Europe, ARYZTA has business-to-business and consumer brands including *Hiestand*, *Cuisine de France*, *Delice de France* and *Coup de Pates*.
  - Food North America is involved in the manufacture and sale of freshly baked cookies and breads in the United States.

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<sup>1</sup> Grain ingredients include oats, barley, wheat, and maize.

<sup>2</sup> "North of the State" refers to north of a line drawn between Dublin and Galway (excluding Northern Ireland). See paragraphs 2.8-2.12 below for the Authority's views on the relevant geographic market.

<sup>3</sup> NGFI are processed and include soyabean meal, soyabean hulls, citrus pulp pellets, corn gluten, corn distillers, palm kernel, sunflower pellets, and rapeseed meal.

<sup>4</sup> ARYZTA also has start-up businesses in Japan, Malaysia and Australia.

- 1.7 Origin is [an agri-nutrition and food company and] has two divisions:
- the agri-nutrition division which is active in the manufacture, sale, and distribution of feed ingredients, specialist agronomy services, crop nutrition and marine proteins and oils in the State, the United Kingdom, Poland and Norway. R&H Hall is part of this division; and,
  - the food division which is involved in the manufacture, sale, and distribution of ambient foods<sup>5</sup> across the retail, food service and manufacturing sectors in the State.
- 1.8 As further described below, Origin also has a joint venture with W&R Barnett for the trading of grain and NGFI in Northern Ireland.
- 1.9 For the year ending 31 July 2010, ARYZTA's worldwide turnover was approximately €3 billion. ARYZTA's turnover in the State for the same period was over €40 million (including R&H Hall's turnover in the State).

#### **W&R Barnett**

- 1.10 W&R Barnett, a family-owned business based in Belfast, is an importer of grain and NGFI for re-sale to animal feed manufacturers.<sup>6</sup> W&R Barnett's business is almost entirely carried out in Northern Ireland. W&R Barnett has storage facilities in Northern Ireland at the ports of Derry and Belfast.
- 1.11 The business of trading grain and NGFI is carried on by W&R Barnett pursuant to a joint venture between it and Origin, as further described below.
- 1.12 For the year ending 31 March 2009, W&R Barnett's worldwide turnover was €[...]. W&R Barnett's turnover in the State for the same period was €[...].

#### **R&H Hall**

- 1.13 As noted above, R&H Hall is currently wholly-owned by Origin. R&H Hall is an importer of grain and NGFI for resale to animal feed manufacturers and the flour milling industry in the State. R&H Hall has storage facilities in the State at the ports of Dublin, Cork, Waterford, and Foynes as well as inland storage facilities at Ardee, Co. Louth

#### **Joint Venture between W&R Barnett and Origin in Northern Ireland**

- 1.14 W&R Barnett currently operates a joint venture with Origin for the sale of grain and NGFI in Northern Ireland. The joint venture between W&R Barnett and Origin also sells grain and NGFI from Northern Ireland into the State. The joint venture is separate and distinct from the activities of R&H Hall in the State. For convenience, 'W&R Barnett' is hereinafter used to refer to the joint venture between W&R Barnett and Origin.

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<sup>5</sup> Ambient foods can be stored at room temperature and include, for example, canned food, baby food, sauces, condiments, etc.

<sup>6</sup> These include agri-merchants who, in addition to manufacturing animal feed, also supply agricultural inputs (e.g., seeds, agri-chemicals, fertiliser, etc) to farmers.

- 1.15 The joint venture between W&R Barnett and Origin is not a joint venture corporate entity. It is a contractual arrangement between W&R Barnett and Origin. Origin is remunerated by taking an equal share with W&R Barnett of the total revenue generated by the sale of grain and NGFI under the joint venture.

### **Rationale for the Notified Transaction**

- 1.16 The parties stated in a press release dated 10 November 2010 that the purpose of the proposed acquisition is to "...establish an all-Ireland grain and feed handling, logistics and trading business. The all-Ireland business will be formed through the integration of Origin's R&H Hall business in the Republic of Ireland and the business of Origin and W&R Barnett in Northern Ireland."
- 1.17 The parties submit that the proposed acquisition will allow W&R Barnett and R&H Hall to achieve greater efficiencies in distributing grain and NGFI to customers. The parties submit that the proposed acquisition will result in a single shipping programme which will enable W&R Barnett and R&H Hall to use larger vessels leading to lower shipping costs per tonne and a greater ability to compete with major multinational competitors such as Arkady Feed Limited ("Arkady") and Cefetra Limited ("Cefetra").
- 1.18 The parties estimate that the following efficiencies will be achieved as a result of the proposed acquisition:
- savings of approximately €[...] in relation to internal storage footprint co-ordination, computer costs, insurance and administration savings;
  - volume of grain and NGFI moved to most efficient ports; and,
  - greater efficiency in turnaround times for ships importing grain and NGFI.

