The Competition Authority
An tÚdarás Iomaíochta

Determination No. M/05/006 of the Competition Authority, dated 9 March 2005, under Section 21 of the Competition Act, 2002

Notification No. M/05/006 – the proposed acquisition by Glanbia plc of the CMP liquid milk business and related assets from Dairygold Dairies Ltd

Introduction

1. On 9 February 2005 the Competition Authority, in accordance with Section 18(3) of the Competition Act, 2002 ("the Act") was notified, on a voluntary basis, of a proposal whereby Glanbia plc ("Glanbia") would purchase the CMP liquid milk business and related assets from Dairygold Dairies Ltd ("Dairygold"). The notified transaction is hereinafter described as "the proposed acquisition".

The Parties

2. Glanbia, the acquirer and sole notifying party, is an international producer of dairy foods and other nutritional products. Glanbia is quoted on the Dublin and London stock exchanges and operates processing plants located in Ireland, the UK and the USA. Glanbia owns three Irish milk brands (*Avonmore*, *Premier* and *Snowcream*) and operates three liquid milk processing plants in Ireland, located in Kildare, Louth and Waterford.
3. CMP, the target, is based at Kinsale Road, Cork. CMP processes and supplies *CMP* branded milk in Cork City and parts of County Cork, and also supplies 'own brand' milk to grocery supermarkets in the Cork region.[1]

Irish Milk Industry

4. Farm-produced "raw milk" can be processed into "liquid milk", for direct human consumption, or used as an input in the production of other diary products such as butter and cheese ("manufacturing milk"). Some 5,200m litres of raw milk were produced in Ireland in 2003; about 91% were used as manufacturing milk and 9% were consumed as liquid milk. Ireland exports approximately 80% of all domestically produced raw milk, mostly as an ingredient in other dairy products.
5. The proposed acquisition concerns liquid milk only, as liquid milk is the only product sector where Glanbia and CMP overlap. Dairygold, by selling CMP, will exit the Irish liquid milk industry. About 571m litres of liquid milk were consumed in the State in 2003; 468m litres were produced domestically and the rest was imported from Northern Ireland. Of all liquid milk sold to consumers, retailers sell about 64% (branded milk or supermarket 'own brand' milk) doorstep deliveries make up about 19% of total sales and catering accounts for the remaining 17%.
6. 16 liquid milk processors and 23 heat treatment plants, licensed to process raw milk into liquid milk, are registered in the State. However, the sector is relatively concentrated; in 2003 two processors, Glanbia and

[1] In 2004 CMP supplied 2.32m litres to Tesco, 2.23m litres to Musgrave (Super Valu & Centra), and 91,000 litres to Spar.

Kerry Group, held about [50-60]% of the national market for the supply of liquid milk to retailers (see Table below).

Relevant Market

7. CMP, the target, is a manufacturer of liquid milk. For the purpose of assessing the proposed acquisition, the relevant product market is the manufacture of liquid milk, branded and unbranded, for supply to retailers. Liquid milk can be transported anywhere in the State.[2] Although there is some consumer preference for regional liquid milk brands, supermarket "own brands" account for a substantial (and growing) portion of total liquid milk sold, and such brands are sold nationwide. Therefore the geographic scope of the product market is national, despite some regional brand strength.

Market Structure

8. Glanbia provided the following market share data:

TABLE: Estimated market shares for the national market for manufacture and retail supply of liquid milk (2003):

Company	Litres (m)	Share (%)	S^2
Glanbia	[200-250]	[40-50]	>1600
Kerry Group	[100-150]	[10-20]	[100-400]
Strathroy	[20-50]	[5-10]	[25-100]
NCF, Sligo	[20-50]	[5-10]	[25-100]
CMP (Dairygold)	[20-50]	[5-10]	[25-100]
Natural Dairies	[20-50]	[0-5]	[0-25]
Monaghan	[20-50]	[0-5]	[0-25]
Clonagh	[10-20]	[0-5]	[0-25]
Dairyland Cuisine	[10-20]	[0-5]	[0-25]
Donegal	[10-20]	[0-5]	[0-25]
Lee Strand	[0-10]	[0-5]	[0-25]
Other Dairies	[20-50]	[0-5]	
Total	**[500-600]**	**100**	**>2000 (HHI)**

9. A HHI of over 1800 indicates that a market is highly concentrated, while the delta arising from the proposed acquisition places it within Zone C and indicates that it raises competitive concerns.[3] However, two other factors are relevant to the analysis - the increasing market power held by grocery supermarket multiples, and increased imports from Northern Ireland.

