



DETERMINATION OF MERGER NOTIFICATION M/018/012 – NORTH CORK /FEALE BRIDGE AND HEADLEY’S BRIDGE

Section 21 of the Competition Act 2002

Proposed acquisition of 100% of the issued share capital of Feale Bridge and Headley’s Bridge Co-Operative Dairy Society Limited by North Cork Co-Operative Creameries Limited.

Dated 16 March 2018

Introduction

1. On 7 February 2018, 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 transaction whereby North Cork Co-Operative Creameries Limited (“North Cork”) would acquire 100% of the issued share capital of Feale Bridge and Headley’s Bridge Co-Operative Dairy Society Limited (“Feale Bridge”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction involves the acquisition by North Cork of 100% of the issued share capital of Feale Bridge from Feale Bridge’s co-operative members, thereby acquiring sole control of Feale Bridge. The parties have informed us that it is proposed that milk supply members of Feale Bridge will be issued with shares in North Cork and thereby become members of North Cork and will sign milk supply agreements (“MSAs”) with North Cork. In essence, North Cork will acquire the milk supply business of Feale Bridge.
3. On the 11 January 2018, the chairman of North Cork wrote to members of Feale Bridge, offering to buy all ordinary shares in Feale Bridge held by each qualifying milk supply member, in exchange for issue shares in North Cork. This offer was



conditional on a minimum of [...] % of the milk supply members of Feale Bridge accepting the offer, and [...] milk suppliers of Feale Bridge entering into MSAs with North Cork.¹ Following the fulfilment of both criteria, the parties approved entry into the Proposed Transaction on 25 January 2018.

The Undertakings Involved

The Acquirer – North Cork

4. North Cork is an agri-business co-operative society, owned by [...] shareholders. North Cork procures milk from farmers (who are all members of North Cork) located primarily in Co. Cork, and to a limited extent in Co. Kerry.
5. North Cork's principal business activity is the production of fresh dairy products, a range of milk powders and casein. In carrying out these activities, North Cork:
 - collects, pasteurises and supplies liquid milk as either branded or own-label milk;
 - processes the cream that is separated from milk to manufacture butter, which is exported worldwide;
 - produces branded butter for retail consumers under the North Cork Creamery brand, own-label butter for retailers, and cream.
 - operates a milk drying facility which produces high quality milk powders for food manufacturing, as well as casein, which are exported worldwide.
6. North Cork procures raw milk from its milk supplying members and other co-operatives, including Feale Bridge. North Cork processes all of its raw milk internally and does not supply milk to other dairy processors. North Cork also processes raw milk on behalf of third party processors which require additional capacity. North Cork sells its milk and dairy products to retail customers.

¹ Letter from the Chairman of North Cork Co-Operative creameries dated 11 January 2018.



7. In addition, North Cork operates two agri-retail outlets selling animal feed, hardware and other farm inputs, located in Kanturk and Cullen, Co. Cork.
8. For the financial year ending 31 December 2016, North Cork's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

The Target – Feale Bridge

9. Feale Bridge is a co-operative society owned by [...] shareholders, of which [...] are dairy farmers who supply raw milk to Feale Bridge. These milk suppliers are located primarily in Co. Kerry, Co. Limerick, and, to a limited extent, in Co. Cork.
10. Feale Bridge's principal business activity is the procurement of raw manufacturing milk from dairy farmers, and the sale to dairy processors, the majority of which is supplied to North Cork.² Feale Bridge does not have any milk processing facilities. Feale Bridge operates two agri-retail outlets selling animal feed, hardware and other farm inputs, located in Abbeyfeale, Co. Limerick and Headley's Bridge, Co. Kerry.
11. For the financial year ending 31 December 2016, Feale Bridge's worldwide turnover was approximately €6.3 million, [...] was generated in the State.

Milk Supply Agreements

12. The offer to members of Feale Bridge is conditional upon a minimum of [...] Feale Bridge milk supply members entering into MSAs with North Cork. The MSA requires the milk supply members to supply raw milk exclusively to North Cork for a minimum of [...] years, with a notice period of [...] months to terminate the MSA.
13. The parties consider this to be a fundamental part of the Proposed Transaction as North Cork could not be certain of acquiring the raw milk supply of Feale

² In 2016, of the [...] million litres of raw milk procured by Feale Bridge from farmers, [...] million litres was supplied to North Cork by Feale Bridge.



Bridge without sufficient Feale Bridge milk supply members signing the proposed MSAs.³

14. The Commission notes that the terms of the MSA are in line with the industry standard with regard to the duration of both the contract and the notice period. The competitive analysis of the Proposed Transaction (detailed below), in this instance, is unaffected by the existence of such agreements.

