



DETERMINATION OF MERGER NOTIFICATION M/11/028 -

Valeo Foods/Jacob Fruitfield

Section 21 of the Competition Act 2002

Proposed acquisition by Valeo Foods Group Limited of sole control of Jacob Fruitfield Food Group Limited

Dated 14 September 2011

Introduction

1. On 19 August 2011, in accordance with section 18 of the Competition Act 2002, the Competition Authority (“the Authority”) received a notification of a proposed acquisition whereby Valeo Foods Group Limited (“Valeo Foods”) would acquire sole control of Jacob Fruitfield Food Group Limited (“Jacob Fruitfield”).

The Undertakings Involved

The Acquirer

2. Valeo Foods is controlled by CapVest Equity Partners II, L.P. (“CapVest”). CapVest principally makes private equity investments in Western Europe. CapVest owns the Mater Private Hospital (“MPH”) and Drie Mollen International BV (“Drie Mollen”).
3. MPH is active in the provision of private healthcare in Ireland. Drie Mollen is a Swiss-based coffee company engaged in the production and sale of tea and coffee in six European countries under the *United Coffee* brand. Drie Mollen has a limited presence on the island of Ireland.
4. Valeo Foods is the holding company formed in 2010 to acquire the entire issued share capital of Maiden Acquisition Company Holdings and Origin Foods. The Competition Authority approved the acquisition of sole control of Valeo Foods by CapVest on 18 November 2010.¹
5. Valeo Foods is involved in the supply of various consumer goods products to the Irish retail sector. Valeo Foods’ business involves:
 - importing and distributing home-baking and cooking ingredients sold under the *Shamrock* brand;
 - importing and distributing Italian meals sold under the *Roma* brand;
 - milling, selling and distributing packaged flour;

¹ M/10/031 – CapVest/Origin Foods/Maiden.

- manufacturing, selling and distributing products sold under the *Batchelors, Sqeez* and *Erin* brands;
 - importing and distributing *Amigo, Picnic* and *Lustre* brands; and,
 - distributing products (including *Fox's* biscuits) on behalf of third party suppliers.
6. Valeo Foods does not manufacture its own biscuit products but it does distribute *Fox's* biscuits on behalf of Northern Foods plc ("Northern Foods") to retailers in the State. However, Tesco Ireland purchases *Fox's* biscuits directly from Northern Foods in the United Kingdom. The two-year distribution agreement between Northern Foods and Valeo Foods (beginning in November 2009) can be terminated at any stage.
7. For the financial year ending 30 June 2011, CapVest's worldwide turnover was €[...]. CapVest's turnover in the State for the same period was €[...].

The Target

8. Jacob Fruitfield is involved in the supply of various consumer goods products to the Irish retail sector. Jacob Fruitfield does not manufacture any of its products; all production is outsourced to third parties. Jacob Fruitfield has four divisions:
- Biscuits – sweet and savoury. Jacob Fruitfield's key biscuit brands are *Jacob's, Kimberley, Mikado, Coconut Creams, Elite, Club Milk, Afternoon Tea, USA* and *Bolands*;
 - Sauces - condiments, dressings and wet pasta sauces. Jacob Fruitfield's key sauces brand is *Chef*;
 - Spreads - marmalades and jams. Jacob Fruitfield's key spreads brands are *Fruitfield, [Old Time Irish]*, and *Little Chip*; and,
 - Confectionary – mints, caramels, and chocolates. Jacob Fruitfield's key confectionery brands are *Silvermints, Scots Clan, Double Centre* and *Yorkshire Toffees*.
9. For the financial year ending 31 December 2010, Jacob Fruitfield's worldwide turnover was €[...], the vast majority of which was generated in the State.

Rationale for the Proposed Transaction

10. According to Valeo Foods, the proposed transaction is an opportunity to diversify its business. Valeo Foods submits that there is strong potential to deliver growth through investment in Jacob Fruitfield, as well as to innovate and be more price-competitive.

Third Party Submissions

11. No submissions were received.

Analysis

12. There is no vertical overlap between the parties in the State. However, the parties overlap horizontally in the supply of relishes, wet pasta sauces and sweet biscuits to retailers in the State.