[2] The Lidl and Aldi chains source all of their own brand liquid milk from the Strathroy Dairies plant in Omagh, which plant is also the exclusive supplier of 'own brand' milk to Superquinn. Natural Dairies, located in Donegal near the Derry border, supplies Dunnes Stores with its own brand milk nationwide, using milk imported from Northern Ireland.
[3] Competition Authority Notice in Respect of Guidelines for Merger Analysis, p. 11.

Competitive Analysis

The effect of supermarket own brands and retail distribution

10. The market shares set out above do not distinguish manufacturer branded liquid milk (e.g. *Avonmore*, *CMP*) from liquid milk sold by grocery supermarkets under their "own brand" labels. The National Milk Agency Annual Report, 2003, estimates that four supermarkets - Tesco, Dunnes Stores, SuperValu and Superquinn – together hold about 71% of the total liquid milk retail distribution channel.[4] Doorstep deliveries are in decline. The same report also estimates that processor brands account for over 86% of liquid milk sold in supermarkets, with supermarket "own brands" making up 14%.[5] However, in the UK about 95% of liquid milk, sold in supermarket multiples, is supermarket own brand. Irish supermarket own brands continue to grow in strength, such that the Irish market appears to be moving towards the UK model.

11. The National Milk Agency Annual Report also notes that rivalry between the main supermarket multiples intensified with the entry and rapid expansion of two international discount chains, Aldi and Lidl. This lead to aggressive discounting of "own brand" food products, including liquid milk, such that in October 2003 the price of 2 litres of own brand liquid milk fell to 99c, 70c less than a 2 litre pack of branded milk. At present 2 litres of 'own brand' liquid milk sells in the State for about €1.20, while branded milk sells for about €1.52 (figures from the National Milk Agency). Such price competition amongst own brands exerts downward price pressure on processor brands, indeed one of Dairygold's stated reasons for selling CMP is the reduced margins caused by the supermarket price wars. There is nothing to indicate that the proposed acquisition would alter this behaviour i.e. Glanbia's increased market share would not enable it to limit or reverse the downward price pressure exerted by supermarket own brand liquid milk. In response to Authority inquiries, Glanbia submitted that there is significant excess capacity amongst incumbent producers, which would also tend to undermine tacit co-ordination between processors.

Entry

12. There is a history of entry and expansion in the liquid milk manufacturing and supply market. Although there is a certain amount of customer loyalty to established brands, imports from Northern Ireland processors are significant and rising. 48m litres of bulk raw milk, for processing into liquid milk in the State, were imported from Northern Ireland in 2003, representing a 14% increase on 2002 figures. Another 41m litres of packaged liquid milk was imported from Northern Ireland in the same

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[4] The total share held by smaller retailers' (i.e. non-supermarkets) had fallen from 23.5% to 17.1% in the three years prior to publication of the National Milk Agency Annual Report, 2003.

[5] It is the Authority's view that the "own brands" market share should be attributed to the seller, i.e. the supermarket multiples, rather than the supplier (Kaysersberg SA v Commission, ECR 1997 Page II-2137; Rewe/Meinl - Case No IV/M.1221, Official Journal of the European Communities, 1.9.1998.

year, an increase of 15m litres on 2002.[6] Although precise figures are not yet available, the Authority has been informed that imports form Northern Ireland increased again in 2004. Supermarkets are also gaining significant market share through sale of their own brands

Geographic overlap

13. One of Glanbia's main objectives is to gain greater access to the Cork liquid milk market. Despite Glanbia's large share of the national liquid milk market, its presence in Munster is considerably lower and its presence in Cork City & County, where CMP operates, is minimal. Hence the effect of the proposed acquisition on market concentration in Cork City and County would be minimal.

Conclusion

14. Liquid milk is a mainly homogenous product, market shares in the relevant market have been relatively stable over time, and there is high price transparency. Such factors may be conducive to co-ordinated price effects. However, post-acquisition unilateral or co-ordinated price rises would be prevented by continued downward pressure from supermarket own brands, coupled with continued growth of imports from Northern Ireland. Further, the pre-acquisition level of geographic overlap between the parties is minimal.

Determination

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by Glanbia plc of the CMP liquid milk business and related assets from Dairygold Dairies Ltd will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

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Member of the Competition Authority

[6] National Milk Agency Annual Report, 2003, p.5