



## **DETERMINATION OF MERGER NOTIFICATION M/11/037 -**

### **Connacht Gold/Donegal Creameries**

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

#### **Proposed acquisition by Connacht Gold Co-operative Society Limited of certain wholly-owned subsidiaries together with a number of assets of Donegal Creameries plc**

**Dated 10 January 2012**

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#### **Introduction**

1. On 1 November 2011, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed acquisition by Connacht Gold Co-operative Society Limited ("Connacht Gold") of Glenveagh Agricultural Co-operative Society Limited ("Glenveagh") and Maybrook Dairy (Omagh) Limited ("Maybrook"), wholly-owned subsidiaries of Donegal Creameries plc ("Donegal Creameries")<sup>1</sup>, together with a number of assets of Donegal Creameries.
2. The proposed transaction involves the acquisition of sole control by Connacht Gold of the milk procurement and supply business of Donegal Creameries (including plant and machinery used for processing raw milk), as well as its agri-trade retail business. As part of the proposed transaction, Connacht Gold is acquiring the assets of nine agri-merchant stores located in the State including stock, computer equipment, motor vehicles and fixtures and fittings. These assets also include the land and buildings of one of the agri-merchant stores in Killygordon, Co. Donegal.
3. On 29 November 2011, the Authority served two Requirements for Further Information on Connacht Gold and Donegal Creameries pursuant to section 20(2) of the Act. This automatically suspended the procedure for the Authority's Phase 1 assessment.
4. Upon receipt of the responses to the Requirements for Further Information, the "appropriate date" (as defined in section 19(6) of the Act) became 12 December 2011.<sup>2</sup>
5. During the investigation, the Authority sought the views of customers who purchase own-label and branded liquid milk and cream from the notifying parties on the likely competitive impact of the proposed transaction. The Authority also sought the views of customers (mainly raw milk processors) who purchase supplies of raw milk from Donegal Creameries. The Authority also sought the views of a competitor of the merging parties. Finally, the Authority sought the views of the Irish Farmers Association

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<sup>1</sup> Hereinafter, any reference to Donegal Creameries includes Glenveagh and Maybrook.

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

(IFA) about the competitive impact of the proposed transaction on raw milk suppliers (i.e., dairy farmers) located in the North-West of Ireland.

6. The Authority requested and received, on an on-going basis, further information and clarifications from the notifying parties.
7. Having considered all the available information in its possession, the Authority has concluded that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

## **The Undertakings Involved**

### ***Acquirer***

#### *Connacht Gold*

8. Connacht Gold's principal activities relate to the production of fresh dairy products (i.e., liquid milk, cream, butter and, to a lesser extent, cheese and yoghurt). Connacht Gold procures raw milk from dairy farmers located in the North-West of Ireland.<sup>3</sup> The vast majority of Connacht Gold's raw milk suppliers are located in the following four counties: Galway, Sligo, Mayo, and Roscommon. Only [...] % of Connacht Gold's raw milk suppliers are located in Co. Donegal. Connacht Gold has no raw milk suppliers located in Northern Ireland. [...] % of Connacht Gold's raw milk suppliers are members of Connacht Gold.
9. Connacht Gold processes all of its raw milk of manufacturing quality<sup>4</sup> internally in its processing plant in Ballaghaderreen, Co. Roscommon to produce butter [and milk powders]. Connacht Gold sells these butter [and milk powder] products [primarily to the Irish Dairy Board for export throughout the world].
10. Connacht Gold processes all of its raw milk of liquid quality internally in its processing plant in Barnasraghy, Co. Sligo to produce liquid milk and cream products. Connacht Gold sells these liquid milk and cream products to retailers in the State under the brands of "*Connacht Gold*" and "*Freshfields*". Almost all of Connacht Gold's sales of branded liquid milk and cream products are made in the North-West of Ireland. In contrast, Connacht Gold sells liquid milk and cream products to retailers throughout the State for resale under their own private label brands.
11. Connacht Gold produces animal feed in its ruminant feed mill in County Roscommon. It is also involved in timber processing through Earrai Coillte Connacht Teo, a subsidiary based in Co. Galway. Connacht Gold is the majority shareholder in Earrai Coillte Connacht Teo, holding [...] % of its shares.
12. Connacht Gold has 30 agri-trade retail stores in eight counties which specialise predominantly in the retail supply of agricultural inputs (animal feed, fertiliser, etc) to farmers. The breakdown by county is as follows: Sligo (10), Mayo (8), Roscommon (5), Leitrim (3), and

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<sup>3</sup> In the merger notification, the parties define the North-West of Ireland as follows: the counties of Connacht (Sligo, Leitrim, Roscommon, Galway and Mayo) together with the Ulster counties based in the State – Donegal, Cavan and Monaghan.

<sup>4</sup> Raw milk of manufacturing quality can only be used to produce manufacturing milk; it cannot be used to produce liquid milk. Manufacturing milk is used as an input in the production of other dairy products such as butter, skimmed milk powder, cheese, etc.

Donegal/Westmeath/Longford/Longford (1 each). Connacht Gold also owns eight garden centres and operates four livestock marts, which sell approximately 100,000 cattle and 30,000 sheep annually on behalf of farmers. Finally, Connacht Gold has some interests in businesses involved in the following industries: auctioneering and property, food ingredients, radio, and renewable energy.

13. For the year ending 31 December 2010, Connacht Gold's worldwide turnover was €300 million. Its turnover in the State for the same period was €275 million.

### **Vendor**

#### *Donegal Creameries*

14. Donegal Creameries has five divisions:
  - Dairy – the processing of liquid milk and cream products at its processing plant in Killygordon, Co. Donegal;
  - Agri-inputs - the manufacture of compound animal feeds;
  - Produce - the development, growing and sale of seed potatoes;
  - Property - including the Grianan Estate, one of the largest farms in the State, and other properties in Counties Donegal and Sligo and the United Kingdom; and,
  - Other Investments – agricultural businesses such as Monaghan Middlebrook Mushrooms.
15. For the year ending 31 December 2010, Donegal Creameries' worldwide turnover was €126 million. Its turnover in the State for the same period was €79 million.

### **Target**

#### *Glenveagh and Maybrook*

16. The target companies, Glenveagh and Maybrook, are wholly-owned subsidiaries of Donegal Creameries. Glenveagh is located in Killygordon, Co. Donegal where it operates a liquid milk processing plant. Glenveagh purchases raw milk from dairy farmers in Co. Donegal and also from Maybrook. Glenveagh sells raw milk of manufacturing quality to third parties in the State and Northern Ireland (mainly to raw milk processors such as Lakeland Dairies). Donegal Creameries informed the Authority that it does not have the scale (i.e., milk volume) required to enter into the processing of raw milk of manufacturing quality at a level that would make it economically feasible.
17. Glenveagh processes all of its raw milk of liquid quality internally in its processing plant in Killygordon to produce liquid milk and cream products. Donegal Creameries sells liquid milk and cream products both locally in County Donegal and to own-label customers in the State. Donegal Creameries sells liquid milk and cream products under the brands of "Donegal Creameries," "Milburn," "Farm Fresh," and "Daisylane." Almost all of Donegal Creameries' total sales of branded liquid milk and cream products are made in Co. Donegal.

18. Maybrook is located in Omagh, Co. Tyrone. Maybrook purchases raw milk from dairy farmers in Northern Ireland and sells this raw milk only to Glenveagh. Maybrook also operates two retail stores selling agricultural inputs (e.g., fertiliser) to farmers in Northern Ireland.
19. Approximately [...]% of Donegal Creameries' raw milk suppliers are located in Co. Donegal. The remaining [...]% of Donegal Creameries' raw milk suppliers are located in Northern Ireland (mainly in Co. Tyrone which is located beside Co. Donegal). Approximately, [...]% of Donegal Creameries' raw milk supply came from dairy farmers located in Co. Donegal in 2010. Approximately, [...]% of Donegal Creameries' raw milk supply came from dairy farmers located in Northern Ireland in 2010. The remaining [...]% of Donegal Creameries' raw milk supply relates to raw milk purchased from third parties.

### **Rationale for the Proposed Transaction**

20. Connacht Gold stated in the merger notification that the proposed transaction will offer Connacht Gold the opportunity to grow its business. No comments were attributed to Donegal Creameries in the merger notification regarding the rationale for the proposed transaction.

