



DETERMINATION OF MERGER NOTIFICATION M/17/067 – MUSGRAVE / LA ROUSSE

Section 21 of the Competition Act 2002

Proposed acquisition by Musgrave Limited of sole control of La Rouse Foods Limited, La Rouse Foods (NI) Limited and certain assets of Cocoa Atelier Limited

Dated 19 January 2018

Introduction

1. On 8 December 2017, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed acquisition (“the Proposed Transaction”) whereby Musgrave Limited (“Musgrave”) would acquire the entire issued share capital, and thus sole control, of La Rouse Foods Limited¹ (“La Rouse”) and certain assets of Cocoa Atelier Limited (“the Target Assets”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share purchase agreement (“the Agreement”) dated 4 December 2017 between the Aryzta Food Solutions Ireland Unlimited Company (“the Vendor”) and Musgrave. Pursuant to the Agreement, Musgrave will acquire the entire issued share capital, and thus sole control, of La Rouse and sole control of the Target Assets from the Vendor.

The Undertakings Involved

Musgrave

3. Musgrave, a private limited company incorporated in the State, is a wholly-owned subsidiary of Musgrave Group plc (“Musgrave Group”). Musgrave Group is active in

¹ Including its wholly-owned direct subsidiary La Rouse Foods (N.I.) Limited, a private limited company incorporated in Northern Ireland.



grocery and food wholesale distribution in the island of Ireland and in Spain. Musgrave is principally a wholesaler-franchisor in the State and operates through franchise agreements with independently-owned retail stores which are operated under the following Musgrave-owned fascia (brands): *SuperValu*, *Centra*, *Day-Today* and *Daybreak*.² Musgrave also has a network of cash & carry depots, a delivered wholesale business and a delivered foodservice business in the State. Musgrave does not currently manufacture any chocolate products.

4. Musgrave, through its subsidiaries, also owns and operates a number of retail grocery stores in the State under either the *SuperValu*³ or *Centra*⁴ brand.
5. For the financial year ending 31 December 2016, Musgrave Group's worldwide turnover was approximately €3.7 billion, of which approximately €3.1 billion was generated in the State.

The Vendor

6. The Vendor is incorporated in the State and has its registered office at Grange Castle Business Park, New Nangor Road, Clondalkin, Dublin 22. The Vendor is a wholly-owned indirect subsidiary of Aрызta AG.

La Rousse

7. La Rousse is wholly-owned by the Vendor and is a private company limited by shares, incorporated in the State. La Rousse is a premium food business specialising in the supply of fine foods to premium foodservice operators in the island of Ireland and describes itself as "*created by chefs for chefs*"⁵. La Rousse concentrates on customers who have a 'premium' offering such as 4-5 star

² The wholesaler-franchisor model which Musgrave operates in the State with its franchisees was described by the Commission's predecessor, the Competition Authority, in *M/11/022 - Musgrave/Superquinn*.

³ Musgrave owns and operates three *SuperValu*-branded stores (two in Dublin and one in Kilkenny) and twenty-two former *Superquinn*-branded stores which are now operated under the *SuperValu* brand, the majority of which are located in the Greater Dublin Area (a further two are located in Co. Wicklow and one is located in each of Kilkenny, Waterford, Co. Limerick and Co. Laois).

⁴ Musgrave owns and operates five *Centra*-branded stores (four are located in Dublin and one is located in Cork). Musgrave also recently acquired the Ballybrit Service Station (Galway) and six grocery stores in Co. Wicklow, all operating under the *Centra* brand. Two of the Wicklow stores also operate a fuel service station. Those two recent acquisitions were the subject of merger notifications M/17/052 and M/17/058.

⁵ ,<<http://www.laroussefoods.ie/>> accessed on 12 January 2018.



hotels and full service restaurants, as well as some catering operations. It is also involved, to a lesser extent, in the supply of a limited range of products to a small number of food retailers.

