The Competition Authority
An tÚdarás Iomaíochta

DETERMINATION OF MERGER NOTIFICATION M/11/032 - Kerry/Cargill

Section 21 of the Competition Act 2002

Proposed acquisition by Kerry Group plc of the flavours business of Cargill Incorporated.

Dated 19 October 2011

Introduction

1. On 26 September 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 Kerry Group plc ("Kerry") would acquire sole control of the flavours business of Cargill Incorporated ("Cargill"), with the exception of that part of the business which manufactures fruit juice compounds.[1]

The Undertakings Involved

The Acquirer

2. Kerry is a public limited liability company incorporated in Ireland with its registered address at Prince's Street, Tralee, Co. Kerry. Kerry is active in the manufacture and sale of food ingredients, flavours[2] and flavour ingredients[3]. In the State and the United Kingdom (U.K.) it is primarily active in the manufacture and sale of consumer foods. Its branded consumer foods include *Denny*, *Dairygold*, *Galtee*, *Calvita*, *Roscrea*, *Kerrymaid*, *Cheestrings* and *Richmond*. It has customers worldwide in the food and beverage industry.

3. Kerry operates nine manufacturing facilities in the State, none of which manufactures flavours or flavour ingredients. Kerry sells flavours which are manufactured at its facilities in the U.K. and Italy to customers located in the State. It does not sell flavour ingredients in the State.

4. For the financial year ending 31 December 2010, Kerry generated worldwide turnover of approximately €4.96 billion. For the same period, Kerry generated approximately €581.5 million in the State. Of

[1] Kerry will acquire the entire issued share capital of those Cargill subsidiaries that own and operate the flavours business of Cargill together with all of their assets and liabilities. These subsidiaries are: Cargill Flavour Systems (UK) Ltd, Cargill Flavour Systems US, LLC and Cargill Flavour Systems Puerto Rico, Inc.

[2] As defined by the European Commission in Case Comp/M.4507 Givaudan/Quest International, decision dated 21/02/2007, at paragraph 8: "*Flavours are compounds of naturally occurring and/or synthetically manufactured ingredients to impart flavour to materials designated for human consumption or animal feeding.*"

[3] Flavour ingredients are inputs used in the manufacture of flavours and include: aroma chemicals, essential oils and extracts.

this figure, Kerry generated approximately €[…] from the sale of flavours in the State.

The Vendor

5. Cargill is a private limited liability company incorporated in Delaware in the United States of America ("U.S.A.") with its registered address in Minnesota, U.S.A. It is an international producer and marketer of food and of agricultural, financial and industrial products and services.

6. In the State, Cargill is active in the sale of branded and own-label chicken and processed poultry products. It is also active in the provision of financial services through its subsidiary La Crosse Global Fund Services.

7. The flavours business to be acquired by Kerry is a wholly owned division of Cargill.

The Target

8. The flavours business of Cargill (the "Target") is active internationally in the manufacture and sale of flavours, aroma chemicals[4] and fruit juice compounds[5] and associated research and development. The Target has no physical presence in the State but is active in the sale of flavours and aroma chemicals to customers located in the State and Northern Ireland. These flavours and aroma chemicals are manufactured by Cargill in the U.S.A. and France.

9. The majority of the Target's sales to customers in the State, i.e., approximately []%, relate primarily to sales to [] customers that are active in the manufacture and sale of beverages internationally.

10. For the financial year ending 31 May 2011, the Target generated a worldwide turnover of approximately €[…][6]. For the same period, the Target generated approximately €[…] in the State[7].

Third Party Submissions

11. No submissions were received.

Analysis

12. In the State there is horizontal overlap between the activities of Kerry and the Target as both are active in the sale of flavours.

Flavours Market

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[4] Aroma chemicals are compounds used as a raw material in the manufacture of flavour compounds.

[5] As mentioned above, the Target's fruit juice compounds business is not included in the proposed transaction.

[6] Using the average ECB Euro/Dollar bilateral exchange rate of 1.3447 for the 12 month period to 31 May 2011.

