



DETERMINATION OF MERGER NOTIFICATION M/11/022 -

Musgrave/Superquinn

Section 21 of the Competition Act 2002

Proposed acquisition by Musgrave Group plc of the Superquinn grocery retail business and certain properties.

Dated 28 September 2011

Introduction

1. On 21 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 Musgrave Group plc ("Musgrave") would acquire sole control of the Superquinn grocery retail business in receivership and certain properties¹ ("Superquinn").
2. Prior to the notification, on 18 July 2011, Messrs. Kieran Wallace and Eamonn Richardson of KPMG had been appointed as Joint Receivers to Superquinn and its parent company, Tokad Company.

The Undertakings Involved

The Acquirer

3. Musgrave is an Irish incorporated public company that is active in grocery and food wholesale distribution in the State, the United Kingdom ("the UK") and Spain. Within the State, Musgrave is a wholesale-franchisor² with separate agreements with each of its affiliated retail stores also known as franchisees. The affiliated stores are independently owned and operate under the Musgrave fascias (brands): Supervalu, Centra, Day Today and Daybreak. Musgrave also supplies grocery goods to buyers other than its affiliated retail stores.
4. Table 1 below sets out the number of Musgrave franchisee stores in the State in 2010.

¹ Musgrave will acquire ten property holding companies within the Superquinn group of companies. Nine of these companies own the property on which a Superquinn retail store is located and one property company owns the property occupied by Superquinn's distribution centre. In addition, some of the stores to be acquired are part of shopping centres which are owned by a Superquinn property company and include units leased out to smaller retailers, e.g., Knocklyon, Blackrock, Blanchardstown, Sutton, Ballinteer and Sundrive. The Greyhound Inn is also included in Blanchardstown property to be acquired. The parties state that the property acquisitions are a necessary component of the overall transaction (i.e., are not a transaction or set of transactions independent of the acquisition of the retail supermarket business). [...]

² The wholesale/retailer model is described further in paragraphs 42-44.

Table 1: Musgrave affiliated stores in 2010.

Store Fascia	No. of Stores
Supervalu	192
Centra	468
Day Today	56
Daybreak	155

Source: Musgrave Annual Report and Review 2010, page 4.

5. Musgrave also distributes grocery and food products to non-affiliated buyers under the brand 'Musgrave Marketplace'. Musgrave's non-affiliated customers include independent grocery retailers and foodservice professionals such as caterers and restaurants.
6. For the financial year ending 31 December 2010, Musgrave generated worldwide turnover of approximately €4,386 million of which approximately €2,634 million was generated within the State.³

The Target

7. Superquinn is a vertically integrated grocery retailer,⁴ active in the retail sale of grocery goods in the State only. There are 24 Superquinn stores throughout the State (listed in Annex A), 18 of which are supermarket format stores. The remaining six stores operate as smaller convenience stores under the Superquinn Select brand.
8. Superquinn also owns a distribution centre in Blanchardstown, County Dublin. The distribution centre only supplies grocery goods to the 24 Superquinn retail stores.
9. For the financial period ending 24 April 2011, Superquinn generated turnover of €[...] million, all of which was generated in the State.

³ Most Musgrave turnover is generated by sales to affiliated retailers. Most Musgrave turnover is generated by sales to affiliated retailers. For the year ended 31 December 2010 Musgrave generated €[...] million turnover in sales to non-affiliated buyers in the State, or approximately [...] % of its wholesale turnover. Musgrave's projections for 2011 indicate similarly €[...] million revenue from wholesale sales to non-affiliated retailers or approximately [...] % of its wholesale turnover.

⁴ The vertically integrated grocery retailer model is described further in paragraphs 45-46.

The Proposed Transaction

10. The proposed transaction involves the acquisition by Musgrave, through wholly owned subsidiaries, of 24 Superquinn stores,⁵ the Superquinn distribution centre located at Blanchardstown, Dublin and certain properties associated with Superquinn.
11. The proposed transaction involves the following stages:
 - (i) The transfer of the Superquinn supermarket retail business to a newly formed company, Remrock Limited;⁶
 - (ii) The proposed acquisition by Screenridge Limited, a wholly owned subsidiary of Musgrave, of sole control of Remrock Limited; and,
 - (iii) The proposed acquisition by Ideaford Limited, a wholly owned subsidiary of Musgrave, of sole control of certain properties, from which Superquinn currently trades.⁷

Rationale for the Transaction

12. Musgrave submits that the proposed transaction provides an opportunity to increase its scale in the Dublin area and to build on the strengths of the Superquinn business.
13. Superquinn submits that the proposed transaction would:
 - (i) Enable an improvement in Superquinn's financial position;
 - (ii) Strengthen and bring increased focus to the Superquinn business;
 - (iii) Ensure sufficient investment in Superquinn stores;
 - (iv) Bring management expertise and implement a store re-generation programme; and,
 - (v) Offer greater future security to the Superquinn business and its employees through improved sales.

Section 19(1) of the Act

14. At the outset of its investigation, the Authority became aware of certain arrangements that had been put in place between the parties. Under these arrangements, Musgrave was to provide certain consultancy services to the Joint Receivers. The parties stated that the objective of those arrangements was to maintain the value of the target business pending a determination by the Authority.

⁵ In addition, a store operates in Dundalk as Carroll Village Supermarket but not under the Superquinn brand. This is not part of the business being acquired.

⁶ Remrock Limited is a newly incorporated company [...].

⁷ See footnote 1.

15. The Authority was concerned that these arrangements might amount to prior implementation of the merger, in breach of section 19(1) of the Act.⁸ Accordingly, on 26 July 2011, the Authority sought further information from the parties in relation to those arrangements. The parties responded by correspondence dated 29 July 2011 and 4 August 2011. The parties' responses satisfied the Authority that the level of interaction between the parties had been limited and did not extend into management or operational issues of the Superquinn business. The Authority informed the parties it would, however, have concerns should the level of interaction between the parties exceed that described by the parties in their responses to the Authority.
16. On the basis of the parties' responses, the Authority concluded that the limited level of interaction between Musgrave and Superquinn did not amount to a prior implementation of the merger, and therefore, that no breach of section 19(1) of the Act had occurred.

Investigation

17. The Authority conducted an extensive phase one review of the proposed transaction including:
 - Analysis of third party submissions;
 - Market enquiries which involved contacting (a) a number of suppliers to the parties and (b) competitors (both wholesalers and retailers) of the parties;
 - On-going contact with the parties including the issuing of a Requirement to provide further information; and,
 - Engagement of an external consulting economist, Professor Paul Walsh of University College Dublin.

Third Party Submissions

18. Four third parties made submissions. Two of these submissions were virtually identical with respect to the specific concerns raised. The main points made in the submissions are summarised as follows:
 - Musgrave would increase its market share in the State post acquisition in both the retail sale and wholesale supply of grocery goods and would therefore have a dominant position;
 - The proposed transaction would lead to localised monopolies and/or a reduction in competition in certain local areas;
 - There would be a reduction in choice in grocery goods for consumers;
 - The main players in the retail grocery sector would account for almost 75% of the market;

⁸ Section 19(1) prohibits the putting into effect of a merger or acquisition prior to obtaining clearance by the Authority, and section 19(2) provides that any contravention of section 19(1) will result in the merger or acquisition being void.

- There would be pressure on suppliers due to reduced selling options;
- There would be higher food prices; and,
- There would be a reduction in options for small product developers to enter the retail grocery sector.

Market Enquiries

Suppliers

19. Initially the Authority contacted five suppliers to Superquinn, most of whom also supply or have previously supplied Musgrave.⁹ In general, these suppliers stated that they were not able to comment fully on the likely impact of the proposed acquisition in the absence of clear information on how Musgrave intended to operate Superquinn post acquisition. That is, a key issue identified by the suppliers was whether the Superquinn business model would be changed to become more like the Musgrave business model post acquisition.¹⁰
20. Notwithstanding uncertainty about how Musgrave intends to operate Superquinn, the suppliers made comments which are summarised as follows:
 - (i) Supplier A said that there may not be much change because Superquinn is primarily a Dublin-based retailer. In addition this supplier said that Superquinn does not compete effectively with Dunnes Stores and Tesco in the sale of dry goods.¹¹ This supplier did not comment on the likely effects on consumers of the proposed acquisition;
 - (ii) Supplier B said that, post acquisition, Musgrave would centralise its buying and this could put pressure on suppliers;
 - (iii) Supplier C said that over many years Superquinn was at the upper end of the retail sector in terms of the quality of products sold and product innovation. This supplier stated that post acquisition, if Superquinn became more like the Musgrave model then there might be a decrease in the number of stock-keeping units ("SKUs") but that consumer prices would probably be lower;
 - (iv) Supplier D said that the grocery retail market would be dominated by three players who would have a significant proportion of the market. These retailers would increase control over the products stocked on their shelves;
 - (v) Supplier E said that, post acquisition, the merged entity would be a larger customer with greater buyer power which might lead to a reduction in own-label business. However, this supplier expected branded business to remain largely the same.