8. Products supplied by La Rousse include bread; seafood; vegetables; fruit; beverages; chocolate; condiments; dairy; desserts; charcuterie; pasta and flour; patisserie; game; meat; poultry; stocks and sauces; pulses, grains and nuts; herbs and spices; Asian foods; and related equipment. La Rousse sources all its products directly from producers and in general, La Rousse does not manufacture products nor sell to the final customer. La Rousse does, however, carry out some limited preparation of products through the butchery of meat and maturation of cheeses and manufactures a range of luxury chocolates under the *Cocoa Atelier* brand.
9. La Rousse's worldwide turnover for the financial year ending 31 July 2017⁶ was approximately €[...] of which approximately €[...] was generated in the State.⁷

The Target Assets

10. The Target Assets consist of certain assets of Cocoa Atelier Limited (which is wholly owned by the Vendor). These assets are owned and/or used by Cocoa Atelier Limited in the manufacture of *Cocoa Atelier* branded chocolate products at premises located at 31A and 31B Park West, Lavery Avenue, Nangor Road, Dublin 12.

Rationale for the Proposed Transaction

11. The parties state in the notification:

“The commercial objective of Musgrave in entering the Proposed Transaction is to extend its presence within the ‘premium’ end of the foodservice sector. The Target’s customer base is concentrated on the ‘premium’ end of the foodservice sector (i.e. the Target specialises in the ‘supply of fine foods to premium establishments...’) and focuses in particular on full service restaurants and hotels. Musgrave’s customer base, on the other hand, is more general in nature

⁶ Figures provided by the parties, based on draft accounts.

⁷ In addition, for the same period, La Rousse Foods (NI) Limited's worldwide turnover was stg£[...] (approx. €[...]), none of which was generated in the State.



covering a wider range of customers. Musgrave has a proportionately lower concentration of customers at the 'premium' end of the foodservice sector. Acquiring the Target will allow Musgrave to expand its service and product ranges within the 'premium' end of the foodservice sector making it a more effective competitive force in the market as a whole, capable of delivering greater efficiencies to the customers of the Target without losing any of the 'premium' nature of the Target's offering."

Third Party Submissions

12. No submission was received.

Competitive Analysis

Horizontal Overlap

13. There is a horizontal overlap between the activities of Musgrave and La Rousse in the State in the supply of food and drink products to the food retail sector and the foodservice sector. Therefore, for the purposes of its analysis, the Commission has reviewed the impact of the Proposed Transaction in the supply of food and drink products to the food retail and food service sectors in the State.

Supply of Food and Drink Products to the Food Retail Sector

14. There is a minimal horizontal overlap between the parties in relation to the supply of food and drink products to the food retail sector. However, this overlap is not significant considering the relatively small value of La Rousse's sales to the food retail sector in the State. For the financial period ending July 2017, La Rousse generated annual sales of approximately €[...], while Musgrave generated sales of €[...], in respect of the supply of food and drink products to the food retail sector in the State. These figures suggest that La Rousse is not a significant competitor in the supply of food and drink products to the food retail sector in the State. Furthermore, following completion of the Proposed Transaction, there will remain significant suppliers such as BWG Foods and the Barry Group, that will continue to provide a competitive constraint to Musgrave in the supply of food and drink products to the food retail sector in the State.



15. Therefore, the Proposed Transaction is unlikely to raise any competition concerns in respect of the supply of food and drink products to the food retail sector in the State.

Supply of Food and Drink Products to the Foodservice Sector

16. There is also a horizontal overlap between the activities of the parties in respect of the supply of food and drink products to the foodservice sector in the State. The most up-to-date information on the foodservice sector in the State is a report published by Bord Bia, dated November 2017, entitled “Irish Foodservice Channel Insights” (“the Bord Bia Report”).⁸ The report states:

“Foodservice or ‘Out of Home’ is the term used to describe all food consumed out of home. It includes everything from restaurants, pubs, hotels and coffee shops to workplace catering, hospitals, education and vending.”

