



DETERMINATION OF MERGER NOTIFICATION M/17/036 - SEAN LOUGHNANE/CRINKLE

Section 21 of the Competition Act 2002

Proposed acquisition by Sean Loughnane (Galway) Limited of certain business assets of Crinkle Fine Foods Unlimited Company

Dated 3 October 2017

Introduction

1. On 29 June 2017, in accordance with section 18(3) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction (the “Proposed Transaction”) whereby Sean Loughnane (Galway) Limited (“Sean Loughnane”) would acquire certain business assets (the “Target Assets”) from Crinkle Fine Foods Unlimited Company (“Crinkle Foods”).¹

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to an asset purchase agreement (the “Agreement”) dated 16 June 2017 between Crinkle Foods and Sean Loughnane, whereby Sean Loughnane will purchase the Target Assets. “to include , but not limited to, the “Rudd’s” brand, certain fixed assets and intellectual property, business and customer relationships, knowledge and know-how and certain property assets.”.²

¹ The Proposed Transaction was initially notified to the Commission in accordance with section 18(1) of the Act on 29 June 2017. On 1 August 2017, the parties informed the Commission that they wished to proceed with the notification as a voluntary notification under section 18(3) of the Act, on the basis that the undertakings do not meet the overall turnover thresholds set out under section 18(1)(a) of the Act and, therefore, the Proposed Transaction does not constitute a mandatory notification.

² Section 1.1 of the Notification.



3. Following implementation of the Agreement, Sean Loughnane will acquire the Target Assets and Crinkle Foods will retain ownership and control over certain excluded assets, which are outlined in the Agreement.³

The Undertakings Involved

Sean Loughnane

4. Sean Loughnane is a private limited company incorporated under Irish law, which produces processed pork products, such as sausages and breakfast puddings,⁴ which it supplies to wholesalers, retailers, and foodservices providers in the State and the United Kingdom. Sean Loughnane operates a meat production site located in Galway City and is involved in the following business activities:
 - the production and supply of *Loughnane's* branded sausages and breakfast puddings to retailers and wholesalers;
 - the production of own-label sausages and breakfast puddings for retailers such as [...] and some retailers located in the United Kingdom; and,
 - the production of bulk sausages and breakfast puddings for foodservices distributors and wholesalers, such as [...].
5. For the financial year ending 31 December 2016, Sean Loughnane's worldwide turnover was approximately €[...] million of which approximately €[...] million was generated in the State.

³The excluded assets include cash-in-hand as at the completion date and cash at bank relating to the businesses including uncleared cheques received at the completion date; trade debtors and other debtors of the business; trade creditors and other creditors in the businesses; any amounts recoverable by Crinkle Foods in respect of tax paid or payable by it in connection with matters or events occurring on or before completion, and all other assets of the businesses not specified in the Agreement.

⁴Sean Loughnane also manufactures a small amount of rashers which it sells to two wholesalers outside the State. Those sales in 2016 amounted to €30,277 which is minimal compared with the overall sales value of rashers in the State in 2016 (approximately €88 million in 2016).



The Target Assets

6. The Target Assets comprise assets associated with Crinkle Foods' breakfast meats business including the *Rudd's* business and brand, certain fixed assets, equipment, intellectual property, business and customer relationships, knowledge and know-how. Crinkle Foods, a private unlimited company incorporated under Irish law, is a wholly-owned subsidiary of Goldreed Holdings Unlimited Company.⁵ Crinkle Foods produces processed meats, such as sausages, rashers and breakfast puddings, which it supplies to wholesalers and retailers in the State. Crinkle Foods operates a meat production site located in Birr, Co, Offaly. The Target Assets comprise assets which are used in the following businesses activities:

- the production and supply of *Rudd's* breakfast meats, including sausages, rashers and breakfast puddings, to retailers, wholesalers and food service providers⁶; and,
- the production of own-label sausages, rashers and breakfast puddings for wholesalers and retailers in the State, such as [...].⁷, [...].

7. For the financial year ending 31 December 2016, Crinkle Foods' worldwide turnover was approximately €[...] million, all of which was generated in the State.