⁹ The suppliers are identified as Suppliers A-E.

¹⁰ As discussed in paragraphs 40-46 Musgrave operates a wholesaler franchisee retailer model whereas Superquinn is a vertically integrated retailer.

¹¹ E.g., textiles, clothing, and other consumer products that have a longer shelf life in contrast to fresh goods, such as fruit and vegetables, dairy and fresh meat products.

Survey of Suppliers

21. In addition to the five suppliers discussed above, a further 36 suppliers of Musgrave and Superquinn were surveyed subsequently. The questionnaire for these suppliers (see Annex B) included questions on whether, post acquisition, the resulting market structure would favour a situation whereby suppliers would price discriminate in favour of larger retailers and to the detriment of consumers – an effect known as the “waterbed” effect.¹² Of these 36 suppliers, four raised concerns that directly related to their business relationship with one or another of the parties.¹³ The findings of the supplier survey are summarised in paragraphs 141-142.

Wholesalers

22. Five wholesalers were contacted by the Authority.¹⁴ Of these, two, Wholesalers A and B, indicated that they were not in a position to comment in any detail on the proposed transaction. However, Wholesaler A did mention that the merged entity could negatively impact on competition in the market, given it would have a 30% market share.
23. Wholesaler C said that a lot would depend on the post acquisition strategy and business model adopted by Musgrave for Superquinn. However, this wholesaler did not consider it likely that there would be a significant impact on consumers.
24. Wholesaler D said that post acquisition Musgrave would have a dominant position and would be able to obtain better terms (lower prices for higher volumes) from suppliers.
25. Wholesaler E did not anticipate significant change in the market post acquisition. However, this wholesaler highlighted a risk of Musgrave having increased buyer power and dominance post acquisition. This wholesaler also stated that there could be a risk post acquisition of fewer suppliers being available to wholesalers and retailers, other than Musgrave and its affiliated retailers. This wholesaler said that this could occur if for example, Musgrave accounted for a large proportion of the suppliers’ sales.

Retailers

26. Of the retail competitors within the State contacted by the Authority,¹⁵ Retailer A said that consolidation would lead to the emergence of three dominant players in the retail market: Tesco, Dunnes Stores and

¹² The waterbed effect is described further in paragraphs 131-135.

¹³ These concerns were (i) for the continuity of existing business relationships; (ii) increased pressure on price reductions; (iii) new suppliers entering the market with unsustainable tenders; and (iv) trading position and listings being reduced.

¹⁴ The wholesalers are identified as Wholesalers A-E. The wholesalers contacted comprise the vast majority active in the wholesaling of grocery products in the State. They are responsible for approximately over 90% of aggregate wholesale turnover. This estimate is based on The Competition Authority, “A Description of the Structure and Operation of Grocery Retailing and Wholesaling in Ireland: 2001 to 2006.” April 2008. Table 5. Page 38. See <<http://www.tca.ie/EN/Promoting-Competitio/Market-Studies/Grocery-Monitor-Project.aspx>>.

¹⁵ The retailers are identified as Retailers A-D. The retailers contacted comprise the vast majority active in grocery retailing in the State, i.e., responsible for approximately 80-90% of aggregate retail turnover. This estimate is also based on the Authority’s Grocery Monitoring Report No 1 *ibid.* Table 16. Page 66.

Musgrave. This retailer also said that it was difficult to say what the competitive outcome would be as a result of the proposed acquisition.

27. Retailer B said that there would obviously be consolidation post acquisition. However, this retailer considered that neither it nor its suppliers would be significantly affected.
28. Retailer C said that, post acquisition, there might be additional opportunities for suppliers and that the impact on consumers would depend on the business model adopted by the merged entity.
29. Retailer D said the transaction involved the merging of close competitors and that there could be restrictions on competition in certain local areas.

Requirement to provide Further Information

30. The Authority required further information from the parties to assist it with its investigation into the likely effects of the proposed transaction. Therefore, on 18 August 2011, the Authority served Requirements to provide Further Information pursuant to section 20(2) of the Act on Superquinn and Musgrave.
31. The parties duly complied with the Requirements for Further Information on 31 August 2011. In effect, the issuing of the Requirements for Further Information adjusted the deadline within which the Authority had to conclude its assessment in Phase I. The new "appropriate date" as per section 19 (6)(b)(i) of the Act became 31 August 2011.

On-going Contact with the parties

32. The Authority's contact with the parties included two formal meetings, on 27 July 2011 and 13 September 2011.
33. The parties submitted a written response to issues raised by the Authority during the meeting of 27 July 2011 meeting.
34. At the 13 September 2011 meeting the Authority identified theories of harm to the parties. Subsequent to the meeting the parties responded in writing to the Authority's request for further comment.

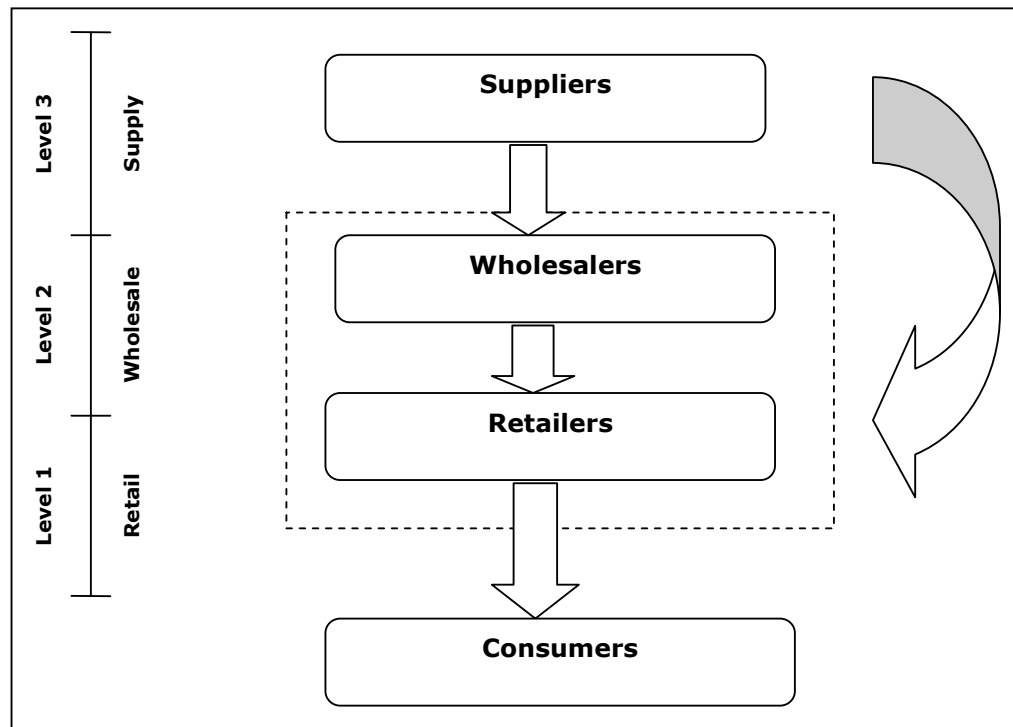
Description of the Grocery Sector in the State

35. The Authority has conducted an extensive analysis of the grocery sector in the State in recent years. This provides a useful background for the Authority's assessment of the proposed transaction.
36. In April 2008, the Authority published its Grocery Monitor Report No. 1, a study of the grocery sector in the State from 2001 to 2006.¹⁶

¹⁶ *Ibid.* This report examined market structure and competition at the wholesale and retail levels of the grocery sector for the period 2001 – 2006. Two further reports were published by the Authority: "Price Trends in the Irish Retail Grocery Sector: A Description of the Evolution of Retail Grocery Prices between 2001 and 2007" published in April 2008 and "The Retail Planning System as Applied to the Grocery Sector: 2001 to 2007" published in September 2008. See <<http://www.tca.ie/EN/Promoting-Competitio/Market-Studies/Grocery-Monitor-Project.aspx>>.

Included in that report was (i) a definition of grocery goods as “food and drink for human consumption and household necessities”,¹⁷ and (ii) a description of the grocery sector as a flow of products from suppliers to retailers, directly or via wholesalers, and ultimately to the customer (i.e., the final consumer).¹⁸ The sector is summarised in Figure 1 below.

Figure 1: Structure of the Grocery Sector



Source: *Grocery Monitor: Report No. 1 pp. 15.*

Supply of Grocery Products

37. As indicated by Figure 1 above, suppliers provide grocery goods either directly to retailers or to wholesalers who in turn sell to retailers. The choice of direct supply versus supply via wholesalers depends on various considerations including how best to manage:

- The physical delivery of grocery products from suppliers to wholesale or retail buyers; and,
- The financial risks associated with supplying grocery products from suppliers to wholesale or retail buyers.

¹⁷ *Ibid.* Paragraph 2.17 at page 13.

¹⁸ The report was prepared in light of legislative and regulatory changes that had recently taken place at that time, namely the repeal of the Restrictive Practices (Groceries) Order, 1987 on 20 March 2006 and the insertion of sections 15a, 15b and 15c in the Competition Act, 2002.

