



## **DETERMINATION OF MERGER NOTIFICATION M/11/004 - Glanbia/Dawn Dairies and Golden Vale Dairies**

---

### **Section 21 of the Competition Act 2002**

#### **Proposed acquisition by Glanbia Foods Ireland Limited of the Limerick-based liquid milk business of Kerry Group plc**

**Dated 1 April 2011**

---

### **Introduction**

1. On 19 January 2011, in accordance with section 18(3) of the Competition Act 2002 (the "Act"), the Competition Authority (the "Authority") received a voluntary notification of a proposed acquisition by Glanbia Foods Ireland Limited ("Glanbia") of the Limerick-based liquid milk business of Kerry Group plc ("Kerry"). The Kerry Limerick-based liquid milk business to be acquired (hereinafter the "Target Business") comprises primarily the liquid milk business carried on by two wholly-owned subsidiaries of Kerry: Dawn Dairies Limited ("Dawn Dairies") and Golden Vale Dairies Limited ("Golden Vale Dairies") and certain other tangible and intangible assets described further below.
2. On 16 February 2011, the Authority served two Requirements for Further Information on Glanbia and Kerry pursuant to section 20(2) of the Act. This automatically suspended the procedure for the Authority's Phase 1 assessment.
3. Upon receipt of the responses to the Requirements for Further Information, the "appropriate date" (as defined in section 19(6) of the Act) became 4 March 2011.<sup>1</sup>
4. The notification contains an economic report prepared by Dr. Francis O'Toole on behalf of the parties (hereinafter, this report will be referred to as the "Economic Report").<sup>2</sup> The Economic Report provides the views of the parties on the markets that are likely to be affected by the proposed transaction.<sup>3</sup> The Economic Report also describes the competitive characteristics of each market and concludes that the proposed transaction will not lead to a substantial lessening in competition in any market in the State. A more detailed discussion of the views expressed in the Economic Report is provided below.

### **Proposed Transaction**

---

<sup>1</sup> The "appropriate date" is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.

<sup>2</sup> Dr. Francis O'Toole is a senior lecturer in the Department of Economics in Trinity College, Dublin.

<sup>3</sup> The Authority sought clarification from the parties during the investigation concerning some of the information provided in the Economic Report. The Authority received two submissions from the parties dated 7 March 2011 and 14 March 2011, respectively, which contained responses from Dr. O'Toole to the Authority's questions. For ease of reference, the term "Economic Report" will be deemed to include the responses provided in both submissions by Dr. O'Toole.

5. As a result of the proposed transaction, Glanbia will acquire:
  - a) the Target Business;
  - b) certain tangible assets from Kerry, including the liquid milk processing machinery of the Target Business but excluding the site and buildings of the Target Business (which are being retained by Kerry post-acquisition);
  - c) an exclusive trademark licence to use the *Dawn*, *Golden Vale*, *Hi & Lo*, and *Ashgrove* brands for a period of [...] years for the distribution and sale of milk, cream and certain non-milk and cream products in certain parts of the State. Annex A below contains a map of the State indicating the areas where Glanbia is allowed under the trademark licence to sell the products concerned under the *Dawn*, *Golden Vale*, *Hi & Lo*, and *Ashgrove* brands.
6. Glanbia will have the right to sell own-label liquid milk and cream purchased from Kerry's Limerick-based suppliers without restriction in the State but its right to sell under the *Dawn*, *Golden Vale*, *Hi & Lo*, and *Ashgrove* brands will be subject to the geographical restrictions outlined above. Glanbia remains free, however, to sell liquid milk and cream products under any of its other brands or retailer brands anywhere in the State.
7. In addition to the Sale Agreement between the parties, the following additional contracts are to be entered into between the parties:
  - A Transitional Services Agreement, whereby Kerry agrees to provide certain services to Glanbia for up to [...] after completion in order to ensure a smooth transfer of the liquid milk business from Kerry to Glanbia;
  - A Milk Supply Agreement whereby Kerry agrees to supply milk to Glanbia. This agreement is for up to [...] years with each party having a right to terminate by [...] year's notice to expire on the [...] of the date the agreement commences; and,
  - A Trademark Licence whereby Kerry grants Glanbia an exclusive licence to use the *Dawn*, *Golden Vale*, *Hi & Lo* and *Ashgrove Farms* brands for a period of [...] years in the specified geographic territory<sup>4</sup> after completion.
8. Post-transaction, Kerry will continue to be active in the liquid milk business in the State as it will continue to own the right to use the *Dawn*, *Golden Vale*, *Hi & Lo*, and *Ashgrove* brands in county Kerry and parts of counties Cork and Limerick. Kerry will also retain ownership of a liquid milk production facility located in Killarney, Co. Kerry.
9. The trademark rights in areas not included in the Glanbia licence referred to in paragraph 5(c) above have been licensed by Kerry to other licensees. Thus, Kerry's Galway-based liquid milk business was acquired by Arrabawn Co-operative ("Arrabawn") in April 2010. Arrabawn owns the exclusive trademark licence for the use of the [...]

---

<sup>4</sup> See paragraph 5 above.

brands in [...].<sup>5</sup> Kerry's Cork-based business is licensed to [...] which owns the exclusive trademark licence for the use of the [...] brands in [...].

## **The Undertakings Involved**

### **Acquirer**

#### *Glanbia*

10. Glanbia, a wholly owned subsidiary of Glanbia plc, manufactures nutritional ingredients and cheese. Glanbia plc has three business divisions – United States Cheese & Global Nutritionals; Dairy Ireland; and Other Business. Only the Dairy Ireland business is relevant to the notified transaction.
11. Dairy Ireland is comprised of three business units: Dairy Ingredients, Consumer Products, and Agribusiness. The Dairy Ingredients unit processes raw milk into dairy products and ingredients. Glanbia's consumer brands include *Avonmore, Yoplait, Kilmeaden, Premier Dairies, Snowcream* and *CMP*. The Consumer Products unit is a branded supplier of milk, cream, cheddar cheese, yogurts, fresh soup and smoothies. The Agribusiness unit mills animal feed, processes grain, and sells a range of agricultural inputs such as animal feed, fertiliser, and farm chemicals.
12. For the year ending 2 January 2010, Glanbia plc's worldwide turnover was €2.2 billion. Glanbia plc's turnover in the State for the same period was approximately €1 billion.

### **Vendor**

#### *Kerry*

13. Kerry manufactures food ingredients, flavours and consumer foods. The food ingredients and flavours division comprises flavours for beverages, syrups, snack foods and other food and drink products and food ingredients such as proteins, emulsifiers, coatings and stabilizers. The consumer foods division manufactures chilled and frozen ready meals, breakfast meats, cooked meats, cheese, spreads, yoghurts, chilled juice, cake and pancake mixes, milk, butter and cream. The Target Business to be acquired is part of the consumer foods division.
14. For the year ending 31 December 2010, Kerry's worldwide turnover was €5 billion. Kerry's turnover in the State for the same period was €581 million.

### **Target**

#### *Target Business*

15. Dawn Dairies and Golden Vale Dairies operate as a single, integrated business entity and are wholly-owned subsidiaries of Kerry. They produce and distribute branded and own-label milk and cream products to a wide range of customers (i.e., retail outlets, restaurants, doorstep

---

<sup>5</sup> This acquisition was not subject to mandatory notification to the Competition Authority pursuant to Part 3 of the Act.

customers, etc) in the State. The processing and packaging of the liquid milk and cream products is carried out at Kerry's production facilities in Lansdowne, Co. Limerick and in Killarney, Co. Kerry. These production facilities will be retained by Kerry post-acquisition.<sup>6</sup>

16. For the year ending 31 December 2009, the Target Business generated turnover of €[...], all of which was generated in the State.