### **The Proposed Transaction**

- 1.19 The effect of the proposed transaction is to create an entity in the State that will replicate the activities of the joint venture between W&R Barnett and Origin in Northern Ireland. As the parties themselves state, the proposed transaction will create an all-island of Ireland business selling grain and NGFI to animal feed manufacturers. It is from this perspective that the Authority has analysed the competitive effects of the proposed acquisition.

### **The Procedure**

#### ***Preliminary Investigation ("Phase 1")***

- 1.20 No third party submissions were received by the Authority during the Phase 1 investigation.

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<sup>7</sup>[http://www.originenterprises.com/pdf/Strategic\\_Consolidation\\_in\\_Irish\\_Grain\\_and\\_Feed\\_Industry.pdf](http://www.originenterprises.com/pdf/Strategic_Consolidation_in_Irish_Grain_and_Feed_Industry.pdf)

- 1.21 Notwithstanding the absence of third party submissions, the Authority sought the views of customers and competitors. In particular, at the request of the Authority, both R&H Hall and W&R Barnett provided a list of their top 5 customers in the north of the State in 2009 for (a) grain; and, (b) NGFI. This is the geographic area where the activities of W&R Barnett and R&H Hall primarily overlap.
- 1.22 In the case of grain, the Authority contacted R&H Hall's top 5 customers in the north of the State.<sup>8</sup> Those customers accounted for [80-90]% of total grain sold by R&H Hall in the north of the State in 2009.
- 1.23 In the case of NGFI, the Authority contacted the top 5 customers of each of W&R Barnett and R&H Hall in the north of the State. Since three customers appear on both parties' top five lists, seven NGFI customers in total were contacted by the Authority.<sup>9</sup> In 2009, the top 5 NGFI customers of R&H Hall accounted for [70-80]% of its total sales of NGFI in the north of the State. In the same period, the top 5 NGFI customers of W&R Barnett accounted for [80-90]% of its total sale of NGFI in the north of the State.
- 1.24 The Authority also sought the views of three competing importers of grain and NGFI about the industry. All three competitors are active in the sale of grain and NGFI in the north of the State.
- 1.25 On 29 November 2010, the Authority conducted a site visit of R&H Hall's storage facilities in Dublin port.
- 1.26 Having considered all the available information in its possession at the time, the Authority was unable to form the view at the conclusion of the Phase 1 investigation that the result of the proposed acquisition would not be to substantially lessen competition in any markets for goods or services in the State.
- 1.27 Accordingly, on 8 December 2010, the Authority determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22(2) of the Act.

***Full Investigation ("Phase 2")***

- 1.28 No third party submissions were received by the Authority during the Phase 2 investigation.
- 1.29 The Authority continued its discussions with customers of W&R Barnett and R&H Hall located in the north of the State. The Authority also continued to seek the views of competing importers of grain and NGFI about the industry.
- 1.30 The Authority requested, on an on-going basis, further information and clarifications from the notifying parties. This included data on capacity utilisation in R&H Hall's storage facilities in the ports of Dublin and Ringaskiddy.

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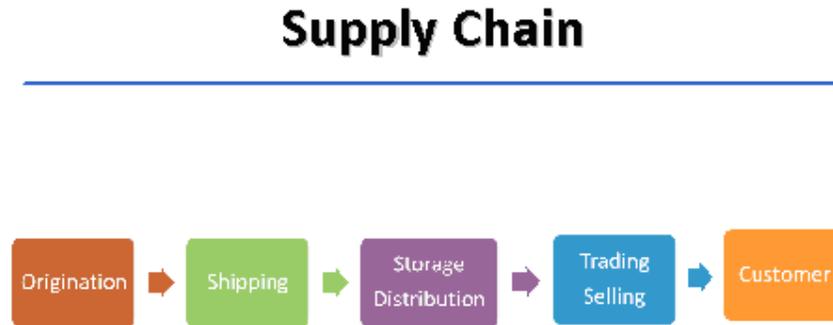
<sup>8</sup> Given W&R Barnett's negligible share of the grain market in the north of the State, the Authority did not contact W&R Barnett's top 5 grain customers in the north of the State.

<sup>9</sup> Furthermore, four out of these seven customers also appear in R&H Hall's list of its top five grain customers in the north of the State.