[7] *Ibid.*

13. From a demand side, flavours are used by companies active in the manufacture of food and beverage products. These companies may use a single flavour or a combination of flavours during the manufacturing process. These companies may use flavours supplied by all flavour manufacturers or customised flavours, designed for a specific product.

14. From a supply side, flavour manufacturers tend to be large international companies that have the ability to design and manufacture a wide range of flavours. Where a customised flavour is required, the flavour manufacturer will work closely with its customers on the design (recipe) of the flavour. The ownership rights of a customised flavour will be agreed between the flavour manufacturer and its customers.

15. The parties state that the relevant product market consists of all flavours and need not be further segmented according to the use of that flavour, e.g., flavours for savoury, sweet, dairy or beverage products.

16. The European Commission (the "Commission") has considered the flavour industry in two previous decisions.[8] In its investigation in *Givaudan/Quest International*, the Commission noted that there was a high-degree of supply-side substitutability, with the principal flavour manufacturers being able to produce flavours for all main applications.[9]

17. The Authority considers that it does not have to reach a conclusion on the precise relevant product market, as, regardless of whether it is defined in a wide or narrow manner there are no competition concerns arising from the proposed transaction.

18. The parties state that the relevant geographic market for flavours is at least EEA-wide if not worldwide. The parties rely on the two previous Commission decisions which suggested, without concluding on the matter, that the relevant market could be as wide as the EEA.[10]

19. The Authority's own enquiries confirmed that customers located in the State purchase flavours from a variety of international flavour manufacturers that are not necessarily located or have manufacturing facilities in the State. Whilst this is suggestive of a relevant geographic market that is wider than the State, the Authority does not have to reach a conclusion on the precise geographic market as there are no competition concerns arising from the proposed transaction.

Competitive Assessment

20. The parties estimate that Kerry and the Target are in the top twenty companies internationally for the manufacture and sale of flavours. According to the parties, and based on data sourced by Leffingwell &

[8] Case No. Comp/M.2926 – EQT/H&R/Dragoco, decision dated 16/09/2002 and Case No. Comp/M.4507 – Givaudan/Quest International, decision dated 21/02/2007.

[9] Givaudan/Quest International, op cit, paragraph 12.

[10] *Supra*.

Associates[11], Kerry and the Target accounted for approximately [0-5]% and [0-5]%, respectively, of the global sales of flavours in 2010.

21. The Authority notes that there are a number of international manufacturers active in selling flavours to customers located in the State, namely: Givaudan, Firmenich, Ungerer & Co, Symrise and IFF.

22. The Authority considers that the proposed transaction is unlikely to raise any competition concerns in the State given that the combined market shares of the parties post-transaction will account for [0-10]% of global sales and there are a number of alternative suppliers available to customers in the State.

23. Furthermore, the proposed transaction does not raise any vertical competitive concerns since there are no vertical relationships between the parties in the State.[12]

24. In light of the above, the Authority considers that the proposed transaction does not raise competition concerns in the State in relation to the sale of flavours.

Ancillary Restraints

25. The proposed transaction imposes non-compete and non-solicitation obligations for a period of three years and eighteen months, respectively, from the completion date of the proposed transaction. The proposed transaction also involves the parties entering into certain transitional service and supply arrangements, for a period of one year and two years, respectively, from the completion of the proposed transaction. The Authority considers the above restrictions to be directly related and necessary to the implementation of the proposed transaction.

26. The parties also notified the Authority of a Memorandum of Understanding relating to a proposed preferred supplier arrangement for the period of three years from the completion date of the proposed transaction. The Authority does not consider this restriction to be directly related and necessary to the implementation of the proposed transaction.

[11] Industry information available at: http://www.leffingwell.com/top_10.htm

[12] The parties state that they have limited sales of flavours to each other outside the State.

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 Kerry Group plc would acquire sole control of the flavours business of Cargill Incorporated, with the exception of that part of the business which manufactures fruit juice compounds, 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

Director Mergers Division

Member of the Competition Authority