



## **DETERMINATION OF MERGER NOTIFICATION M/13/013 -**

### **Kepak / Silvercrest**

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

#### **Proposed acquisition by the Kepak Group of Certain Assets from Anglo Irish Beef Processors Ireland and ABP Foods**

**Dated 21 May 2013**

#### **Introduction**

1. On 23 April 2013, 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 Kepak Clonee, a wholly owned subsidiary of the Kepak Group ("Kepak"), would acquire certain assets from Anglo Irish Beef Processors and ABP Foods ("ABP").
2. The target assets comprise the building in which ABP's frozen burger production in Ireland took place until January 2013, as well as certain of the plant, machinery, fixtures and fittings located in the premises. The target assets are collectively referred to as "Silvercrest".

#### **The Undertakings Involved**

##### *The Acquirer*

3. Kepak is a company incorporated and registered in Ireland, with its head office in Clonee, Co. Meath. It employs over 2000 people, with beef processing being its main business. As such, Kepak processes in excess of 300,000 cattle per annum through nine manufacturing facilities located across Ireland and the United Kingdom.<sup>1</sup>
4. Kepak operates three divisions: (i) Meat Division, which processes beef and lamb and produces manufacturing meat, which is used for mince meat, ready meals and burgers, both fresh and frozen; (ii) Convenience Foods, which markets branded burgers under the Big Al brand along with a range of poultry and pork products and other convenience foods in Ireland, the UK and the EU; and (iii) AgraKepak, which is involved in the international trade of meat and food products, supplying importers in various countries in Europe, Africa and the Middle and Far East.
5. For the financial year ended 31 December 2011, Kepak generated a worldwide turnover of €[...] million, including €[...] million turnover in the State.

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<sup>1</sup> One such facility is Kepak's processing plant in Condonstown, Co. Cork, which produces all of its frozen burger production, which is supplied as branded retail packs (Big Al's), customer specific 'own label' packs and foodservice bulk (cases consisting of 48-120 units) packs.

### *The Target Assets*

6. ABP is a global company with chilled beef at the core of its business. It is Europe's largest beef exporter, employing 8000 people in 36 facilities in eight countries, with 2500 employees based in Ireland.<sup>2</sup>
7. The target assets, Silvercrest, comprise ABP's purpose built, state of the art, frozen burger production plant in Ballybay, Co. Monaghan, which according to the parties is one of Europe's top frozen burger production facilities.
8. For the ten months to January 2013, Silvercrest's turnover was €[...] million, of which €[...] million was generated from sales to customers on the island of Ireland. Due to Silvercrest being caught up in the widely-reported European equine meat scandal in January 2013, Silvercrest lost all of its customers. As a result the plant has been closed since then and turnover since the closure in January 2013 has been €0.

### **Third Party Submissions**

9. No submission was received.

### **Rationale for Proposed Transaction**

10. The parties state that the proposed transaction will allow Kepak to increase its frozen burger capacity, and the fact that Silvercrest will be supplied with Kepak's own Irish manufacturing meat makes it possible for Kepak to contract with Burger King Europe for a [...] year contract, processing [...] tonnes of frozen burgers per annum. Burger King was one of the customers that Silvercrest lost as a result of being caught up in the equine meat scandal.

### **Competitive Analysis**

#### *Horizontal overlap*

11. At the end of 2012, there was an overlap, both globally and within the State, between Kepak and Silvercrest, given that both were involved in the processing, supply and export of frozen beef burgers.<sup>3</sup>
12. As a result of Silvercrest's role in the extensively-reported equine scandal,<sup>4</sup> Tesco, Aldi and Burger King terminated their contracts with Silvercrest. When the press reported that Silvercrest lost three of its main customers in Ireland, the remaining customers followed suit shortly after, leaving Silvercrest without any customers.
13. Silvercrest has not had any custom or supply for the four months since its closure in January 2013. The factory in Ballybay Co. Monaghan

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<sup>2</sup> <http://www.abpfoodgroup.com/abp-food-group-announces-sale-of-silvercrest-facility-to-kepak/>

<sup>3</sup> While the capacity to produce frozen beef burgers at the plant in Ballybay Co. Monaghan remains, production ceased in mid January 2013, when Silvercrest was one of the first companies to be exposed as having equine DNA in its products including frozen beef burgers.