Rationale for the Proposed Transaction

8. The parties state in the notification:

"[Sean Loughnane] views the acquisition of the Rudd's Business from Crinkle [Foods] as a strategic acquisition for the Group's business which is principally driven by [Sean Loughnane's] requirement to

⁵ The Commission's merger determination *M/17/002 –Silvereed-Tombolo* provides that Goldreed Holdings Unlimited Company owns O'Brien Find Foods Unlimited Company, Faughan Foods Unlimited Company, Ironreed Unlimited Company and Crinkle Foods Fine Foods Unlimited Company. Please see <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-17-002-Silvereed-Tombolo-Public-.pdf>

⁶ The report prepared by Comecon Competition Economics on behalf of the parties, dated 29 June 2017, and submitted to the Commission, "*Crinkle Foods Fine Foods/Sean Loughnane (Galway) Limited: Economic Analysis of the Relevant Market(s)*" (the "*Compecon report*"), states that "*Crinkle supplies small amounts of breakfast meat products to food service outlets*". (paragraph 25)

⁷ Crinkle Foods informed the Commission that Crinkle supplies own label puddings to [...] for [...] only.



expand its current operation capacity to meet demand, and facilitate the development of new products.”

Preliminary Investigation (“Phase 1 investigation”)

9. The Phase 1 investigation involved various contacts with the notifying parties. The Commission also conducted market enquiries with third parties, including the notifying parties’ customers and a competitor which is active in the production and supply of breakfast meats to various customers in the State.

Contacts with the Undertakings Involved

10. On 29 June 2017, in addition to the notification, a report dated 29 June 2017 and prepared by Compecon on behalf of the parties (the “*Compecon Report*”) was submitted to the Commission:
11. On 8 August 2017, the Commission issued a formal requirement for further information (“RFI”) to each of Sean Loughnane and Crinkle Foods, pursuant to section 20(2) of the Act. This adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.
12. Upon receipt of all the responses to the RFI from each of Sean Loughnane and Crinkle Foods, the “appropriate date” (within the meaning of section 19(6) of the Act) subsequently became 24 August 2017.⁸

Third Party Submissions

13. No submission was received by the Commission during its investigation. The Commission, however, conducted market enquires due to concerns that the Proposed Transaction might raise potential concerns in relation to the production and supply of own-label breakfast puddings to wholesalers and retailers in the State.

Market Enquiries

⁸ The “appropriate date” is the date from which the time limits begin to run for the Commission to make Phase 1 and, if appropriate, Phase 2 determinations in relation to a merger or acquisition notified to it.



14. During its investigation, the Commission issued questionnaires to the parties' customers (i.e., wholesalers, retailers and foodservice providers) in the State and to a competitor currently active in the production and supply of own-label breakfast puddings to retailers in the State. The Commission received responses from most third parties and also contacted those third parties by telephone and/or e-mail to seek further detail regarding those responses.

Competitive Analysis

Overlap in the activities of the parties

15. Table 1 below shows information on estimated market shares for rashers, sausages and breakfast puddings in the State in 2016.

Table 1 Estimated Market Shares for Breakfast Meats in the State, 2016

Company Name	Brand Name	Rashers	Sausages	Breakfast Puddings
Kerry Foods Limited	<i>Kerry Foods</i>	[20-30]%	[10-20]%	[20-30]%
Clonakilty Food Company Unlimited Company	<i>Clonakilty</i>	[0-5]%	[10-20]%	[20-30]%
Crinkle Foods	<i>Rudds</i>	[0-5]%	[0-5]%	[0-10]%
Sean Loughnane	<i>Loughnane</i>	nil	[0-5]%	[0-5]%
Various Companies	Other Brands	[0-10]%	[10-20]%	[20-30]%
	Own Label*	[60-70]%	[50-60]%	[20-30]%
	Total	100	100	100



Source: The Commission, based on information provided by the Parties.