**Rationale for the Proposed Transaction**

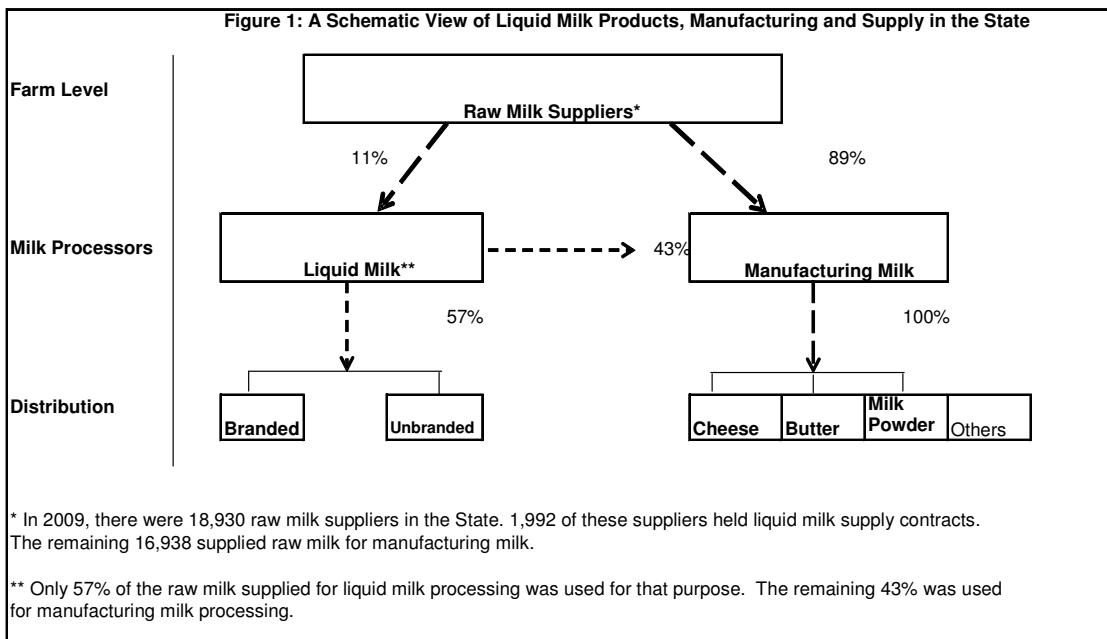
17. Glanbia submits that the commercial rationale for the proposed transaction is to [...] and to leverage production efficiencies in its two liquid milk production plants at Ballytore (Co. Kildare) and Drogheda (Co. Louth).
18. Kerry submits that the proposed transaction will allow it to focus on, and expand, other areas of its business.

**Third Party Submissions**

19. The Authority received one third party submission during the Phase 1 investigation from an individual located in Co. Limerick. The submission raised a concern about the impact of the proposed acquisition on the branded liquid milk market in Co. Limerick given that the three liquid milk brands currently sold in Co. Limerick (*Avonmore, Golden Vale, and Dawn*) would all be owned by Glanbia post-acquisition.

**Industry Background – The Production and Sale of Liquid Milk and Cream**

20. Figure 1 below provides an overview of the supply chain for liquid milk and cream.



Source: The Competition Authority

<sup>6</sup> [...].

21. Dairy farmers produce raw milk from milking cows. Raw milk is then collected from dairy farms and delivered to dairies or creameries where it is processed into either "liquid milk" or "manufacturing milk".
22. Liquid milk is used for human consumption as full fat milk, low fat milk, or cream. Liquid milk and cream products are sold by milk processors direct to retailers either as branded or own-label products.<sup>7</sup> Manufacturing milk is used as an input in the production of other dairy products such as butter, skimmed milk powder, cheese, etc. A wide range of customers purchase manufacturing milk from milk processors. These include butter manufacturers, natural cheese manufacturers, skimmed milk powder manufacturers, etc. The vast majority of these dairy products are subsequently exported by manufacturers.
23. While there were 18,930 active dairy farmers in the State in 2009, only 1,992 had registered liquid milk supply contracts.<sup>8</sup> Liquid milk supply contracts are contracts between the dairy farmer and the processor. These contracts are required by the Milk Regulation of Supply Act, 1994. Liquid milk sold for human consumption in the State must have a registered liquid milk supply contract. In order to get a contract, a farmer must meet specific quality standards and register with the National Milk Agency. The quality standards for liquid milk are higher than those required for manufacturing milk. Each dairy processor checks to ensure that each dairy farmer meets these standards. In general, there are no supply contracts for manufacturing milk.
24. Raw milk of manufacturing quality can only be used to produce manufacturing milk; it cannot be used to produce liquid milk. The vast majority of dairy farmers in the State only produce raw milk for processing as manufacturing milk. However, in 2009, only 57% of the raw milk produced by the 1,992 registered liquid milk producers actually went into the production of liquid milk. The remaining 43% of liquid milk produced was processed into manufacturing milk.
25. The parties informed the Authority that dairy farmers in the State supplied 4,801 million litres of raw milk to all processors in the State in 2009.<sup>9</sup> Approximately 91% of this raw milk was used as manufacturing milk, while the remaining 9% was processed for liquid milk consumption in the State.

### **Relevant Product Market**

26. The proposed acquisition involves horizontal overlap between the parties in the production and sale of raw milk. The proposed acquisition also involves horizontal overlap between the parties in the production and wholesale supply of own-label and branded liquid milk and cream to retailers.

### *Views of the Undertakings Involved*

---

<sup>7</sup> Milk processors also sell branded liquid milk and cream products direct to customers (e.g., the Health Service Executive) and food service companies (e.g., hotels).

<sup>8</sup> The Economic Report states that these statistics are taken from the National Milk Agency's 2009 Annual Report and Accounts.

<sup>9</sup> The parties state that these figures are taken from the National Milk Agency's 2009 Annual Report and Accounts.

27. The Economic Report provided by the parties identified four product markets and examines the impact of the proposed acquisition on each market. The following product markets were examined:
- The upstream raw milk processing market;
  - The upstream liquid milk processing market;
  - The downstream retail liquid milk market; and,
  - The downstream retail cream market.

#### Upstream Raw Milk and Liquid Milk Processing Markets

28. The Economic Reports makes the following observations about the upstream raw milk and liquid milk processing markets. The upstream raw milk production sector encompasses both the manufacturing milk and liquid milk sub-sectors. The Economic Report states that it is tempting to focus on the upstream liquid milk and manufacturing milk sub-sectors separately, but says that to do so is incorrect for the following reasons. While there were 18,930 active dairy farmers in the State in 2009, only 1,992 had registered liquid milk supply contracts (i.e., the vast majority of dairy farmers in the State only produce manufacturing milk). However, only 57% of the liquid milk output of these 1,992 registered liquid milk producers in 2009 actually went into the production of liquid milk, with the remaining 43% processed into manufacturing milk.<sup>10</sup>
29. The Economic Report states that there are significant existing supply linkages, as well as potential linkages, between the liquid milk and manufacturing milk sub-sectors. In addition, all of the raw milk produced in Northern Ireland is available to liquid milk processors in Northern Ireland and in the State.
30. The Economic Report submits that supply-side substitutability is straightforward from liquid milk to manufacturing milk but not vice-versa as liquid milk suppliers need to be registered milk producers and therefore must meet specific quality standards. As noted above, only 57% of the total liquid milk output in 2009 actually went into the production of liquid milk, with the remaining 43% processed into manufacturing milk. This 43% in turn represented approximately 7% of manufacturing milk in 2008.
31. The Economic Report submits that the above views strongly suggest that the appropriate upstream market from an economics of competition policy perspective is raw milk, or alternatively, liquid milk plus the significant level of liquid milk that is used for manufacturing milk in the State together with all the raw milk in Northern Ireland. Notwithstanding this view, the Economic Report examines the competitive effects of the proposed acquisition in the following two upstream product markets:
- The upstream raw milk processing market and,
  - The upstream liquid milk processing market.

