



DETERMINATION OF MERGER NOTIFICATION M/15/051 - DUNNES STORES / CAFÉ SOL

Section 21 of the Competition Act 2002

Proposed acquisition by Dunnes Stores of the entire issued share capital of Café Sol Holdings Limited

Dated 3 November 2015

Introduction

1. On 23 September 2015, in accordance with section 18(1) of the Competition Act 2002, as amended¹ (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification whereby Dunnes Stores would acquire the entire issued share capital of Café Sol Holdings Limited (“CSHL”).

The Undertakings Involved

Dunnes Stores

2. Dunnes Stores is a private unlimited company incorporated in the State. It is a wholly owned subsidiary of Dunnes Holding Company which is the ultimate holding company for the Dunnes Stores group of companies (the “Dunnes Stores Group”). The Dunnes Stores Group is a multi-category retailer active in the sale of groceries, men’s, women’s and children’s clothes, and home and garden wares through its retail outlets which are located primarily in the State and in Northern Ireland, with a smaller number of stores in Great Britain and Spain.
3. For the financial year ending 31 January 2015, the turnover of the Dunnes Stores Group (both worldwide and within the State) was [...].

¹ It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.



CSHL

4. CSHL is the holding company for the Café Sol Group.² The Café Sol Group is active in the provision of food services through:
 - i. the operation of coffee shops under its Café Sol and Baxter & Greene brands;
 - ii. the provision of a food delivery service under the Café Sol brand aimed at business users in the Dublin city centre area;
 - iii. the operation of the Neon Restaurant on Camden Street, Dublin 2 specialising in Asian street food.
5. In the financial year ended 31 March 2015, the Café Sol Group had turnover of approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

6. The parties state in the notification:

“The Parties believe that the best prospect for the development of CSHL’s brands and network of outlets is as part of a larger commercial organisation with a nationwide presence and the resources to finance their expansion and development.”

Third Party Submissions

7. No submission was received.

Competitive Analysis

8. There is a horizontal overlap between the parties in the provision of food services in coffee shops and in restaurants and in the provision of prepared food. Dunnes Stores is involved in the provision of food services through its in-store restaurants and retail sales of prepared food in the Dublin city centre area. CSHL is involved in the provision of food

² The shareholders in CSHL are Emmet Daly and Jennifer Sheehan (together, the “Vendors”). CSHL and the Café Sol Group are under the sole control of Emmet Daly who is the majority shareholder in CSHL.



services through its Café Sol, Baxter and Greene, and Neon outlets and through its provision of a food delivery service under the Café Sol brand in the Dublin city centre area.³ However the extent of the overlap is minimal⁴. There is a large and varied number of providers of coffee shops, restaurants and prepared retail food in the Dublin city centre area, and there are no switching costs for customers.

9. There is a limited vertical relationship between Dunnes Stores and CSHL whereby CSHL supplies Dunnes Stores with a small amount of food and coffee products sold on a retail basis to Dunnes Stores employees from a kiosk located in the lobby of Dunnes Stores' corporate headquarters in Dublin city centre. The Commission is of the view that this vertical relationship does not give rise to any competition concerns.
10. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition in any market for goods or services in the State

Ancillary Restraints

11. The Share Purchase Agreement between the parties to the proposed transaction contains a number of restrictive obligations.⁵ These include non-compete and non-solicitation obligations imposed on the Vendors. The Commission considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

³ The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this case, the Commission considers that it is not necessary for it to define precise relevant markets.

⁴ CSHL operates nine coffee shops and one restaurant in the Dublin city centre area while Dunnes Stores operates only two in-store restaurants in the same geographic area. According to the parties' own estimates, post-merger the combined entity will account for less than 3% of the total sales in the Pubs/Cafes/Coffee Shops channel in Dublin city centre.

⁵ The duration of these ancillary restraints does not exceed the maximum duration acceptable to the Commission. In this respect the Commission follows the approach adopted by the EU Commission in paragraph 20 of its "Notice on restrictions directly related and necessary to concentrations" (2005).

See [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=E](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=E).



Determination

The Competition and Consumer Protection Commission, 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 Dunnes Stores would acquire the entire issued share capital of Café Sol Holdings Limited will not be to substantially lessen competition in any market for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Gerald FitzGerald
Member
Competition and Consumer Protection Commission