### **Third Party Submissions**

21. The Authority received one third party submission during the Phase 1 investigation from an individual located in Co. Roscommon. The submission did not raise any competition issues in relation to the proposed transaction.

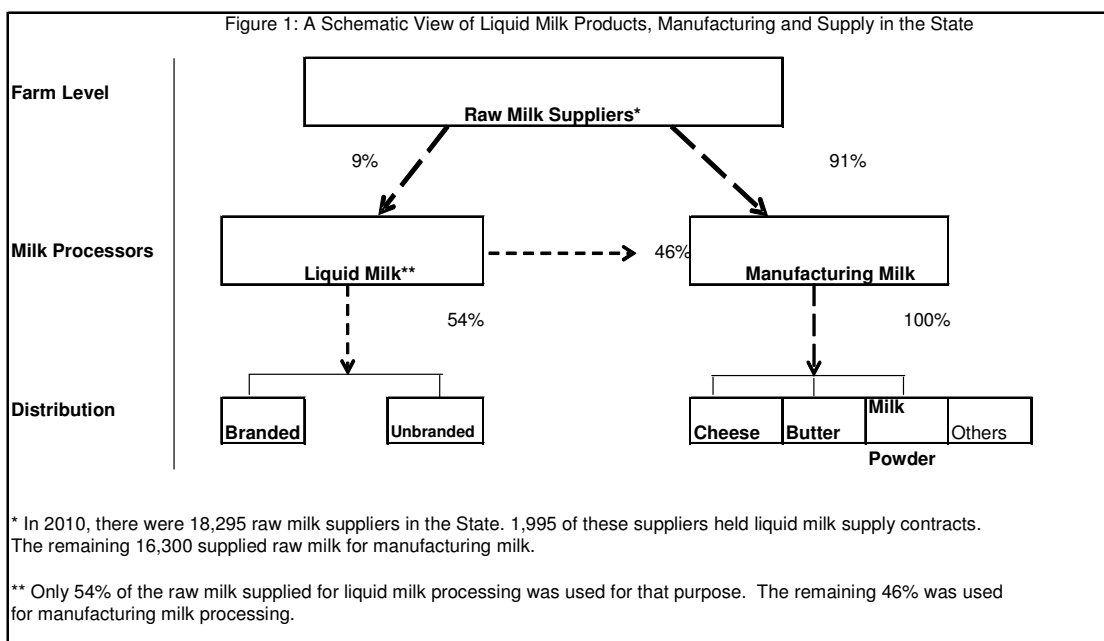
### **Industry Background – The Production and Sale of Liquid Milk and Cream**

22. Figure 1 below provides an overview of the supply chain for liquid milk and cream.<sup>5</sup> This figure shows the three levels of the supply chain and the types of milk produced. Raw milk is produced at the farm level which is then supplied to milk processors in the form of either liquid milk or manufacturing milk.<sup>6</sup> This is then produced into consumable dairy products for distribution.

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<sup>5</sup> Figure 1 is taken from the Authority's determination in *M/11/004 - Glanbia/Dawn Dairies and Golden Vale Dairies*.

<sup>6</sup> Manufacturing milk" is of course liquid, but it is not approved for sale as a liquid milk, hence the names.



Source: The Competition Authority

23. Domestic raw milk supplies in the State totalled 5,173 million litres in 2010.<sup>7</sup> Approximately 91% of this raw milk was used as manufacturing milk, while the remaining 9% was processed for liquid milk consumption in the State.
24. Raw milk is collected from dairy farms by dairy processors and delivered to dairies or creameries where it is processed into either "manufacturing milk" or "liquid milk".

#### *Manufacturing Milk*

25. Raw milk of manufacturing quality can be used to produce only manufacturing milk; it cannot be used to produce liquid milk. The vast majority of dairy farmers in the State produce raw milk only for processing as manufacturing milk. However, raw milk of liquid quality can be processed into manufacturing milk. For example, in 2010 only 54% of the raw milk produced by the 1,995 registered liquid milk producers actually went into the production of liquid milk. The remaining 46% of liquid milk produced was actually processed into manufacturing milk.
26. Manufacturing milk is used as an input in the production of other dairy products such as butter, skimmed milk powder, and cheese. A wide range of customers purchase manufacturing milk from milk processors.<sup>8</sup> These include butter manufacturers, natural cheese manufacturers, and skimmed milk powder manufacturers. The vast majority of these dairy products are subsequently exported by manufacturers.

#### *Liquid Milk*

27. Liquid milk is processed into full fat milk, low fat milk, skimmed milk, or cream for human consumption. These products are sold by milk processors direct to retailers either as branded or own-label products.

<sup>7</sup> National Milk Agency, Annual Report and Accounts, 2010, Table 1.5.

<sup>8</sup> Some raw milk processors use this milk internally as an input into the production of dairy products such as butter, skimmed milk powder, and cheese.

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

28. While there were 18,295 active dairy farmers in the State in 2010, only 1,995 had registered liquid milk supply contracts.<sup>9</sup> Liquid milk supply contracts are contracts between the dairy farmer and the processor. These contracts are required by the Milk Regulation and Supply Act, 1994. Liquid milk sold for human consumption in the State must have a registered liquid milk supply contract. In order to get a contract, a farmer must meet specific quality standards and register with the National Milk Agency. The quality standards for liquid milk are higher than those required for manufacturing milk. Each dairy processor checks to ensure that their suppliers of liquid milk meet these standards. There are no supply contracts for manufacturing milk.

#### *Imports of Raw Milk*

29. Imports of raw milk in 2010 amounted to 388 million litres, a decrease of 39 million litres from 2009.<sup>10</sup> These raw milk imports were equivalent to 8% of the total domestic raw milk supply in 2010, down from 9% in each of the previous three years.<sup>11</sup> 15% of the total volume of raw milk imported in 2010 was used for processing into liquid milk.
30. Total imports of raw milk for liquid consumption have increased sharply from 66 million litres in 2000 to 142 million litres in 2010. There has been a marked increase in imports of liquid milk in consumer packs from 20 million litres in 1999 (the first year with reported import data) to 84 million litres in 2010.<sup>12</sup>
31. Overall, imports are accounting for an increasing share of the State's consumption of liquid milk. The share of the total volume of liquid milk consumed in the State by liquid milk imports has increased almost every year, from 12% in 2000 to 25% in 2010.<sup>13</sup>

### **Analysis**

#### ***Overlap in the Activities of the Parties***

32. There are at least three areas of horizontal overlap between the parties:
- the procurement of raw milk in Co. Donegal;
  - the production and sale of liquid milk and cream in the island of Ireland; and,
  - the retail supply of agricultural inputs (mainly fertiliser and animal feed) to farmers in Co. Donegal.
33. The parties state in the merger notification that there is also a horizontal overlap between the parties in the production and sale of raw milk of manufacturing quality. Although Donegal Creameries sells all of its raw milk of manufacturing quality, Connacht Gold processes all of its raw milk

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<sup>9</sup> National Milk Agency, Annual Report and Accounts, 2010 ("Annual Milk Report").

<sup>10</sup> These raw milk imports were mainly cross border movements of raw milk from Northern Ireland.

<sup>11</sup> Annual Milk Report Table 1.5.

<sup>12</sup> Annual Milk Report Table 1.6.

<sup>13</sup> Annual Milk Report Table 1.8.

(liquid and manufacturing) internally to produce liquid milk, cream, butter, and [milk powders]. Whether or not there is a horizontal overlap between the parties, it is clear that the proposed transaction will not harm competition in the production and sale of raw milk of any quality.