16. Table 1 shows that there are horizontal overlaps between the business activities of the parties in the State. Both Sean Loughnane and Crinkle Foods are involved in the production and wholesale supply of sausages and breakfast puddings to wholesalers and retailers in the State.
17. The Commission defines market to the extent necessary depending on the particular circumstances of a given case.
18. In its determination in *M/08/009 – Kerry/Breeo*, the Commission's predecessor, the Competition Authority (the "Authority"), concluded that sausages, puddings and rashers constitute separate and distinct product markets⁹ and that in each case the relevant geographic market was at least as wide as the State.
19. The *Compecon Report*¹⁰ states that "*the relevant product markets in the present case are the markets for the supply of own label breakfast meats to the main multiple and symbol supermarket groups and to food service outlets. ... Thus it seems clear that the relevant geographic market is at least the state.*"
20. On foot of the RFI, Crinkle Foods informed the Commission that it does not supply sausages and breakfast puddings to food services providers in the State. Therefore, there is no overlap between the parties' activities with respect to the wholesale supply of sausages and breakfast puddings to food services providers. The Commission will therefore assess the parties' activities with respect to wholesale supply to wholesalers and retailers in the State.
21. In this instance, the Commission does not need to come to a definitive view on the precise relevant product market since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant market is either narrow as the following:
 - the production and wholesale supply of branded sausages;

⁹ See paragraph 3.1 of the Authority's determination which can be accessed at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/M08009-Kerry-Breeo-Determination-Public_0.pdf

¹⁰ See paragraph 26.



- the production and wholesale supply of own label sausages;
- the production and wholesale supply of branded breakfast puddings; and
- the production and wholesale supply of own label breakfast puddings.

or broader as the following:

- the production and wholesale supply of all sausages; and,
- the production and wholesale supply of all breakfast puddings.

22. There is no overlap between the parties' activities in the wholesale supply of sausages and breakfast puddings to food services providers in the State. Therefore, wholesale supply refers to wholesale supply to wholesalers and retailers in the State throughout the rest of the document.
23. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market in this instance, since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant geographic market is the State or wider, to encompass the island of Ireland.
24. In order to determine whether the Proposed Transaction is likely to result in a substantial lessening of competition, the Commission has analysed its impact by reference to the potential relevant product markets referred to in paragraph 21 in the State.



25. Table 2 below shows the parties' revenue and estimated market shares in the areas of horizontal overlap between them in the State in 2016. To assess the likely impact of the Proposed Transaction, the Commission uses total retail sales as a proxy for market share estimation at wholesale level, including wholesale to wholesalers and retailers.

Table 2: Areas of horizontal overlap between the parties in the State, 2016

Business Activity	Brand vs Own label	Sean Loughnane (sales €)	Percentage of Total Retail Sale	Crinkle Foods (sales €)	Percentage of Total Retail Sale	Total Value of Retail Sale in the State ¹¹ (€)	Combined Percentage of Total Retail Sale
Production and Supply of Sausages	Branded	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
	Own Label	[...]	[20-30]%	[...]	[0-5]%	[...]	[20-30]%
Total Sausages		[...]	[10-20]%	[...]	[0-5]%	[...]	[10-20]%
Production and Supply of Breakfast Puddings	Branded	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%
	Own Label	[...]	[20-30]%	[...]	[40-50]%	[...]	[70-80]%
Total Breakfast Puddings		[...]	[0-10]%	[...]	[10-20]%	[...]	[20-30]%

Source: The Commission, based on information provided by the Parties.

Sausages

26. If the Commission were to consider that there is a potential relevant product market for the production and wholesale supply of branded sausages, Table 2 above shows that the parties' combined market share for branded sausages (c. [0-10]%) is minimal compared to the total retail sales of branded sausages in the State in 2016. Post-transaction, Sean Loughnane's branded sausages will continue to face competition from

¹¹ The parties informed the Commission that the information in this column is based on Kantar data for the 52 weeks ending July 2016.



other branded sausages such as *Clonakilty, Denny, Galtee, Hodgins Foods, Hafner's, Mallon's, Truly Irish and Divilly's*. Therefore, the Commission considers that the Proposed Transaction is not likely to raise any competition concerns in relation to the production and wholesale supply of branded sausages to wholesalers and retailers in the State.

