



## **DETERMINATION OF MERGER NOTIFICATION M/13/034 -**

### **Adams / First Milk**

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

#### **Proposed acquisition by Adams of certain Assets of First Milk**

**Dated 20 December 2013**

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#### **Introduction**

1. On 29 November 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 the Irish Dairy Board Cooperative Limited ("IDB"), through its wholly owned subsidiary Adams Foods Limited ("Adams"), would acquire certain assets (collectively First Cheese) from First Milk Cheese Company Limited and Scottish Milk Products Limited (collectively "First Milk"). Pursuant to an asset purchase agreement dated 30 October 2013 Adams will acquire from First Milk the business and assets involved in the sale, marketing and supply of hard cheese in England, Scotland, Wales, Ireland, Northern Ireland, Isle of Man, Scilly Islands and the Channel Islands. In particular the asset purchase agreement involves the transfer from First Milk to Adams of the following:<sup>1</sup>

[...].

2. As stated by the parties, in addition to the asset purchase agreement the proposed transaction includes other agreements entered into by the parties including

[...].

#### **The Undertakings Involved**

##### *Acquirer*

##### *IDB*

3. IDB, the ultimate acquirer, is an Irish co-operative society, owned by Irish dairy processing co-operatives and dairy companies and through them, by Irish dairy farmers. IDB is a "second tier" co-operative, which means that it is a co-operative owned by other co-operatives within the State. The primary focus of IDB is on export markets outside of the State.<sup>2</sup>
4. IDB procures cheese and other dairy products from member co-operatives in Ireland, including cheese, butter, milk powder and

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<sup>1</sup> Asset Purchase Agreement, Clause 2.1.

<sup>2</sup> For more information on IDB see <<http://www.idb.ie/about/company-overview>>.

related products and ingredients. IDB's business is focused on three areas:

- Consumer Foods - i.e., the international supply of butter, cheese and other consumer dairy products under various brands including Kerrygold, Pilgrims Choice, Dubliner, MU and Beo.<sup>3</sup>
- Dairy Trading and Ingredients – this business division is responsible for the procurement of Irish and non-Irish dairy products and for the sale of dairy ingredients to food manufacturers and foodservice customers.
- DPI Specialty Foods – a speciality food distribution network based in Ontario California, USA.

5. Within the State IDB's turnover is derived from:

- Licensing by the Irish Dairy Board Cooperative Limited of the Kerrygold brand to producers in the State.
- Sales by non-Irish subsidiaries such as Adams [...].
- [...].
- Sales [...] to the foodservice sector.
- [...].

6. For the year ended 29 December 2012 IDB's worldwide turnover was approximately €1,957 million, of which approximately € [...] million was generated in the State.

#### *Adams*

7. Adams, a wholly owned subsidiary<sup>4</sup> of IDB based in Leek, Staffordshire U.K. is involved primarily in the UK in

- supplying pre-packed hard cheese to the food wholesale, retail and foodservice sectors, and
- supplying butter and spreads.

8. Adams' main UK-based brands supplied to the retail sector are Pilgrims Choice, MU and Kerrygold. Adams' main UK brands for the foodservice sector are Horlicks Farms and Adams.

9. Within the State Adams is involved only in [...].

10. For the year ended 31 December 2012 Adams's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.<sup>5</sup>

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<sup>3</sup> See <<http://www.idb.ie/brands>>.

<sup>4</sup> Adams became a wholly-owned subsidiary of IDB in the 1970s. In 2010, The Kerrygold Company and North Downs Dairy Company were merged into Adams in an internal IDB group restructure.

*Vendor - First Milk*

11. First Milk, the vendor in the proposed transaction is a British farmer-owned cooperative with approximately 1,600 members. First Milk procures milk directly from its UK members and then processes it into dairy products. First Milk supplies a wide range of dairy products and ingredients for both the UK and international retail and foodservice markets including cheese, raw milk, butter, skimmed milk powder, whey protein and quark.
12. First Milk currently operates a cheese packing facility located at Maelor, Wrexham, UK. The parties state that  
  
“[...].”
13. For the year ended 31 March 2013 First Milk’s worldwide turnover was approximately €654 million, of which approximately € [...] million was generated in the State.<sup>6</sup>

*Target - First Cheese*

14. First Cheese, the target in the proposed transaction, is involved in the supply of pre-packed cheese (i) to UK food retailers, (ii) to the UK foodservice sector and (iii) for export outside UK. First Cheese’s main UK-based brands are Lake District Dairy Co., Mull of Kintyre, Kingdom Cheese Company, Pembrokeshire, Isle of Arran, Scottish Pride and CNP Professional.
15. Following the proposed transaction, First Milk will remain active on the market for the procurement of milk from its members and the manufacture of hard cheese for the export market.
16. Within the State First Cheese is a wholesale supplier of cheese mostly under the Lake District Dairy Co. brand. This will continue post merger.
17. For the year ending 31 March 2013, the Target Business had a worldwide turnover of approximately €[...] million and sales of approximately €[...] million into the State.