<sup>4</sup> See: <http://www.irishtimes.com/news/can-silvercrest-survive-losing-tesco-1.1072312>.

has been idle since then. Therefore what Kepak is acquiring is additional capacity to produce frozen beef burgers.

*Product market*

14. In defining the relevant product market, the Authority notes the view previously taken by the European Commission, that the market for meat can be divided into processed and unprocessed meat and that the market for processed meat can be segregated by species and that there is therefore a separate market for processed beef.<sup>5</sup>
15. The common steps involved in the processing of beef products (i.e., beef burgers, cottage pies, lasagne and bolognese) are: (i) meat and recipe preparation; (ii) meat mincing and grinding (to break down frozen component of mix); (iii) meat mixing (fresh and frozen meat mixed together); (iv) ingredients blending; (v) forming; (vi) freezing; (vii) packaging; and, (viii) palletation, storage and transport/dispatch to customers.
16. The specific product segment relevant to the Silvercrest processing plant at Ballybay is frozen beef burgers. Frozen beef burgers are processed from beef called manufacturing meat, a co-product of the beef boning process, which comprises predominantly of off-cuts and lesser value prime cuts that get processed. Manufacturing meat represents about 36% of output through beef boning halls. Manufacturing meat is also used by beef processors for beef mince, fresh beef burgers, and convenience food (ready meals) containing beef, such as lasagne, using the process described above.
17. Since manufacturing meat can be freely switched to be used in making mince, burgers and convenience foods, the relevant market for the purpose of this transaction could be defined as the market for processed beef. On the other hand, since the target asset is a very large plant useful only for making frozen burgers, the market arguably could be limited to that product. Since using either approach the Authority concludes that the acquisition will not substantially lessen competition, there is no need to choose between them.

*Geographic market*

18. The Authority notes that it has previously concluded that there are separate national markets for the sale of processed beef.<sup>6</sup> It also notes that Irish providers supply almost all frozen burgers purchased in the State. Since the Authority's conclusion about the competitive effect of this acquisition would be unaffected by the choice of geographic market, there is no need for the Authority to consider whether to define a market broader than the State.

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<sup>5</sup> Case No IV/M.1313 – Danish Crown / Vestjyske Slagterier, 09/03/1999.

<sup>6</sup> See: The Competition Authority v Beef Industry Development Society.

<http://www.tca.ie/EN/Enforcing-Competition-Law/Civil-Court-Cases/Beef-Industry.aspx>

*Analysis*

19. ABP holds by far the largest portion of the market for processed beef in Ireland, with a market share of 20%-30%<sup>7</sup>, followed by Kepak and Dawn respectively holding 10%-20% and 5%-15%. The remainder of the market is made up by Liffey Meats, Slaney and others - see Table 1.

*Table 1 – Beef Processing in Ireland*

<b>Name</b>	<b>Output (tonnes per annum)</b>	<b>Share</b>
ABP	[...]	20%-30% <sup>8</sup>
Kepak	[...]	10%-20%
Dawn Meats	[...]	5%-15%
Liffey	[...]	0%-10%
Slaney	[...]	0%-10%
Others	[...]	20%-30%
<b>Total</b>	<b>28,476<sup>9</sup> (approx)</b>	<b>100%</b>