17. According to the Bord Bia Report, in 2017, purchases by foodservice providers of food and drink products amounted to approximately €2.6 billion in the island of Ireland. Approximately €1.9 billion of this amount was purchased in the State.⁹ In terms of the size and range of foodservice providers, the Bord Bia Report notes that there were 26,845 outlets in 2017 within the State. Table 1 below presents details in relation to the categories of foodservice providers, both in relation to the number of outlets and the Euro value of purchases by operators within that customer category.

Table 1: Foodservice Customer Category – By Number of Outlets and Operator Purchases, 2017

Foodservice Customer Category	Number of Outlets	Purchases by Operators (€m)
Limited service restaurants (including quick service restaurants, fast casual restaurants and food-to-go providers)	6,985	675
Full service restaurants	2,450	216

⁸<https://www.bordbia.ie/industry/events/SpeakerPresentations/2017/IrishFoodserviceDirectory/2017%20Irish%20Foodservice%20Channel%20Insights.pdf>

⁹ For the same period, in terms of consumer expenditure, the foodservice sector in the island of Ireland was worth approximately €7.8 billion, of which approximately €5.7 billion was in the State.



Pubs	7,200	285
Coffee shops / cafes	1,950	91
Hotels	1,040	341
Other Commercial	750	79
Institutional	6,470	230
Total	26,845	1,916

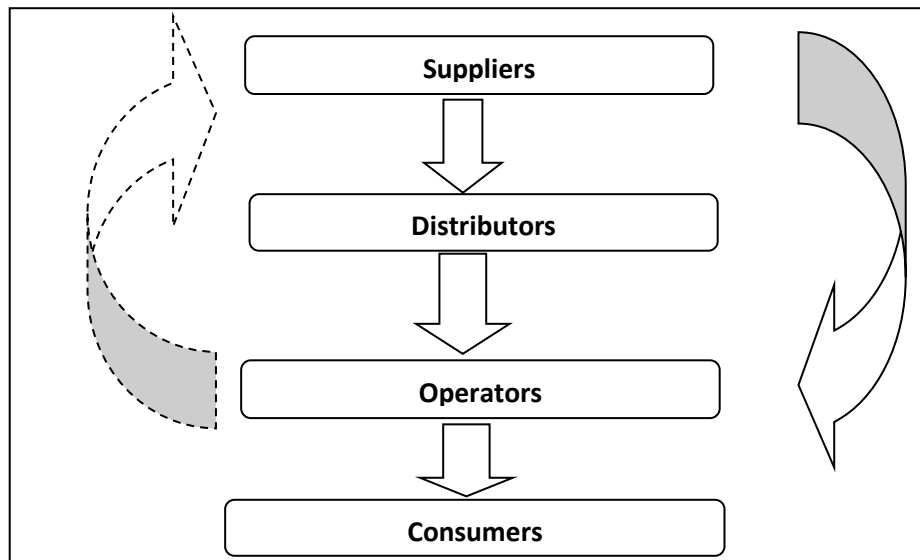
Source: Bord Bia - Irish Foodservice Channel Insights Report November 2017

18. Figure 1 below presents an overview of the foodservice sector, which comprises: (i) suppliers of foodservice products; (ii) foodservice distributors; (iii) foodservice operators and (iv) end consumers. Foodservice suppliers produce and/or sell food products to distributors (such as La Rousse or Musgrave). Foodservice distributors sell these products to foodservice operators. Foodservice distributors, also known as “Delivered Wholesale”, are intermediaries between suppliers and the foodservice operators, i.e., the supplier sells to the distributor who in turn sells to the operator. The end consumers are the customers of restaurants, hotels, pubs, coffee shops etc. Delivered Wholesale accounts for a significant majority of foodservice products purchased by foodservice operators.¹⁰

¹⁰ Bord Bia estimates that Delivered Wholesale is the route to market for approximately 67% of all foodservice products, measured by value in terms of operator buying prices.