34. The parties also state in the merger notification that there is a vertical overlap between the parties because Donegal Creameries sells raw milk to Connacht Gold. The Authority, however, does not consider this vertical link between the parties to constitute a vertical overlap raising competition concerns for the following reasons.
35. A number of Donegal Creameries' suppliers of raw milk (i.e., dairy farmers) also hold Connacht Gold quota raw milk which Donegal Creameries collects, pays for and sells to Connacht Gold. This arrangement relates to a Connacht Gold milk quota which became surplus to the requirements of Connacht Gold's dairy farmers. This quota was allocated to Donegal Creameries' suppliers who had spare capacity and a desire to increase raw milk output. Over the past four years, the volume of raw milk supplied by Donegal Creameries' dairy farmers to Connacht Gold under this quota arrangement was as follows:
- 2007 - [...];
  - 2008 - [...];
  - 2009 - [...]; and,
  - 2010 - [...];
36. The raw milk sold by Donegal Creameries to Connacht Gold is milk already owned and controlled by Connacht Gold under its quota. The Authority, therefore, does not consider these sales of raw milk by Donegal Creameries to Connacht Gold, under this arrangement, to constitute a vertical overlap between the parties that could raise competition concerns.
37. Even if this vertical link were to constitute a vertical overlap, the Authority considers that the arrangement does not raise any vertical competitive concerns. The [...] million litres of raw milk supplied under this arrangement in 2010 represents approximately [...]% of the total volume of raw milk processed in the North-West of Ireland and [...]% of the total volume of raw milk processed in the State in that year.<sup>14</sup>

## **Relevant Product Markets**

### *Views of the Undertakings Involved*

38. The parties relied on the views expressed by the Authority in previous merger determinations. The parties state that consistent with previous Authority merger determinations,<sup>15</sup> the competitive effects of the proposed transaction should be assessed by reference to the following four product markets:

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<sup>14</sup> Approximately, [...] million litres of raw milk was processed in the North-West of the State in 2010. As noted above, dairy farmers in the State supplied 5,173 million litres of raw milk to all processors in the State in 2010.

<sup>15</sup> The parties cite the following merger determinations: M/11/004 - *Glanbia/Dawn Dairies and Golden Vale Dairies*; M/10/029 - *Kerry/Newmarket*; M/09/010 - *LL/TPDL/FIL/Freshmills/Drummonds*; and, M/05/005 - *Glanbia/Dairygold Dairies*.

- The production and sale of raw milk of manufacturing quality;
  - The production and supply of liquid milk to retailers;
  - The retail sale of liquid milk and cream; and,
  - The retail supply of agricultural inputs to farmers.
39. The parties did not express any views in relation to the relevant product market for the procurement of raw milk.

*Views of the Competition Authority*

The Procurement of Raw Milk

40. There is horizontal overlap between the parties with respect to the procurement of raw milk since both Connacht Gold and Donegal Creameries purchase supplies of raw milk (of liquid and manufacturing quality) from dairy farmers.
41. There are two types of raw milk that can be procured from dairy farmers: organic raw milk and non-organic raw milk. The vast majority of raw milk produced by dairy farmers with dairy cows in the State is non-organic raw milk.<sup>16</sup> Donegal Creameries procures both, whereas Connacht Gold does not procure organic raw milk. The volume of organic milk procured is sufficiently small that the competitive effects analysis is largely the same, whether looking at the procurement of all raw milk or examining only non-organic raw milk.
42. Similarly, there is no need to resolve whether to include the procurement of raw milk from sheep and goats, or soy milk, in the market being assessed. Only 1.5% of the total volume of raw milk produced in the State in 2008 came from sheep and goats.<sup>17</sup> Given that the notifying parties do not produce soy milk or procure raw milk from dairy farmers with dairy sheep or dairy goats, the Authority will confine its analysis of the competitive impact of the proposed transaction to the procurement of raw milk from dairy farmers with dairy cows.
43. The Authority, however, does not need to come to a definitive view on the precise relevant product market because its conclusions concerning the competitive effects of the proposed acquisition, outlined below, will be unaffected whether the relevant product market is the procurement of raw milk from dairy farmers with dairy cows, or narrowed to non-organic milk, or widened to include raw milk from all types of dairy animals (i.e., cows, sheep, and goats) and soy milk.
44. As noted, both parties procure raw milk but Donegal Creameries sells all of its raw milk of manufacturing quality to third parties whereas Connacht Gold uses all of its raw milk internally. Without resolving market definition issues related to this, the Authority will consider whether competition in the production and sale of raw milk is likely to be harmed substantially post-transaction.

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<sup>16</sup> The Authority was told that there are only two raw milk processors in the State who sell organic raw milk: Donegal Creameries and Glenisk Organic Dairy.

<sup>17</sup> Source: <http://www.rawmilkireland.com/>



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

45. There is a horizontal overlap between the parties with respect to the production and sale of own-label and branded liquid milk and cream. As noted above, it is not possible to use raw milk of manufacturing quality as liquid milk or cream in the State. For this reason, liquid milk and cream should be regarded as a separate product market. For the purpose of analysing the proposed transaction, the Authority will examine the market for the production and sale of own-label and branded liquid milk and cream to customers. The Authority reached the same conclusion in its determination in M/11/004 – Glanbia/Dawn Dairies and Golden Vale Dairies.
46. The parties also examined the competitive impact of the proposed transaction in the following product market: “the retail sale of liquid milk and cream”. Neither party is active in such a market, however. Almost all of the parties’ sales of liquid milk and cream are to entities other than end consumers. Nevertheless, although the parties are not retailers, their brands do compete at the retail level. Therefore, the Authority will examine sales of liquid milk and cream at the retail level in order to assess the competitive impact of the proposed transaction on end consumers.

### The Retail Supply of Agricultural Inputs to Farmers

47. As described in the Authority’s determination in M/09/010 – LL/TPDL/FIL/Freshmills/Drummonds, in order to grow grains (spring barley, winter barley, wheat, and oats) and other crops, farmers require various agricultural inputs such as seeds, fertiliser and agri-chemicals. Farmers who also raise animal livestock (i.e., cattle and sheep) require animal feed to supplement the grazing of the land, particularly in the winter months when grass is scarce.
48. It could be argued that since agricultural inputs are not substitutes for one another, the market for the retail supply of agricultural inputs (i.e., seeds, fertiliser, agri-chemicals, animal feed, and grain) to farmers is too wide and that each agricultural input represents a separate relevant product market. However, given the complementary nature of agricultural inputs from the perspective of the end customer (i.e., the farmer), the Authority considers that the supply of agricultural inputs by agri-merchants to farmers could represent a single relevant product market.
49. The Authority, however, does not need to come to a definitive view on the precise relevant product market because its conclusions concerning the competitive effects of the proposed transaction, described below, will be unaffected whether each agricultural input supplied by agri-merchants to farmers is a separate relevant product market or whether all agricultural inputs supplied to farmers comprise a single relevant product market. The Authority reached the same conclusion in its determination in M/09/010 – LL/TPDL/FIL/Freshmills/Drummonds<sup>18</sup>.

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

50. For the purpose of examining the competitive effects of the proposed transaction, the Authority will examine the following product markets:

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<sup>18</sup> Paragraphs 25-26.

- The procurement of raw milk (without precisely defining the product market, and while also looking at the production and sale of raw milk);
- The production and sale of liquid milk and cream (while also examining the retail sale of liquid milk and cream); and,
- The retail supply of agricultural inputs to farmers.

## **Relevant Geographic Markets**

### The Procurement of Raw Milk in Co. Donegal

#### *Views of the Undertakings Involved*

51. The parties did not express any views in relation to the relevant geographic market for the procurement of non-organic raw milk.

#### *Views of the Competition Authority*

52. Given the costs involved in transporting raw milk from the farm of a raw milk supplier to the raw milk processing plant, processors tend to procure raw milk from dairy farmers located in relative close proximity to their processing plant(s). The Irish Farmers Association (IFA) informed the Authority that the location of a raw milk processor will influence its choice of raw milk suppliers. The IFA explained, by way of example, that there would be little scope for Cork-based Dairygold Co-operative to collect raw milk from Donegal Creameries' raw milk suppliers.
53. [...]% of Donegal Creameries' raw milk purchases in 2010 were made from dairy farmers located in Co. Donegal and Northern Ireland. Over [...]% of Donegal Creameries' raw milk suppliers (i.e., dairy farmers) are located in Co. Donegal and Co. Tyrone. This is unsurprising given the location of Donegal Creameries' liquid milk processing plant in Killygordon, Co. Donegal.<sup>19</sup>
54. In the case of Connacht Gold, [...]% of its raw milk purchases in 2010 were made from dairy farmers located in the following four counties: Mayo, Sligo, Galway, and Roscommon. [...]% of Connacht Gold's raw milk suppliers (i.e., dairy farmers) are located in these four counties. This is unsurprising given the location of Connacht Gold's two raw milk processing plants in Ballaghaderreen, Co. Roscommon and Barnasraghy, Co. Sligo.<sup>20</sup> Connacht Gold does not procure raw milk from dairy farmers in Northern Ireland.
55. Since both parties only overlap in the procurement of raw milk from dairy farmers in Co. Donegal, the Authority will examine the competitive effects of the proposed acquisition in the market for the procurement of raw milk in Co. Donegal, without deciding whether the relevant market should be broader than this. Due to the geographic scope of the activities of the

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<sup>19</sup> Killgordon is located close to the border between Co. Donegal and Co. Tyrone. Killygordon is only 40km from Omagh in Co. Tyrone where Donegal Creameries' subsidiary Maybrook is located. Maybrook purchases raw milk from dairy farmers in Northern Ireland and sells this raw milk to Glenveagh.