## Background – The Trading of Grain and Non-Grain Feed Ingredients

1.31 W&R Barnett and R&H Hall overlap in the importation and trading of grain and NGFI in the State.<sup>10</sup> Figure 1 below illustrates the supply chain for grain and NGFI.

**Figure 1: Stages Involved in the Supply of Grain and Non-grain Feed Ingredients**



Source: The Parties

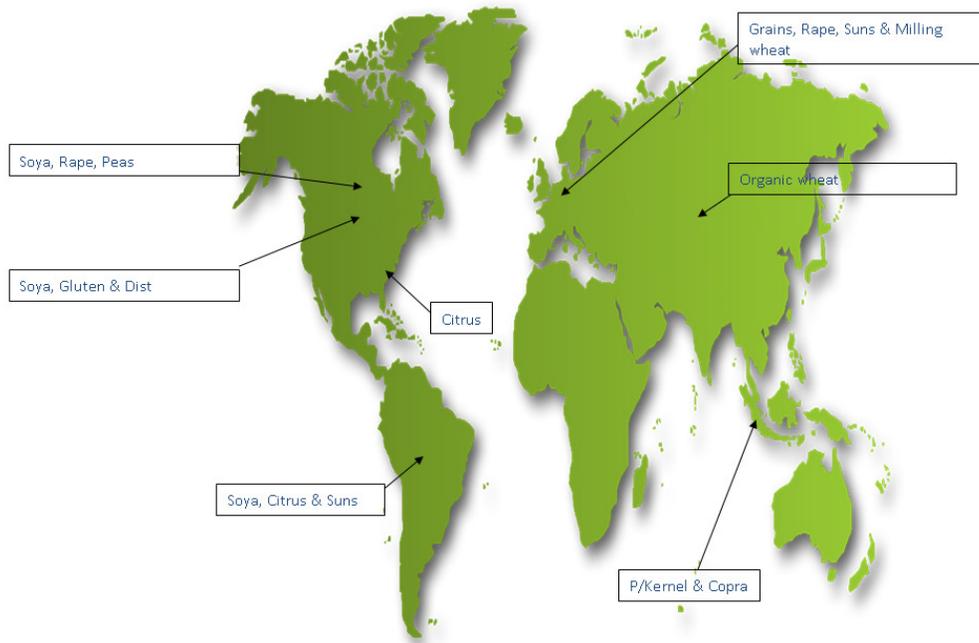
1.32 Suppliers can purchase grain from farmers in the State or can import grain. The parties' estimate that approximately 28% of the total supply of grain used in the State is imported from outside the island of Ireland. Since most NGFI are not produced in the island of Ireland, all suppliers, including W&R Barnett and R&H Hall, source NGFI directly from the countries where NGFI are produced. The parties' estimate that approximately 94% of the total supply of NGFI used in the State is imported from outside the island of Ireland. Figure 2 below illustrates the worldwide origin of grain and NGFI. Suppliers then hire shipping vessels in order to transport NGFI to their respective storage facilities located at ports in the State from where the products are delivered to customers.<sup>11</sup>

**Figure 2**

<sup>10</sup> Hereinafter, firms who are involved in the importation and trade of grain and NGFI will be referred to as suppliers of grain and NGFI.

<sup>11</sup> Some suppliers also have storage facilities located inland in the State.

## Feed Ingredients Origination



Source: The Parties

### *Grain and NGFI used as Inputs*

- 1.33 Suppliers sell the grain and NGFI to animal feed manufacturers as an input into the production of animal feed for pigs, poultry and ruminant animals (i.e., cattle and sheep). Typically, animal feed manufacturers collect the grain and NGFI from the suppliers' storage facilities.
- 1.34 Animal feed is then sold by manufacturers to farmers who use the animal feed to raise and fatten animal livestock (i.e., pigs, cattle and sheep). Farmers require animal feed to supplement the grazing of the land, particularly in the winter months when grass is scarce.

## **SECTION TWO: RELEVANT PRODUCT AND GEOGRAPHIC MARKETS**

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### **Introduction**

2.1 In this section, the relevant markets are defined in terms of their product and geographic dimensions. The views of the undertakings involved are summarised and the Authority's analysis and conclusions are set out.

### **Relevant Product Market**

#### *Views of the Undertakings Involved*

2.2 The parties submit that the relevant product market affected by the proposed acquisition is the trading of agricultural commodities (i.e., grain and NGFI). The parties state that grain and NGFI are treated interchangeably by customers in the State. The parties also state that this is the approach to product market definition taken by the European Commission in a previous decision where it concluded that the relevant product market is the trading of agricultural commodities.<sup>12</sup>

2.3 The parties, however, further submit that the narrowest possible product markets affected by the proposed acquisition would be:

- The trading of grain; and,
- The trading of NGFI.