Figure 1: Foodservice Sector Structure and Relationships



Source: M/12/010 - Pallas/Crossgar - Competition Authority Determination

19. Other routes to market also exist in addition to the traditional Delivered Wholesale model. For example:

- Foodservice operators may purchase products from foodservice distributors on a wholesale 'Cash and Carry' basis, i.e., the foodservice distributor sells products to the foodservice operator but the foodservice distributor has no delivery function as the foodservice operator collects and transports the products;
- Foodservice suppliers, particularly large multinational suppliers, may bypass foodservice distributors altogether and negotiate with foodservice operators for the direct supply of products; and
- Foodservice operators may nominate foodservice suppliers, i.e., negotiate directly with foodservice suppliers and have the products stored and/or delivered by a foodservice distributor in which case the foodservice distributor's role is purely logistics, or 'Wheels Only', with no buying or selling.

20. Within the island of Ireland there are a number of so-called "full range" distributors (e.g., Musgrave, Pallas Foods Unlimited Company, BWG Foods Unlimited Company, and Lynas Foodservice Limited,) that distribute or are capable of distributing a wide range of products over all or most of the island of Ireland. There are also many distributors



who specialise in supplying products either in terms of location and/or product range within the island of Ireland. For example, Bord Bia's distributor listing for foodservice¹¹ identifies over 50 distributors within the island of Ireland ranging from full range distributors to distributors specialising in selling a limited range of products and/or servicing a limited geographical area. Within the foodservice sector there are contractual and non-contractual (ad hoc) trading relationships. The distribution of foodservice products to varying sizes of independent operators is done mainly on a non-contractual basis.

21. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission and its predecessor, the Competition Authority, have previously considered the foodservice sector¹² and decided that it was not necessary to precisely define relevant markets. In those cases, the Commission and the Competition Authority considered that the conclusion concerning the competitive effects of the proposed transactions would be unaffected whether the relevant product markets in the foodservice sector were defined broadly or narrowly. Broadly being, for example, the supply of all food and drink products either directly or indirectly (i.e. via wholesalers) to the foodservice sector. Narrowly being separate markets, for example, for the following:

- i. Different categories of food products such as meat, bread, dairy or chocolate products.
- ii. Different categories of food service customer (e.g., cafes, caterers, hotels, restaurants), and/or premium versus general.
- iii. Direct sales and indirect sales (i.e., via wholesalers) to food retailers and food service operators.

22. In 2016, the European Commission, in Case M.7986 - Sysco / Brakes¹³, considered that the question of whether the distribution of food products to foodservice customers

¹¹<https://www.bordbia.ie/industry/manufacturers/GrowingYourBusiness/DistributorSearch/Pages/DistributorListing.aspx>

¹² M/15/040 – Aryzta / La Rouse and M/12/010 – Pallas / Crossgar

¹³ http://ec.europa.eu/competition/mergers/cases/decisions/m7986_918_4.pdf



should be segmented by (i) mode of supply; (ii) national and independent customers or (iii) product category could be left open. The European Commission also considered that the geographic scope of any such possible relevant market could be left open.

23. The Commission has not, in the course of its analysis of the Proposed Transaction, found reasons to depart from the approach previously adopted by the Commission or its predecessor, the Competition Authority. In this instance, it is not necessary for the Commission to define precise relevant markets. The Commission's conclusion concerning the competitive effects of the Proposed Transaction would be unaffected whether the relevant product market in the foodservice sector is defined broadly or narrowly.
24. 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 defined as regional, national or broader, such as an island of Ireland basis.
25. Accordingly, the Commission has assessed the competitive effects of the Proposed Transaction with regard to the potential market for the supply of food and drink products to the foodservice sector in the State¹⁴.
26. La Rousse is focused primarily on the premium end of the delivered wholesale sub-channel and tends to deliver specifically to high end restaurants and 4-5 star hotels with a premium product range. The parties submit that there are at least four other foodservice wholesalers and distributors who operate predominantly at the 'premium' end of the foodservice sector in the State, namely, Redmond Fine Foods Limited, Odaios Limited T/A Odaios Foods, Artisan Foods Limited, and Barbarrie Duckling Limited t/a BD Foods¹⁵. However, all foodservice wholesalers in the island of Ireland, including Pallas Foods Unlimited Company, BWG Foods Unlimited Company, and Lynas Foodservice

¹⁴ The analysis would result in similar conclusion if the geographic area was considered the Island of Ireland.