<sup>20</sup> Ballaghaderreen in Co. Roscommon is only 50km from Barnasraghy in Co. Sligo. Furthermore, Ballaghaderreen is located close to the border with Co. Mayo where [...]% of Connacht Gold's raw milk suppliers are located.

parties, this is the narrowest geographic market in which the proposed acquisition could raise a competition concern.

56. The Authority does not need to come to a definitive view on the precise relevant geographic market because its conclusions concerning the competitive effects of the proposed acquisition, outlined below, would be unaffected whether the relevant geographic market is Co. Donegal, or wider to encompass other areas in the island of Ireland.

### The Production and Sale of Liquid Milk and Cream in the Island of Ireland

#### *Views of the Undertakings Involved*

57. The parties state that in M/11/004 – Glanbia/Dawn Dairies and Golden Vale Dairies, the Authority concluded that the relevant geographic market for the production and supply of own-label and branded liquid milk to retailers is the island of Ireland.

#### *Views of the Competition Authority*

58. From a demand-side perspective, information provided by retailers indicates that they are prepared to purchase supplies of own-label and branded liquid milk and cream from dairy processors located anywhere in the island of Ireland. For example, [...]. [...].
59. Furthermore, a liquid milk processor based in Northern Ireland informed the Authority that it supplies branded and own-label liquid milk and cream to retailers in the island of Ireland. Strathroy Dairy Limited (“Strathroy”), based in Co. Tyrone, informed the Authority that it supplies branded and own-label liquid milk and cream throughout the island of Ireland.<sup>21</sup>
60. The Authority therefore considers that a relevant geographic market for the production and sale of liquid milk and cream is the island of Ireland.
61. As noted above, the parties assessed the impact of the proposed transaction in the market for the retail sale of liquid milk and cream by reference to the regional market in which Donegal Creameries and Connacht Gold sell their branded liquid milk and cream products – the counties of Connacht (Sligo, Leitrim, Roscommon, Galway and Mayo) together with the Ulster counties based in the State – Donegal, Cavan and Monaghan.
62. The parties also examined the competitive impact of the proposed transaction in the retail sale of liquid milk and cream in Co. Donegal. However, the parties state that Co. Donegal cannot be seen as a separate geographic market for the purposes of examining the competitive effects of the proposed transaction. Although the Authority does not consider the parties to be active in the retail sale of liquid milk and cream, it agrees that examining sales of liquid milk and cream at the retail level is important for assessing the competitive impact of the proposed transaction. Since nearly all of Donegal Creameries’ retail sales of branded liquid milk and cream products in 2010 were made in Co. Donegal, the Authority will examine retail sales of liquid milk and cream in this county. If the retail sale of liquid milk and cream in Co. Donegal were

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<sup>21</sup> Strathroy processes liquid milk and cream in its processing plant in Omagh, Co. Tyrone but it also has distribution depots in Dublin, Limerick, Galway, Sligo, Cavan, and Letterkenny.

a relevant market, it would comprise the narrowest relevant market in which to assess the competitive impact of the proposed transaction.

### The Retail Supply of Agricultural Inputs to Farmers in Co. Donegal

#### *Views of the Undertakings Involved*

63. The parties state that while not coming to a definitive view on the scope of the geographic market, the Authority has previously expressed the view in M/09/010 – LL/TPDL/FIL/Freshmills/Drummonds that "... it is likely that agri-merchants compete in regional geographic markets for the retail supply of agricultural inputs to farmers." The parties state that the Authority's view was based on the following assertion:

"[I]t is unlikely that farmers would be prepared to switch in response to a permanent price rise given their preference for dealing with agri-merchants in their locality. As stated by the IFA, if a farmer decides to source supplies of agricultural inputs from an agri-merchant located outside the farmer's locality, he will face additional transport costs for the supply of agricultural inputs as well as for the delivery of his grain to the agri-merchant."

64. The parties state that while they agree with the general thrust of the IFA's statement, they note that farmers do seek competitive quotes from a number of sources outside their locality and, indeed, their region.
65. The parties state that the narrowest possible geographic market under which the proposed transaction should be assessed is the local market around each individual Donegal Creameries' store, rather than on a regional basis.

#### *Views of the Competition Authority*

66. As described in M/09/010 – LL/TPDL/FIL/Freshmills/Drummonds,<sup>22</sup> the traditional relationship between the farmer and agri-merchant has been one where the former supplies the harvested grain to a local agri-merchant in settlement for the initial purchase of agricultural inputs. Proximity to the agri-merchant's depot(s) is therefore an important factor in the farmer's choice of agri-merchant.
67. It is unlikely that farmers would be prepared to switch in response to a price rise given their preference for dealing with agri-merchants in their locality. If a farmer decides to source supplies of agricultural inputs from an agri-merchant located outside the farmer's locality, he will face additional transport costs for the supply of agricultural inputs as well as for the delivery of his grain to the agri-merchant. Thus, it is likely that agri-merchants compete in local or regional geographic markets for the retail supply of agricultural inputs to farmers.
68. Connacht Gold owns 30 retail stores in eight counties which sell agricultural inputs to farmers: Sligo (10), Mayo (8), Roscommon (5), Leitrim (3), and Donegal/Westmeath/Longford/Longford (1 each). Donegal Creameries owns 11 retail stores, nine of which are based in Co. Donegal with the remaining two based in Northern Ireland. Thus, the key

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<sup>22</sup> Paragraphs 27-29.

geographic area of overlap between the parties in relation to the retail supply of agricultural inputs is Co. Donegal.

69. The Authority will therefore examine the competitive effects of the proposed acquisition in the market for the retail supply of agricultural inputs to farmers in Co. Donegal. Due to the geographic scope of the activities of the parties, this is the narrowest geographic market in which the proposed acquisition could raise a competition concern.
70. The Authority does not need to come to a definitive view on the precise relevant geographic market for the retail supply of agricultural inputs to farmers because its conclusions concerning the competitive effects of the proposed acquisition, outlined below, will be unaffected whether the relevant geographic market is local (i.e., Co. Donegal), or wider to encompass other areas in the island of Ireland.

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

71. In conclusion, for the purpose of examining the competitive effects of the proposed transaction, the Authority will examine the following markets:
- The procurement of raw milk in Co. Donegal (without precisely defining the market, and while also looking at the production and sale of raw milk);
  - The production and sale of liquid milk and cream in the island of Ireland (while also looking at the retail sale of liquid milk and cream in Co. Donegal); and,
  - The retail supply of agricultural inputs to farmers in Co. Donegal.

### **Competitive Assessment**

#### ***The Procurement of Raw Milk in Co. Donegal***

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

72. The parties did not express any views in relation to the competitive impact of the proposed transaction in the market for the procurement of raw milk in the North-West of Ireland.

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

73. The Authority examined whether Connacht Gold, post-acquisition, would have the ability to lessen competition in the procurement of raw milk from dairy farmers in Co. Donegal (by, for example, lowering the price offered to dairy farmers for raw milk and/or reducing the volume of raw milk procured from dairy farmers).
74. The Authority does not have market share data available indicating the volume of raw milk procured by each raw milk processor in Co. Donegal. However, one proxy measure for the volume of raw milk procured by each processor from dairy farmers is to examine the total volume of raw milk processed by each dairy processor. Although no data is available for Co. Donegal, data is available for the North-West of Ireland. Table 1 below

provides market share estimates for the processing of raw milk in the north-west of Ireland for 2010.<sup>23</sup>

**Table 1: Processors of Raw Milk in the North-West of Ireland, 2010**

| Processor                 | Total Raw Milk (million litres) | %              |
|---------------------------|---------------------------------|----------------|
| Lakeland Dairies          | [...]                           | [30-40]        |
| Glanbia                   | [...]                           | [25-35]        |
| <b>Connacht Gold</b>      | [...]                           | <b>[15-25]</b> |
| <b>Donegal Creameries</b> | [...] <sup>24</sup>             | <b>[0-10]</b>  |
| Arrabawn                  | [...]                           | [5-15]         |
| Town of Monaghan          | [...]                           | [5-15]         |
| Natural Dairies           | [...]                           | [0-10]         |
| Total                     | [...]                           | 100            |