#### *Views of the Competition Authority*

2.4 The parties overlap horizontally in the sale of grain and the sale of NGFI to animal feed manufacturers. The Authority considers that from a demand-side perspective, grain and NGFI are likely to be interchangeable albeit in the proportions in which they are used to manufacture each type of animal feed. Both grain and NGFI are used by animal feed manufacturers as inputs into the production of animal feed for pigs, poultry and ruminant animals. Thus, it is likely that grain and NGFI are part of the same product market. However, for the purposes of assessing the proposed transaction, the Authority does not need to reach a conclusion on the precise relevant product market since W&R Barnett has a negligible share of the market for the sale of grain in the State. Any competition concerns in the State could therefore only relate to the parties combined share of the market for NGFI post-acquisition.

2.5 The focus of the Authority's analysis has therefore been on the competitive effects of the proposed acquisition in the market for the sale of NGFI to animal feed manufacturers. This is the narrowest product market in which the proposed acquisition is likely to raise a competition concern.

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<sup>12</sup> Case No. COMP/M.3725 - Cargill/Pagnan.

- 2.6 For completeness, however, the Authority has also examined the competitive effects of the proposed transaction in the market for the sale of grain to animal feed manufacturers.

### **Relevant Geographic Market**

#### *Views of the Undertakings Involved*

- 2.7 The parties submit that the relevant geographic market for the trading of agricultural commodities is at least European-wide and possibly world-wide. The parties state that this is because there are a large number of suppliers operating in Europe and world-wide. The parties state that there is a high degree of price transparency in relation to the trading of grain and NGFI. The parties also submit that a previous decision by the European Commission concluded that the geographic market for such agricultural commodities is European-wide.<sup>13</sup>

#### *Views of the Competition Authority*

- 2.8 As noted above, grain and NGFI are imported by suppliers from the country of origin. This might suggest a global market for the supply of grain and NGFI and, from a supply-side perspective, that may indeed be the case (although it is not a matter the Authority needs to decide in this Determination). The Authority's concern is that, from the perspective of customers (i.e., animal feed manufacturers) who purchase grain and NGFI from suppliers, the proposed merger may have competitive effects in narrower regional or local markets that need to be considered.
- 2.9 The Authority's market inquiries with animal feed manufacturers indicate that transport costs are an important factor in deciding where to buy grain and NGFI. As noted above, animal feed manufacturers collect the grain and NGFI from suppliers' storage facilities. Animal feed manufacturers informed the Authority that they have a strong preference for buying grain and NGFI from suppliers with storage facilities in their locality. Thus, it is likely that suppliers compete in regional geographic markets for the supply of grain and NGFI to customers.
- 2.10 W&R Barnett has two storage facilities located in the ports of Belfast and Derry. It is therefore not surprising that the vast majority of W&R Barnett sales of grain and NGFI take place in Northern Ireland. W&R Barnett only accounted for [0-10]% of the total market for the sale of grain in the north of the State in 2009. W&R Barnett accounted for [10-20]% of the total market for the sale of NGFI in the north of the State in 2009. W&R Barnett made no sales of grain or NGFI in the south of the State in 2009.<sup>14</sup> Thus, W&R Barnett's and R&H Hall's activities overlap in the sale of grain and NGFI in the north of the State.
- 2.11 Since the parties overlap in the sale of grain and the sale of NGFI in the north of the State, the Authority has examined the competitive effects of the proposed acquisition in this geographic area. The Authority, however, does not need to come to a definitive view on the precise relevant geographic market because its conclusions concerning

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<sup>13</sup> Case No. COMP/M.1376 - Cargill/Continental Grain.

<sup>14</sup> "South of the State" refers to south of a line drawn between Dublin and Galway.

the competitive effects of the proposed acquisition, outlined below, will be unaffected whether the relevant geographic market is narrow (i.e., regional) or broad, encompassing the entire State.

### **Conclusion on the Relevant Product and Geographic Market**

2.12 In conclusion, for the purposes of examining the competitive effects of the proposed acquisition, the Authority has examined the following two markets:

- The sale of NGFI to animal feed manufacturers in the north of the State; and,
- The sale of grain to animal feed manufacturers in the north of the State.

## **SECTION THREE: COMPETITIVE EFFECTS ANALYSIS – SALE OF NON-GRAIN FEED INGREDIENTS IN THE NORTH OF THE STATE**

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### **Introduction**

3.1 In this section, the Authority analyses the competitive characteristics of the market for the sale of NGFI in the north of the State to establish whether the proposed acquisition raises competition concerns.