Wholesaling of Grocery Goods

38. Wholesaling essentially consists of five key activities:
- Purchase of products from suppliers;
 - Storage of goods;
 - Delivery/distribution of goods to retailer and other customers;
 - Provision of credit to retailers and other customers such as e.g., caterers and restaurants; and
 - Sale of goods to retailers and other customers.

Retailing of Grocery Goods

39. Retailers are the final link in the distribution chain of grocery goods from the supplier to the end consumer. It is at the retail level that competition is most apparent as this is where the end customer chooses between grocery goods and/or which retailer to buy from.

Business Models and Relationships

40. As presented in Figure 1 above, an independent retailer has no relationship with a wholesaler beyond that of an 'arms-length' customer.
41. There are, however, alternatives to the independent model in which the relationship between a wholesaler and a retailer is closer than arms-length. The most relevant alternatives to the independent model are:
- Wholesale Franchisor/Retail Franchisee (Musgrave Model); and,
 - Vertically Integrated Retailer (Superquinn Model).

Wholesaler Franchisor/Retailer Franchisee

42. Typically in a franchise model a network of franchisee retailers operate, pursuant to licence agreements, under a brand (also known as a fascia) owned by the franchisor wholesaler. Franchisee retailers are commonly referred to as affiliated retailers. They are affiliated to the specific franchisor wholesaler. Franchisee retailers are also sometimes referred to as 'symbols'.
43. In the franchise model, in contrast to the independent retailer, procurement from suppliers is centralised to the wholesaler. Consequently franchisee retailers receive most, if not all, of their grocery goods from the wholesaler franchisor. Goods may be physically delivered to the retail store by the wholesaler or alternatively, products may be physically delivered directly from the supplier to the retailer. In the latter case, payment to the supplier is made via a central billing process whereby the supplier is paid by the wholesaler franchisor. The wholesaler franchisor also provides services to the franchisee retailers such as negotiating with suppliers on their behalf, managing supplier credit risk and other support services consistent with the maintenance of the brand.

44. Musgrave operates under this model, owning the fascias 'Supervalu', 'Centra', 'Daybreak' and 'Day-to-Day' in the State. Within the State, the other main wholesaler-franchisors are ADM Londis, Barry Group, BWG Foods, and Gala.

Vertically Integrated Retailers

45. Vertically integrated retailers operate at both the wholesale and retail level. In contrast to the independent retailer and the franchise model, the retail and wholesale functions are integrated into the same organisation. For example, in a vertically integrated retailer the same organisation is involved in (i) procuring products from suppliers, (ii) selecting products for sale in retail stores, (iii) distributing products to retail stores, and (iv) selling to the end customer.¹⁹
46. In the State, there are six major vertically integrated retailers, namely: Tesco, Dunnes Stores, Superquinn, Marks & Spencer, Aldi and Lidl. The first four are also commonly called 'multiples' since they own and operate many stores across the State. Aldi and Lidl are sometimes referred to as 'discounters' since their business model involves offering a smaller product range, relative to other retailers, at discounted prices.

Counterfactual

47. Identifying the relevant counterfactual, i.e., the state of competition in the relevant market in the absence of the proposed transaction is an important step to assessing the competitive effects arising from the proposed transaction.
48. In particular, in this instance an important issue is whether or not Superquinn constitutes a failing firm. A failing firm counterfactual would imply that the proposed transaction would likely be pro-competitive, for example, by maintaining the total market volume of grocery goods available to consumers. Under this scenario, the proposed transaction would reduce the risk of price increases, as would likely occur in the event of a reduction in total market volume of grocery goods.

Views of the Parties

49. The parties state that it would not be appropriate to assume the presence of a stand-alone, independent and financially healthy Superquinn in the absence of the proposed acquisition. In particular, the parties submit that Superquinn had remained trading solely because of continued bank credit which, together with a worsening market position, led ultimately to the appointment of the Joint Receivers to sell the business on 18 July 2011. The parties submit therefore that Superquinn should be considered a failing firm for purposes of reviewing the proposed transaction

¹⁹ A vertically integrated retailer may, however, contract out some functions, e.g., storage of goods and transportation, to third parties. Also, by way of clarification, vertical integration of retailing and wholesaling, as indicated in Figure 1, does not imply integration further to include suppliers.

50. The parties make the following submissions in relation to each of the four criteria set out in the Authority's Merger Guidelines²⁰ for showing that a firm is failing. Each of the criteria together with the parties views are set out below.

Criterion 1: The Alleged Failing Firm must be unable to meet its financial obligations in the near future.

51. The parties state that the appointment of the Joint Receivers confirms that Superquinn was unable to meet its financial obligations. In particular the parties submit that Superquinn had remained trading solely because of continued banking credit support.

Criterion 2: No Possibility exists that the firm will be successfully reorganised under the process of Examinership.

52. The parties submit that, in line with the preference of the creditor banks and that of the Joint Receivers,²¹ Superquinn would have been held together as much as possible. The parties claimed that this would have been achieved as part of an 'all or nothing' sale. The parties also stated that the examinership process initiated by certain Directors of Superquinn and subsequently withdrawn indicated to the Court that there was no viable alternative to the proposed acquisition.

Criterion 3: The firm has made good-faith and verifiable efforts to elicit reasonable alternative offers of acquisition that would keep its assets, both tangible and intangible, in the relevant market and be less of a threat to competition than the proposed merger. It must be shown that such efforts have resulted in the firms being unable to sell for a price in excess of the liquidation value of its assets.

53. The parties state that the creditor banks would not have been able to procure a buyer willing to pay a higher price for the Superquinn assets than that offered by Musgrave. There was only one other serious bidder, according to the parties, but its offer was inferior. The parties did not show that Superquinn could not be sold for a price in excess of the liquidation value of the business and assets to be acquired.

Criterion 4: Without the merger taking place, the assets of the failing firm would definitely exit the relevant market.

54. The parties submit that there is scope for interpretation of the fourth criteria. The parties state that a very significant proportion, if not all, of the goodwill associated with the Superquinn brand would have been lost to the market. However, the parties acknowledge that it is not possible for the parties to say with certainty that all Superquinn assets would exit the market in the absence of the proposed transaction.

Views of the Authority

55. All four of the above criteria must be met in order for Superquinn to satisfy the requirements of the failing firm test. Having considered the

²⁰ Notice in respect of guidelines for merger analysis – Decision No. N/02/004 dated 16 December 2002. See http://www.tca.ie/images/uploaded/documents/n_02_004%20Merger%20Analysis%20Guidelines.PDF.

²¹ Musgrave letter of 17 September 2011 and Superquinn RFI response of 31 August 2011.

parties' submissions outlined above, the Authority is of the view that the fourth criterion has not been satisfied in this instance, and indeed that the third may not have been either. The Authority considers, therefore, that Superquinn should not be considered a failing firm for purposes of reviewing the proposed transaction. The Authority's assessment is set out below.

Criterion 1

56. The Authority does not dispute that Superquinn faced serious short-term financial difficulties. That is, on the basis of information made available to the Authority by the parties, and self-evidently by the fact of the appointment of the Joint Receivers on 18 July 2011, it is clear that Superquinn was not in a position to meet its short-term financial obligations in the absence of continued credit from its bank creditors. The first criterion is therefore satisfied.

Criterion 2

57. The Authority does not dispute that an examinership process was withdrawn and could not be re-commenced given the appointment of the Joint Receivers. The Authority notes, however, that the financial difficulties arose not so much from the poor performance of the assets to be acquired but rather from leveraging property investments against the assets of the supermarket business and consequent obligations to buy or lease properties including those not directly related to the supermarket business. Nevertheless, the Authority accepts that the second criterion has been met.

Criterion 3

58. On the basis of information made available to the Authority by the parties, it is clear that a process was entered into to identify potential purchasers other than Musgrave. Also, however, as indicated above, there was a strategy to sell Superquinn on an "all or nothing" basis, rather than to sell assets separately. This does not suggest that the third criterion has necessarily been met. Information from the parties, and also from market enquiries, confirm that alternative buyers would have been interested in buying some, but not necessarily all, of the Superquinn assets.

Criterion 4

59. It is clear that the final criterion is not met in this instance. That is, it is not necessarily the case that output attributable to Superquinn and/or Superquinn assets prior to the proposed transaction would no longer be available in the absence of the merger. Rather, notwithstanding the preference of the creditor banks and the Joint Receivers, a viable alternative counterfactual would involve the sale of at least some assets to competitors and/or new entrants.
60. In particular, in this instance, the fact that Superquinn has entered a receivership process does not in itself imply that Superquinn is a failing firm for the purposes of merger review. That is, while receivership will entail the end of Superquinn in its current form, receivership does not imply that Superquinn assets necessarily will no longer be productive in the retail sale of grocery goods.

61. Furthermore, on the basis of the Authority's discussions with Superquinn and the Joint Receivers, and also on the basis of market enquiries, it is clear that the assets would not have left the market, as this would not have been in the interests of the creditor banks that had appointed the Joint Receivers.