Source: The Parties

75. Post-transaction, Connacht Gold’s market share in raw milk processing will increase to approximately [20-30]% and it will remain the third-biggest raw milk processor in the North-west of Ireland. Notwithstanding this increase in market share post-transaction, the Authority considers that Connacht Gold will not have the ability to lessen competition in the procurement of raw milk from dairy farmers in Co. Donegal for the following reasons.
76. First, unlike Donegal Creameries, Connacht Gold has a limited presence in the procurement of raw milk in Co. Donegal. Only [...] % of Connacht Gold’s raw milk suppliers are located in Co. Donegal and these accounted for [...] % of Connacht Gold’s total raw milk purchases in 2010. Furthermore, [...] out of Connacht Gold’s [...] raw milk suppliers in Co. Donegal are “dual suppliers” - dairy farmers who principally supply raw milk to another dairy co-operative but have had some raw milk quota allocated to them by Connacht Gold.
77. Second, the IFA informed the Authority that Donegal Creameries’ raw milk suppliers have no competition concerns regarding the proposed transaction. The IFA indicated to the Authority that Donegal Creameries’ dairy farmers are positive about the impact of the proposed transaction because Connacht Gold is committed to buying raw milk from dairy farmers in Co. Donegal over the long-term. The IFA also expressed the view that it does not anticipate Connacht Gold, post-transaction, attempting to squeeze dairy farmers in Co. Donegal by, for example, offering a lower price for their raw milk.
78. Third, there are a number of alternative raw milk processors active in the North-west of Ireland to whom dairy farmers in Co. Donegal can sell their raw milk post-transaction should Connacht Gold attempt to squeeze dairy farmers. In 2010, for example, both Lakeland Dairies and Glanbia, processed more raw milk than Connacht Gold and Donegal Creameries combined (all illustrated in Table 1 above). Annex A contains a table listing the main raw milk processors in the North-West of Ireland and Northern Ireland. Most of the raw milk processors listed in the table have the capacity to increase production of raw milk. For example, [...].

<sup>23</sup> These figures may underestimate or overestimate the volume of raw milk procured by each raw milk processor since many processors buy raw milk from and sell raw milk to rival raw milk processors.

<sup>24</sup> As noted above, Donegal Creameries procured approximately [...] million litres of raw milk from dairy farmers in 2010. However, Donegal Creameries only processed [...] million litres of raw milk of liquid quality in 2010.

79. The IFA informed the Authority that the main rival dairy processors to Donegal Creameries and Connacht Gold in the North-West of Ireland (including Co. Donegal) would be Lakeland Dairies and Town of Monaghan. The IFA also expressed the view that raw milk processors in Northern Ireland such as Strathroy would also be competitors of Donegal Creameries and Connacht Gold.
80. Fourth, there are mechanisms in place for a dairy farmer to switch raw milk processor. The parties informed the Authority that dairy farmers need to provide only three months notice if they wish to switch their supply of raw milk to an alternative raw milk processor.<sup>25</sup> Donegal Creameries informed the Authority that eight dairy farmers switched their supply of raw milk to a rival processor in 2011. The parties also informed the Authority that subsequent to the commencement of commercial negotiations between Connacht Gold and Donegal Creameries certain raw milk suppliers of Donegal Creameries based in Northern Ireland (who accounted for approximately [...] million litres of raw milk) switched their supply to Lakeland Dairies.
81. In conclusion, the Authority considers that Connacht Gold will not have the ability to lessen competition in the procurement of raw milk from dairy farmers in Co. Donegal.
82. Without deciding whether there is a market for the production and sale of raw milk, the Authority also examined the impact of the proposed transaction on the options available to Donegal Creameries' raw milk customers post-transaction. As noted earlier, Donegal Creameries sells raw milk of manufacturing quality to third parties in the State and Northern Ireland. Connacht Gold processes all of its raw milk internally.

#### Survey of Customers

83. The majority of raw milk customers of Donegal Creameries contacted by the Authority expressed no competition concerns about the proposed transaction.
84. In order to ascertain the views of raw milk customers, the Authority designed a questionnaire to be answered by customers of Donegal Creameries.<sup>26</sup> The questionnaire consisted of questions about the respondent's experience with buying raw milk and its views about the proposed transaction.
85. Excluding Connacht Gold, [...] customers in total purchased raw milk from Donegal Creameries in 2010. The Authority sent the questionnaire to these [...] customers of Donegal Creameries. Table 2 below illustrates the breakdown of raw milk sales by Donegal Creameries to [...] customers in 2010.

**Table 2: Donegal Creameries' Sales of Raw Milk, Volume, 2010**

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<sup>25</sup> The IFA informed the Authority that current milk quota regulations mean it can take between 3-6 months for a dairy farmer to switch processor. The IFA also informed the Authority that historically dairy farmers tend not to switch dairy processor for three reasons: (a) most are shareholders of the dairy co-operative and thus would have no incentive to switch; (b) there is no guarantee that another dairy processor will continue to offer a higher price for raw milk than the current processor; and, (c) there is no guarantee that another dairy processor will make a long-term commitment to buy raw milk from the dairy farmer.

<sup>26</sup> Connacht Gold uses all of its raw milk for its own produce and thus has no customers to whom it sells raw milk.

| <b>Customer</b> | <b>Volume (million litres)</b> | <b>% of Donegal Creameries' Total Raw Milk Sales</b> |
|-----------------|--------------------------------|--|
| [...]           | [...]                          | [...]  |
| [...]           | [...]                          | [...]  |
| [...]           | [...]                          | [...]  |
| [...]           | [...]                          | [...]  |
| [...]           | [...]                          | [...]  |
| [...]           | [...]                          | [...]  |
| <b>Total</b>    | [...]                          | <b>100</b>   |

Source: Donegal Creameries

86. Five [...] customers returned a completed questionnaire to the Authority. The Authority subsequently contacted some of these five customers in order to discuss further their responses to the Authority's questionnaire. Four customers expressed no competition concerns regarding the proposed transaction. All four customers listed United Dairy Farmers, a raw milk processor located in Northern Ireland, as a credible alternative supplier of raw milk post-transaction. One of the four customers also listed Lakeland Dairies and Town of Monaghan as credible alternative suppliers of raw milk. Another customer listed the following suppliers as credible alternatives in addition to United Dairy Farmers: Dawn Dairies, Glanbia, Strathroy, and Fivemiletown.
87. One out of the five customers that returned a completed questionnaire raised a concern regarding access to supplies of organic raw milk post-transaction. This customer, a manufacturer of organic cheese, stated that there are only two organic raw milk processors in the State: Donegal Creameries and Glenisk Organic Dairy. This customer expressed a concern that Connacht Gold would shut down Donegal Creameries' organic raw milk operations post-transaction, leaving Glenisk Organic Dairy as the only remaining supplier of organic raw milk in the State. This customer stated that dairy processors in the State are against the growth of organic milk sales as they perceive non-organic raw milk to be almost the same as organic raw milk.
88. Connacht Gold informed the Authority that it will [supply] Donegal Creameries [with] organic raw milk post-transaction [, and that Donegal Creameries will retain its organic milk brands]. Connacht Gold also informed the Authority that it will continue to fulfil Donegal Creameries' own-label organic raw milk supply contracts with retailers post-transaction. For the above reasons, the Authority considers that the proposed transaction will not harm competition in the production and sale of organic raw milk in the State.

## **Conclusion**

89. In the light of the above, the Authority considers that Connacht Gold, post-transaction, will not have the ability to lessen competition in the procurement of raw milk from dairy farmers in Co. Donegal or elsewhere; nor will competition be harmed in the production and sale of raw milk.



## ***The Production and Sale of Liquid Milk and Cream in the Island of Ireland***

### *Views of the Undertakings Involved*

90. Table 3 below provides the parties' market share estimates for those processors involved in the production and sale of liquid milk (own-label and branded) to retailers in the island of Ireland in 2010.<sup>27</sup> This data does not include sales of cream products.