---

<sup>10</sup> The Economic Report states that these statistics are taken from the National Milk Agency's 2009 Annual Report and Accounts.

32. Finally, the Economic Report states that the Authority's approach to market definition in its 2005 Determination Glanbia/CMP<sup>11</sup> fuses the upstream and downstream levels and hence does not explicitly highlight the importance of retailer brands. The Economic Report states that later in that Determination the Authority did, however, recognise the importance of retailer brands.

#### *Views of the Competition Authority*

##### The Production and Sale of Raw Milk

33. The Authority agrees with the parties' view that the proposed acquisition affects the market for the production and sale of raw milk to customers. As noted above, raw milk can be processed into liquid milk or manufacturing milk. There is a wide range of customers who purchase raw milk from raw milk suppliers (i.e., dairies and creameries). These include liquid milk processors, butter manufacturers, natural cheese manufacturers, skimmed milk powder manufacturers, etc.
34. In its Determination in M/10/029 – Kerry/Newmarket<sup>12</sup>, the Authority expressed the view that the relevant product market in that case was the production and sale of raw milk. The Authority stated that pasteurised milk (i.e., liquid milk for human consumption) is not a substitute for raw milk since the products are used for different purposes. The Authority sees no reason to depart from this view in the present case.

##### The Production and Supply of Liquid Milk to Retailers

35. In its determination in M/05/006 – Glanbia/CMP<sup>13</sup>, the Authority expressed the view that the relevant product market is the manufacture of liquid milk, branded and own-label, for supply to retailers. The Authority sees no reason to depart from this view.
36. As noted above, the parties confirmed that it is not possible to use raw milk of manufacturing quality as liquid milk in the State. For this reason, liquid milk should be regarded as a separate product market. For the purpose of analysing the present transaction, the Authority examined the market for the production and supply of own-label and branded liquid milk to retailers.

##### The Retail Sale of Liquid Milk and Cream

#### *Views of the Undertakings Involved*

37. The Economic Report makes the following observations about the markets for the retail sale of liquid milk and cream. The Economic Report examined two downstream product markets:
- The downstream retail liquid milk market and,
  - The downstream retail cream market.

---

<sup>11</sup> M/05/006 – Glanbia/CMP

<sup>12</sup> Paragraphs 28-29.

<sup>13</sup> Paragraph 7.

38. From a demand-side perspective, there is limited substitutability between double cream and low fat milk. Liquid milk typically has less than 4.5% fat content while cream typically has between 25%-45% fat content. The Economic Report states that this limited demand-side substitutability is also true with respect to full fat milk and skimmed milk.
39. The Economic Report, therefore, focuses on the retail liquid milk market separately from the retail cream market
40. The Economic Report states that while Glanbia and Kerry Group are significant operators in the *doorstep deliveries channel*, this channel only accounted for 8% of total downstream liquid milk sales in the State in 2009 (down from 30% in 1999). Glanbia and Kerry Group are somewhat smaller operators with respect to the *catering/food service channel* which accounted for 13% of total downstream liquid milk sales. The Economic Report states that focusing on the *retail channel* alone, as opposed to all three channels, over-estimates the relative combined importance of Glanbia and Kerry Group.

#### *Views of the Competition Authority*

41. With the exception of sales via the doorstep deliveries channel, the parties do not sell liquid milk or cream direct to end-consumers. However, as noted above, both Glanbia and Kerry supply own-label and branded liquid milk and cream to retailers who in turn sell these products to end consumers. While the Authority agrees with the parties that there is limited demand-side substitutability between cream and liquid milk from the perspective of the end consumer, it does not consider it necessary to precisely define separate product markets for the retail sale of liquid milk and cream for the purpose of assessing the proposed transaction.
42. Nonetheless, as detailed below in the section examining the competitive effects of the proposed acquisition, the Authority will examine separately retail sales data for both liquid milk and cream in order to establish whether the proposed transaction is likely to raise competition concerns in relation to the retail sale of either liquid milk or cream.

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

43. For the purpose of examining the competitive effects of the proposed transaction, the Authority will examine the following product markets:
  - The production and sale of raw milk;
  - The production and supply of liquid milk to retailers;
  - The retail sale of liquid milk and,
  - The retail sale of cream.

#### **Relevant Geographic Market**

##### The Production and Sale of Raw Milk

##### *Views of the Undertakings Involved*



44. With respect to the production and sale of raw milk, the Economic Report examines the impact of the proposed acquisition in the State. The Economic Report states that over 25% of the raw milk produced in Northern Ireland is imported into the State.
45. Glanbia argues that the relevant geographic market for the production of raw milk is the island of Ireland since several raw milk processors in the State such as Glanbia, Monaghan Dairies and Lakeland Dairies have raw milk pools in the State and Northern Ireland.
46. Glanbia also informed the Authority that it transports raw milk significant distances from farms to processing plants. [...].

#### *Views of the Competition Authority*

47. In its determination in M/10/029 – Kerry/Newmarket<sup>14</sup>, the Authority expressed the view that the relevant geographic market for the production and sale of raw milk is the Munster region given the costs involved in transporting raw milk. In the present case, the parties disagree with this view and say the relevant geographic market is the State.
48. However, for the purpose of assessing the competitive impact of the proposed acquisition, the Authority does not need to come to a definitive view on the precise relevant geographic market because its conclusions concerning the competitive effects of the proposed acquisition, outlined below, will be unaffected whether the relevant geographic market is regional or encompasses the State.

#### The Production and Supply of Liquid Milk to Retailers in the Island of Ireland

##### *Views of the Acquirer*

49. With respect to the production and sale of liquid milk, the Economic Report examines the impact of the proposed acquisition in the island of Ireland. The Economic Report states that major retailers can easily switch between liquid milk processors based in the State or Northern Ireland for the processing of their own-label liquid milk. It states that liquid milk can be transported over significant distances. [...] [...]

##### *Views of the Competition Authority*

50. In its determination in M/05/006 – Glanbia/CMP<sup>15</sup>, the Authority stated that liquid milk can be transported anywhere in the State. From a demand-side perspective, information provided by retailers indicates that they are prepared to purchase supplies of own-label and branded liquid milk from dairy processors located anywhere in the island of Ireland. [...] [...]
51. Furthermore, liquid milk processors based in Northern Ireland informed the Authority that they supply liquid milk to help the island of Ireland. For example, Strathroy Dairy Limited (“Strathroy”), based in Co. Tyrone, informed the Authority that it supplies liquid milk throughout the island of Ireland.<sup>16</sup> Dale Farm Limited (“Dale Farm”), located in

---

<sup>14</sup> Paragraph 36.

<sup>15</sup> Paragraph 7.

<sup>16</sup> Strathroy processes liquid milk in its processing plant in Omagh, Co. Tyrone but it also has distribution depots in Dublin, Limerick, Galway, Sligo, Cavan, and Letterkenny.

Belfast, also informed the Authority that it supplies own-label liquid milk to [...] throughout the State.<sup>17</sup>

52. The Authority therefore considers that the relevant geographic market for the production and supply of own-label and branded liquid milk to retailers is the island of Ireland.