#### *Views of the Undertakings Involved*

3.2 Table 1 below provides estimated market shares in the sale of NGFI in the north of the State over the period 2007-2009.

**Table 1: Percentage Market Shares in the Sale of NGFI in the North of the State, 2007-2009**

<b>Company</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>R&amp;H Hall</b>	<b>[20-30]</b>	<b>[20-30]</b>	<b>[10-20]</b>
<b>W&amp;R Barnett</b>	<b>[10-20]</b>	<b>[10-20]</b>	<b>[10-20]</b>
Cefetra	[20-30]	[30-40]	[30-40]
Arkady	[30-40]	[20-30]	[30-40]
Torc	[0-10]	[0-10]	[0-10]
Total	100	100	100

Source: The Parties

3.3 The parties state that the overlap between W&R Barnett and R&H Hall in the State is *de minimis* and will not have any adverse impact on competition in the State. The parties state that there are suppliers competing in the market for the sale of NGFI to animal feed manufacturers in the north of the State including Arkady, Cefetra, and Torc Grain and Feed Limited (“Torc”). The parties state that there will be no unilateral effects as a result of the proposed acquisition.

3.4 The parties also state that proposed acquisition will not change the prevailing market conditions that currently make it difficult for competitors to be able to reach a common understanding to lessen competition. This is because:

- the relevant markets will continue to be served by a large number of competitors;
- the relevant markets will continue to be characterised by low barriers to entry and strong potential competition;
- low capacity constraints and low barriers to expansion will remain a feature of the relevant markets; and,
- price discounting will remain a feature of the competitive process and its presence will continue to make it hard for rivals to reach any common understanding to lessen competition.

3.5 The parties state that the combination of a large number of firms, the scope for existing rivals to expand their market share and the strong potential competition mean that it is unlikely that firms will be able to

institute any credible punishment mechanism that they might use to maintain a common understanding to lessen competition in the relevant markets.

*Views of the Competition Authority*

- 3.6 The Authority examined two possible theories of harm in the sale of NGFI in the north of the State: (a) unilateral effects; and, (b) coordinated effects.

***Unilateral Effects***

- 3.7 As Table 1 above indicates, W&R Barnett and R&H Hall will have a combined market share of [30-40]% post-acquisition. Notwithstanding this, the Authority considers that the proposed acquisition will not result in a permanent increase in the price of NGFI in the north of the State.

- 3.8 First, customers can easily switch between competing suppliers of NGFI. NGFI are homogeneous products that are not sold under a brand name by suppliers. All seven NGFI customers contacted by the Authority stated that they use multiple suppliers for both grain and NGFI in order to get the best price and ensure security of supply. In general, customers do not switch suppliers; rather, customers use multiple suppliers and alter the volume purchased from each supplier depending on the best price available.<sup>15</sup>

- 3.9 Second, Cefetra and Arkady will remain close competitors to both R&H Hall and W&R Barnett in the sale of NGFI in the north of the State post-acquisition. As illustrated in Table 1 above, Cefetra has a greater market share than the combined market share of W&R Barnett and R&H Hall in the north of the State. Arkady's market share of [30-40]% is the same as the combined market share of W&R Barnett and R&H Hall. Cefetra's market share has increased significantly over the period 2007-2009. The Irish Farmer's Association ("IFA") expressed the view to the Authority that Cefetra has become a big supplier in recent years in the sale of NGFI in the State. The IFA also expressed the view that competition in the sale of NGFI is particularly intense in the north of the State. Furthermore, Arkady informed the Authority that [...].

- 3.10 Third, six out of the seven NGFI customers contacted by the Authority expressed no competition concerns in relation to the sale of NGFI in the north of the State. One of these six customers expressed a concern that it would no longer be able to play R&H Hall and W&R Barnett off against one another but it also stated that Cefetra is a viable and credible alternative supplier post-acquisition should R&H Hall and W&R Barnett raise their NGFI prices. This customer currently uses four NGFI suppliers: R&H Hall, W&R Barnett, Cefetra, and Arkady. Furthermore, this customer also expressed a concern about R&H Hall and W&R Barnett potentially controlling access to their storage facilities at some ports in the State. This concern is examined in detail below.

- 3.11 All six customers who expressed no competition concerns also expressed the view that R&H Hall and W&R Barnett will face strong

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<sup>15</sup> This view was confirmed by a competing grain and NGFI supplier who informed the Authority that the volume of grain and NGFI sold to each of its customers fluctuates from year to year.

competition from Cefetra and Arkady post-acquisition. Furthermore, three out of the six customers expressed the view that the proposed acquisition may lead to lower prices for both grain and NGFI since R&H Hall and W&R Barnett may be able to achieve lower costs.