**Table 3: Processors of Liquid Milk in the Island of Ireland, 2010**

| <b>Processor</b>          | <b>Volume (million litres)</b> | <b>%</b>      |
|---------------------------|--------------------------------|---------------|
| Glanbia                   | [...]                          | [45-55]       |
| Strathroy                 | [...]                          | [15-25]       |
| <b>Connacht Gold</b>      | [...]                          | <b>[0-10]</b> |
| <b>Donegal Creameries</b> | [...]                          | <b>[0-10]</b> |
| Arrabawn                  | [...]                          | [0-10]        |
| Dale Farm                 | [...]                          | [0-10]        |
| Clona Dairies             | [...]                          | [0-10]        |
| Wexford Dairies           | [...]                          | [0-10]        |
| Linwoods                  | [...]                          | [0-10]        |
| Total                     | [...]                          | 100           |

Source: The Parties

91. The parties state that Connacht Gold has a [0-10]% share of the market with Donegal Creameries having a share of approximately [0-10]%. The combined market share of the parties post-transaction will be less than [5-15]%. The parties state that Connacht Gold will have neither the market power nor the incentive to raise its own-label liquid milk prices to retailers post-transaction. The parties refer to the Authority's recent determination in M/11/004 – Glanbia/Dawn Dairies and Golden Vale Dairies which stated that most retailers use multiple suppliers of own-brand liquid milk, including suppliers based in Northern Ireland. The parties state that this highlights the existence of credible alternative suppliers to whom retailers can switch should Connacht Gold attempt to raise its own-label liquid milk prices post-transaction. The parties also state that most retailers tender own-label milk contracts on an annual basis, further facilitating switching amongst suppliers. The views of the parties in relation to the production and sale of branded liquid milk and cream are outlined below.

### *Views of the Competition Authority*

92. There are three channels through which processors make sales of liquid milk and cream products in the State:
- Sales to retailers (e.g. Tesco, Spar, independent retail outlets, etc);
  - Sales via the doorstep deliveries channel (i.e., sales direct to end customers); and
  - Sales to the catering/foodservice industry (i.e., restaurants, pubs, etc)
93. The majority of liquid milk and cream sales in the State are made to retailers. Liquid milk sales via the doorstep deliveries channel have fallen

<sup>27</sup> The parties's estimates are based on AC Nielsen data and information contained in the National Milk Agency's 2010 Annual Report.

from approximately 30% of total sales in 1999 to 8% in 2009.<sup>28</sup> Sales to the catering/food service channel accounted for approximately 13% of total liquid milk sales in 2009.

94. Donegal Creameries informed the Authority that only [...] % of its total sales of liquid milk in 2010 was accounted for by direct sales to end consumers. The equivalent figure for Connacht Gold in 2010 was less than [...] %. Donegal Creameries informed the Authority that approximately [...] % of its total sales of liquid milk in 2010 was accounted for by sales to the catering/food service channel. The equivalent figure for Connacht Gold in 2010 was approximately [...] %.
95. The Authority's assessment of the competitive impact of the proposed transaction will focus on the production and sale of liquid milk and cream to retailers since this accounts for the vast majority of liquid milk and cream sold in the island of Ireland.
96. The market share estimates provided by the parties (see Table 3 above) do not include data for the production and sale of cream to retailers in the island of Ireland. However, the parties informed the Authority that the volume of cream they produce annually is a tiny fraction of the total volume of liquid milk produced. Donegal Creameries informed the Authority that it sold [...] litres of cream in the State in 2010 in comparison to over [...] million litres of liquid milk sales in the State in 2010. Thus, despite the absence of data for cream, Table 3 above gives a good indication of market share figures for those processors involved in the production and sale of liquid milk and cream (own-label and branded) to retailers in the island of Ireland.
97. 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 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. The pre-proposed transaction HHI is 2,777 while the HHI post-transaction is 2,861. The change in the HHI is 84.
98. The HHI results would put the transaction in Zone B as defined by the Competition Authority's *Merger Guidelines*.<sup>29</sup> In other words, the market for the production and sale of own-label and branded liquid milk to retailers in the island of Ireland post-transaction would be defined as moderately concentrated.
99. The Authority considers that post-transaction, Connacht Gold will not have the ability to exercise market power or lessen competition in the production and sale of liquid milk and cream in the island of Ireland for the following reasons.
100. First, as Table 3 above indicates, although Connacht Gold's market share will increase to almost [5-15] % post-acquisition, it will remain the third biggest liquid milk processor in the island of Ireland behind Glanbia and Strathroy. There are a large number of alternative liquid milk processors available to customers (such as retailers seeking suppliers of own-label

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<sup>28</sup> See paragraph 40, M/11/004 – Glanbia/Dawn Dairies and Golden Vale Dairies.

<sup>29</sup> Full details of the HHI are explained in the Competition Authority, 2004, *Notice in Respect of Guidelines for Merger Analysis*, Decision No. N/02/004. This document is available on [www.tca.ie](http://www.tca.ie). A Zone A merger is less likely to have adverse competitive effects. In contrast, Zone C mergers occur in already highly concentrated markets and are more likely to raise competition concerns.

and branded liquid milk) should Connacht Gold attempt to raise its liquid milk prices post-acquisition. Furthermore, as noted above, imports of liquid milk from Northern Ireland are increasingly important.

### Survey of Customers

101. Second, none of the ten customers contacted by the Authority expressed any concerns about the sale of own-label and branded liquid milk. In order to ascertain the views of customers, the Authority designed a questionnaire to be answered by customers of the merging parties. The questionnaire consisted of questions about the respondent's experience with buying branded and own-label liquid milk and its views about the proposed acquisition.
102. The Authority sent the questionnaire to the merging parties' top five customers in the State. Since two customers appear on both parties' top five lists, eight customers were contacted by the Authority.<sup>30</sup> In addition, the Authority also sent the questionnaire to two other retail customers.<sup>31</sup> Thus, ten customers in total were contacted by the Authority.
103. As Table 4 below illustrates, sales of liquid milk (branded and own-label) by Connacht Gold to its top five customers accounted for [...] % of total liquid milk sales by Connacht Gold in the State in 2010. Sales of liquid milk (branded and own-label) by Donegal Creameries' to its top five customers accounted for [...] % of its total liquid milk sales in the State in 2010.

**Table 4: The Parties' Sales of Liquid Milk (Branded and Own-label) to their top 5 Customers in the State, Volume (litres), 2010**

| <b>Customer</b>     | <b>Connacht Gold<br/>(%)</b> | <b>Donegal Creameries<br/>(%)</b> |
|---------------------|------------------------------|-----------------------------------|
| [...]               | [...]                        | [...]                             |
| [...]               | [...]                        | [...]                             |
| [...]               | [...]                        | [...]                             |
| [...]               | [...]                        | [...]                             |
| [...] <sup>32</sup> | [...]                        | [...]                             |
| [...]               | [...]                        | [...]                             |
| [...]               | [...]                        | [...]                             |
| [...] <sup>33</sup> | [...]                        | [...]                             |
| Others              | [...]                        | [...]                             |
| Total               | 100                          | 100                               |

Source: The Parties

104. All ten customers returned a completed questionnaire to the Authority. The Authority subsequently contacted some of these ten customers in order to discuss further their responses to the Authority's questionnaire.

### *Customer Views on the Sale of Own-label Liquid Milk and Cream*

<sup>30</sup> Six of these eight customers are retailers. A seventh customer is a food processor who sells a wide range of products including liquid milk and cream to retail customers. Finally, an eighth customer is an agent for and distributor of Donegal Creameries' liquid milk products.

<sup>31</sup> One is a customer of Connacht Gold but not one of its Top 5 customers. The other is a customer of Donegal Creameries but not one of its Top 5 customers.

<sup>32</sup> Donegal Creameries classifies [...] as a foodservice customer.

<sup>33</sup> [...] is an agent for and distributor of Donegal Creameries' liquid milk products.

105. One customer stated that it uses seven suppliers of own-label liquid milk and cream and it also listed two other credible potential suppliers. This customer also stated that the proposed transaction will have no impact since there will remain a wide range of alternative suppliers post-transaction. A second customer stated that it uses eight suppliers of own-label liquid milk and cream. A third customer stated that it currently uses Natural Dairies (located in Co. Donegal) as its sole supplier of own-label liquid milk and cream. This customer also listed five other credible potential suppliers of own-label liquid milk and cream located in the island of Ireland.
106. A fourth customer stated that it uses six suppliers of own-label liquid milk and cream all of whom are located in the island of Ireland. A fifth customer stated that it uses eight suppliers of own-label liquid milk and cream. A sixth customer stated it currently uses two suppliers of own-label liquid milk and cream: Donegal Creameries and Strathroy. This customer also listed four credible alternative suppliers: Arrabawn, Glanbia, Clona Dairies, and Natural Dairies.
107. A seventh customer stated that it uses one supplier of own-label liquid milk and cream (Donegal Creameries) after switching from Glanbia in 2009. This retailer also listed seven credible alternative suppliers of own-label liquid milk and cream. An eighth customer stated that it uses Glanbia as its sole supplier of own-label liquid milk and cream after switching from Strathroy in 2011. This customer also listed six credible alternative suppliers of own-label liquid milk and cream.
108. A ninth customer stated that it uses Donegal Creameries as its sole supplier of own-label liquid milk and cream and it listed two credible alternative suppliers. Finally, a tenth customer (an agent for and distributor of Donegal Creameries' milk products) stated that it does not sell own-label liquid milk or cream.