### The Retail Sale of Liquid Milk and Cream

#### *Views of the Acquirer*

53. With respect to the retail sale of liquid milk, the Economic Report examines the impact of the proposed acquisition on both the national (i.e., the State) market and a regional geographic market (i.e., Munster). The Economic Report further states that the more appropriate regional market that should be examined is North Munster where Glanbia is relatively [...] represented. The Economic Report states that, in contrast, Glanbia is [...] represented in South Munster.

#### *Views of the Competition Authority*

54. In its determination in M/05/006 – Glanbia/CMP<sup>18</sup>, the Authority expressed the view that although there is some consumer preference for regional liquid milk brands, own-label brands account for a substantial and growing share of total liquid milk sold and such own-label brands are sold nationwide. The Authority therefore concluded that the relevant geographic market is national, despite some regional brand strength.
55. The sale of liquid milk to retailers by the Target Business is primarily carried out in three counties in the State: Dublin, Limerick and Clare. This is clear from the internal documentation provided to the Authority by the parties. For example, an internal document provided by Glanbia entitled “[...]”<sup>19</sup> dated October 2010 states:

“[Kerry’s Limerick-based liquid milk business] operates in [...] distinct territories: [...]”.

56. Thus, for the purpose of examining the competitive effects of the proposed transaction, the Authority will confine its analysis to the following two geographic markets: Dublin and Munster since these are the narrowest possible geographic markets affected by the proposed acquisition.
57. The Authority, however, does not need to come to a definitive view on the precise relevant geographic market because its conclusions concerning the competitive effects of the proposed acquisition, outlined below, will be unaffected whether the relevant geographic markets for the retail sale of liquid milk and the retail sale of cream are regional or national.

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

---

<sup>17</sup> Dale Farm has a distribution depot in Newbridge, Co. Kildare.

<sup>18</sup> Paragraph 7.

<sup>19</sup> [...].

58. In conclusion, for the purpose of examining the competitive effects of the proposed transaction, the Authority will examine the following markets:

- The production and sale of raw milk;
- The production and supply of liquid milk to retailers in the island of Ireland;
- The retail sale of liquid milk in County Dublin;
- The retail sale of liquid milk in Munster;
- The retail sale of cream in County Dublin and,
- The retail sale of cream in Munster.

## **Competitive Assessment**

### ***The Production and Sale of Raw Milk***

#### *Views of the Acquirer*

59. The Economic Report provides an overview of the major processors of raw milk in the State (see Table 1 below).

**Table 1: Major Processors of Raw Milk in the State, 2007/08**

<b>Processor</b>	<b>Total Raw Milk ('000 litres)</b>	<b>%</b>
Glanbia	[...]	[25-35]
Kerry	[...]	[10-20]
Dairygold	[...]	[10-20]
Lakeland	[...]	[0-10]
West Cork	[...]	[0-10]
Arrabawn	[...]	[0-10]
Connaught Gold	[...]	[0-10]
Wexford	[...]	[0-10]
Monaghan	[...]	[0-10]
Others	[...]	[0-10]
<b>Total</b>	[...]	100

Source: The Notification Form

60. However, the Economic Report states that Table 1 does not take account of either Arrabawn's recent acquisition of Kerry's Galway-based liquid milk business (which involved over [...] litres of raw milk) or of Kerry's recent acquisition of Newmarket Cooperative Creameries Limited, which involved approximately [...] litres of raw milk. The Economic Report states, however, that Table 1 is a reasonable guide to the current situation with respect to the processing of raw milk in the State.

61. The Economic Report states that the proposed acquisition (which would involve approximately [...] litres of raw milk) would have a marginal impact on the market share figures in Table 1. The Economic Report states that Glanbia's share of raw milk processing in the State would increase from approximately [25-35]% to approximately [25-35]%, while Kerry's share would decrease from approximately [10-20]% to

approximately [10-20]%. The Economic Report states that the increase in the Herfindahl Hirschman Index (“HHI”) as a result of the proposed acquisition would be significantly less than 50 and, hence, the upstream raw milk processing sector in the State would remain concentrated but not very concentrated

*Views of the Competition Authority*

62. As noted above, the Authority does not need to come to a definitive view on the precise relevant geographic market for the production and sale of raw milk. If the relevant geographic market is regional, there is no geographical overlap between the parties since Glanbia's production facilities are located in Leinster, while Kerry's [...] litres of raw milk comes from Munster (where it will retain its production facilities).
63. If, on the other hand, the relevant geographic market is national, the Authority considers that the proposed acquisition raises no competition concerns in the market for the production and sale of raw milk in the State. As Table 1 above indicates, the acquisition by Glanbia of Kerry's liquid milk-business (which comprises [...] litres of raw milk) will have a negligible impact on the market. The change in Glanbia's market share following the proposed acquisition will be very small (approximately [0-5]%). Raw milk customers (e.g., liquid milk processors, natural cheese manufacturers, butter manufacturers, etc) will continue to have many sources from whom to purchase supplies of raw milk post-transaction.

***The Production and Supply of Liquid Milk to Retailers in the Island of Ireland***

*Views of the Acquirer*

64. The Economic Report provides market share estimates for “...the significantly narrower upstream liquid milk processing sub-sector”. Table 2 below includes liquid milk from Northern Ireland.

**Table 2: Major Processors of Liquid Milk in the Island of Ireland (end 2009)**

<b>Processor</b>	<b>Total Liquid Milk ('000 litres)</b>	<b>%</b>
Glanbia (Drogheda, Ballitore)	[...]	[25-35]
Dale Farm (Northern Ireland)	[...]	[10-20]
Strathroy (Northern Ireland)	[...]	[10-20]
Kerry (Limerick, Killarney)	[...] ([...],[...])	[0-10]
Ballyrashane (Northern Ireland)	[...]	[0-10]
Natural Dairies (Convoy)	[...]	[0-10]
Arrabawn (Kilconnell)	[...]	[0-10]
Sligo (Sligo)	[...]	[0-10]
Clona (Clonakilty)	[...]	[0-10]
Linwoods (Northern Ireland)	[...]	[0-10]
Farm View (Northern Ireland)	[...]	[0-10]
Donegal (Letterkenny)	[...]	[0-10]
Monaghan (Monaghan)	[...]	[0-10]
Fane Valley (Northern Ireland)	[...]	[0-10]
Lee Strand (Tralee)	[...]	[0-10]
Wexford (Wexford)	[...]	[0-10]
Centenary (Thurles)	[...]	[0-10]

Tullamore (Tullamore)	[...]	[0-10]
North Cork (Kanturk)	[...]	[0-10]
Others	[...]	[0-10]

Source: The Notification Form

65. The Economic Report states that the upstream liquid milk processing sub-sector in the island of Ireland is not highly concentrated. The Economic Report states that the proposed acquisition, which would see Kerry's Killarney-based liquid milk business remaining with Kerry, would increase the HHI by 307 to 1,772 since Glanbia's market share would increase to [30-40]% and Kerry's market share would decrease to [0-10]%. The Economic Report states that the HHI would still be below the Authority's highly concentrated threshold of 1800.
66. The Economic Report argues that the major retailers can easily switch between liquid milk processors (based in the State or Northern Ireland) in terms of the processing of own-label liquid milk. [...] [...]
67. The Economic Report also states that significant investments with respect to the processing of liquid milk have been made in the past two years by a number of incumbent processors. Three such investments have been made in Northern Ireland (Strathroy, Linwoods, and Farmview), while two have been made in the State (Arrabawn and Thurles). The Economic Report states that all five investments have added capacity to the liquid milk processing sector and demonstrate the existence of a competitive environment in this sector.