Conclusion on the Counterfactual

62. As acknowledged by the parties, it is not certain that all the Superquinn assets would have necessarily exited the market in the absence of the proposed transaction. Market enquiries also indicate that at least some of the Superquinn assets would have remained in the retail grocery sector. Consequently, notwithstanding the impending demise of the pre-receivership Superquinn business, the appropriate counterfactual upon which to assess competitive effects of the proposed transaction is the ongoing presence in the market for the retail sale of grocery goods, of an entity, distinct from either Musgrave or Superquinn in its present form.

Analysis

Overlap in the Activities of the Parties

63. There is no vertical overlap in the activities of the parties as neither party supplies the other with grocery goods.²² There is, however, a horizontal overlap in the activities of the parties.
64. Musgrave and Superquinn are both active in the retail sale of grocery goods in the State. The overlap of the retail activity of the parties varies geographically because Superquinn has a relatively stronger presence in Dublin City and County and the immediately surrounding areas, whereas Musgrave has a relatively stronger presence outside of the Dublin area.
65. Despite the differences in the business models of the parties outlined above, the parties argue that for the purpose of reviewing the proposed transaction, Musgrave, and in particular Supervalu, should be considered a single entity. This approach seems appropriate, not least because Supervalu, and also the typically smaller Centra franchisees, are subject to an exclusive purchasing or loyalty clause in their respective license agreements. In practice, the franchisees are required to purchase at least 95% of their wholesale goods from Musgrave.

Relevant Product Market

Views of the Parties

66. The parties, in an economics report prepared by Dr. Francis O'Toole of Trinity College Dublin, followed the definition in the Authority's Grocery Monitor Report No. 1 and submit that the relevant product market

²² Superquinn only distributes wholesale grocery goods to Superquinn retail stores whereas, as discussed in paragraph 5, Musgrave does supply non-affiliated retailers (but not Superquinn) in addition to supplying its franchisee retailers. See also footnote 3.

consists of 'grocery goods', i.e., "food and drink for human consumption and household necessities".²³

67. The parties state that, like their competitors, they do not limit their activities to particular subsets within the grocery sector. In addition the parties state that, in the course of their business, they monitor a wide range of retail competitors. That is, the parties consider that they face competition from all grocery retailers.
68. Furthermore, the parties argue that it is not necessary to further distinguish the product market, for example, into different types of shopping services or different business models.
69. In support of this position the parties note that the Authority's Grocery Monitoring Report No. 1 did not find a strong patterns in or relationships between:
 - Different retail shopping services, (e.g., 'one stop', 'top up' or 'convenience' shopping); and,
 - Different retailer business models (e.g., independent, franchisee, vertically integrated).²⁴

Views of Third Parties

70. Market enquiries indicate that distinctions between different types of retail services, catering for different consumer buying behaviour, have become blurred over time, and are likely to remain so in the future as consumers focus primarily on price.
71. Market enquiries also indicate that there does not appear to be a strong relationship between business models and the target consumer behaviour.
72. In addition, monitoring of competitors by grocery retailers is not limited to those within the market structures or the retail shopping types described above. Rather grocery retailers generally tend to regard all other grocery retailers as their competitors.

Views of the Authority

Is the product market wider or narrower than grocery goods?

73. As with any merger evaluation, the appropriate market definition depends on an analysis of the specific circumstances of the proposed transaction.
74. The Authority finds no reason to depart from the product market definition used in the Grocery Monitoring Report No. 1 for the purposes of assessing the proposed transaction. The Authority therefore agrees

²³ *Op cit.* paragraph 2.17 page 13.

²⁴ *Ibid.*, for example, paragraphs 2.38-2.39 page 20. In "The supply of groceries in the UK market investigation", published in April 2008, the UK Competition Commission identified 'one stop' shopping, i.e., a large 'basket' of grocery goods to satisfy a typical consumer's weekly grocery good requirements in a single visit; 'top up' shopping – a medium basket that is a typical consumer's weekly grocery good requirements; and 'convenience' shopping – smaller purchases such as impulse buys or the specific purchase of essential items. See <http://www.competition-commission.org.uk/rep_pub/reports/2008/538grocery.htm>.

with the parties that the definition of grocery goods in the Grocery Monitoring Report No. 1 is appropriate for purposes of reviewing the proposed transaction.

Should the product market be segmented into different types of retail store formats?

75. As discussed above, the overlap between the parties is at the retail level. Within that sector there is an observable degree of heterogeneity. For example, as described above:
 - There are different retail shopping behaviours (e.g., 'one stop', 'top up' or 'convenience' shopping), and,
 - Differences exist in retail business models (e.g., independent, franchisee and vertically integrated).
76. Internal documents seen by the Authority, such as market share data prepared by Kantar²⁵ and also data prepared by the parties themselves, disaggregate the grocery goods sector into various sub segments such as "multiples", "symbols", "discounters" and "convenience" sectors.
77. It is also likely to be the case that there are asymmetric competitive constraints in the grocery retail sector, i.e., larger retailers place a stronger competitive constraint on smaller retailers than vice versa.
78. Taken together, the above factors might suggest some merit in a product definition or set of definitions based on shopping services or business models.
79. In contrast, however, neither the third party views summarised above, the Authority's Grocery Monitoring Report No 1, nor internal documents seen by the Authority, support a product definition or set of definitions based on shopping services or business models.
80. For example, reports on switching behaviour, such as Kantar reports prepared for Musgrave and an OI Research²⁶ report prepared for Superquinn, clearly indicate that Supervalu, a franchisee retailer, should be considered a competitor to vertically integrated Dunnes Stores, Tesco and Superquinn.
81. The Authority has also seen other Kantar reports prepared for Musgrave that aggregate the market shares of Supervalu and the typically smaller Centra, but also report the market shares of these fascias separately.
82. It is also the case that fascias offer a range of shopping services. For example, Superquinn Select and Tesco Express are examples of vertically integrated stores targeting smaller shopping baskets, whereas some franchisee stores such as Eurospar and larger Londis stores target larger shopping baskets.

²⁵ Kantar is a major market research company. Through its Kantar Worldpanel services it provides research on consumer behaviour at both an aggregate level and at a more detailed level tailored to specific retailers. See <<http://www.kantarworldpanel.com/#/Home>>.

²⁶ Online Interactive Research is a market research company. See <<http://www.oiresearch.com>>.

83. None of the above factors suggest either a strong reason, or even an unambiguous basis, to further define the retail grocery market in terms of either (i) shopping services, or (ii) business models.

Conclusion on the Relevant Product Market

84. For the purposes of assessing the proposed transaction, the Authority considers that the relevant product market is the retail sale of grocery goods.

Relevant Geographic Market(s)

Views of the Parties

85. The parties presented market share information on a national and regional basis, while leaving the precise definition of the relevant geographic market(s) open. The parties submit that both a national and a regional perspective is appropriate given that Superquinn has a greater presence inside Dublin relative to outside of Dublin whereas Musgrave has a greater presence outside of Dublin relative to inside of Dublin.
86. The parties also state that it is appropriate to look at local markets (i.e., relative to each Superquinn). The parties submit that their assessment of local markets did not identify any local competition concerns.

Views of the Authority

87. For the purposes of assessing the proposed transaction the Authority considers that competition concerns could possibly arise, regarding the retail sale of grocery goods, mainly in two geographic areas: (a) nationally and (b) the Dublin region, i.e., Dublin City and County and immediately surrounding areas.
88. Musgrave (in particular Supervalu and Centra) and Superquinn both compete on a national basis as evidenced by national pricing policies, national promotion strategies, centralised monitoring of competitors and national distribution systems.
89. The Dublin region is the most appropriate area for a regional analysis. This is the area where Superquinn has most of its stores and consequently this is where there is the largest overlap between Musgrave and Superquinn. Therefore, local catchment areas within this region, as measured by a drive time and/or a distance parameter surrounding each of the Superquinn stores to be acquired, are most likely to be affected by the proposed transaction. Local catchment areas are also important because actual competition between retailers occurs at the local level. It is possible, depending on the specific circumstances, for the competitive effects at a local level to diverge from national or regional effects.

Conclusion on the Relevant Geographic Market(s)

90. It is not necessary to reach a conclusion on the precise relevant geographic market(s) in relation to the proposed transaction. Regardless of how widely or narrowly the geographic market(s) are

defined there are no competition concerns arising from the proposed transaction.

91. However, for the purposes of assessing the proposed transaction the Authority has considered competitive effects nationally and in relation to the Dublin region.
92. In addition the Authority has examined the competitive effects of the proposed transaction on the local areas surrounding each Superquinn store by a 10 minute drive time and/or a ten kilometre distance.

Market Structure and Closeness of Competition

Introduction

93. In this section, the national and regional market shares of the parties and their closest competitors are examined.

National Market Shares

94. Table 2 below is based on Kantar data and shows the national market shares for major retailers of grocery goods for two time periods: (i) the 52 weeks to 10 July 2011, and (ii) the 52 weeks to 26 December 2010.