*Customer Views on the Sale of Branded Liquid Milk and Cream*

109. No customer expressed any concern about harm to competition in relation to the sale of branded liquid milk and cream. Four customers expressed the view that the liquid milk and cream brands supplied by Connacht Gold and Donegal Creameries are close competitors in the North-West of the State. A fifth customer expressed the view that Connacht Gold and Donegal Creameries "...are close competitors around the border of Sligo and Donegal; however as you move away into more rural areas of both counties there is little overlap [between the parties]." All five customers, however, informed the Authority that there are a number of other liquid milk and cream suppliers that are close competitors of both Connacht Gold and Donegal Creameries, most notably Strathroy Dairies, Glanbia's *Avonmore* brand, and Arrabawn.
110. Three out of the ten customers contacted by the Authority expressed the view that the liquid milk and cream brands supplied by Connacht Gold and Donegal Creameries are not close competitors since they are principally sold in different regions of the State.<sup>34</sup>
111. The views of customers can be summarised as follows:

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<sup>34</sup> Two out of the ten customers expressed no view concerning the closeness of competition between the liquid milk and cream brands of Connacht Gold and Donegal Creameries.

- Most customers use multiple suppliers of own-label liquid milk and cream;
- All customers stated that credible alternative suppliers exist; and,
- No competition concerns were expressed by any customer.

*Views of Major Competitor in Co. Donegal*

112. Third, Strathroy (the second biggest liquid milk processor in the island of Ireland as illustrated in Table 3 above) informed the Authority that it has no competition concerns with the proposed transaction.<sup>35</sup> Strathroy listed fourteen competitors active in the production and sale of own-label liquid milk and cream to retailers in the island of Ireland.<sup>36</sup> [...].
113. The Authority considers that the presence of Strathroy and other liquid milk processors such as Glanbia will act as a significant competitive constraint on Connacht Gold post-acquisition. The vast majority of customers contacted by the Authority listed Strathroy as a close competitor of both Connacht Gold and Donegal Creameries in the sale of liquid milk and cream.

**Conclusion**

114. The Authority considers that Connacht Gold will not have the ability to raise its own-label and branded liquid milk and cream prices post-acquisition. As noted above, all retail customers informed the Authority that they use multiple suppliers of own-label liquid milk including suppliers based in Northern Ireland. This reflects the existence of credible alternative suppliers to whom retailers can switch post-acquisition should Connacht Gold decide to raise its liquid milk and cream prices. No customer expressed concern about competition post-transaction in the production and sale of branded or own-label liquid milk or cream.

**Assessment of Retail Liquid Milk and Cream Sales**

115. As noted above, although the Authority does not consider the parties to be active in the retail sale of liquid milk and cream, examining sales of liquid milk and cream at the retail level is important for assessing the competitive impact of the proposed transaction. In particular, only at the retail sales level is data available for sales of the parties' liquid milk and cream brands. Examining market share data at the retail level enables the Authority to compare the market position of the liquid milk and cream brands sold by Connacht Gold and Donegal Creameries with competing brands and retailer own-label brands.

*Views of the Undertakings Involved*

116. The parties considered the competitive impact of the proposed transaction in the retail sale of liquid milk in Co. Donegal (see Table 5 below).

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<sup>35</sup> The Authority recognises, however, that the views of competitors may or may not be consistent with the interests of consumers. See page 43 of "ICN Investigative Techniques Handbook for Merger Review", International Competition Network, June 2005.

<sup>36</sup> Strathroy noted that not all fourteen competitors supply own-brand liquid milk and cream throughout the entire island of Ireland.

**Table 5: Retail Liquid Milk Market Shares by Value, 2008-2010, Co. Donegal<sup>37</sup>**

| <b>Brand Manufacturer/Owner</b>                 | <b>2008</b>    | <b>2009</b>    | <b>2010</b>    |
|---|----------------|----------------|----------------|
| <b>Donegal Creameries</b>                       | <b>[45-55]</b> | <b>[45-55]</b> | <b>[45-55]</b> |
| Own-label (including discounters) <sup>38</sup> | [15-25]        | [15-25]        | [15-25]        |
| Strathroy ( <i>Bainne Ur</i> )                  | [20-30]        | [20-30]        | [20-30]        |
| <b>Connacht Gold</b>                            | <b>[5-15]</b>  | <b>[5-15]</b>  | <b>[5-15]</b>  |
| Glanbia ( <i>Avonmore</i> )                     | [0-10]         | [0-10]         | [0-10]         |
| Total   | 100            | 100            | 100            |

Source: The Parties

117. The parties state that the decline in the market share of own-label liquid milk in Co. Donegal in recent years might suggest that it is not as strong a competitive constraint in Co. Donegal as it is in others parts of the State. The parties state, however, that such an interpretation would misrepresent the actual competitive dynamic in Co. Donegal.
118. The parties state that own-label liquid milk products have suffered a decline in sales in Co. Donegal in recent years principally due to the fact that certain competitors – in particular, Strathroy – compete aggressively on price, matching or undercutting own-label liquid milk prices. The parties state that three of Donegal Creameries’ brands (*Milburn*, *Farm Fresh* and *Daisy Lane*) are “price fighters” retailed at own-label liquid milk prices. Connacht Gold argues that many of the independent retailers based in Co. Donegal stock such “price fighter” brands as a de-facto own-label liquid milk offering.
119. The parties further state that due to the geographic location of Co. Donegal, a significant amount of cross-border shopping by consumers occurs. The presence of large multiple retailers in border towns in Northern Ireland – such as Asda in Strabane, Co. Tyrone – serves to ensure that the retail sale of liquid milk in Co. Donegal is an extremely competitive market. Finally, the parties state that Co. Donegal cannot be seen as a separate geographic market for the purposes of examining the competitive effects of the proposed transaction.

#### *Views of the Competition Authority*

120. Post-transaction, Connacht Gold will remain the biggest supplier of branded liquid milk in Co. Donegal with a market share of [55-65]%. Notwithstanding Connacht Gold’s high market share in Co. Donegal post-transaction, the Authority considers that that the proposed transaction will not result in harm to competition in Co. Donegal or elsewhere for reasons described below.

<sup>37</sup> The parties state that these estimates reflect Connacht Gold’s general knowledge and experience in Co. Donegal. In generating these estimates, Connacht Gold relied upon its own sales figures for branded and own-label liquid milk in Co. Donegal, together with those of Donegal Creameries. The parties then estimated the shares (and value) of the remaining players in the market together with the overall size of the retail liquid milk market for each year. Connacht Gold also sought the input of its Donegal-based sales agents in estimating these market shares. Connacht Gold has three agents based in south Donegal (Killybegs, Ballyshannon and Donegal Town) that sell both branded and own-label liquid milk to retailers. Connacht Gold has little or no presence in northern Donegal.

<sup>38</sup> These figures are the combined share of all own-label liquid milk brands in Co. Donegal (excluding Dunnes Stores due to unavailability of data).