27. If the Commission were to consider that there is a potential relevant product market for the production and wholesale supply of own label sausages, Table 2 shows that Crinkle Foods' market share for own label sausages (c. [0-5]%) is minimal compared to the total retail sales of own label sausages in the State. Following completion of the Proposed Transaction Post-transaction, Sean Loughnane will continue to face competition from firms such as Arthur Mallon Foods Unlimited Company, Hilton Foods Ireland Limited, ABP Foods Unlimited Company, Divillys (Galway's Leading Butchers) Limited, Country Style Foods Limited and Kerry Foods Limited. Therefore, the Commission considers that the Proposed Transaction is not likely to raise any competition concerns in relation to the production and wholesale supply of own label sausages to wholesalers and retailers in the State.
28. If the Commission were to consider that there is a potential relevant product market for the production and wholesale supply of all sausages (i.e., branded and own label), Table 2 above shows that the parties' combined market share for sausages is c.[10-20]% of the overall retail sales of sausages (i.e., branded and own label) in the State. Post-transaction, Sean Loughnane will continue to face competition from the same brands and firms mentioned in paragraph 26 and 27 above. Therefore, the Commission considers that the Proposed Transaction is not likely to raise any competition concerns in relation to the production and wholesale supply of all sausages to wholesalers and retailers in the State.
29. In light of the above, the Commission considers that the Proposed Transaction does not raise any competition concerns for the production and wholesale supply of sausages to wholesalers and retailers in the State.



Breakfast Puddings

30. If the Commission were to consider that there is a potential relevant product market for the production and wholesale supply of branded breakfast puddings, Table 2 above shows that the parties' market share for branded breakfast pudding is c.[0-10]% of the overall retail sales of branded breakfast puddings in the State. Post-transaction, Sean Loughnane's branded breakfast puddings will continue to face competition from competitors' branded breakfast puddings such as *Clonakilty*, *Hodgins Foods*, *Denny*, *Galtee*, *Divilly's*, *Country Style*, *De Róiste* and *Lisduff*. Therefore, the Commission considers that the Proposed Transaction is not likely to raise any competition concerns in relation to the production and wholesale supply of branded breakfast puddings to wholesalers and retailers in the State.
31. If the Commission were to consider that there is a potential relevant product market for the production and wholesale supply of all breakfast puddings (i.e., branded and own label), Table 2 above shows that the parties' combined market share for breakfast puddings is c.[20-30]% of the overall retail sales of breakfast puddings in the State. Post-transaction, Sean Loughnane will continue to face competition from the companies which produce and supply branded breakfast puddings listed in paragraph 30 and in particular, Country Style Foods Limited which produces and supplies own label breakfast puddings to wholesalers and retailers in the State. Therefore, the Commission considers that the Proposed Transaction is unlikely to raise any competition concerns in relation to the production and wholesale supply of breakfast puddings to wholesalers and retailers in the State.
32. If the Commission were to consider that there is a potential relevant product market for the production and wholesale supply of own label breakfast puddings, Table 2 above shows that, the parties' combined market share for own label breakfast puddings is c. [70-80]% of the overall retail sales of own label breakfast puddings in the State. This suggests that the potential market for the production and wholesale supply of own label breakfast puddings to wholesalers and retailers in the State, which is the narrowest potential market, is likely to be affected by the Proposed Transaction.



33. Therefore, the remainder of the Commission's determination will assess the likely competitive impact of the Proposed Transaction on the production and wholesale supply of own label breakfast puddings to wholesalers and retailers in the State.
34. Table 2 shows that the own label puddings sales in the State were estimated at €[4-5] million in 2016. The customers of own label puddings are the main supermarket and wholesaler groups. Aldi Stores Ireland, Lidl Ireland GmbH, Tesco Ireland Limited, Dunnes Stores Unlimited Company, Musgrave Retail Partner Limited, Musgrave Wholesale Partners Ireland and BWG Unlimited Company Ireland account over [70-80]% of the total retail sale of own label puddings sales in the State.¹²