Rationale for the Proposed Transaction

15. The notification states:

“The Boards of North Cork and Feale Bridge believe that a merger of the two co-operative societies will bring benefits to both societies by increasing the scale of the combined milk pool and thereby improving efficiencies and cost synergies and that this will ensure the continued growth and success of North Cork and Feale Bridge in a competitive market.”

Third Party Submissions

16. No submission was received.

Horizontal overlap in the activities of the parties

17. North Cork does not sell raw milk to third party milk processors, therefore no horizontal overlap arises with respect to the supply of raw milk in the State. Feale Bridge does not process raw milk, therefore no horizontal overlap arises between the parties in the production of dairy products in the State.
18. There are two horizontal overlaps in the State between the parties' business activities: (i) the procurement of raw milk; and (ii) the retail sale of agricultural inputs to farmers.

³ In its 2013 Annual Report, the Commission's predecessor, the Competition Authority (the "Authority"), noted that exclusive supply agreements between raw milk processors and farmers could lead to a number of efficiencies in the context of the supply of raw milk, "including security of supply and, in some cases the funding of additional processing infrastructure." <https://www.cpc.ie/consumers/wp-content/uploads/sites/2/2017/03/Annual-Report-2013.pdf>



Industry Background

19. Dairy farmers produce raw milk from milking cows. Raw milk is then collected from dairy farmers and delivered to dairies or creameries where it is processed into either “liquid milk” (i.e. milk for human consumption in liquid form) or “manufacturing milk”. Liquid milk and cream products are sold by milk processors to retailers as branded or own label products. Manufacturing milk is used as an input in the production of dairy products such as butter, skimmed milk powder, cheese, etc., by milk processors and manufacturers of dairy products. The vast majority of dairy products are subsequently exported by manufacturers.
20. As of 2016, there are approximately 17,000 dairy farmers in the State,⁴ of which 1,754 have registered liquid milk contracts.⁵ Liquid milk supply contracts between the dairy farmer and the processor typically require farmers to supply the processor exclusively on a year round basis. These contracts are required by the Milk (Regulation of Supply) Act 1994. Liquid milk sold for human consumption in the State must have a registered liquid milk supply contract. In order to get a contract, a farmer must meet specific quality standards and register with the National Milk Agency. The quality standards for liquid milk are higher than those required for manufacturing milk. Each dairy processor checks to ensure that each dairy farmer meets these standards. In general, there are no supply contracts for manufacturing milk.
21. Figure 1 below provides an overview of the supply chain for liquid milk and cream.

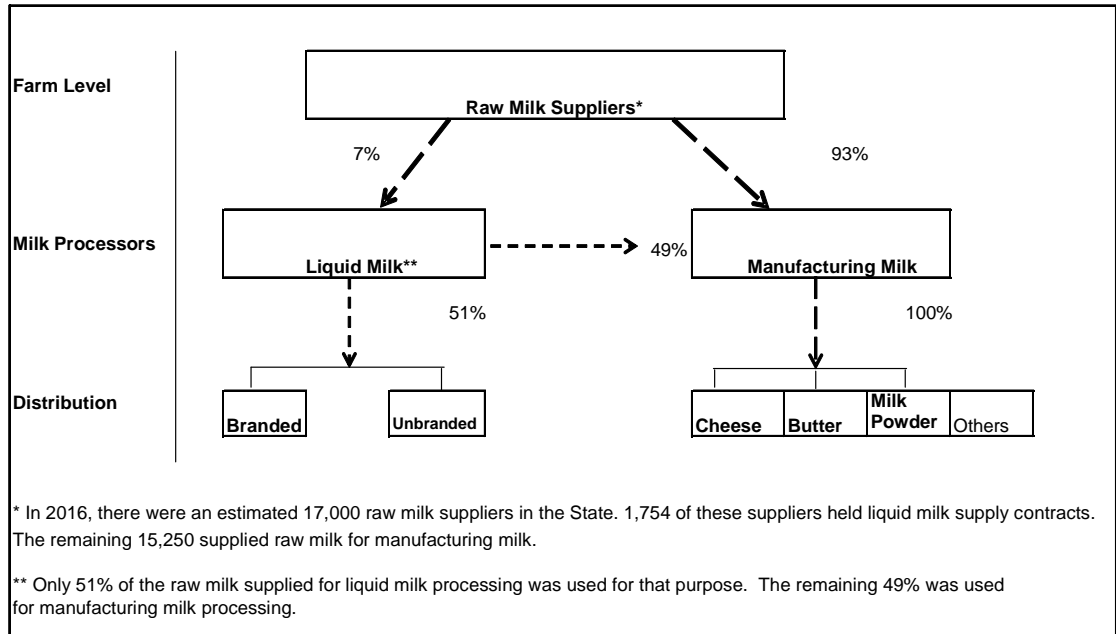
⁴ National Milk Agency, Annual Report and Accounts 2016 (the “NMA 2016 report”), pg. 16.