121. First, Connacht Gold does not sell liquid milk or cream in North Donegal. All three of Connacht Gold's agents<sup>39</sup> in Co. Donegal are based in South Donegal (Killybegs, Ballyshannon and Donegal Town). The proposed transaction will therefore have little competitive impact in the retail sale of liquid milk or cream in North Donegal.
122. Second, most of the parties' sales of liquid milk and cream are made to retailers selling throughout the State.<sup>40</sup> It seems unlikely that Connacht Gold, post-transaction, could target a discriminatory price increase on Co. Donegal. The views of customers are consistent with this – all ten customers contacted by the Authority expressed no competition concerns in relation to the retail sale of liquid milk and cream in the State.
123. Third, the Authority also considers that Connacht Gold will not have the ability to impose a price rise on small, independent retailers in Co. Donegal post-transaction. Alternative liquid milk and cream brands do exist for independent retailers. In particular, imports mainly from Northern Ireland will act as a significant competitive constraint on Connacht Gold's liquid milk and cream brands in Co. Donegal post-acquisition. As illustrated in Table 5 above, Strathroy has a substantial [...] market share in Co. Donegal.
124. The vast majority of customers contacted by the Authority listed Strathroy as a close competitor of both Connacht Gold and Donegal Creameries in the retail sale of liquid milk and cream. Furthermore, as noted above, [...].
125. Fourth, notwithstanding its declining market share, own-label liquid milk will continue to act as a competitive constraint on Connacht Gold's liquid milk brands in Co. Donegal post-acquisition. As noted above, the parties informed the Authority that the decline in own-label liquid milk sales in Co. Donegal is principally due to certain competitors – in particular, Strathroy – competing aggressively on price, matching or undercutting own-label liquid milk prices.
126. Internal documentation provided to the Authority by the parties clearly indicates the competitive constraint exerted by own-label liquid milk on liquid milk brands. For example, an internal document provided by Connacht Gold entitled "[...]" dated August 2011 contains the following quotes:
- "[...]"
127. An internal document provided by Connacht Gold entitled "[...]" dated September 2011 contains the following quote:
- "[...]."
128. Finally, in addition to Strathroy, end consumers may also perceive Glanbia's *Avonmore* brand to be a close competing liquid milk brand to Connacht Gold in Co. Donegal. Although Glanbia's *Avonmore* brand has a [...] market share in Co. Donegal (as illustrated in Table 5 above), [...]. An

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<sup>39</sup> Agents sell branded and own label liquid milk products to retailers on behalf of Connacht Gold.

<sup>40</sup> In this regard, the Authority notes Tesco Ireland's recent decision to put its own-brand liquid milk contract for all its retail stores in the State out to tender, "Tesco Milk Tender set to Attract Big Players", *Irish Independent Farming*, 10 January 2012.

internal document provided by Connacht Gold entitled “[...]” dated September 2011 contains the following quote:

“[...]”

### **Conclusion**

129. In conclusion, for the reasons given above, the Authority considers that Connacht Gold will not, as a result of the proposed transaction, have the ability to raise the price of its liquid milk and cream brands in Co. Donegal or elsewhere in the State.

### ***The Retail Supply of Agricultural Inputs to Farmers in Co. Donegal***

#### *Views of the Undertakings Involved*

130. The parties state that since Connacht Gold has only one retail store located in Co. Donegal, there is very limited overlap between the parties in the retail supply of agricultural inputs. The parties state that the Connacht Gold store in Kilbarron, Co. Donegal is located approximately 6 kilometres from a Donegal Creameries’ store in Bridgetown, Co. Donegal. The parties state that no competition concerns arise in respect of this horizontal overlap on the basis that there will remain a significant number of rival retail stores in the locality post-acquisition including:

- Gibson in Donegal town (9.5 kilometres from Bridgetown);
- Donegal Town Hardware in Donegal town (9.5 kilometres from Bridgetown);
- Carty in Beleek (13 kilometres from Bridgetown); and,
- Bundoran Hardware in Bundoran (21 kilometres from Bridgetown).

131. The parties further state that farmers can get agricultural inputs delivered to them directly which will also act as a competitive constraint on Connacht Gold post-transaction. The parties state that farmers can directly source agricultural inputs from suppliers such as [...].

132. Finally, the parties state that if the relevant geographic market for the retail supply of agricultural inputs to farmers is considered regional, no substantial lessening of competition will result from the proposed transaction. The parties state that there are a large number of rival agri-trade retailers based in the North-West of Ireland.

#### *Views of the Competition Authority*

133. Given the limited overlap between the parties in Co. Donegal, the Authority considers that the proposed acquisition raises no competition concerns in the market for the retail supply of agricultural inputs in Co. Donegal. Post-acquisition, Connacht Gold will continue to face competition from a large number of suppliers of agricultural inputs in Co. Donegal. Connacht Gold will not have the ability to raise the price of its agricultural inputs in the Co. Donegal since farmers can easily switch to alternative suppliers of agricultural inputs.



## **Ancillary Restraints**

134. The Milk and Stores Businesses Purchase Agreement and the Business Asset Purchase Agreement contain non-compete obligations and non-solicitation agreements (concerning employees, customers and suppliers). The Milk and Stores Businesses Purchase Agreement provides that Donegal Creameries, for a period of [...], will not directly or indirectly carry on in any business within the State involving the processing and sale of milk. The Milk and Stores Businesses Purchase Agreement provides that Donegal Creameries, for a period of [...], will not solicit any person or company that is a customer of Glenveagh and Maybrook.
135. The Milk and Stores Businesses Purchase Agreement provides that Donegal Creameries, for a period of [...], will not employ any person who is an employee of Glenveagh and Maybrook. The Milk and Stores Businesses Purchase Agreement provides that Donegal Creameries, for a period of [...], will not contract with any person who has been contracted with or engaged to manufacture, supply or deliver goods or services to Glenveagh and Maybrook.
136. The Authority considers these restrictions to be directly related and necessary to the implementation of the proposed acquisition.

## **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 Connacht Gold Co-operative Society Limited of Glenveagh Agricultural Co-operative Society Limited and Maybrook Dairy (Omagh) Limited, wholly-owned subsidiaries of Donegal Creameries plc, together with a number of assets of Donegal Creameries 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**

**Stephen Calkins**  
**Member of the Competition Authority**  
**Director, Mergers Division**

## Annex A – Raw Milk Processors in the North-West of Ireland and Northern Ireland

| Processor            | Location of Processing Plants                                    | Total Capacity, litres            | Distance of Plants to Letterkenny (km) <sup>41</sup> |
|----------------------|--|-----------------------------------|--|
| Lakeland Dairies     | (1) Bailieboro, Co. Cavan<br>(2) Killashandra, Co. Cavan         | 1 billion <sup>42</sup>           | (1) 167km<br>(2) 145km                               |
| Glanbia              | Virginia, Co. Cavan  | 1.5 billion in 2007 <sup>43</sup> | 178km  |
| Arrabawn             | Kilconnell, Ballinasloe, Co. Galway                              | 205 million <sup>44</sup>         | 240km  |
| Town of Monaghan     | (1) Monaghan town<br>(2) Artigarvan, near Strabane               | 81 million <sup>45</sup>          | (1) 109km<br>(2) 32km                                |
| Strathroy Dairies    | Omagh, Co. Tyrone  | [...] million <sup>46</sup>       | 58km   |
| United Dairy Farmers | Cookstown, Co. Tyrone  | 1 billion per annum <sup>47</sup> | 98km   |
| Connacht Gold        | (1) Ballaghaderreen, Co. Roscommon<br>(2) Barnasraghy, Co. Sligo | [...] million <sup>48</sup>       | (1) 163km<br>(2) 115km                               |
| Donegal Creameries   | Killygordon, Co. Donegal   | [...] million <sup>49</sup>       | 26km   |

Source: The Competition Authority

<sup>41</sup> Letterkenny was chosen because it is the biggest town in Co. Donegal and located in a relatively central position in the county thereby providing an indication of the average distance to be travelled by a raw milk processor to dairy farmers in Co. Donegal.

<sup>42</sup> Information taken from its website: [www.lakeland.ie](http://www.lakeland.ie). However, the parties state in the merger notification that Lakeland Dairies processed approximately [...] million litres of raw milk in 2010. Also, information contained in merger determination M/11/004 – Glanbia/Dawn Dairies and Golden Vale Dairies indicates a figure of 430 million litres.

<sup>43</sup> Information contained in merger determination M/11/004 – Glanbia/Dawn Dairies and Golden Vale Dairies.

<sup>44</sup> Information contained in merger determination M/11/004 – Glanbia/Dawn Dairies and Golden Vale Dairies.

<sup>45</sup> Information contained in merger determination M/11/004 – Glanbia/Dawn Dairies and Golden Vale Dairies.

<sup>46</sup> [...].

<sup>47</sup> Information taken from its website: <http://www.utdni.co.uk/>

<sup>48</sup> Total raw milk volume processed by Connacht Gold in 2010.

<sup>49</sup> Donegal Creameries procured approximately [...] million litres of raw milk from dairy farmers in 2010. However, Donegal Creameries only processed [...] million litres of raw milk of liquid quality in 2010.