Potential market for the supply of own label breakfast puddings

35. Paragraph 1.16 of the Commission's "Guidelines for Merger Analysis" states the following: "*the Commission investigates the likely effect of a merger not only by reference to current competitors, but also by reference to potential competitors.*"¹³ Potential competitors can sometimes provide a credible competitive constraint on the behaviour of the merged entity post-transaction.
36. The *Compecon Report*¹⁴ states the following: "*There are, however, some large undertakings such as Kerry Foods and Clonakilty which currently produce branded puddings that would be in a position to compete to supply own label puddings*"
37. There is one other firm that currently produces and supplies own label breakfast puddings to retailers and food service providers in the State, i.e., Country Style Foods Limited. Country Style Foods Limited informed the Commission that it has the capacity to take on more own label contracts if the opportunity arises.
38. The Commission's survey of retailers and wholesalers indicates that they believe that there are other potential producers in the State who could supply them with own label breakfast puddings including producers of branded breakfast puddings.

¹² Based on information provided by the Parties.

¹³ The Commission's "Guidelines for Merger Analysis" can be accessed at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/CCPC-Merger-Guidelines.pdf>

¹⁴ See paragraph number 34.



39. One of the merging parties' current customers in the State expressed concerns to the Commission about the likely impact of the Proposed Transaction on competition in the production and supply of own label breakfast puddings to retailers in the State. Notwithstanding this view, this customer also informed the Commission that it considered using [...], [...] and [...] in the past during the tendering processes for the production and supply of own label puddings.
40. One retailer informed the Commission that *"all branded suppliers are given the opportunity to propose own label breakfast meats for consideration"*. Another retailer informed the Commission that supplying own label breakfast puddings *"is a sought after business. Competition is high in the area of breakfast meats."* One retailer informed the Commission that competition for supplying own label breakfast puddings *"is very strong currently due to pork prices for Bord Bia protein particularly... [...] and [...] could supply it with own label breakfast puddings and own label breakfast sausages."* One wholesaler informed the Commission that *"there are other suppliers who would be able to supply us with these own brand products"*.
41. Sean Loughnane informed the Commission that *"since 2013 Divilly Meats, Hodgins Sausages, McCarthy's of Kanturk have all begun competing with Loughnane's for own-label breakfast pudding products in the State."*¹⁵ Sean Loughnane has lost tenders for supplying [...] with own label breakfast puddings to [...] in 2015. Since 2013, Sean Loughnane has lost the contract for the supply of own label black and white pudding to [...], and lost a tender to supply[...] with [...] and [...] to [...]-.
42. The above evidence, and the fact in particular that one of the merging parties has lost a number of own label breakfast pudding contracts to rival suppliers since 2013, indicates that post-transaction, Sean Loughnane will still face competition for the supply of own label breakfast puddings from the following:
- branded breakfast pudding producers; and
 - other breakfast pudding producers.

¹⁵ Information provided to the Commission in response to the RFI on 24 August 2017.



43. The Commission will now assess the possibility of entry in the production and wholesale supply of own label breakfast puddings to wholesalers and retailers in the State.

Entry

44. Section 6 of the Commission's "*Guidelines for Merger Analysis*" states that market power may be constrained by the occurrence or threat of new entry.¹⁶ A merger is unlikely to lead to a substantial lessening of competition ("SLC") if entry into the market is sufficiently low cost and easy that the merged entity, post-merger, is unable to increase prices above pre-merger levels.

45. The *Compecon Report*¹⁷ states that "*Producers of sausages such as Mallons, Hodgins and Olhausens could relatively easily produce puddings and compete for contracts to supply own label puddings to major retailers.*"

46. The Commission considers that entry into the production and wholesale supply of own label breakfast puddings is sufficiently low cost and easy, which is consistent with the Authority's conclusion in *M/08/009 – Kerry Breeo*¹⁸, on the basis of the following:

- the Commission's market survey of customers indicates that there is no legal contract between most wholesalers and retailers and their suppliers of own label breakfast puddings. This means that wholesalers and retailers can switch quickly between different producers of breakfast puddings. This view is consistent with the Authority's market survey in the *M/08/009 – Kerry Breeo Merger* case.
- a new entrant would not have to invest substantial machinery to produce own label breakfast puddings. For example, a sausage producer can produce breakfast puddings if it invests in the filling equipment, cooking and cooling tanks. In fact, one of the producers of own label and branded sausages and breakfast puddings in the State informed the Commission that most of the sausage producers currently

¹⁶ Please see section 6 of the "*Guidelines for Merger Analysis*" at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/CCPC-Merger-Guidelines.pdf>

¹⁷ See paragraph number 34.

