



DETERMINATION OF MERGER NOTIFICATION M/11/021 -

Intersnack/Largo Food

Section 21 of the Competition Act 2002

Proposed acquisition by IHKG, through its subsidiaries Intersnack International B.V. and New Ireland Snack Foods Limited, of Largo Food Exports Limited.

Dated 3 August 2011

Introduction

1. On 15 July 2011, in accordance with section 18 of the Competition Act 2002 (the "Act"), the Competition Authority (the "Authority") received a notification of a proposed transaction whereby Pfeifer & Langen Industrie-und Handels-KG ("IHKG"), through its subsidiaries Intersnack International B.V. ("Intersnack") and New Ireland Snack Foods Limited ("NISF") would acquire sole control of Largo Food Exports Limited ("Largo").

The Undertakings Involved

The Acquirer

2. IHKG, based in Cologne Germany, currently holds a 15% share in Largo and is acquiring sole control by virtue of acquiring an additional interest which will give it a 51% interest in Largo. IHKG is a holding company that owns and controls Intersnack. Intersnack is a limited liability company incorporated in The Netherlands that forms part of Intersnack Group GmbH & Co. KG ("Intersnack Group"), also based in Germany.
3. Intersnack is active in the manufacture, marketing and distribution of snack foods mainly in Europe. Its snack foods comprise potato chips (commonly known as crisps), nuts, baked products¹ and speciality products². It sells snack foods under various brand names such as *Chio*, *Funny-Frisch*, *Bohemia*, *Felix*, *Monster Munch*, *Vico*, *Pom-Bär* and *Penn State*.
4. In the State, Intersnack is only active in the sale of snack foods³ through its distributor, BR Marketing Limited and directly to [...]⁴. It also sells [inputs]⁵ to Largo;⁶ these are ingredients used in the

¹ These include products that are made from dough that are shaped and baked with or without added flavourings. Intersnack considers pretzels and salty sticks to be baked products.

² Intersnack speciality products are made from a variety of ingredients including potato, corn, wheat and other grains. Intersnack considers tortilla chips and popcorn to be speciality products.

³ Intersnack sold the brands *Chio*, *Pom-Bär* and *Penn State* in the State in 2010.

⁴ [...].

⁵ [...].

manufacture of Largo's *Tayto Toobz* branded snack foods. It has no physical presence in the State.

5. IHKG owns and controls NISF, which was established solely for the purpose of acquiring 11% of the equity share capital in Largo.
6. IHKG also controls the Pfeifer & Langen Group which is active in the manufacture of household and industrial sugar products. Furthermore, IHKG holds a [...] % shareholding interest in Krüger GmbH & Co. KG ("Krüger"), a German company active in the manufacture of branded beverage, foodstuffs and pharmaceutical products.
7. For the financial year ended 31 December 2010, IHKG generated worldwide turnover of approximately €[...] ⁷ of which approximately €[...] was generated by the Intersnack group. For the same period, IHKG generated turnover of approximately €[...] in the State of which €[...] was generated by the Intersnack Group. ⁸

The Target

8. Largo is an Irish registered company that is active in the manufacture, sale and distribution of snack foods primarily in the State and the United Kingdom. ⁹ Its snack foods comprise potato crisps, extruded products, ¹⁰ popcorn and baked products. It sells its snack foods under the brand names *Tayto*, *Hunky Dorys*, *King*, *Sam Spudz* and *Perri*.
9. Largo is also active in the manufacture of snack foods for third parties in both the State and the United Kingdom, manufacturing snack foods for sale under the private label of retailers such as [...]. In the State, Largo has manufacturing facilities in counties Meath and Donegal.
10. For the financial year ended 31 December 2010, Largo generated a worldwide turnover of approximately €84.2 million. For the same financial period, Largo generated turnover of approximately €67.5 million in the State. ¹¹

Third Party Submissions

11. No third party submissions were received.

Proposed Transaction

⁶ [...]

⁷ This includes turnover of approximately €[...] generated by Krüger.

⁸ This includes sales by Krüger in the State of approximately €[...]. The remaining turnover was generated from the activities of the Pfeifer & Langen Group in relation to its sugar business.

⁹ Largo have a subsidiary in Northern Ireland that is not engaged in manufacturing.

¹⁰ Snacks made from corn, potato, rice, soya or other grains that are cooked using an extrusion process.

¹¹ Largo has a 53% shareholding in Cornscape Limited, a popcorn manufacturer based in England. Its sales of approximately €[...] in the State are accounted for in the turnover of Largo.