#### *Views of the Competition Authority*

68. The Authority agrees with the parties' view that the proposed acquisition raises no competition concerns in the market for the production and supply of liquid milk to retailers in the island of Ireland.
69. First, as Table 2 above indicates, the acquisition by Glanbia of the Target Business (which comprises [...] litres of liquid milk<sup>20</sup>) will have a relatively small impact on the market. Although Glanbia's market share will increase to almost [30-40]% post-acquisition, it is clear from Table 2 above that should Glanbia attempt to permanently raise its liquid milk prices post-acquisition, there is a large number of alternative liquid milk processors available to customers (i.e., retailers seeking suppliers of own-label and branded liquid milk).
70. Second, information provided by liquid milk processors based in Northern Ireland indicates that they have the capacity to increase production of liquid milk in response to increased demand from retailers. Strathroy informed the Authority that it currently has the capacity to process approximately 200 million litres of liquid milk annually. Dale Farm informed the Authority that it currently has the capacity to process approximately 150 million litres of liquid milk annually.

#### Survey of Retailers

71. Third, the vast majority of retailers contacted by the Authority expressed no concerns about the supply of own-label liquid milk. In order to ascertain retailers views the Authority designed a

---

<sup>20</sup> [...]

questionnaire to be answered by retail customers of the merging parties. The questionnaire consisted of questions about the respondent's experience with buying branded and own-label liquid milk and its views about the proposed acquisition.

72. There are three channels by which liquid milk processors make sales to customers: (a) retail, (b) doorstep deliveries, and (c) the catering/food service channel. The Economic Report states that while Glanbia and Kerry are significant operators in the *doorstep deliveries channel*, this channel only accounted for approximately 8% of the downstream liquid milk consumption market in 2009 (down from 30% in 1999). The Economic Report states that Glanbia and Kerry are smaller operators in the *catering/food service channel* which accounted for 13% of the downstream liquid milk consumption market in 2009. Since the *retail channel* accounted for almost 80% of total liquid milk sales in the State in 2009, the Authority's survey of customers focused solely on this channel.
73. The Authority sent the questionnaire to the merging parties' top five retail customers in the State. Since four retailers appear on both parties' top five lists, six retailers were contacted by the Authority. In addition, the Authority also sent the questionnaire to a seventh customer.<sup>21</sup> Thus, seven customers in total were contacted by the Authority.
74. As Table 3 below illustrates, sales of liquid milk (branded and own-label) by Glanbia to its top five retail customers accounted for [60-70]% of total liquid milk sales by Glanbia in the State in 2010. Sales of liquid milk (branded and own-label) by the Target Business to its top five retail customers accounted for [50-60]% of its total liquid milk sales in the State in 2010.

**Table 3: The Parties' Sales of Liquid Milk (Branded and Own-label) to their top 5 Retail Customers in the State, € Value, 2010**

Customer	Glanbia (%)	Kerry <sup>22</sup> (%)
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	-
[...]	-	[...]
[...]	[...]	[...]
Total	100	100

Source: The Notification Form

75. All seven customers returned a completed questionnaire to the Authority. The Authority subsequently contacted each of these seven retailers in order to discuss further their responses to the Authority's questionnaire.
76. Six out of the seven retailers contacted by the Authority expressed no competition concerns in relation to the supply of own-label liquid milk.

<sup>21</sup> This is a customer of Kerry's Limerick-based liquid milk but not one of its Top 5 customers.

<sup>22</sup> This refers to Kerry's Limerick-based liquid milk business.

77. One retailer stated that it currently uses Strathroy as its supplier of own-label liquid milk having switched away from Glanbia in June 2009. This retailer also listed ten other credible potential suppliers of own-label liquid milk all of whom are located in the island of Ireland. A second retailer stated that it uses seven suppliers of own-label liquid milk and it also listed two other credible potential suppliers. A third retailer stated that it currently uses Natural Dairies (located in Co. Donegal) as its sole supplier of own-label liquid milk. This retailer listed five other credible potential suppliers of own-label liquid milk located in the island of Ireland.
78. A fourth retailer stated that it uses eight suppliers of own-label liquid milk all of whom are located in the island of Ireland. A fifth retailer stated that it currently uses two suppliers of own-label liquid milk: Dale Farm and Connacht Gold. This retailer listed four other credible potential suppliers of own-label liquid milk. Finally, a sixth retailer uses four suppliers of own-label liquid milk (including Glanbia and Kerry) and it also listed two other credible potential suppliers. This retailer indicated that it stopped using Kerry as its supplier of own-label liquid milk in a number of its stores in April 2010 and switched to Sligo Dairies.<sup>23</sup>
79. One out of the seven retailers contacted by the Authority expressed a concern about the supply of own-label liquid milk in the Leinster region. This retailer currently uses nine suppliers of own-label liquid milk all of whom are located in the State.<sup>24</sup> It uses different suppliers in different regions. Glanbia and Kerry each accounted for [...]% of this retailer's total purchases of own-label liquid milk in 2010. The retailer is concerned that the proposed acquisition will mean that there will be no alternative own-label liquid milk supplier to Glanbia in the Leinster region post-acquisition. The retailer stated that Glanbia will be the only supplier with a distribution network that can effectively cover the Leinster region (including Co. Dublin). It is, however, unnecessary to consider this issue since, as already explained, the Authority is examining the proposed transaction by reference to an island of Ireland geographic market for the production and supply of liquid milk to retailers.

#### Review of Internal Documentation

80. Fourth, internal documentation provided to the Authority by the parties indicates that competition for the supply of own-label liquid milk to retailers is intense. An internal document provided by Glanbia entitled "[...]" (undated) contains the following quote:

"[...]"

81. Another internal document provided by Glanbia entitled "[...]" [...]:

"[...]"

82. Similarly, an internal document provided by Kerry entitled "[...]" dated 18 August 2010 highlights the competitive threats facing the Target Business for the supply of own-label liquid milk:

---

<sup>23</sup> This retailer indicated that it continues to use Kerry's Limerick-based liquid milk business as its own-label supplier for six of its stores in Munster.

<sup>24</sup> This retailer stated that it has a policy of only selling Irish own-label and branded liquid milk. It will not sell own-label or branded liquid milk from Northern Ireland.

"[...]"

### Views of Competitors

83. The Authority contacted the two largest liquid milk processors in Northern Ireland, both of whom confirmed that they supply own-label liquid milk to retailers in the State. Both liquid milk processors raised a concern about the impact of the proposed acquisition. One processor stated that the proposed acquisition will further strengthen Glanbia's already dominant position, increasing its ability to squeeze out smaller competing liquid milk processors. This processor also stated that since Glanbia is currently the only supplier of own-label liquid milk across the State with other processors supplying regionally, the proposed acquisition reduces the scope for customers to switch away from Glanbia to a combination of regional processors. Finally, this processor raised a concern about the impact of the National Dairy Council's (NDC) "Farmed in the Republic of Ireland" campaign, which is designed to protect liquid milk processors in the State from competition from more competitively priced milk from Northern Ireland.
84. The other liquid milk processor contacted by the Authority also raised a concern about the impact of the NDC's marketing campaign. This processor stated that absent the NDC campaign, it would have no concerns with the proposed acquisition since it would remove a large competitor which could result in an opportunity for the processor to act as a competitive constraint countering any unilateral price increase by Glanbia. This processor claimed that the object and effect of the NDC campaign is to segment the market in the island of Ireland through product differentiation affecting the purchase decisions of end consumers and that as a result of the NDC campaign, retailers will not enter into contracts for the supply of own-label liquid milk unless suppliers carry the NDC logo.
85. The processor further stated that the proposed acquisition will create one dominant player in Co. Dublin where there are currently three main players in the liquid milk market – Glanbia, Kerry, and Strathroy. The processor states that if the proposed acquisition were to go ahead, the liquid milk sector in Dublin will effectively have only one supplier since retailers will not use suppliers of own-label liquid milk who do not have the NDC logo.
86. As noted above, the Authority contacted seven retailers about the proposed acquisition and subsequently sent follow-up e-mails to each of these seven retailers in order to discuss further their responses to the Authority's questionnaire. One of the follow-up questions posed to retailers was to what extent, if any, does the NDC logo influence a retailer's decision regarding its choice of supplier of own-label liquid milk. Only four out of seven retailers responded to the Authority's follow-up e-mail. Three retailers stated that the NDC logo is not a factor in their choice of own-label liquid milk supplier. One retailer stated that it is part of its packaging design to have the NDC logo shown on its own-label liquid milk.<sup>25</sup>

### **Conclusion**

---

<sup>25</sup> This retailer does not use Northern Ireland suppliers for its own-label liquid milk.