The supply of Relishes and Wet Pasta Sauces to Retailers in the State

13. Data provided by the parties and verified by the Authority indicate that Jacob Fruitfield has a minimal presence in the supply of relishes and wet pasta sauces to retailers in the State.
14. In the case of relishes, the total retail sales value in the State in 2010 was only €2.5 million.² Jacob Fruitfield has a limited presence in the relishes segment in the State with only one product line. The parties state that while Valeo Foods has a market share of [75-85]%, Jacob Fruitfield has a market share of only [0-10]% in the State.³ Thus, the increment in market share following the proposed transaction is negligible.
15. In the case of wet pasta sauces, the total retail sales value in the State for the twelve months to June 2011 was €30 million.⁴ Valeo Foods made sales of €[...] in 2010 while Jacob Fruitfield, with three product lines, made sales of €[...] in 2010.⁵ Thus, Valeo Foods has a market share of approximately [0-10]% while Jacob Fruitfield has a market share of approximately [0-10]% in the State. Thus, the increment in market share following the proposed transaction is also negligible. Furthermore, there are a number of alternative wet pasta sauces brands sold in the State including *Dolmio*, *Loyd Grossman*, *Sacla*, *Ragu*, and *Napolina*.
16. The Authority therefore considers that the proposed acquisition raises no competition concerns in relation to the supply of either relishes or wet pasta sauces to retailers in the State.

The supply of Sweet Biscuits to Retailers in the State

17. The parties also overlap horizontally in the supply of sweet biscuits to retailers in the State.

Relevant Product and Geographic Market

Views of the Undertakings Involved

18. The parties state that biscuits can be included as part of an overall market for "snacking products" as biscuits satisfy the same need as other snacking products such as chocolate and sugar confectionery, chewing-gum, cakes and snacks. The parties point out, however, that the European Commission (the "Commission") has previously concluded that biscuits constitute a relevant product market, distinct from other snacking segments.⁶
19. The parties further submit that in previous merger control decisions, the Commission has concluded that a distinction should be made between sweet biscuits and savoury biscuits. The Commission made

² Source: AC Nielsen

³ Source: AC Nielsen

⁴ Source: AC Nielsen

⁵ Source: the parties

⁶ M.4842 – Kraft/Danone Biscuits

this finding on the basis that there is an absence of demand side substitutability.⁷ The parties submit, however, that the question of whether or not there should be a distinction between sweet biscuits and savoury biscuits can be left open as there is no competitive overlap between the parties in the savoury segment of the biscuit market.

20. The parties submit that the relevant geographic market should encompass at least the State and the United Kingdom. The parties argue that it is no longer appropriate to assess competition solely on a national market. The parties confirm that Irish retailers are able to source biscuits from suppliers based abroad (particularly in the United Kingdom).

Views of the Competition Authority

21. Following the approach of the Commission, the Authority will examine the competitive impact of the proposed transaction in the market for the supply of sweet biscuits to retailers. With respect to the relevant geographic market, many of the sweet biscuits suppliers active in the State are based in the United Kingdom including United Biscuits, Burtons, and Nestle. Notwithstanding this fact, the Authority will examine the competitive impact of the proposed transaction in the supply of sweet biscuits to retailers in the State. This is the narrowest geographic market in which the proposed transaction is likely to raise a competition concern.

Competitive Assessment

Views of the Undertakings Involved

22. Table 1 below provides market shares in the supply of sweet biscuits to the retail sector in the State over the period 2008-2010.

Table 1: Percentage Market Shares (by Value) in the Sale of Sweet Biscuits in the State, 2008-2010

Supplier	2008	2009	2010
Jacob Fruitfield	[25-35]	[25-35]	[20-30]
Fox's (sales via Valeo Foods)	[0-10]	[0-10]	[0-10]
<i>Fox's (sales via Tesco Ireland)</i>	-	[0-10]	[0-10]
United Biscuits	[10-20]	[10-20]	[10-20]
Kraft/Cadbury	[10-20]	[10-20]	[10-20]
Private Label	[10-20]	[10-20]	[10-20]
Burtons	[0-10]	[0-10]	[0-10]
Nestle	[0-10]	[0-10]	[0-10]
All Others	[10-20]	[10-20]	[10-20]
Total	100	100	100