<http://nationalmilkagency.ie/uploads/files/annualreports/2016/annualreport2016.pdf>

⁵ *ibid*, pg. 4.



Figure 1: A schematic view of the liquid milk, manufacturing and supply in the State



Source: The Commission's analysis of data contained in the NMA 2016 report.

Competitive Assessment

22. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.

The procurement of raw milk

23. In its determination *M/13/038 Glanbia / Wexford Creamery* (the "2013 Decision") the Competition Authority (the "Authority")⁶ found that it was not necessary to precisely define the market, but assessed the competitive effects of the merger on the basis of the potential market for "*the procurement by dairy processors from dairy farmers of raw milk*".⁷

⁶ In 2014, the Commission was established following an amalgamation of the Competition Authority and the National Consumer Agency.

⁷ <https://www.cccp.ie/business/wp-content/uploads/sites/3/2017/04/M-13-036-Glanbia-Wexford-Creamery-Public.pdf>



24. In *M/11/037 Connaught Gold/ Donegal Creameries* (the “2011 Decision”) similarly involved a transaction in which one party collected raw milk solely for the purpose of supply to third parties, and the other party collected milk for processing internally. In the 2011 Decision the Authority did not precisely define the market and assessed the merger on the potential market for “*the procurement of raw milk*”.⁸
25. The potential product market definition in the 2011 Decision captures the competitive effects of the Proposed Transaction, and the Commission sees no need to deviate from this potential product market definition.
26. In relation to the relevant geographic market, in the 2011 Decision the market for the procurement of milk was assessed on the potential geographic market of Donegal, because:
- “the costs involved in transporting raw milk from the farm of a raw milk supplier to the raw milk processing plant, processors tend to procure raw milk from dairy farmers located in relative close proximity to their processing plant(s).”⁹*
27. Similarly, in the 2013 Decision, the Authority found the market to be regional, and assessed the competitive effects of the merger on the geographic market of Wexford.
28. The parties state in the notification that technological developments and better roads have increased the distance over which it is technically and economically feasible to deliver raw milk. As an example, the parties note that North Cork processes milk from farmers located in [...].
29. In this instance, it is not necessary for the Commission to define precisely the relevant markets. However, for the purpose of determining whether the

⁸ <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m11037-connaught-golddonegal-creameries/>

⁹ See para 52 of the determination in *M/11/037 Connaught Gold/ Donegal Creameries*.



Proposed Transaction might result in a substantial lessening of competition, the Commission assessed the competitive impact on the potential market for the procurement of raw milk in in the counties of Limerick, Cork, and Kerry, and in Munster.

The supply of agricultural inputs

30. In *M/09/010 LL / TPDL / FIL & FreshMills / Drummonds*¹⁰ (the “2009 Decision”) the Authority considered that:

“given the complementary nature of agricultural inputs from the perspective of the end customer (i.e., the farmer), the Authority considers that the supply of agricultural inputs by agri-merchants to farmers could represent a single relevant product market.”¹¹

31. In relation to geographic market definition, in both the 2011 and 2009 decision the Authority assessed the effects of overlaps in the market for the retail supply of agricultural inputs to farmers at a local or regional level. In *M/15/058 Fane Valley/ Lakeland Dairies*, the Commission considered that Lakeland and Fane Valley stores located more than 100km from one another would not compete with each other.¹²
32. In this instance, it is not necessary for the Commission to define precisely the relevant markets. However, for the purpose of determining whether the Proposed Transaction might result in a substantial lessening of competition, the Commission assessed the competitive impact on the potential market for the retail supply of agricultural inputs at a regional level (using 100km distance as a reference point).

The procurement of raw milk

¹⁰ https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/M-09-010-LL-TPDL-FIL.public_0.pdf

¹¹ See para 25, of the Authority’s determination in *M/09/010 - LL / TPDL / FIL & FreshMills / Drummonds*.

¹² https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M_15_058-Fayne-Valley_Lakeland-Dairies-Public-Version.pdf



33. The Commission does not have complete data on raw milk procurement by the Parties for the counties of Limerick, Cork or Kerry or the province of Munster. Table 1. below shows :
- i. the total milk production in counties Limerick, Cork and Kerry and the province of Munster;
 - ii. the total raw milk processed by North Cork in the State as a percentage of total milk production in Limerick, Cork and Kerry and the province of Munster; and
 - iii. the total raw milk supplied/procured by Feale Bridge in the State as a percentage of total milk production in Limerick, Cork and Kerry and the province of Munster.
34. As noted in paragraph 6 above, North Cork processes both raw milk on behalf of third party processors and raw milk it procures, therefore, the number of litres of raw milk processed by North Cork will be greater than the number of litres of raw milk procured by North Cork. Consequently, the data on North Cork's processing of raw milk is used as a proxy for data on milk procurement.