¹⁸ Please see paragraph 4.25 https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/M08009-Kerry-Breeo-Determination-Public_0.pdf



active in the State already have the machinery required to manufacture breakfast puddings.

- a new entrant would not have to invest in brand awareness, which is costly, when producing own label breakfast puddings for wholesalers and retailers.
- Crinkle Foods informed the Commission that Divillys (Galway's Leading Butchers) Limited entered into the production and supply of own label breakfast puddings since 2013.

47. The Commission now will assess below the possibility of whether entry into the production and wholesale supply of own label breakfast pudding is sufficiently low cost and easy that Sean Loughnane, post-merger, is not likely to increase prices above pre-merger levels.

48. The Commission considers that there is a certain level of substitution between own label and branded breakfast puddings at retail level. One of the competitive strengths of own label breakfast puddings compared to branded breakfast puddings is competitive price.¹⁹ Thus, wholesalers and retailers need to ensure that own label breakfast puddings maintain competitive prices to compete with branded breakfast puddings. One own label breakfast pudding producer informed the Commission that the current profit margin for producing own label breakfast puddings does not warrant entry. The Commission considers that if post transaction, Sean Loughnane raises the prices of own label breakfast puddings, wholesalers and retailers will try to keep the price of own label breakfast puddings low by seeking alternative own label breakfast pudding producers. As mentioned in paragraph 37, 41, 42, 46 above:

- other current own label breakfast pudding manufacturers still have capacity to take on new contracts;

¹⁹ This is because retailers accept lower profit margins for their own label products and retailers adopt an everyday low pricing strategy for their own label products as relative to the high- low price strategy (where everyday price of a particular product is high but there is promotion for that product from time to time (such as 3 for 2 offers),) adopted for branded breakfast puddings.



- one of the merged parties has lost contracts to other own label breakfast pudding manufacturers since 2013;
- branded breakfast pudding manufacturers could supply own label breakfast puddings and have considered doing so in the past; and;
- entry into the production of own label breakfast puddings is easy and sausage producers could switch to supplying own label breakfast puddings at very low cost and in a timely period.

49. Therefore, the Commission considers that entry into the production and wholesale supply of own label breakfast puddings is sufficiently low cost and easy that Sean Loughnane, post transaction, is not likely to be able to increase prices above pre-merger levels.

50. In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise any competition concerns in relation to the production and wholesale supply of own label breakfast puddings to wholesalers and retailers in the State.

Vertical Relationship

51. The Proposed Transaction does not raise any vertical competition concerns in the State as there is no vertical relationship between the parties.

Potential anti-competitive agreement between Crinkle Foods and Sean Loughnane

52. During the assessment of the Proposed Transaction, the Commission discovered that the parties had entered into an arrangement, which, if it were implemented, would have prevented Sean Loughnane from engaging in business activities which compete with O'Brien Fine Foods Group ("O'Brien Fine Foods"). This arrangement also restricts Sean Loughnane from soliciting the clients, customers or employees of O'Brien Fine Foods. In particular, clause 14 of the Agreement provides as follows:

"14 Purchaser²⁰ Non-Compete

²⁰ Sean Loughnane is defined as the "Purchaser" in the Agreement.



14.1 the Purchaser covenants with the Vendor²¹ that the Purchaser will not and will procure that no company or entity controlled by the Purchaser from time to time will either on its or their own account or in conjunction with or on behalf of any person or persons whether directly or indirectly for the period of 24 months from completion:

14.1.1 engage in the O'Brien Fine Foods Business²² in the Territory²³;

14.1.2 compete with the Vendor or O'Brien Fine Foods Group in the O'Brien Fine Foods Business;

14.1.1.3 solicit or endeavour to solicit the custom in the Territory of any of the client contracts or any person, firm or company who or which was either at Completion or during the period of 18 months prior to Completion had been a client or customer of the O'Brien Fine Foods Business, for the provision of services which are the same as or compete with those services provided by the O'Brien Fine Foods Business to that person, firm or company at or during the period of 24 months prior to Completion;