12. Intersnack currently holds a 15% shareholding in Largo. The acquisition of control will occur through a series of agreements, namely:
- (i) a Subscription Agreement between Intersnack and Largo dated May 2007 (amended in March 2009), which entitles Intersnack to have further shares in Largo issued to it;
 - (ii) a Convertible Loan Agreement dated March 2009, which entitles Intersnack to elect to convert a loan into ordinary shares;
 - (iii) a Put and Call Option Agreement dated May 2007 (amended in March 2009), which granted Intersnack a Call Option to purchase shares in Largo; and,
 - (iv) an Option Exercise Agreement between Intersnack, NISF and Largo, which entitles NISF to acquire an 11% shareholding in Largo.
13. As a consequence of Intersnack exercising the entitlements contained in the above series of agreements, and in particular the exercise by Intersnack of the option set out in (iii) above, IHKG will, through Intersnack and NISF, hold a 51% interest in and acquire sole control of Largo.

Analysis

14. In the State there is no horizontal overlap in the activities of the Pfeifer & Langen Group, Krüger and Largo. However, there is horizontal overlap between Intersnack and Largo in relation to the supply of snack foods to customers in the State.

Horizontal Overlap

15. The Authority considers that the proposed transaction is unlikely to raise any horizontal competitive concerns in relation to the supply of snack foods to customers in the State for the following reasons:

(i) The increment in market shares resulting from the proposed transaction is minimal. Whilst Largo leads the market with an estimated market share in 2010 of approximately [40-50]%, Intersnack accounts for approximately only [less than 5]%.¹²

(ii) There are credible alternative suppliers¹³ of branded snack foods in the State, namely: Pepsico (*Walkers, Doritos, Red Sky, and Sensations*), United Biscuits (*KP, Phileas Fogg, Hula Hoops and McCoys*), Proctor & Gamble (*Pringles*) and Manhattan (*Manhatan*). Of these brands, *Walkers, KP* and *Pringles* were among the top five brands of crisps/snacks (as categorised by Checkout Magazine) sold in

¹² Based on market share data provided by the parties from Nielsen Market Track data 17/4/11 in relation to crisps/snacks and Nielsen ScanTrack September 2008 data in relation to nuts. According to Checkout Magazine's - 'Top 100 brands 2010', published by Checkout Publications Ltd in conjunction with Nielsen, *Tayto* and *Hunky Dory* branded crisps accounted for approximately 45.1% of the crisps sector in June 2010.

¹³ Whilst all of the suppliers listed are credible alternatives, it is noted for completeness that only United Biscuits, under the KP brand, and Manhattan manufacture snack foods in the State.

the State in 2010. Largo's *Tayto* and *Hunky Dorys* brands claimed first and fourth place respectively.¹⁴

(iii) There are alternative suppliers of private label snack foods in the State, namely: United Biscuits, Kolak Snack Foods Limited and the Tayto Group Limited¹⁵.

Vertical Relationship

16. In the State, there is a vertical relationship between Intersnack and Largo. Intersnack supplies Largo with certain ingredients used in the manufacture of its snack foods. This relationship does not raise any vertical competitive concerns due to the *de minimis* sales¹⁶ to Largo and the fact that Intersnack does not supply ingredients to any other snack food manufactures in the State.
17. In light of the above, the Authority considers that the proposed transaction does not raise any competition concerns in the State in relation to the supply of food snacks to customers in the State.

Ancillary Restraint

18. As part of the proposed transaction, Mr. Raymond Coyle, the majority shareholder in Largo, has entered into non-compete and non-solicitation covenants for a duration of two years commencing on his ceasing to be a shareholder in Largo. The Authority considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

¹⁴ Checkout Magazine's – 'Top 100 brands 2010', published by Checkout Publications Ltd in conjunction with Nielsen.

¹⁵ Tayto Group Limited is a Northern Irish based company that is active in the manufacture of private label and branded snack foods. Its brands include *Golden Wonder* and *Real Crisps*. It is a separate and distinct entity from Largo.

¹⁶ In 2010, Intersnack generated approximately €[...] from its sale of [inputs] to Largo. This represents approximately [0-10]% of Largo's total spend on inputs. Largo sources [inputs] from other manufacturers located outside of the State.

DETERMINATION

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby Pfeifer & Langen Industrie-und Handels-KG, through its subsidiaries Intersnack International B.V. and New Ireland Snack Foods Limited, would acquire sole control of Largo Food Exports Limited will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect

For the Competition Authority

Noreen Mackey

Member of the Competition Authority

Director, Mergers Division