20. Before the equine scandal, Silvercrest’s dedicated specialist burger producing plant at Ballybay produced [...] tonnes of burgers for the Irish market, of which an estimated [...] tonnes were produced for Burger King outlets in the State.
21. Should the proposed transaction be cleared and the contract with Burger King re-commenced as expected, the estimated [...] tonnes of frozen burgers that will be earmarked for use in Burger King outlets in the State<sup>10</sup> will bring Kepak’s output up to around [...] tonnes and a market share of around [...]%.
22. Therefore from the perspective of a national market for the processing of beef the proposed transaction will not change to any significant extent the existing market conditions in terms of output. Nor would there be an increase in concentration in terms of capacity.
23. The Authority has also examined a narrower possible market, for frozen beef burgers - the specific segment for which the Silvercrest plant was purpose built.<sup>11</sup> Table 2 presents data for frozen beef burgers. Kepak is among the five largest processors of frozen beef burgers in the State, with the others being Silvercrest, Dawn Meats, Rangeland Foods and Liffey Meats. Kepak is currently the smallest of

<sup>7</sup> This figure is based on 2012 end of year estimates, which includes [...] tonnes of beef processed at Silvercrest.

<sup>8</sup> Since Silvercrest’s output has been zero for the year thus far, ABP’s current output of processed beef can be said to have dropped to around [...] tonnes, which then equates to around [...]% market share.

<sup>9</sup> Includes approximately 4,246 tonnes for ready meals containing beef, 14,000 tonnes for fresh mince and burgers and 10,230 tonnes for frozen burgers.

<sup>10</sup> It is important to note that while market enquiries by the Competition Authority have confirmed that Burger King is eager to contract with Kepak to re-commence the supply of frozen burgers from the Ballybay plant, the other former major customers of Silvercrest (i.e. Tesco and Aldi) have not provided any such assurances.

<sup>11</sup> Although the parties submit that Silvercrest produced a small amount of frozen lamb, chicken and pork burgers but due to the equine DNA crisis, Kepak indicated that it does not intend to process non-beef burgers at Silvercrest.

the five in terms of total burger processing capacity. Post transaction, Kepak's total burger processing capacity will increase to [...] tonnes, potentially making it the largest of the five largest processors of frozen beef burgers in the State.

*Table 2 – Frozen Burger Processing in Ireland*

<b>Name</b>	<b>Total Burger Processing Capacity (Tonnes)</b>	<b>Current Output (Tonnes)</b>	<b>National supply end of year 2012 (Tonnes)</b>	<b>Share of national supply (%)</b>
Dawn Meats	[...]	[...]	[...]	20%-30%
Silvercrest	[...]	[...]	[...]	10%-20%
Rangeland	[...]	[...]	[...]	15%-25%
Liffey	[...]	[...]	[...]	0%-10%
Kepak	[...]	[...]	[...]	20%-30%
Birds Eye (UK)	--	--	[...]	0%-10%
Paragon Foods UK	--	--	[...]	0%-10%
<b>Total</b>	<b>72,500</b>	<b>32,000</b>	<b>10,230</b>	<b>100%</b>

24. In terms of overall output Table 2 shows that the vast majority of frozen beef burgers currently produced in Ireland are exported. The parties estimate that Irish demand absorbs approximately 10,230 tonnes of the 32,000 tonnes produced by Irish frozen burger suppliers. The balance of frozen beef burgers currently produced in Ireland, around 76%, is exported to the UK and EU.
25. Post transaction, Kepak will have between 25%-35%<sup>12</sup> and 30-40%<sup>13</sup> of the market for frozen burgers and 35%-45% of the burger processing capacity. Under any of these three scenarios the HHI analysis indicates that the merger will be a Zone C merger, which is an indication that it may raise competitive concerns.
26. Nevertheless despite this increase in concentration there are a number of factors that mitigate against the acquisition harming competition:
  - All of the Irish processing plants mentioned above currently have spare capacity and could increase their output in response to market demand.
  - The ease with which Silvercrest's customers terminated their contracts and switched to other suppliers confirms that customers have alternative manufacturers/suppliers available both within and outside the State. Besides the other Irish processors mentioned above (Dawn Meats, Rangeland and Liffey Meats) there are suppliers currently importing from the UK being Birdseye, Freshly Frozen Co and Paragon Quality Foods.