Table 2: National Retail Grocery Market Shares

Retailer	52 Weeks to 10 July 2011	52 Weeks to 26 December 2010
Musgrave	21.9%	22.0%
Superquinn	6.3%	6.6%
Combined	28.2%	28.6%
Tesco	27.3%	27.1%
Dunnes Stores	23.2%	23.3%
Lidl	5.9%	5.7%
Aldi	3.9%	3.5%
Truncated HHI (Post Acquisition)	2,129	2,140
Delta (Post minus Pre Acquisition)	276	290

Source: Kantar Data prepared for the parties

95. Table 3 below is based on Kantar data and shows the Dublin market shares for major retailers of grocery goods for two time periods: (i) the 52 weeks to 10 July 2011; and (ii) the 52 weeks to 26 December 2010.

Table 3: Dublin Region Grocery Retail Market Shares

Retailer	52 Weeks to 10 July 2011	52 Weeks to 26 December 2010
Musgrave	9.6%	9.4%
Superquinn	12.7%	12.4%
Combined	22.3%	21.8%
Tesco	30.0%	30.0%
Dunnes Stores	27.9%	28.2%
Lidl	6.1%	5.7%
Aldi	3.1%	3.0%
Truncated HHI (Post Merger)	2,223	2,212
Delta (Post minus Pre Merger)	244	238

Source: Kantar Data prepared for the parties

96. The Authority's Merger Guidelines state that any merger with HHIs above 1,800 and with a Delta over 100 would be considered a "Zone C" merger, i.e., occurring in "already highly concentrated markets and more usually [will] be those that raise competitive concerns".²⁷
97. In addition to the above figures, the parties provided a series of HHI calculations on the basis of Kantar data, and also other data sources, all of which presented the proposed transaction as either a 'Zone C' merger, as above, or a 'Zone B' merger.²⁸

²⁷ *Op cit.* paragraph 3.10.

²⁸ *Ibid.* Zone B mergers, e.g., (i) with an HHI above 1,800 and a Delta of between 50 and 100 or (ii) an HHI between 1,000 and 1,800 and a Delta of more than 100, "may raise significant competitive concerns". The parties cite data from the Authority's Grocery Monitoring Report Kantar World panel, AC Nielsen, IGD Retail and also internal data analysis such as Musgrave combining some of the above sources. The parties state that Kantar market share data may overstate the market shares of larger players, because Kantar survey data is based on the weekly shopping behaviour of surveyed consumer participants.

98. In summary, the market shares and HHI calculations in relation to the proposed transaction indicate the presence of possible competition concerns both nationally and within the Dublin region.
99. HHI calculations are not, however, conclusive in themselves. Rather HHI calculations provide a screening mechanism which in this case indicates that further investigation and analysis is warranted. In particular, analysis of closeness of competition, as discussed below, is highly relevant especially in an already concentrated market.

Closeness of Competition

Introduction

100. The extent to which Superquinn and Musgrave are close competitors significantly affects the strength of the competitive constraint exerted by other grocery retailers. That is, if Musgrave and Superquinn are close competitors, as evidenced for example by geographical proximity, consumer switching behaviour and monitoring by competitors, then there is a greater prospect of Musgrave being in a position to sustain price increases post acquisition. Conversely, if Musgrave and Superquinn are not close competitors then there is a lesser prospect of a price increase being sustainable post acquisition.

Views of the Parties

101. The parties submit, on the basis of switching data and their own experience, that Superquinn and Musgrave (in particular Supervalu and Centra) are not each other's closest competitor. Rather, the data shows that switching patterns are significantly stronger between Musgrave and Tesco and Musgrave and Dunnes Stores. Similarly switching patterns to and from Superquinn do not indicate that Supervalu and Centra are its closest competitors. These switching patterns are due in part, but not exclusively, to the minimal geographical overlap of the Musgrave and Superquinn stores.

Views of Third Parties

102. Only one third party suggested that Superquinn and Musgrave were each other's closest competitor in the retail grocery sector. Other third parties did not generally view Superquinn and Musgrave as each other's closest competitors. Some third parties also suggested, however, that Musgrave and Superquinn would be close competitors, in certain areas and depending on local conditions.

Views of the Authority

103. The available evidence indicates that Superquinn and Musgrave (in particular Supervalu and Centra) are not each other's closest competitors either nationally or within the Dublin region. Market enquiries, switching data prepared by third parties, as well as the parties' own internal documents regarding the monitoring of competitors, as seen by the Authority, do not indicate that Superquinn and Musgrave are close competitors.
104. The evidence examined by the Authority suggests that the closest competitors for Musgrave (in particular Supervalu and Centra) are Dunnes Stores and Tesco.

105. Similarly, the evidence examined by the Authority suggests that the closest competitors for Superquinn are also Dunnes Stores and Tesco, and to a lesser extent, Aldi and Lidl.
106. The evidence therefore implies that Superquinn and Supervalu are not each other's closest competitors. This is partly, but not completely, explained by the geographical locations of Supervalu and Superquinn within the State. Superquinn is present mainly in the Dublin region and Musgrave is present mainly outside of the Dublin region. However, other factors include floor size, price levels, product range, store size, service quality, staff numbers, and availability of car parking facilities. These factors also tend to indicate that Superquinn and Musgrave are not each other's closest competitors.
107. It is possible, however, that there may be fewer credible alternatives to Superquinn and Musgrave affiliated stores at a local level than would be implied by national or regional data. Accordingly, the Authority has also examined local competitive effects, as described in paragraphs 160-194.

Competitive Effects

Introduction

108. Assessing the competitive effects of the proposed transaction requires:
 - Identifying any relevant theories of harm - i.e., how the proposed transaction could result in a substantial lessening of competition; and,
 - Analysis of those theories of harm through an evaluation of the available evidence.
109. For the purposes of assessing the proposed transaction the Authority identified four relevant theories of harm to be evaluated. The four theories, elaborated below, are:
 - Unilateral effects, in particular increasing prices post acquisition;
 - Strategic blocking of entry;
 - Waterbed effects; and,
 - Coordinated effects.
110. Comments by the parties and also market enquiries indicate that in many respects grocery retailing is undertaken on a national basis, e.g., procurement and distribution policies, pricing strategies, and promotion strategies all tend to be national. Consequently a national focus is appropriate.
111. It is also appropriate to focus attention on the Dublin region on the basis that it is where Superquinn has a much more significant presence than elsewhere in the country, and hence, where competitive effects from the proposed transaction may have the greatest impact.

112. Accordingly, the four theories listed above are assessed in two broad geographical contexts:
- Nationally; and,
 - Within the Dublin region.
113. In addition, potential competitive effects at local level are addressed because, as noted above, it is at the local level that consumers make choices between retailers and grocery goods on offer and depending on local circumstances, it is possible for the competitive environment at a local level to differ from that at a national or regional level.
114. The competitive effects arising from blocking of entry, coordinated effects and potential waterbed effects are most appropriately analysed in a national context. Therefore, for purposes of assessing the proposed transaction under those three headings, an analysis within a regional or local context is not necessary.

National Competitive Effects

Unilateral Effects

Introduction

115. Unilateral effects arise when, as a result of a merger, the merged firm finds it profitable to raise prices, irrespective of the reactions of its competitors or customers, to the detriment of consumers. In this instance, the question is whether, post acquisition, Musgrave would be in a position to unilaterally raise prices.

Views of the Parties

116. The parties submit that the increase in Musgrave's national market share is not significant, i.e., between 5 and 10%. Furthermore, the parties argue that Superquinn's national market share has been declining over recent years.
117. The parties also submit that based on their experience and analysis of consumer switching behaviour, Musgrave and Superquinn are not each other's closest competitor. The parties base this argument largely, but not exclusively, on the different geographical locations of Musgrave and Superquinn stores.
118. The parties also argue further that rather than reducing competition, the merged entity will be in a stronger position to offer greater competition to Tesco and Dunnes Stores, at present the two largest grocery retailers nationally.

Views of the Authority

119. The market share information supplied by the parties, and the HHI calculations set out above in Table 2, indicate a potentially significant increase in national market share post acquisition.

120. Equally, however, the evidence from internal documents seen by the Authority including independent analysis of switching behaviour, and from market enquiries, indicates that Musgrave, particularly Supervalu and Centra, should not be considered as the closest competitor of Superquinn in a national context. Rather, the evidence points to other closer competitors, e.g., Dunnes Stores and Tesco. This indicates that there are credible competitive constraints preventing Musgrave from attempting to unilaterally increase prices post acquisition.
121. In summary, the evidence indicates that, notwithstanding its increase in national market share, Musgrave will not have the ability or the incentive to unilaterally impose price increases post acquisition.