***Possible Foreclosure of Competitors via W&R Barnett's and R&H Hall's Control of Storage Facilities in Ports in the Island of Ireland***

- 3.12 Two out of the seven NGFI customers contacted by the Authority raised a concern about the potential ability of R&H Hall and W&R Barnett to foreclose competitors by restricting access to their storage facilities at ports in the island of Ireland including Derry, Belfast, Dublin, Cork and Foynes (Limerick).<sup>16</sup> Furthermore, two competing NGFI suppliers active in the State also expressed the same concern to the Authority.
- 3.13 W&R Barnett and R&H Hall will continue to trade as separate entities post-acquisition. However, as noted above, the Authority is treating W&R Barnett and R&H Hall as one entity from the perspective of analysing the competitive effects of the proposed acquisition. R&H Hall has storage facilities in the State at the ports of Dublin, Cork, Waterford, and Foynes. R&H Hall also has an inland storage facility at Ardee, Co. Louth. Some of these storage facilities are owned by R&H Hall while other storage facilities are rented by R&H Hall from third parties. All these storage facilities, however, are controlled by R&H Hall. Thus, R&H Hall has the final decision as to whether a competing supplier (e.g., Arkady, Cefetra, etc) can use the storage facility to store grain or NGFI before collection by a customer. R&H Hall informed the Authority that it currently allows competitors such as Cefetra and Arkady to store grain and NGFI at its storage facilities in the ports of Dublin and Cork.
- 3.14 W&R Barnett has storage facilities in Northern Ireland at the ports of Derry and Belfast. W&R Barnett does not own or rent any storage facilities in the State.
- 3.15 The Authority considers that the proposed acquisition will have no impact on the ability of R&H Hall/W&R Barnett to foreclose competitors through their control of storage facilities since W&R Barnett does not own, rent or control any storage facilities in the State. This foreclosure concern is not specific to the proposed acquisition since W&R Barnett/R&H Hall do not currently overlap in the control of storage facilities in any port in the State.<sup>17</sup> This foreclosure concern pre-dates the proposed acquisition and is in no way affected by the proposed acquisition. The proposed acquisition makes no difference to the ability of R&H Hall/W&R Barnett to restrict access to their storage facilities in the ports of Derry, Belfast, Dublin, Cork, Waterford, and Foynes.
- 3.16 In any event, even if R&H Hall/W&R Barnett decides post-acquisition to prevent its competitors from using its storage facilities in the ports of Dublin and Belfast, there is no evidence to indicate the absence of alternative storage facilities in either of these areas. Furthermore, the

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<sup>16</sup> This concern was also raised by one of R&H Hall's top five grain customers in the north of the State.

<sup>17</sup> One competing supplier of grain and NGFI who raised this foreclosure concern with the Authority also expressed the view that the proposed acquisition does not alter the situation vis-à-vis storage facilities because W&R Barnett does not own or rent any storage facilities in the State.

cost of setting up such a storage facility does not appear to be high. The parties informed the Authority that grain and NGFI do not require specialised warehouse infrastructure. Any covered warehousing can be easily and temporarily modified to store grain and NGFI. The parties state that warehouse space used for storing bulk goods are substitutes for warehouse space used for storing grain and NGFI. The parties also state that since grain and NGFI are not highly perishable, they can be transported to off-port warehouse facilities several miles from the port.