**Third Party Submissions**

18. No submissions were received.

**Rationale for Transaction**

19. [...]<sup>7</sup>
20. [...]:  
  
“[...].”<sup>8</sup>

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<sup>5</sup> Calculated using an ECB Annual Average exchange rate for 2012 of 1 € = £ 0.8135. The total turnover in the State is derived from supplying cheese to [...].

<sup>6</sup> Calculated using an ECB Annual Average exchange rate for 2012 of 1 € = £ 0.8135.

<sup>7</sup> Notification page 7.

<sup>8</sup> *ibid.*

## Analysis

### *Market Definition*

21. For the purpose of examining the competitive effects of the proposed transaction, the Authority does not need to come to a definitive view on the precise product or geographic market. The Authority's conclusion concerning the competitive effects of the proposed transaction, outlined below, would be unaffected whether the relevant product market is narrow (e.g., the wholesale supply of cheese to food retailer customer or the wholesale supply of cheese to foodservice customers) or broad (e.g., the wholesale supply and sale of cheese). Similarly, the Authority's conclusions will be unaffected whether the geographic market is defined narrowly (e.g., the State) or broadly (e.g., Ireland and UK or Europe).
22. The parties argue that the geographic market for the wholesale supply of cheese is wider than the State and is either (i) UK and Ireland or (ii) Europe, both of which would significantly reduce the market shares of Adams and First Cheese.<sup>9</sup>
23. Irrespective of the geographic market the horizontal overlap implied by the above market shares does not appear to be significant. The small First Cheese market share and the low level of First Cheese turnover in the State does not indicate that the proposed transaction is likely to lead to competition concerns in the State.

### *Horizontal Overlap*

24. There is a horizontal overlap in the activities of the parties within the State. Both IDB and First Cheese are involved in the wholesale supply of cheese in the State. The overlap is not, however, significant.
25. The parties own estimates indicate that in a market for the wholesale supply of cheese limited to the State the market shares would be approximately [5-15]% and [0-10]% respectively and the merged entity would have a market share of approximately [5-15]%. These estimates are based on estimates of combined turnover of € [...] million and a total market size of approximately € [...] million in 2012.<sup>10</sup> The size of the respective market shares and the small increase market share post-merger do not indicate that the proposed transaction is likely to lead to competition concerns in the State. This conclusion is not changed even if one considers the extent to which IDB participates in the Irish cheese market through licensing the Kerrygold brand.
26. Further the parties do not appear to be close competitors within the State. [...] Adams turnover is derived from sales to customers in the retail sector. [...] First Cheese turnover in the State is derived from sales to customers in the food service sector.

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<sup>9</sup> The parties submit that a combined UK and Ireland market for the wholesale supply of cheese is worth approximately €5 billion and a European market for the wholesale supply of cheese would be between €33 - 40 billion

<sup>10</sup> As stated in the Notification, page 22 and in correspondence from the parties dated 13 December 2013, these are the Parties' own market share estimates calculated with reference to estimates of total market size based on Central Statistics Office and European Commission data.

### *Vertical Overlap*

27. The proposed transaction does not raise significant vertical competition concerns.

### *Conclusion*

28. In light of the above, the Authority concludes that the proposed transaction will not raise competition concerns in any market for goods or services in the State.

### **Ancillary Restraints**

29. The parties have entered into non-solicitation and non-compete covenants with respect to the supply of cheese products in the UK which will apply for a period of [...] years [...]. [...] these covenants can be considered as directly related to and necessary for the implementation of the proposed transaction and are consistent with past Authority guidance.<sup>11</sup>

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<sup>11</sup> See also Commission Notice (2005/C 56/03) <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:056:0024:0031:EN:PDF>>.

## **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 the Irish Dairy Board Cooperative Limited, through its wholly owned subsidiary Adams Foods Limited, would acquire certain assets from First Milk Cheese Company Limited and Scottish Milk Products Limited 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  
Director, Mergers Division