87. The Authority considers that Glanbia will have neither the ability nor incentive to permanently raise its own-label liquid milk prices to retailers post-acquisition. As noted above, most retailers informed the Authority that they use multiple suppliers of own-brand liquid milk including suppliers based in Northern Ireland. The Authority notes that [...] uses one supplier of own-brand liquid milk ([...]) to service all its stores in the State while [...] uses two suppliers ([...] and [...]). This indicates the existence of credible alternative suppliers to whom retailers can switch post-acquisition should Glanbia decide to permanently raise its own-label liquid milk prices.

### ***The Retail Sale of Liquid Milk in County Dublin***

#### *Views of the Acquirer*

88. [Glanbia] considers that the relevant geographic market for the retail sale of liquid milk is as least as wide as the State. The Economic Report provides market share estimates for the retail liquid milk market in the State (see Table 4 below).

**Table 4: Retail Liquid Milk Market Shares by Value, December 2008-2010, the State**

<b>Brand Manufacturer/Owner</b>	<b>Dec 2008</b>	<b>Dec 2009</b>	<b>Dec 2010</b>
Own-label (including discounters) <sup>26</sup>	[0-35]	[0-40]	[0-45]
<b>Glanbia (Avonmore, Premier, CMP, Snowcream)</b>	<b>[0-45]</b>	<b>[0-40]</b>	<b>[0-40]</b>
<b>Kerry (Dawn, Golden Vale)</b>	<b>[0-15]</b>	<b>[0-15]</b>	<b>[0-10]</b>
NCF (Connaught Gold)	[0-10]	[0-10]	[0-10]
Strathroy (Bainne Ur, Meadow Lane, Strathroy)	[0-10]	[0-10]	[0-10]
Clona (Clona, Dawn)	[0-10]	[0-10]	[0-10]
Arrabawn (Arrabawn, Oranmore)	[0-10]	[0-10]	[0-10]
Lee Strand (Lee Strand)	[0-10]	[0-10]	[0-10]
Donegal Foods (Donegal)	[0-10]	[0-10]	[0-10]
Monaghan (Champion)	[0-10]	[0-10]	[0-10]
All Others (e.g. Glenisk, Thurles, Dairy Land, Linwoods)	[0-10]	[0-10]	[0-10]

Source: The Notification Form

89. Table 4 includes the discount retailers (e.g., Aldi) but excludes Dunnes Stores (due to unavailability of data). The Economic Report states that the figures in Table 4 underestimate the market share of own-label brands and exaggerate the market shares of both Glanbia and Kerry since Dunnes Stores sells a disproportionate level of own-label liquid milk. The Economic Report states that the Target Business accounted

<sup>26</sup> These figures are the combined share of all own-label liquid milk brands in the State (excluding Dunnes Stores due to unavailability of data).

for approximately [...] % of Kerry's national market share of [0-10]%.<sup>27</sup> The Economic Report states that when viewed from a national perspective, Glanbia's proposed acquisition of the Target Business would increase Glanbia's national market share from [30-40] % to [35-45] %.

*Views of the Competition Authority*

90. [Glanbia] provided market share estimates for the retail liquid milk market in County Dublin (see Table 5 below). This data excludes both the discount retailers and Dunnes Stores.

**Table 5: Retail Liquid Milk Market Shares by Value, December 2009 and 2010, County Dublin**

<b>Brand Manufacturer/Owner</b>	<b>Dec 2009</b>	<b>Dec 2010</b>
Own Label (excluding discounters) <sup>28</sup>	[0-30]	[0-35]
<b>Glanbia (Avonmore, Premier)</b>	<b>[0-70]</b>	<b>[0-70]</b>
<b>Kerry (Golden Vale)</b>	<b>[0-10]</b>	<b>[0-10]</b>
Kelkin (Alpro)	[0-10]	[0-10]
Strathroy (Bainne Ur)	[0-10]	[0-10]
Linwoods (Linwoods)	[0-10]	[0-10]
Glenisk	[0-10]	[0-10]
All Others	[0-10]	[0-10]

Source: The Notification Form

91. The Authority considers that the proposed acquisition raises no competition concerns in the market for the retail sale of liquid milk in County Dublin.
92. First, as Table 5 above indicates, Kerry has a negligible share of the retail liquid milk market in County Dublin ([0-10] %). The change in market share following the proposed acquisition will therefore be very small.
93. Second, six out of the seven retailers contacted by the Authority expressed no competition concerns in relation to the retail liquid milk market in Co. Dublin. One retailer expressed a concern about the impact of the proposed acquisition, stating that Kerry is Glanbia's main competitor in Leinster. It is clear, however, from Table 5 above that the main competitive constraint on Glanbia post-acquisition in Co. Dublin will be own-label liquid milk which accounted for 28% of the market. Given Glanbia's existing share of the Dublin market for liquid milk, the acquisition of the Kerry brands and of its raw milk suppliers

<sup>27</sup> Kerry's Cork-based liquid milk business (Dawn Ballinahina) is currently licensed to [...] and hence is not included in Kerry's overall market share.

<sup>28</sup> These figures are the combined share of all own-label liquid milk brands in County Dublin (excluding Dunnes Stores due to unavailability of data).

in the Limerick area will have little impact on the competitive landscape in the retail liquid milk market in Co. Dublin.

### **The Retail Sale of Liquid Milk in Munster**

#### *Views of the Acquirer*

94. The Economic Report provides market share estimates for the retail liquid milk market in Munster (see Table 6 below). This data excludes both the discount retailers and Dunnes Stores. The Economic Report states that data constraints mean that the parties are unable to examine the more appropriate regional market, namely North Munster, where Glanbia is [...] represented; Glanbia is very [...] represented in Co. Waterford, i.e., South Munster.

**Table 6: Retail Liquid Milk Market Shares by Value, December 2008-2010, Munster**

<b>Brand Manufacturer/Owner</b>	<b>Dec 2008</b>	<b>Dec 2009</b>	<b>Dec 2010</b>
Own Label (excluding discounters) <sup>29</sup>	[0-45]	[0-50]	[0-55]
Glanbia (Avonmore, CMP, Snowcream, Premier)	[0-30]	[0-25]	[0-25]
Kerry (Golden Vale, Dawn)	[0-25]	[0-20]	[0-15]
Clona (Clona, Dawn Ballinahina)	[0-10]	[0-10]	[0-10]
Lee Strand (Lee Strand)	[0-10]	[0-10]	[0-10]
Thurles	[0-10]	[0-10]	[0-10]
Strathroy	[0-10]	[0-10]	[0-10]
All Others	[0-10]	[0-10]	[0-10]

Source: The Notification Form

95. The Economic Report states that the Target Business accounts for approximately [...] % of Kerry's regional market share of [5-15]%. The Economic Report states that when viewed from a regional perspective, the proposed acquisition would therefore increase Glanbia's regional market share from [15-25]% to approximately [25-35]% and would decrease Kerry's regional market share from [5-15]% to approximately [0-10]%. The Economic Report states that the market share estimates in Table 6 suggest that the post-proposed acquisition HHI would still be comfortably below 1800. The Economic Report states that the impact of the growing importance of own-label brands on the market share data is again shown to be dramatic in Table 6 above.