14.1.4 solicit or entice away or endeavour to solicit or entice away from the Vendor an officer, manager, servant or other employee who was either at Competing or during the period of 24 months prior to Completion engaged in the O'Brien Fine Foods Business whether or not such person would commit a breach of his contract of employment by reason of leaving service; or

14.1.5 carry on or be engaged, concerned or interested in the Territory in the O'Brien Fine Foods Business and any business which

²¹ Crinkle Foods is defined as the "Vendor" in the Agreement.

²² "O'Brien Fine Foods Business" is defined in the Agreement as meaning the manufacturing, production and distribution of sliced cooked meats and bulk cooked ham, chicken, turkey, and beef carried on by the O'Brien Fine Foods Group.

²³ The "Territory" is defined in the Agreement as meaning the Republic of Ireland and all of the United Kingdom.



compete with the O'Brien Fine Foods Business as the same was carried on at Completion.

14.2 it is agreed between the parties that, whilst the restrictions set out in clause 14.1 are considered fair and reasonable, if it should be found that any of the restrictions be void or unenforceable as going beyond that is fair and reasonable in all the circumstances and if by deleting part of the wording or substituting a shorter period of time, geographical limits or more restricted ranges of activities for any of the period of time, geographic limits or ranges of activities set out in clause 14.1 it would not be void or unenforceable then there shall be substituted such next less extensive period or limit or activity or such deletions shall be made as shall render clause 14.1, as appropriate, valid and enforceable.

53. The Commission notes that O'Brien Fine Foods is part of the group of companies to which Crinkle Foods belongs. The Commission, however, further notes that the O'Brien Fine Foods business is not involved in the Proposed Transaction and offers products and services that are not part of the economic activity of the Target Assets. The Commission therefore considers that the non-compete and non-solicitation clauses imposed on Sean Loughnane (i.e., the purchaser) under clause 14 of the Agreement are not directly related to and necessary for the implementation of the Proposed Transaction. The Commission is of the view that the provisions of clause 14 of the Agreement which restrict Sean Loughnane from competing with and soliciting clients, customers and employees of O'Brien Fine Foods are potentially in breach of section 4 of the Act.
54. To address this competition concern, at the request of the Commission, Crinkle Foods and Sean Loughnane have submitted proposals in accordance with section 20(3) of the Act. Crinkle Foods and Sean Loughnane have varied the terms of the Agreement by deleting clause 14 of the Agreement in its entirety, effective from 29 September 2017, by Deed of Amendment dated 29 September 2017. In addition, each of Crinkle Foods and Sean Loughnane confirm that they will not put any arrangement in place that would have the same or similar effect to clause 14 of the Agreement.



Conclusion

55. In light of the above, and having taken the proposals into account, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

56. Clause 13 of the Agreement contains a number of restrictive obligations including non-compete and non-solicitation obligations on Crinkle Foods (i.e., the vendor). The duration of those restrictive obligations does not exceed the maximum duration acceptable to the Commission.²⁴ The Commission considers the restrictive obligations in Clause 13 to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

²⁴ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



Determination

Pursuant to section 20(3) of the Competition Act 2002, as amended (the “Act”), Crinkle Fine Foods Unlimited Company (“Crinkle Foods”) and Sean Loughnane (Galway) Limited (“Sean Loughnane”) have submitted to the Competition and Consumer Protection Commission (the “Commission”) the proposals set out in paragraph 54 above, for the purpose of ameliorating any effects on competition in markets for goods and services arising from the proposed transaction whereby Sean Loughnane would acquire certain business assets from Crinkle Foods, with a view to the proposals becoming binding on Crinkle Foods and Sean Loughnane.

The Commission has taken the proposals into account and in light of the said proposals (which form part of the basis of its determination) has determined, in accordance with section 21(2) (a) of the Act, that the result of the proposed transaction whereby Sean Loughnane would acquire certain business assets from Crinkle Foods 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

Brian McHugh
Member
Competition and Consumer Protection Commission