- 3.17 Furthermore, it does not appear to be essential to transport grain and NGFI through the ports of both Dublin and Belfast in order to compete effectively in the market for the sale of NGFI in the north of the State. The Authority notes that both Arkady and Cefetra have increased their market share in the sale of NGFI in recent years. Cefetra makes sales of grain and NGFI in the north of the State via its storage facilities in the ports of Belfast, Drogheda and Dundalk. Cefetra signed an agreement with the port authority in Belfast in 2008 for the construction of a new storage facility with a capacity of 55,000 tonnes. Cefetra started using this facility in early 2009.<sup>18</sup> Arkady makes sales of grain and NGFI in the north of the State via its storage facilities in the ports of Derry, Drogheda, Dundalk, and Greenore (Co. Louth). In addition, Arkady sometimes uses R&H Hall's storage facility in Dublin port.
- 3.18 Thus, even if R&H Hall/W&R Barnett decides post-acquisition to prevent its competitors from using its storage facilities in the ports of Dublin and Belfast, the Authority considers that both Cefetra and Arkady will remain effective competitors in the sale of NGFI in the north of the State post-acquisition.
- 3.19 The Authority also considers that R&H Hall/W&R Barnett may not have an incentive to foreclose competitors by restricting access to their storage facilities in the State. Information provided to the Authority by the parties indicates that R&H Hall's storage facilities are significantly under-utilised with capacity utilisation averaging [...] % over the last five years in R&H Hall's storage facility in Dublin port and [...] % in R&H Hall's storage facility in Ringaskiddy, Co. Cork. The parties informed the Authority that this low utilisation of R&H Hall's storage facilities is a commercial difficulty with adverse financial consequences for R&H Hall. The parties also informed the Authority that there is a high cost in maintaining these storage facilities. The parties state that R&H Hall therefore has an incentive to continue making its storage facilities available to competitors.
- 3.20 Given this unused capacity and the cost of maintaining its storage facilities, the Authority considers that R&H Hall/W&R Barnett may not have any incentive to foreclose access to its storage facilities at ports in the State.
- 3.21 The Authority therefore considers that the proposed acquisition will have no impact on the ability of R&H Hall/W&R Barnett to foreclose competitors by restricting access to their storage facilities at ports in the State and Northern Ireland.

#### *Conclusion on Unilateral Effects*

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<sup>18</sup>[http://www.cefetra.com/fileadmin/cefetra/data/jaarverslagen/jaarverslag-2008/PDF\\_Ned\\_Eng/Cefetra\\_Annual\\_2008\\_web.pdf](http://www.cefetra.com/fileadmin/cefetra/data/jaarverslagen/jaarverslag-2008/PDF_Ned_Eng/Cefetra_Annual_2008_web.pdf)

- 3.22 In light of the above, the Authority is of the view that the proposed acquisition will not result in a permanent increase in the price of NGFI in the north of the State.

***Coordinated Effects***

- 3.23 Coordinated effects occur where the proposed acquisition changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will engage in coordinated interaction to raise prices or decrease output. Such interaction refers to actions that are profitable only as a result of each firm accommodating the reactions of others. Thus, the key question is whether the proposed acquisition materially increases the likelihood that firms in the market will successfully coordinate their behaviour or strengthen any existing coordination.
- 3.24 The Authority is of the view that the proposed acquisition will not make it more likely that W&R Barnett/R&H Hall and some or all of their competitors will engage in coordinated interaction to raise NGFI prices or decrease output in the north of the State.
- 3.25 First, no customer contacted by the Authority expressed a concern about coordinated behaviour. The Authority has no evidence to indicate that suppliers active in the sale of NGFI in the north of the State have been engaged in coordinated interaction.
- 3.26 Second, market shares in the sale of NGFI in the north of the State do not appear to be stable.<sup>19</sup> As noted above, both Arkady and Cefetra have increased their market share in the sale of NGFI in recent years.

*Conclusion on Coordinated Effects*

- 3.27 The Authority considers that the proposed acquisition will not make it more likely that W&R Barnett/R&H Hall and some or all of their competitors will engage in co-ordinated interaction to raise NGFI prices or decrease output in the north of the State.

**Conclusion**

- 3.28 In light of the above, the Authority considers that the proposed acquisition will not raise any competition concerns in the market for the sale of NGFI in the north of the State.

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<sup>19</sup> The parties state in the notification that the market share of R&H Hall in the State has fluctuated between 1990 and 2010. The parties state that R&H Hall's share of the grain market in the State in 1995 was [0-10]% while in 2004 its share of the grain market was [20-30]%. The parties state that R&H Hall's share of the NGFI market in the State in 1995 was [40-50]% and its share of the NGFI market in 2004 was [30-40]%.

## **SECTION FOUR: COMPETITIVE EFFECTS ANALYSIS – SALE OF GRAIN IN THE NORTH OF THE STATE**

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### **Introduction**

- 4.1 In this section, the Authority analyses the competitive characteristics of the market for the sale of grain in the north of the State to establish whether the proposed acquisition raises competition concerns.

#### *Views of the Undertakings Involved*

- 4.2 Table 2 below provides estimated market shares in the sale of grain in the north of the State over the period 2007-2009.