Blocking of Entry

Introduction

122. Acquiring a competitor may be a strategy by which an incumbent market participant can remove, or at least restrict, the possibility for a new competitor to enter the market.
123. For such a strategy to be viable then:
 - (i) The incumbent market participant needs to obtain economic benefits, through higher prices subsequent to acquiring a competitor, in order to recoup the cost of the acquisition; and,
 - (ii) The economic benefits of a viable blocking strategy would be expected to be implicit in a premium price paid to acquire the competitor.
124. Currently, Superquinn is a vertically integrated grocery retailer based primarily in the Dublin region and with some stores elsewhere in the State. The acquisition of Superquinn would therefore represent a potentially attractive means for a new entrant to enter the Irish market, both nationally and within the Dublin region. Musgrave by contrast is already in the Irish market and, as submitted by third parties, the proposed acquisition would effectively block this entry avenue to a new competitor.

Views of the Parties

125. Musgrave states that the rationale for the proposed transaction is the opportunity to increase its scale in the Dublin area and to build on the strengths of the Superquinn business.
126. The parties submit that Musgrave would not have the incentive or the opportunity to put a blocking strategy into effect. In particular, other large incumbent competitors such as Dunnes Stores and Tesco would also benefit from blocking the entry of another competitor. The parties also submit that the price paid did not include a premium element to block a new entrant.

Views of the Authority

127. National market shares cast significant doubt on the viability of a recoupment strategy. In particular, because of the presence of similarly strong competitors, Musgrave would not be able to gain the market dominance post acquisition necessary to appropriate only for itself any increase in profits from blocking entry. This in itself would significantly reduce the viability of a blocking strategy. Either Musgrave would need to accept a dilution of the benefits of restricting a new entrant, or alternatively the strategy would have to include the involvement of its competitors.
128. The Authority has not seen any evidence from internal documents to support the theory that the proposed transaction is a strategy to block entry, particularly *de novo* entry.
129. Neither has the Authority seen evidence in support of a premium price having been paid by Musgrave. Rather, the final price agreed was [...].
130. None of the available evidence, summarised above, supports a theory of harm based on a strategy to block the entry of competitors.

Waterbed Effect

Introduction

131. In essence, a waterbed effect results from better supply terms (e.g., prices, volumes and discounts) for powerful buyers leading to a worsening of the supply terms for smaller or otherwise-less-powerful buyers. A waterbed effect occurs if such a difference in supply terms has adverse consequences for consumers through a lessening of downstream competition, i.e., at the retail level.²⁹ For example, higher prices from less powerful buyers may be passed through to consumers.
132. This implies that for a waterbed effect to occur there must be:
 - Sufficient buyer power to extract discounts in excess of what would be expected with an increase in volumes) purchased; and,
 - Suppliers must have the ability to price discriminate (i.e., increase prices to some but not all buyers).
133. A further second round competitive effect could be that suppliers exit the market in the event that they cannot price discriminate to the extent necessary to recoup the foregone revenue resulting from the supply terms agreed with a powerful buyer or buyers.
134. Musgrave, post acquisition, will increase its retail presence and also its wholesale presence, i.e., the range and volume of goods it buys from

²⁹ See for example, Dobson and Inderst "The waterbed effect: where buying and selling power come together." *Wisconsin Law Review*. 2008. pp. 331-357.

suppliers.³⁰ For a waterbed effect to happen the following events must both occur:

- (i) Musgrave obtains supply terms from its suppliers, in excess of what would be expected with an increase in volumes purchased; and,
- (ii) Suppliers charge higher prices to other less powerful buyers.

135. The likely impact of waterbed effects arising from the proposed transaction can be assessed through the following questions:

- will the buyer power of the merged entity increase?
- will suppliers to the merged entity price discriminate against other buyers, including other grocery retailers?
- will there be countervailing effects to mitigate any waterbed effects that may arise as a result of the increased buyer power of the merged entity?

Views of the Parties

136. The parties submit that the necessary conditions for a waterbed effect are not present in this instance, for the following reasons:

- a) Musgrave's current market share is approximately 22% and the increase in national market share in terms of grocery retailing will be approximately 6%. This will not significantly increase buyer power as the likely increase in market share will not tip the balance in favour of the buyer power necessary to establish and/or enhance any waterbed effect.
- b) The proposed transaction will increase rather than decrease competition in the retail market. Consequently there is little scope for Musgrave post acquisition to keep any savings made from procuring products from suppliers rather than to pass savings on to consumers.
- c) For many branded goods, Musgrave will not be in a position post acquisition to exert significant additional downward pressure on suppliers as Musgrave and Superquinn combined would not be a significantly large buyer (as a proportion of the supplier's total sales);
- d) For fresh produce (e.g., dairy, fruit, vegetables, meat and fish) the parties submit that suppliers will continue to have the option of supplying other grocery retailers; and,
- e) The presence of buyer groups who procure from suppliers on behalf of smaller and/or independent retailers implies a competitive constraint on the buyer power of the merged entity.

³⁰ This increase arises from Musgrave taking over the procurement function now performed by Superquinn.

Views of the Authority

137. The Authority agrees with the parties that the post acquisition market structure does not support a waterbed effect theory. That is, the approximate 6% additional market share would not give Musgrave a position of dominance at the retail level and hence increase sufficiently its buyer power at the wholesale level.
138. Market enquiries support the argument that large branded suppliers will be in a position to withstand attempts by Musgrave to exercise increased buyer power.
139. Furthermore, as part of its investigations the Authority approached 36 small and medium-sized suppliers to Musgrave and Superquinn, primarily in fresh produce, to assess the potential impact of a waterbed effect arising from the proposed transaction. In particular the suppliers were asked:
- whether they anticipated that the average net prices paid by Musgrave post acquisition would be lower than that paid now by either Musgrave and/or Superquinn; and,
 - Whether, in the event of lower average net prices paid by Musgrave post acquisition, they would increase average net prices charged to other retailers, and if so, whether higher prices would be charged to major buyers, smaller buyers or to both.
140. The suppliers were also asked to provide the number of buyers to whom they supply their products.
141. In summary, the response of the suppliers contacted as part of the Authority's enquiries were as follows:
- (i) None of the suppliers raised concerns regarding the prices that would be paid to suppliers by the merged entity;
 - (ii) Nine of the 36 suppliers said that they anticipated lower prices for their products for the merged entity because:
 - Suppliers expect an increase in volumes purchased by the new entity (this was the most common reason given).
 - Superquinn has had a more expensive distribution system which in turn has encouraged suppliers to charge more to Superquinn to cover costs.
 - (iii) One supplier said that it anticipated a small increase in the price paid by the new entity (compared to that currently paid by Musgrave); and,
 - (iv) One supplier anticipated that the price paid post acquisition would be in line with Musgrave's current price.
142. Specifically in relation to the waterbed effect:
- (i) 35 out of 36 suppliers said that they would not increase the price charged to other retailers;

- (ii) One supplier commented that in the event of net prices being decreased without an increase in volumes, they would review all the prices charged to other customers where there is no contractual restriction on altering price; and,
 - (iii) Four out of 36 suppliers only supplied Superquinn, whereas 19 supplied five customers or more. This implies that for most suppliers there are credible alternatives to supplying Musgrave now and post acquisition.
143. On the basis of the above evidence, and in light of the likely increase in market shares resulting from the proposed transaction, the Authority considers that it is unlikely that there would be any waterbed effects resulting from the proposed transaction.

Coordinated Effects

Introduction

144. Coordinated effects occur when the actions of the merged entity together with those of its competitors, either tacitly or explicitly, result in reduced output and/or increased prices to the detriment of consumers. In contrast to unilateral effects, the increase in prices or the reduction in output is profitable for each of them only as a result of accommodating the reactions of the others.
145. The Authority has considered coordinated effects in previous decisions. In its Phase 2 Determination in M/08/011-Heineken/S&N, the Authority stated that:

"Coordinated effects occur where the proposed transaction 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 co-ordinated 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. Here the main question is whether the merger materially increases the likelihood that firms in the market will successfully coordinate their behaviour or strengthen existing coordination".³¹

146. This implies there are three main questions to address:
- What are the conditions that must exist for coordinated behaviour to occur?
 - Is there evidence of pre-existing coordinated behaviour? and,
 - Does the merger have a material impact on coordinated behaviour – i.e., will the proposed transaction make it more likely that coordinated behaviour will be initiated or that pre-existing coordinated behaviour will be enhanced?

³¹ Determination in Merger Notification M/08/011 Heineken/Scottish & Newcastle, decision dated 3/10/2008.

Views of the Parties

147. The parties submit that the relevant conditions to support coordinated behaviour are not present:
- There is little transparency in terms of retailer input costs, i.e., the prices paid to suppliers, because contracts are typically negotiated bilaterally;
 - There is little homogeneity in products or the range of products, e.g., different retailers will stock different ranges of products;
 - Even within the same product category there will be product differentiation in terms of size and quality;
 - Increased sales of own-brand products suggest increased product differentiation; and,
 - Grocery retailers are not homogenous – e.g., there is a range of different structures and business models present in the State, in particular between the Musgrave franchise model and the vertically integrated model.
148. The parties submit that the above arguments also weaken the possibility of an effective detection and/or effective enforcement system for coordinated behaviour.
149. The parties further submit that there has been significant change in the market in the last ten years, which would further suggest that coordination will not be viable. The parties cite, for example, the entry of the so-called discounters, i.e., Aldi and Lidl, and also the fact that cross-border shopping is a relevant factor constraining retailers in the State.