Source: AC Nielsen

23. The parties state that the proposed transaction will not lead to a substantial lessening in competition in relation to the supply of biscuits to the Irish retail sector for the following reasons:

⁷ M.4842 – Kraft/Danone Biscuits

- Following the proposed transaction, the merged entity will account for approximately [30-40]% by value of the supply of sweet biscuits to retailers in Ireland. This represents a relatively small increment in market share of [0-10]%;
- There are many strong competitors active in the sector such as United Biscuits, Kraft/Cadbury's, private label, Burton's and Nestlé. Barriers to entry are also low as evidenced by the recent introduction of *Oreos* by Kraft/Cadbury (in June 2008) and *Aero Biscuits* by Nestlé (in May 2011) into the Irish retail market;
- *Fox's* biscuits are not the biggest competitor to Jacob Fruitfield. The biggest competitors to Jacob Fruitfield are United Biscuits, Kraft/Cadbury's, and private label;
- Tesco Ireland purchases *Fox's* biscuits direct from its supply chain in the United Kingdom bypassing Valeo Foods. This accounts for approximately [20-30]% of *Fox's* biscuits sold in the State; and,
- The presence of strong retail buyers with countervailing power will deter any attempt by the merged entity to raise its sweet biscuit prices. In addition, since Tesco Ireland is the leading retailer in the State, Valeo Foods' other retail customers will not be willing to accept sweet biscuit prices which are higher than those set by Tesco Ireland.

Views of the Competition Authority

24. According to the market share data in Table 1 above, post-transaction, Valeo Foods will account for [30-40]% of the supply of sweet biscuits to retailers in the State, an increase in market share of [0-10]%. United Biscuits has a market share of [10-20]% and Kraft/Cadbury has a [10-20]% market share. This implies that the proposed transaction will lead to an increase in market concentration.
25. Market concentration refers to the degree to which production in a particular market or industry is concentrated in the hands of a few large firms. The most commonly used measure of market concentration is the Herfindahl-Hirschman index ("HHI"), which is defined as the sum of the squares of the market shares of all firms participating in the market.⁸ The higher the value of the HHI, the more concentrated the market.
26. The proposed transaction occurs in a sweet biscuits market with a HHI of 1345. The HHI will increase to 1709 post-acquisition which places the proposed transaction in Zone B of the Authority's *Merger Guidelines* meaning that the sweet biscuits market would be defined as moderately concentrated post-transaction.⁹
27. In order to assess whether the proposed transaction will result in a substantial lessening of competition in the supply of sweet biscuits to

⁸ Full details of the HHI are explained in the *Notice in Respect of Guidelines for Merger Analysis*, Decision No. N/02/004, which is available on www.tca.ie.

⁹ When calculating the HHI, the Authority has excluded the market shares of Private Label and Others since it does not have individual market share data for each retailer and supplier.

retailers in the State, the Authority will examine the following characteristics of the market:

- closeness of competition; and,
- entry.

Closeness of Competition

28. In the competitive analysis of differentiated products such as different brands of sweet biscuits, it is important to be able to measure the degree to which two (or more) brands are close substitutes. If the merging parties are not close competitors, it is likely that the merger will not lead to anti-competitive effects. However, if the merging parties are found to be close competitors, it is then necessary to consider all the competitive conditions in the market before coming to a final conclusion.
29. In order to determine the closeness of competition between Jacob Fruitfield’s sweet biscuits brands and Fox’s sweet biscuits, the Authority designed a questionnaire to be answered by customers of the merging parties. The questionnaire consisted of questions about the respondent’s experience of buying sweet biscuits and its views about the proposed transaction. The Authority sent the questionnaire to Valeo Foods’ top five customers in the State (as listed in the notification).¹⁰ All five customers returned a completed questionnaire to the Authority.
30. As Table 2 below illustrates, sales of sweet biscuits by Valeo Foods to its top five customers accounted for [90-100]% of total sweet biscuits sales by Valeo Foods in the State in 2010. Sales of sweet biscuits by Jacob Fruitfield to its top five customers accounted for [80-90]% of total sweet biscuits sales by Jacob Fruitfield in the State in 2010.