**Table 2: Percentage Market Shares in the Sale of Grain in the North of the State, 2007-2009**

<b>Company</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>R&amp;H Hall</b>	<b>[10-20]</b>	<b>[20-30]</b>	<b>[30-40]</b>
<b>W&amp;R Barnett</b>	<b>[0-10]</b>	<b>[0-10]</b>	<b>[0-10]</b>
Comex	[30-40]	[30-40]	[30-40]
Cefetra	[10-20]	[0-10]	[0-10]
Arkady	[0-10]	[0-10]	[0-10]
Grain Assemblers	[20-30]	[20-30]	[20-30]
Total	100	100	100

Source: The Parties

- 4.3 The parties state that the overlap between W&R Barnett and R&H Hall in the State is *de minimis* and will not have any adverse impact on competition in the State. The parties state that no matter how the market is defined, the proposed acquisition will not substantially lessen competition in any market in the State.
- 4.4 The parties state that there is a wide range of suppliers competing in the market for the sale of grain in the State including Comex McKinnon Limited (“Comex”), Arkady, and Cefetra. The parties state that there will be no unilateral effects as a result of the proposed acquisition.

#### *Views of the Competition Authority*

- 4.5 The Authority examined two possible theories of harm in the sale of grain in the north of the State: (a) unilateral effects; and, (b) coordinated effects.

### **Unilateral Effects**

- 4.6 The Authority considers that that the proposed acquisition will not result in a permanent increase in the price of grain in the north of the State. As Table 2 above indicates, W&R Barnett has a negligible share of this market ([0-10]%).<sup>20</sup> Post-acquisition, W&R Barnett and R&H Hall will continue to face competition from a number of suppliers active

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<sup>20</sup> Given the importance of transport costs to customers in the choice of supplier, it is unsurprising that most of W&R Barnett’s sales are in Northern Ireland given the location of its storage facilities (Derry and Belfast).

in the north of the State including Comex, Cefetra, Arkady and various grain assemblers.<sup>21</sup>

- 4.7 Furthermore, the Authority sent a questionnaire to R&H Hall's top five grain customers in the north of the State in 2009. All five customers informed the Authority that they use multiple suppliers for grain in order to get the best price and ensure security of supply. Since grain is a homogeneous product that is not sold under a brand name by suppliers, customers can easily switch between competing suppliers.
- 4.8 Four out of the five customers contacted by the Authority expressed no competition concerns in relation to the sale of grain in the north of the State. All four customers informed the Authority that W&R Barnett and R&H Hall will face a number of strong competitors post-acquisition including Comex, Cefetra, Arkady, and local grain suppliers.<sup>22</sup> Furthermore, one of the four customers expressed the view that the proposed acquisition may lead to lower prices for both grain and NGFI since W&R Barnett and R&H Hall may be able to achieve lower shipping costs.
- 4.9 One out of R&H Hall's top five grain customers contacted by the Authority expressed a concern about the potential ability of R&H Hall/W&R Barnett to foreclose competitors by restricting access to their storage facilities at some ports in the island of Ireland. This issue is examined in detail in section three above.

#### *Conclusion on Unilateral Effects*

- 4.10 In light of the above, the Authority is of the view that the proposed acquisition will not result in a permanent increase in the price of grain in the north of the State.

#### **Coordinated Effects**

- 4.11 The Authority considers that the proposed acquisition will not make it more likely that W&R Barnett/R&H Hall and some or all of their competitors will engage in coordinated interaction to raise grain prices or decrease output. First, since W&R Barnett has a negligible share of the grain market in the north of the State ([0-10]%), the proposed acquisition will have no impact on the likelihood that W&R Barnett/R&H Hall and some or all of their competitors will engage in coordinated interaction. Second, no customer contacted by the Authority expressed a concern about coordinated behaviour. Third, any attempt by W&R Barnett/R&H Hall and some or all of their competitors to engage in coordinated interaction to raise grain prices will prompt customers to purchase grain from suppliers (i.e., farmers) in the State thus defeating any such price rise.

#### *Conclusion on Coordinated Effects*

- 4.12 The Authority is of the view that the proposed acquisition will not make it more likely that W&R Barnett/R&H Hall and some or all of their competitors will engage in co-ordinated interaction to raise grain prices or decrease output in the north of the State.

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<sup>21</sup> Grain assemblers are farmers in the State who supply grain direct to animal feed manufacturers.

<sup>22</sup> The IFA expressed the view to the Authority that Comex is a big player in the sale of grain in the State with very aggressive pricing.

## **Conclusion**

- 4.13 In light of the above, the Authority considers that the proposed acquisition will not raise any competition concerns in the market for the sale of grain in the north of the State.

## **SECTION FIVE: THE DETERMINATION**

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The Competition Authority, in accordance with section 22(3)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby W&R Barnett Limited and Origin Enterprises plc would acquire joint control of R&H Hall 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

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Declan Purcell  
Chairperson and Member of the Competition Authority

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Dr. Stanley Wong  
Member of the Competition Authority

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Isolde Goggin  
Member of the Competition Authority