<sup>12</sup> Assuming post transaction that the Ballybay plant recommences its supply of burgers for Burger King outlets in the State.

<sup>13</sup> Assuming that post transaction the Ballybay plant supplies all of its former customers, which as described above is unlikely.

- Major customers can persuade beef processors to increase burger manufacturing capacity. This happened recently when McDonald's awarded a major contract to Dawn Meats, which substantially expanded its burger-making capacity.<sup>14</sup> Similarly, Liffey recently expanded its capacity to meet (European-based) demand. It appears that other Irish beef processors<sup>15</sup> could easily invest burger-making capacity should conditions warrant it.
  - Enquiries by the Authority confirmed that almost all contracts with large multiples are operated on a periodic tender basis and buyers in the market are quite aware of prevailing beef prices and any substantial or unsubstantiated increase in price by a processor will result in the contract immediately being put out to tender again. Also, most supermarkets prefer to stock products from more than one processor to ensure consistency in supply.
  - ABP has another division that manufactures frozen beef burgers in the UK, Dalepak, which is apparently a significant brand in the UK and Northern Ireland<sup>16</sup> and which could potentially compete in Ireland. According to the parties, it is conceivable that ABP could re-enter the Irish market with Dalepak should the price of burgers rise substantially, as transport on average makes up only between 1.5% to 3% of the cost of a frozen burger. Any price increase above that level would make it viable for Dalepak to enter the Irish market, particularly since ABP has access to Irish beef and the proposed transaction does not include any ancillary restraint.
27. An additional factor that needs to be considered, concerns the use of the Ballybay plant post transaction. Burger King has confirmed that it is anxious to resume supply of its burger patties for its European markets from Ireland given the premium quality associated with Irish beef.<sup>17</sup> Burger King has also confirmed that it has a preference for the plant in Ballybay, from which it can easily service its operations in the State, Northern Ireland, the UK and elsewhere in Europe. Acquiring the plant at Ballybay thus makes it possible for Kepak to win back the Burger King contract that Silvercrest lost at the beginning of the year, since Kepak [...] was not implicated in the equine DNA scandal and it has undertaken to initially use only Irish beef manufacturing meat for the Silvercrest plant. Kepak currently has the smallest capacity of the five Irish firms listed in Table 2.
28. The Burger King contract will account for almost half of the capacity of the Silvercrest plant [...].<sup>18</sup> The initial period of the contract will be for [...] years and applicable prices will be reviewed and re-negotiated in light of prevailing raw material prices every [...].

<sup>14</sup> See: <http://www.independent.ie/business/irish/dawn-meats-to-create-65-jobs-after-securing-300m-mcdonalds-deal-26856744.html>

<sup>15</sup> Such as: Kildare Chilling, Ashbourne Meat, Dunbia, Moyvalley Meats and Foyle Meats.

<sup>16</sup> For information about Dalepak see: <http://www.dalepak.co.uk/index.asp>.

<sup>17</sup> Enquiries confirmed that Burger King is currently being supplied by [...] in Italy and [...] in Germany and that as a result they had to change their marketing slogan from '100% British and Irish Beef' to only '100% Beef'.

<sup>18</sup> Only [...] % of the burgers to be produced at Ballybay for Burger King will be supplied to Burger King outlets in the State.

29. The Authority also enquired from the parties' most important customers, which include the large multiples, whether they had any concerns over the proposed transaction and none expressed any concerns.
30. Therefore even within the confines of a narrower market for frozen beef burgers it would appear that the transaction is unlikely to alter the current conditions in the market in a manner harmful to competition.
31. In light of the above, the Authority does not consider that the proposed transaction will give rise to a substantial lessening of the competitive conditions within 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 Kepak Clonee, a wholly owned subsidiary of the Kepak Group, would acquire the Silvercrest assets from Anglo Irish Beef Processors and ABP Foods will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect.

### **For the Competition Authority**

Stephen Calkins  
Member of the Competition Authority