Views of the Authority

150. In its decision in *M/08/011-Heineken/S&N* the Authority recast the relevant parts of the Merger Guidelines relating to Coordinated Effects into a table, recreated below as Table 4, to show (i) the necessary conditions for coordinated effects and (ii) the evidence that would indicate the presence of coordinated effects.

Table 4: Coordinated Effects Conditions and Evidence

Condition	Evidence required
1. Identify common terms of coordination	Market transparency
	Product homogeneity
	Symmetry of costs, production techniques and capacity
	Non-existence of 'maverick' firms
	Structural links – joint ventures, cross shareholdings etc
2. Costly to deviate	Market transparency
	Market stability
	Structural links
3. Weak competitive constraints	Same as unilateral effects

151. Table 4 above sets out the framework for evaluating evidence of coordinated effects. The Authority's view, established on the basis of party responses to questions, independent data, and market enquiries is set out in terms of that framework.

- Input prices are typically set on a bilateral basis, with discounts and rebates common, which does not suggest input price transparency;
- Notwithstanding observable retail prices, price promotions, sometimes set up within a short time frame (e.g., six weeks), offer a ready means to vary retail prices between retailers;
- Whereas there is a degree of homogeneity regarding particular products and/or product categories, it is not the case that retailers' baskets of goods, which would seem the most appropriate measure for a merger of grocery retailers, are in all cases homogeneous;
- A significant range of business models (franchisee or fully integrated models) and also different cost structures (centralised or out-sourced warehousing functions) are present in the grocery retail sector;
- There are no clear structural links (e.g., cross shareholdings or joint ventures) between any of the grocery retailers;
- There is an increased focus by consumers on price over all other considerations, which in turn is reflected in more volatile switching behaviour, which does not suggest there is a stable market; and,

- Superquinn and Musgrave (Supervalu and Centra) are not each other's closest competitor in the sector; rather for both parties Dunnes Stores and Tesco appear to be closer competitors.
152. From the Authority's investigations, and on the basis of internal documents provided, Musgrave's pricing policy appears to track [...] prices. Market enquiries and discussions with the parties indicate that there is a widespread use of national pricing and monitoring of competitors' prices.
153. The above facts do not, however, indicate necessarily either:
- (i) A presence of coordinated behaviour; or,
 - (ii) That the proposed transaction is likely to have a material impact on coordination.
154. In addition, the Authority's investigation has not identified any public or internal documents to suggest that the proposed transaction will have a material impact on coordinated behaviour – either to initiate coordinated behaviour or to enhance already existing coordinated behaviour.
155. In summary the available evidence does not support a theory of harm based on coordinated effects.

Dublin Region Effects

156. The HHI calculations in Table 3, and information supplied by the parties indicate that within the Dublin region the proposed transaction is either Zone C or Zone B.
157. As in a national context, closeness of competition is important for assessing the effects in a regional context. The Authority has not seen any evidence to suggest that, contrary to the situation nationally, Musgrave and Superquinn are each others' closest competitors in the Dublin region.
158. Information supplied by the parties, on local catchment areas within the Dublin region as discussed below in paragraphs 160-194, indicate the presence of many competing fascia across the Dublin region which provide credible competitive constraints on unilateral behaviour by any grocery retailer.
159. Consequently, the same conclusion can be drawn for the Dublin region as from a national perspective. Notwithstanding its increase in market share in the Dublin region, Musgrave will not have the ability or the incentive to unilaterally impose price increases post acquisition.

Local Effects

Introduction

160. As noted above, local effects may or may not be similar to regional or national effects. Consequently, it is also necessary for the Authority to consider whether the proposed transaction would have adverse effects at a local level. A first step in that process involves identifying those areas where there could be potential competition concerns, notwithstanding any national or regional conclusions.
161. The parties provided the Authority with catchment maps, showing the location of stores operating under the following fascia: Aldi, Dunnes Stores, Eurospar, Lidl, Marks and Spencer, Superquinn, Supervalu and Tesco within a 10 minute drive time and/or a 10 kilometre radius of the relevant Superquinn store to be acquired.
162. Following a request by the Authority, the parties provided additional data on store size and the availability of car parking spaces for each of the stores within each catchment area.
163. The Authority examined information on local markets including catchment maps provided by the parties for each of the 24 Superquinn stores to be acquired.
164. Following international best practice, the Authority adopted a conservative approach based on previous Irish cases and also UK cases,³² and identified potentially problematic catchment areas on the basis of:
 - (i) Superquinn and Musgrave affiliated stores being in close proximity prior to the proposed transaction;
 - (ii) the number of competing fascia reducing from 5 to 4 or from 4 to 3 post acquisition; and,
 - (iii) Musgrave significantly increasing its share of retail floor space post acquisition to have the largest area amongst all fascias in a particular catchment.
165. On the basis of the above approach, the Authority's own investigations, and also comments of third parties during market enquiries, five local catchment areas were identified that warranted further investigation, namely:

³² For example, M/09/002 - HMV / Zavvi, see <<http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications/M09002--HMV--Zavvi.aspx?page=1&completed=True&year=0>> and M/08/014 - BWG/Mangan, see <<http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications/M08014--BWGMangans.aspx?page=3&completed=True&year=2008>>.

Also relevant are UK Competition Commission decisions (i) *Somerfield plc and Wm Morrison Supermarkets plc A report on the acquisition by Somerfield plc of 115 stores from Wm Morrison Supermarkets plc* 2005, see <http://www.competition-commission.org.uk/rep_pub/reports/2005/fulltext/501.pdf> and *Safeway plc and Asda Group Limited (owned by Wal-Mart Stores Inc); Wm Morrison Supermarkets PLC; J Sainsbury plc; and Tesco plc: A report on the mergers in contemplation*, 2003, see <<http://www.competition-commission.org.uk/inquiries/completed/2003/safeway/index.htm>>.

Also note the joint UK Competition Commission and OFT "Commentary on retail mergers" March 2011. See <http://www.competition-commission.org.uk/rep_pub/corporate_documents/other_guidance/Commentary_on_retail_merges_V1a.pdf>.

- Blackrock;
- Charlesland;
- Knocklyon;
- Lucan; and,
- Swords.

Views of the Parties

166. The parties submit that for all of the five local catchment areas listed above, and indeed for all 24 catchment areas, the closest competitor to Superquinn (in terms of size, estimated turnover, product range, parking facilities and/or location within the catchment area) is a grocery retailer other than a Musgrave affiliated retailer.
167. The parties also submit that there will be at least four fascias present in each catchment area post acquisition. In summary, the parties submit that for some or all of the five catchments listed above, there are:
- Independent grocery retailers not included on the parties' catchment maps that can be expected to exert a competitive constraint;
 - Competitors within the catchment area with sufficient presence to provide a credible competitive constraint;
 - Competitors close to but outside of the catchment boundary that can reasonably be expected to exert an effective competitive constraint; and,
 - Major roads, including motorways and commuting routes from the centre of Dublin to suburban areas. Consequently the catchment maps may underestimate the strength of the competitive constraint imposed by competitors in other catchment areas.
168. Set out below are the submissions of the parties in relation to each of the above five areas.

Blackrock

169. The parties state that Donnybrook Fair, which was not included on the map, provides a viable competitive constraint, as do the more than 40 convenience stores, also not included on the maps.
170. A Marks and Spencer store is present in the Frascati shopping centre which is less than half a kilometre from the Superquinn store. In addition, the parties also identify four shopping centres, within the catchment area namely, Bloomfield, Cornelscourt, Merrion and Stillorgan shopping centres.
171. Also, the Blackrock store is close to the N11 which may expand the effective catchment area for Superquinn and competitor stores. This would effectively increase the competitive constraints on Musgrave post acquisition.

172. In summary, the parties state that six fascias would remain post acquisition in the Blackrock catchment area, namely, Tesco, Dunnes Stores, Musgrave, Lidl, Marks and Spencer and Donnybrook Fair.

Charlesland

173. The parties state that Superquinn's principal competitor in this area is Tesco which has a large store in Greystones, approximately 2.5 kilometres away. A large Dunnes Stores supermarket is located approximately 6.5 kilometres away in Newtownmountkennedy.
174. The parties also state that the Superquinn store located in the Charlesland shopping centre has no more than a 10% of local market share – i.e., it does not have a large market share at present and the combined local shares of Musgrave and Superquinn will be less than the market shares of Dunnes Stores and Tesco.
175. Consequently, the parties state that Dunnes Stores and Tesco provide credible competitive constraints on Superquinn and will do so acquisition for Musgrave.
176. Also, the Charlesland store is relatively close to the N11 which may expand the effective catchment area for Superquinn and competitor stores. This would effectively increase the competitive constraints on Musgrave post acquisition.
177. In summary, the parties state that four fascias would remain post acquisition in the Charlesland catchment area, namely, Tesco, Dunnes Stores, Musgrave and Lidl.