#### *Views of the Competition Authority*

96. The Authority agrees with the parties' view that the proposed acquisition raises no competition concerns in the market for the supply of liquid milk to retailers in Munster.

<sup>29</sup> These figures are the combined share of all own-label liquid milk brands in Munster (excluding Dunnes Stores due to unavailability of data).

97. First, the Authority considers that Glanbia and Kerry are not close competitors in the market for the retail supply of liquid milk in Munster. The liquid milk brands of Glanbia and Kerry are strong in different parts of the market for the retail supply of liquid milk in Munster.
98. The activities of the Target Business in Munster are primarily confined to counties Limerick and Clare. Internal documentation provided by Kerry and Glanbia describe the Target Business as being active in two regions in the State: the mid-west and Dublin. The parties describe the mid-west region as comprising Limerick, Clare, Tipperary, North Cork, Offaly, and Waterford. The Target Business has [...] distribution routes in the mid-west region, of which [...] are located in Counties Limerick and Clare. It is thus unsurprising that the majority of retail liquid milk sales by the Target Business are made in these two counties.
99. An internal document provided by Glanbia entitled “[...]” dated October 2010 describes the Target Business as follows:
- “[...]”
100. Thus, counties Limerick and Clare accounted for approximately [...]% of Kerry's Limerick-based total retail liquid milk and cream sales (branded and unbranded) in the mid-west region by the Target Business in 2010.
101. Information provided by Kerry indicates that [...]% of total liquid milk sales under Kerry's *Golden Vale* brand in the State in 2010 were made in counties Limerick and Clare with sales in the rest of Munster. This accounted for only [...]% of total sales in State. In the case of Kerry's *Dawn* liquid milk brand, [...]% of total *Dawn* liquid milk sales in the State were made in counties Limerick and Clare; this rises to [...]% if sales in Co. Kerry (where the *Dawn* brand is strong) are included.<sup>30</sup> Only [...]% of total *Dawn* brand liquid milk sales in the State were made in the rest of Munster.
102. In contrast, despite having a retail market share of [15-25]% in the liquid milk market in Munster in 2010, Glanbia has a small presence in the retail supply of liquid milk in north Munster. Information provided by Glanbia indicates that sales by Glanbia's *Avonmore* liquid milk brand in counties Limerick and Clare only accounted for only [...]% of total Glanbia branded liquid milk sales in State in 2010.<sup>31</sup>
103. As noted above, Glanbia considers that the proposed acquisition will allow it greater access to the North Munster liquid milk market. An internal document provided by Glanbia entitled “[...]” dated October 2010 contains the following quote:
- “[...]”
104. Glanbia currently has a limited presence in the retail liquid milk market in north Munster and is seeking to expand in this area. An internal

---

<sup>30</sup> As noted above, however, the proposed acquisition will have no impact on Co. Kerry since the trademark licence does not allow Glanbia to sell liquid milk under the *Golden Vale* and *Dawn* brands in Co. Kerry post-acquisition

<sup>31</sup> [...].

document provided by Glanbia entitled “[...]” dated 12 January 2011 contains the following quote:

“[...]”

105. Second, six out of the seven retailers contacted by the Authority expressed no competition concerns in relation to the retail liquid milk market in Munster. One retailer stated that the liquid milk brands supplied by Glanbia and Kerry Group “...operate in different regional areas of the country and therefore do not compete”. A second retailer stated that “Dublin is the only area where *Avonmore*, *Premier* and *Golden Vale* would compete for shelf space”. A third retailer stated that “There is competition between the *Avonmore* and the *Dawn* and *Golden Vale* brands in limited areas of the country (principally Kerry, Limerick and Tipperary) only”. Finally, a fourth retailer stated that “*Avonmore* and *Golden Vale* would mainly compete in the Munster region. The only other competitor to *Avonmore*, *Golden Vale* and *Dawn* in Limerick is own-label”.
106. One retailer expressed a concern about the impact of the proposed acquisition stating that “Kerry and Glanbia are close competitors in Munster...the proposed acquisition will strengthen Glanbia’s position considerably in Munster”. Given the views of the other retailers, however, and the other evidence set out above and below, the Authority does not share this retailer’s concerns.
107. Third, own-label liquid milk will continue to act as a significant competitive constraint on Glanbia’s liquid milk brands in the Munster region post-acquisition. As illustrated in Table 6 above, own-label liquid milk accounted for [45-55]% of total retail liquid milk sales in Munster in December 2010. Furthermore, own-label liquid milk sales in Munster have increased significantly between December 2008 and December 2010. This has been at the expense of all liquid milk brands, in particular Kerry which has seen its market share drop from [15-25]% in December 2008 to [5-15]% in December 2010.
108. These retail market share figures in Munster confirm some of the views expressed in the internal documents provided to the Authority by the parties. An internal document provided by Glanbia entitled “[...]” contains the following quote<sup>32</sup>:

“[...]”<sup>33</sup>

109. An internal document provided by Kerry entitled “[...]” dated 18 August 2010 contains the following quote:

“[...]”

## **Conclusion**

110. In conclusion, the Authority considers that Glanbia will have neither the ability nor the incentive to permanently raise the price of its liquid milk brands in Munster since end-consumers have the option of switching to own-label liquid milk products. Furthermore, since the liquid milk brands of Glanbia and Kerry are not close competitors in

---

<sup>32</sup> This document is undated.

<sup>33</sup> [...]

Munster by virtue of the fact that they are strong in different parts of the province, the proposed acquisition will have little impact on the competitive landscape in the retail liquid milk market in Munster.

**The Retail Sale of Cream in County Dublin**

*Views of the Acquirer*

111. Glanbia provided market share estimates for the retail cream market in County Dublin (see Table 7 below). This data excludes both the discount retailers and Dunnes Stores.

**Table 7: Retail Cream Market Shares by Value, December 2008-2010, County Dublin**

<b>Brand Manufacturer/Owner</b>	<b>Dec 2008</b>	<b>Dec 2009</b>	<b>Dec 2010</b>
Own-label (including discounters) <sup>34</sup>	[0-15]	[0-20]	[0-25]
<b>Glanbia (Avonmore, Premier, Yoplait Crème Fraiche)</b>	<b>[0-85]</b>	<b>[0-80]</b>	<b>[0-75]</b>
<b>Kerry (Dawn, Golden Vale)</b>	<b>[0-10]</b>	<b>[0-10]</b>	<b>[0-10]</b>
Elmlea	[0-10]	[0-10]	[0-10]
Glenisk	[0-10]	[0-10]	[0-10]
Boyne Valley (Carie, Yeo Valley)	[0-10]	[0-10]	[0-10]
All Others	[0-10]	[0-10]	[0-10]

Source: The Notification Form

112. The parties state that Glanbia is relatively stronger in the cream category compared to liquid milk while Kerry is relatively weaker in cream compared to liquid milk. The parties also state that the market shares of Glanbia and Kerry have been falling significantly in recent years due to the growth in own-label cream.