Table 1: Total Milk production by region, and parties procurement share of raw milk in 2016¹³

Region	Total Milk Production ("TMP")	North Cork raw milk processed as % of TMP ¹⁴	Raw milk procurement by Feale Bridge as % of TMP ¹⁵	Incremental share of Feale Bridge procurement of raw milk ¹⁶	Combined Milk procured by Parties as % of TMP
Munster	4,611 million litres	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Limerick, Cork and Kerry region	3,153 million litres	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Limerick	629 million litres	[10-20]%	[0-5]%	[0-5]%	[10-20]%
Cork	1,953 million litres	[5-10]%	[0-5]%	[0-5]%	[5-10]%
Kerry	569 million litres	[10-20]%	[0-5]%	[0-5]%	[20-30]%

¹³ Total Milk Production figures are sourced from Irish Co-Operative Organisation Society data supplied by the parties.

¹⁴ The parties informed the Commission that in 2016, North Cork processed [...] million litres of raw milk

¹⁵ The parties informed the Commission that in 2016, Feale Bridge procured [...] million litres of raw milk

¹⁶ The parties informed the Commission that in 2016, North Cork procured approximately [...] million litres of raw milk from Feale Bridge.



35. Based on the figures provided by the parties in Table 1 above, North Cork's and Feale Bridge's combined share of total milk procurement in Munster is low, and the incremental share is insignificant.
36. However as Table 1 demonstrates, even if either North Cork or Feale Bridge procured its total raw milk supply in one single county,¹⁷ the combined market share of the milk procured would not be greater than [20-30]% in any one of the counties of Limerick, Cork and Kerry, and the incremental share would not be greater than [0-5]% in any of the counties of Limerick, Cork and Kerry.
37. Therefore, the Proposed Transaction does not lead to a significant increase in concentration in Munster or the counties of Limerick, Cork and Kerry.
38. Furthermore, following completion of the Proposed Transaction, North Cork will continue to face competition in the procurement of raw milk in Munster, from larger dairy processors, such as Dairygold Co-Operative Limited, Kerry Group, and Carberry Group which processed 1,160 million litres in Cork, 1,200 million litres in Kerry and 450 million litres in Cork of milk in 2016, respectively.

Retail supply of agricultural inputs to farmers

39. Both parties are involved in the retail supply of agricultural inputs to farmers. The Proposed Transaction involves the acquisition of Feale Bridge's two agri-trade retail stores in the State. These stores are located in Abbeyfeale, Co. Limerick and Headley's Bridge, Co. Kerry. North Cork has two agri-retail stores located in Kanturk and Cullen, Co. Cork.
40. Following implementation of the Proposed Transaction, North Cork will continue to face competition from 18 agri-retail outlets that will continue to operate within 100km of the four outlets. This includes outlets run independently, such as O'Connor Hardware and Farm supplies, and by co-

¹⁷ As discussed in paragraphs 4 and 9 above, North Cork procures milk primarily in Co. Cork and Feale Bridge procures milk primarily in Co. Kerry and Co. Limerick.



operatives, such as Dairygold Superstore Ardagh, Kerry Agri Castle Island and Kerry Agri Newmarket.

Vertical relationship

41. There is a vertical relationship between the parties in the State as Feale Bridge supplies raw milk of manufacturing quality to North Cork, which is processed by North Cork into dairy derivative products. Consequently, the Commission examined the possibility that the merged entity might be able to exercise either input or output foreclosure.
42. As can be seen in Table 1 above, Feale Bridge accounts for a very small proportion of the total volume of raw milk procured in Munster. Furthermore, most of Feale Bridge's raw milk is currently supplied to North Cork. Therefore, the Commission does not consider that any dairy processor would be likely to be foreclosed from accessing milk suppliers in Munster or the counties of Limerick, Cork, or Kerry as a result of the Proposed Transaction.
43. As mentioned in paragraph 38 above, following the implementation of the Proposed Transaction, many larger dairy processors will continue to operate in Munster and in the counties of Limerick, Cork and Kerry. Therefore, the Commission does not consider that any milk supplier would be likely to be foreclosed from accessing dairy processors in Munster or the counties of Limerick, Cork, or Kerry as a result of the Proposed Transaction. For these reasons, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns.

Conclusion

44. 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



45. As discussed in paragraphs 12 to 14 above, the MSA is a fundamental part of the Proposed Transaction and the Commission has formed the view that this is an ancillary restraint necessary for the implementation of the Proposed Transaction.



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 transaction, whereby North Cork Co-Operative Creameries Limited would acquire 100% of the issued share capital of Feale Bridge and Headley's Bridge Co-Operative Dairy Society 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