¹⁵ These are included under "Others" in Table 2.



Limited, are capable of serving and do serve customers at the 'premium' end of the foodservice sector.

27. Considering the presence of a number of providers who concentrate on supplying the 'premium' end of the foodservice sector in the State and also the fact that the general wholesalers also serve the 'premium' end of that particular sector, the Commission considers that the Proposed Transaction will not lead to any substantial competition concerns in the potential narrower market for the the supply of food and drink products to the 'premium' end of the foodservice sector.
28. Musgrave is focused on the general delivered wholesale and cash and carry channels. Musgrave and La Rousse operate at different levels within the foodservice sector, with La Rousse focusing on 'premium' level customers while Musgrave has a more general customer base.
29. There is a minor overlap between the customers of Musgrave and La Rousse, consisting of approximately [...] common customers, which represents approximately [...]% of Musgrave customers and [...]% of La Rousse customers. These customers, however, purchase different products from Musgrave and La Rousse.
30. Table 2 below provides market share estimates for the foodservice distribution sector in the State and on an island of Ireland basis as presented in Professor Francis O'Toole's report "*Musgrave's Proposed Acquisition of La Rousse: An Economics of Competition Policy Report*". Table 2 illustrates that Musgrave and La Rousse have approximately [...]% and [...] market share in the State respectively.

Table 2: Distributor Market Shares within the State and Island of Ireland based on Sales to Foodservice Operators in 2016

Distributors	State (%)	Island of Ireland (%)
Pallas/Brakes	[...]%	[...]%
Musgrave Wholesale Partners	[...]%	[...]%
La Rousse	[...]%	[...]%
Lynas	[...]%	[...]%



BWG	[...]%	[...]%
Henderson	[...]%	[...]%
Total Produce	[...]%	[...]%
Corrib	[...]%	[...]%
Caterway	[...]%	[...]%
Derry-naflan	[...]%	[...]%
Others ¹⁶	[...]%	[...]%

Source: *Economics of Competition Policy Report* by Professor Francis O'Toole's attached to notification

31. Following completion of the Proposed Transaction, Musgrave's market share would increase to [...]%, and the incremental increase in market share of approximately [...]%, is considered as not being significant. Also, there are now, and will continue to be, following completion of the Proposed Transaction, significant competitors (both in terms of size and number) to Musgrave in the foodservice sector in the State.
32. For the reasons set out above, the Commission considers that the Proposed Transaction will not substantially lessen competition in the potential relevant market for the supply of food and drinks products to the foodservice sector in the State.

Vertical Relationship

33. Musgrave does not purchase any produce from La Rousse. There is, however, a potential vertical relationship between Musgrave and La Rousse in that La Rousse purchase a negligible amount of product from Musgrave. The Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State: (i) because of the small amount of purchases between the parties, and (ii) there are sufficient number of competitors and customers who will remain in the market to constrain Musgrave following completion of the Proposed Transaction.

¹⁶ Including Redmond Fine Foods Limited, Odaios Limited T/A Odaios Foods, Artisan Foods Limited, and Barbarrie Duckling Limited t/a BD Foods.



Conclusion

34. 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

35. The Agreement contains restrictive obligations on the Vendor. These include non-compete and non-solicitation obligations. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission¹⁷. The Commission considers that these non-compete and non-solicitation obligations are directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

¹⁷ 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” (2002). For more information see

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



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby Musgrave Limited would acquire the entire issued share capital, and thus sole control, of La Rousse Foods Limited including its subsidiary La Rousse Foods (N.I.) Limited and certain assets of Cocoa Atelier 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

Brian McHugh
Member
Competition and Consumer Protection Commission