Knocklyon

178. The parties state that the competitive landscape around Knocklyon includes two major shopping centres: one in Tallaght (The Square) and the other in Rathfarnham (Nutgrove). Also the Liffey Valley shopping centre is just outside the catchment area and likely provides a competitive constraint to some degree.
179. The parties state that neither Superquinn nor Musgrave has a presence in either of the above three shopping centres. The parties submit that this indicates that Musgrave and Superquinn are currently at a competitive disadvantage to their competitors.
180. Superquinn's closest competitor in the Knocklyon area in terms of shop size and distance is Tesco in the Rathfarnham shopping centre, approximately 3 kilometres away.
181. There is a Costcutter store in close proximity to the Superquinn store, which was not included in the map.
182. The Knocklyon Store is close to the M50 and the area surrounding the Superquinn store has very well developed infrastructure, and benefits from an extensive road network. Together these factors may expand the effective catchment area for Superquinn and competitor stores. This would effectively increase the competitive constraints on Musgrave post acquisition.

183. In summary, the parties state that six fascias would remain post acquisition in the Knocklyon catchment area, namely Tesco, Dunnes Stores, Aldi, Lidl, Costcutter and Musgrave.

Lucan

184. The parties state that while four Musgrave stores (in Leixlip, Maynooth, Neilstown and Palmerstown) are within the catchment area, they are either (a) of small size or (b) are not in sufficiently close proximity to effectively compete with the Superquinn store located in Lucan. Therefore, the parties state, the proposed acquisition would have no effect on the number of fascias which operate in the locality and there would be no change to the competitive landscape on a local level
185. Liffey Valley shopping centre is within the Lucan catchment area. Consequently the Marks and Spencer store in that centre and other stores provide a credible constraint on Superquinn at present and will continue to do so on for Musgrave post acquisition.
186. The parties state also that a large Dunnes Stores store at Clondalkin is marginally outside of a 10 minute drive time catchment area. The parties submit that this store provides a credible constraint on Superquinn at present and will also do so for Musgrave post acquisition.
187. The Lucan store is close to the M7, M4 and M50 motorways, which may expand the effective catchment area for Superquinn and competitor stores. This would effectively increase the competitive constraints on Musgrave post acquisition.
188. In summary, the parties state that six fascias would remain post acquisition in the Lucan catchment area, namely Tesco, Dunnes Stores, Aldi, Lidl, Costcutter and Musgrave.

Swords

189. The parties point out that the Superquinn store and a comparable Dunnes Stores store are both located in the Pavilion Shopping Centre. The proximity of the two stores and the ability of consumers to easily switch stores means that the current competitive constraint on Superquinn will remain for Musgrave post acquisition.
190. An independent supermarket, JC's Supermarket, which was not included on the parties' catchment maps, is situated approximately 1.5 kilometres from the Superquinn store. The parties estimate that this independent retailer has approximately 30% of the local market and hence is a credible competitive constraint.
191. In addition to the Tesco Express in Swords, Tesco also operates two other major stores in Balbriggan and Clarehall, which are marginally outside of a 10 minute drive time catchment area. The parties submit that these stores provide a credible constraint on Superquinn at present and will also do so for Musgrave post acquisition.
192. In summary, the parties submit that five fascias would remain post acquisition in Swords, namely: Musgrave, Dunnes Stores, JC's Supermarket, Tesco and Spar.

Views of the Authority

193. On the basis of its review of the maps and submissions provided by the parties, and its own investigations, the Authority agrees that there will be at least four fascias in each of the catchment areas that were subject to further scrutiny. This satisfactorily addresses any outstanding competition concerns in relation to local competition effects.
194. Consequently, the Authority concurs with the parties that the proposed transaction will not lead to a substantial lessening of competition in Blackrock, Charlesland, Knocklyon, Lucan, or Swords.

Conclusion

195. In summary, the Authority identified four theories of harm applicable to the proposed transaction, namely:
- Unilateral effects, in particular increasing prices post acquisition;
 - Strategic blocking of entry;
 - Waterbed effects; and,
 - Coordinated effects.
196. The Authority assessed each of the above theories of harm on the basis of (i) ongoing contact with the parties, (ii) the review of third party submissions, (iii) market enquiries; and (iv) the input provided by an external consulting economist.
197. The Authority concludes, on the basis of the available evidence, that the proposed transaction will not lead to a substantial lessening of competition in the retail sale of grocery goods within the State either (i) nationally; (ii) within the Dublin region, i.e., Dublin City and County and immediately surrounding areas; or (iii) locally.

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 transaction whereby Musgrave Group plc would acquire sole control of the Superquinn grocery retail business and certain properties 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

**Noreen Mackey
Member of the Competition Authority
Director, Mergers Division**

Annex A: Superquinn Stores

Store	Address	Format (Supermarket/Select)
Ballinteer	Ballinteer Avenue, Ballinteer, Dublin 16	Supermarket
Blackrock	Blackrock Road, Blackrock, Co. Dublin	Supermarket
Blanchardstown	Main Street, Blanchardstown, Dublin 15	Supermarket
Bray	"Castle Street, Bray, Co. Wicklow	Supermarket
Carlow	Kennedy Avenue, Carlow	Supermarket
Charlesland	"Charlesland, Greystones, Co. Wicklow	Select
Clonmel	Emmet Street, Clonmel, Co. Tipperary	Supermarket
Finglas	McKee Avenue, Finglas, Dublin 11	Supermarket
Heuston	Heuston South Quarter, Military Road, Kilmainham, Dublin 8	Select
Kilkenny	Market Cross Centre, James Street, Kilkenny	Supermarket
Knocklyon	Knocklyon Road, Templeogue, Dublin 16	Supermarket
Limerick	Dublin Road, Castletroy, Co. Limerick	Supermarket
Lucan	Newcastle Road, Lucan, Co. Dublin	Supermarket
Northside	Northside Shopping Centre, Coolock, Dublin 17	Supermarket
Portlaoise	Unit 1, Portlaoise Shopping Centre, Abbeyleix Road, Portlaoise, Co. Dublin.	Supermarket
Ranelagh	Main Street, Ranelagh	Select
Rathborne	The Village, Rathborne, Dublin 15	Select
Rathgar	13 Orwell Road, Rathgar, Dublin 6	Select
Sundrive/Crumlin	Sundrive Road, Kimmage, Dublin 12	Supermarket
Sutton	Sutton Cross, Sutton Dublin 13	Supermarket
Swords	The Pavillion Shopping Centre, Swords, Co. Dublin	Supermarket
Tyrellstown	Tyrellstown, Dublin 15	Select
Walkinstown	Walkinstown, Dublin 12	Supermarket
Waterford	Kilbarry Centre, Tramore Road, Waterford	Supermarket

Source: Information supplied by Superquinn

Annex B: Questionnaire to grocery suppliers

1. Please provide:

Name of company or division	
Address	
Contact name (for any queries on your response)	
Contact job title and telephone number	
Name and address of immediate parent company (if any)	
Name and address of ultimate parent company (if different)	

2. Please outline briefly the nature of your business. (Please cover your role in the supply chain— whether manufacturer, importer, wholesaler, processor/packer—the main product sectors you supply and whether you supply your own brands, supermarket own-label brands or unlabelled goods. Please give examples of the products you supply.)
3. Please complete the following Table stating your annual sales in Euro to each buyer:

Buyer	Products sold			
	Fresh Dairy	Fresh Meat	Fresh Fruits	Fresh Veggies
Musgrave				
Superquinn				
Tesco				
Dunnes Stores				
BWG				
ADM Londis				
Barry Group				
Stonehouse				
Gala				
JC Savage				
Marks & Spencer				
Aldi				
Lidl				
Iceland				
Others				

4. Please describe how you negotiate prices with each buyer.

5. Please state the basis on which rebates or discounts are offered to a buyer.

6. Please summarise (by placing 'X' in the appropriate box) how your negotiating strength in dealings with each buyer on prices or other terms of supply has changed, **compared to three years ago:**

Buyer	Much improved	Improved a little	Not changed	Reduced a little	Much reduced
Musgrave					
Superquinn					
Tesco					
Dunnes Stores					
BWG					
ADM Londis					
Barry Group					
Stonehouse					
Gala					
JC Savage					
Marks & Spencer					
Aldi					
Lidl					
Iceland					
Others					

7. Similarly, how have your overall relationships with supermarkets changed over the last three years?

Supermarket	Much improved	Improved a little	Not changed	Reduced a little	Much reduced
Musgrave					
Superquinn					
Tesco					
Dunnes Stores					
BWG					
ADM Londis					
Barry Group					
Stonehouse					
Gala					
JC Savage					
Marks & Spencer					
Aldi					
Lidl					
Iceland					
Others					

8. If Musgrave were to acquire Superquinn, please indicate:
- (i) Whether you anticipate that the average net price paid for your products by the new combined group would be lower than each now pays individually.
 - (ii) If you lowered your average net prices to the combined group, would you increase average net prices charged to other retailers? If so, would you charge higher prices to the other major buyers, to smaller buyers or both?
9. Is there anything else you would like to tell us?