*Views of the Competition Authority*

113. The Authority agrees with the parties' view that the proposed acquisition raises no competition concerns in the market for the supply of cream to retailers in County Dublin.
114. First, as Table 7 above indicates, Kerry has a negligible share of the retail cream market in County Dublin. The change in market share following the proposed acquisition will therefore be very small. It is clear that the proposed acquisition will have almost no impact on the competitive landscape in the retail supply of cream in County Dublin.
115. Second, retailers contacted by the Authority expressed no competition concerns in relation to the retail cream market in Co. Dublin. As noted above, seven retail customers were sent a questionnaire by the Authority. The Authority subsequently sent a second questionnaire to each of these seven retailers concerning the respondent's experience

<sup>34</sup> These figures are the combined share of all own-label cream brands in County Dublin (excluding Dunnes Stores due to unavailability of data).

with buying branded and own-label cream and its views about the impact of the proposed acquisition on the cream product category.<sup>35</sup>

116. All seven retailers responded to the Authority’s questionnaire concerning the cream product category. Six retailers raised no competition concerns regarding the proposed acquisition. One retailer expressed a concern stating that the proposed acquisition would strengthen Glanbia’s position significantly in Co. Dublin. Given Kerry’s negligible share of the market, however, the Authority does not attach much significance to this submission.

### **The Retail Sale of Cream in Munster**

#### *Views of the Acquirer*

117. Glanbia provided market share estimates for the retail cream market in Munster (see Table 8 below). This data excludes both the discount retailers and Dunnes Stores (due to absence of data).

**Table 8: Retail Cream Market Shares by Value, December 2008-2010, Munster**

<b>Brand Manufacturer/Owner</b>	<b>Dec 2008</b>	<b>Dec 2009</b>	<b>Dec 2010</b>
Own-label (including discounters) <sup>36</sup>	[0-15]	[0-20]	[0-25]
<b>Glanbia (Avonmore, Premier, Yoplait Crème Fraiche)</b>	<b>[0-45]</b>	<b>[0-45]</b>	<b>[0-45]</b>
<b>Kerry (Dawn, Golden Vale)</b>	<b>[0-20]</b>	<b>[0-20]</b>	<b>[0-15]</b>
Clona (Clona, Dawn Ballinahina)	[0-15]	[0-15]	[0-10]
Lee Strand	[0-10]	[0-10]	[0-10]
Elmlea	[0-10]	[0-10]	[0-10]
Glenisk	[0-10]	[0-10]	[0-10]
Boyne Valley (Carie, Yeo Valley)	[0-10]	[0-10]	[0-10]
Thurles	[0-10]	[0-10]	[0-10]
All Others	[0-10]	[0-10]	[0-10]

Source: The Notification Form

118. The parties state that the appropriate regional market would be north Munster as opposed to Munster. The parties state that while Glanbia does have a market presence in counties Limerick and Clare in the retail supply of cream, Glanbia is relatively [...] in the north Munster region.

<sup>35</sup> Since neither the notification nor the Economic Report contained a discussion of the cream product category, the Authority did not become aware until later in the investigation of the existence of a horizontal overlap between the parties in the retail supply of cream in the State. Hence, the Authority’s decision to send a second questionnaire to customers later in the investigation.

<sup>36</sup> These figures are the combined share of all own-label cream brands in Munster (excluding Dunnes Stores due to unavailability of data).

### *Views of the Competition Authority*

119. The Authority agrees with the parties' view that the proposed acquisition raises no competition concerns in the market for the supply of cream to retailers in Munster.
120. First, as is the case in the market for the retail sale of liquid milk in Munster, the Authority considers that the brands of Glanbia and Kerry are not close competitors in the retail cream market in Munster. As noted above, internal documentation provided by the parties indicates that counties Limerick and Clare accounted for approximately [...]% of total retail liquid milk and cream sales (branded and unbranded) in the mid-west region by the Target Business in 2010.
121. Information provided by Kerry indicates that [...]% of total cream sales by the *Golden Vale* brand in the State in 2010 were made in counties Limerick and Clare with sales in the rest of Munster accounting for only [...]% of total sales in State. In the case of the *Dawn* liquid milk brand, [...]% of total *Dawn* cream sales in the State were made in counties Limerick and Clare; this rises to [...]% if sales in Co. Kerry are included where the *Dawn* brand is strong.<sup>37</sup> Only [...]% of total *Dawn* brand cream sales in the State were made in the rest of Munster.
122. In contrast, despite having a retail market share of [35-45]% in Munster in 2010, Glanbia has a small presence in the retail supply of cream in north Munster. Information provided by Glanbia indicates that sales by Glanbia's cream brands in counties Limerick and Clare only accounted for [...]% of total Glanbia branded cream sales in State in 2010.
123. Thus, it is clear that the cream brands of Glanbia and Kerry are strong in different parts of the market for the retail sale of cream in Munster.
124. Second, of the seven retailers who responded to the Authority's questionnaire concerning the cream product category, six expressed no concerns about the proposed acquisition. One retailer stated that the cream brands of Glanbia and Kerry are not competitors as they are sold in different parts of the State. A second retailer stated that County Dublin is the only region in the State where the cream brands of Glanbia and Kerry compete for shelf space. A third retailer stated that Glanbia and Kerry are close competitors in the supply of branded cream products in County Kerry but that the Lee Strand cream brand would be a close competitor. Three other retailers all expressed the view that the proposed acquisition raises no competition concerns with respect to the retail sale of cream.
125. One retailer did express a concern stating that the proposed acquisition would strengthen Glanbia's position significantly in Munster. Given the views of the other retailers, however, and the other evidence set out above and below, the Authority does not attach much significance to this submission.
126. Third, own-label liquid milk will continue to act as a significant competitive constraint on Glanbia's cream brands in the Munster region

---

<sup>37</sup> As noted above, however, the proposed acquisition will have no impact on Co. Kerry since the trademark licence will not allow Glanbia to sell cream under the *Golden Vale* and *Dawn* brands in Co. Kerry post-acquisition



post-acquisition. As illustrated in Table 8 above, own-label cream accounted for [15-25]% of total retail cream sales in Munster in December 2010, almost double its market share in December 2008. This has been at the expense of all cream brands, in particular Glanbia and Kerry who have both seen their market share fall by over [...] percentage points during this period.

127. The growth of own-label cream in Munster is also reflected in the internal documents provided to the Authority by the parties. An internal document provided by Glanbia entitled “[...]” contains the following quote<sup>38</sup>:

“[...]”

128. In conclusion, the Authority considers that Glanbia will have neither the ability nor the incentive to permanently raise the price of its branded cream products in Munster since end consumers have the credible option of switching to own-label cream products. Furthermore, since the cream brands of Glanbia and Kerry are not close competitors in Munster by virtue of the fact that they are strong in different parts of the province, the proposed acquisition will have little impact on the competitive landscape in the retail cream market in Munster

### **Ancillary Restraints**

129. The Sale Agreement provides that Dawn Dairies and Golden Vale Dairies, for a period of [...] years, will not directly or indirectly carry on or assist in carrying on within the State<sup>39</sup>, in any business or commercial activity involving the production, sale, promotion or distribution of products which compete directly with milk, butter milk and cream produced and/or distributed by the Target Business. The parties state that this is directly related and necessary to the transfer of the value of the assets and goodwill to Glanbia.
130. The Milk Distribution Agreement provides that Glanbia will not undertake to carry on either alone or in partnership with others in the State<sup>40</sup> the production, marketing, distribution, and sale of milk fortified with omega for so long as the agreement remains in force and for a period of [...] thereafter.
131. The Authority considers these restrictions to be directly related and necessary to the implementation of the proposed acquisition.

---

<sup>38</sup> This document is undated.

<sup>39</sup> [...]

<sup>40</sup> [...]

## **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 Glanbia Foods Ireland Limited of the Limerick-based liquid milk business of Kerry Group plc 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**

**Gerald FitzGerald**

**Member of the Competition Authority**

**Director, Mergers Division**

## **Annex A**

**[...]**