Table 2: The Parties’ Sales of Sweet Biscuits to their top 5 Customers in the State, € Value, 2010

Customer	Valeo Foods (%)	Jacob Fruitfield (%)
Dunnes Stores	[...]	[...]
Tesco Ireland	-	[...]
Musgrave Group	[...]	[...]
Superquinn	[...]	-
Stonehouse	[...]	[...]
BWG	[...]	[...]
Others	[...]	[...]
Total	100	100

Source: The Parties

31. Retailers were asked to list the sweet biscuits brands which they consider to be “must have” brands. In addition, retailers were asked to provide information on the closest competing brands to Fox’s sweet biscuits. Table 3 below summarises their responses.

¹⁰ Four out of these five customers are also listed in Jacob Fruitfield’s top 5 customers in the State. The other customer in Jacob Fruitfield’s top 5 – Tesco Ireland – was not sent a questionnaire since it will be unaffected by the proposed transaction given it purchases Fox’s biscuits direct from its supply chain in the United Kingdom.

Table 3: Retailer Responses¹¹ about the closeness of competition in relation to Fox’s sweet biscuits.

Retailer	Must-have Sweet Biscuits Brand	Closest competing brand to Fox’s
A	<i>Jacobs, McVities, Own-label</i>	<i>Jacobs, McVities, Burtons</i>
B	None	<i>Jacobs, McVities</i>
C	<i>Jacobs, McVities, Elkes, Cadbury</i>	<i>Jacobs, McVities, Elkes</i>
D	<i>Jacobs, McVities</i>	<i>McVities, Burtons</i>
E	<i>Jacobs, McVities, Fox’s, Kit Kat</i>	<i>McVities</i>

Source: Market enquiries by the Authority

32. Only one retailer listed Fox’s biscuits as a “must have” brand. In contrast, four retailers listed Jacob Fruitfield’s *Jacobs* brand and United Biscuits’ *McVities* brand as “must have” brands. All five retailers listed the *McVities* brand as one of the closest competing sweet biscuits brand to Fox’s biscuits. The *McVities* sweet biscuits brand is owned by a third-party supplier (United Biscuits) and will be the closest competitor to Valeo Foods’s sweet biscuits brands (*Jacobs* and *Fox’s*) post-transaction.
33. Retailers expressed no competition concerns about the proposed transaction stating that there are credible alternative suppliers such as United Biscuits and Burtons available to retailers which will prevent Valeo Foods from raising its sweet biscuits prices post-transaction. Furthermore, two out of these five retailers expressed the view that in addition to alternative suppliers, their private label sweet biscuits could also be used as a credible bargaining tool in negotiations with Valeo Foods in order to prevent a price rise post-transaction.

Entry

34. There do not appear to be any significant barriers to entry as shown by the recent introduction of *Oreos* by Kraft/Cadbury into the Irish retail market in June 2008. The parties informed the Authority that [223] new sweet biscuits products were launched in the State in 2010. Of these, 84 product lines (with sales totalling €1.3 million) were launched in the State in 2010 by suppliers other than Jacob Fruitfield, United Biscuits, Kraft/Cadbury, *Fox’s*, Burtons, and Nestle.

Conclusion

¹¹ The retailer responses are not recorded in any particular order.

35. The Authority considers that Valeo Foods will have neither the ability nor the incentive to permanently raise its sweet biscuits prices post-acquisition. Valeo Foods will face close competition from existing rival sweet biscuits suppliers post-transaction, most notably United Biscuits' *McVities* brand. Any attempt by Valeo Foods' to increase the price of its sweet biscuits brands post-transaction will be unprofitable since end consumers will switch to rival brands such as *McVities*.

Ancillary Restraints

36. The Share Purchase Agreement contains a number of restrictive obligations on the sellers. None of these obligations exceed two years in duration. The Authority considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by Valeo Foods Group Limited of sole control of Jacob Fruitfield Food Group Limited will not be to substantially lessen competition in markets for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition Authority

Noreen Mackey

Member of the Competition Authority

Director, Mergers Division