



DETERMINATION OF MERGER NOTIFICATION M/18/018 - SHS/3V

Section 21 of the Competition Act 2002

Proposed acquisition by SHS Group Limited of sole control of 3V Natural Foods Limited

Dated 15 March 2018

Introduction

1. On 12 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 SHS Group Limited (“SHS Group”) would acquire sole control of 3V Natural Foods Limited (“3V”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a Sale and Purchase Agreement dated 8 February 2018 between Neil Butler, James Ashton, Rasanco Management Limited (collectively, the “Vendors”), SHS Group and Russell Smart.¹ The parties have informed the Commission that as part of the Proposed Transaction, SHS Group will also enter into a Shareholders’ Agreement with the Vendors and 3V. At the date of notification, the parties had not yet executed the Shareholders’ Agreement.

The Undertakings Involved

The Acquirer - SHS Group

3. SHS Group, a private limited company incorporated in Northern Ireland, is involved in a wide range of activities, including the provision of manufacturing and logistics services. SHS Group is divided into the following four divisions:
 - Condiments and sauces;
 - Drinks;
 - Sales and marketing (UK); and
 - Sales and marketing (Ireland).

¹ Russell Smart is the owner of Rasanco Management Limited.



Condiments and Sauces Division

4. The condiments and sauces division trades through its wholly-owned subsidiary, BPS Holdings Limited, and is based in the United Kingdom. It specialises in the processing, packing and marketing of herbs, spices, seasonings and wet condiments, including the marketing and distribution of products under the *British Pepper and Spice* brand in the State.

Drinks Division

5. The drinks division, based in the United Kingdom, manufactures and supplies ready-to-drink beverages under the following brands: *WKD*, *Shloer* and *Bottlegreen*. These products are marketed and distributed in the State by SHS's sales and marketing Ireland division or through third party distributors.

Sales and Marketing (UK) Division

6. The sales and marketing (UK) division, based in the United Kingdom, provides sales, logistics, customer service, finance and customer marketing services. The division supplies own-label products as well as representing brands in the grocery, healthcare, household, drinks and confectionery sectors. These brands include: *Mars Consumer Drinks*, *Finish*, *Douwe Egberts*, *Chewits*, *Nivea* and *Nurofen*.

Sales and Marketing (Ireland) Division

7. The sales and marketing (Ireland) division is active in the State through offices located in Dublin and Belfast. This division provides similar services in the State to those provided in the United Kingdom by the sales and marketing UK division. This division represents brands in the grocery, healthcare, household, drinks and confectionery sectors including the following brands: *WKD*, *Shloer*, *Tunnocks Teacakes*, *Colgate*, *Savlon*, *Finish*, *Cricket Lighters*, *Burton's Biscuits* and *Maquire & Paterson*.
8. Following the acquisition of Standard Brands (UK) Limited in 2017, SHS Group's operations also include the manufacture and supply of fire ignition products.²
9. For the financial year ending 31 December 2016, SHS Group's worldwide turnover was approximately €572 million, of which approximately €[...] was generated in the State.

The Target - 3V

10. 3V, incorporated and headquartered in the United Kingdom, specialises in natural, free from, fairtrade and organic food and drink products, which are distributed through large supermarkets, health food shops and independent retailers. 3V owns Meridian Foods Limited ("Meridian") and Rocks Organic Limited ("Rocks").³
11. Meridian, based in Wales, manufactures nut butters, nut bars, fruit spreads, seed butters, gluten, wheat and dairy free sauces and pestos, yeast extract, natural

² This transaction was approved by the Commission on 24 August 2017 and the determination can be accessed at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/07/Public-M.17.043-SHS-Standard-Brands.pdf>

³ 3V also owns Rocks Drinks Limited which is dormant.



sweeteners, oils, soya sauces, pasta sauces and other sauces and dressings. Meridian supplies its products predominantly in the United Kingdom and in the State. Meridian also provides private label services for some brands, including [...].

12. Rocks, based in the United Kingdom, manufactures and supplies a variety of organic and non-alcoholic beverages, including squashes, cordials, fruit juice concentrates and still and sparkling ready-to-drink beverages in the United Kingdom and, to a lesser extent, in the State. In addition, Rocks provides co-packing services⁴ to domestic and international beverage brands [...].
13. For the financial year ending 30 September 2017, 3V's worldwide turnover was approximately €34 million, of which approximately €[...] was generated in the State.⁵

Rationale for the Proposed Transaction

14. The parties state the following in the notification:

"[SHS Group] is seeking to acquire [3V] to drive growth domestically and internationally with the use of the latter's premium branded products and strong innovation pipelines."

Third Party Submissions

15. No submission was received.

Competitive Assessment

16. There is no horizontal overlap between the business activities of SHS Group and 3V's subsidiary, Meridian, in the State.
17. There is a negligible horizontal overlap between SHS Group and 3V, through its subsidiary Rocks, in the State with respect to the supply of squashes.⁶ SHS Group supplies the *Bottlegreen* squashes brand in the State while 3V, through its subsidiary Rocks, supplies the *Rocks* squashes brand in the State
18. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.
19. The Commission's predecessor, the Competition Authority (the "Authority"), expressed the following view in relation to product market definition in paragraph 39 of its determination in *M/07/027 - Britvic/C&C*:

"Taking into account all the evidence in its possession, the Authority [...] concludes that the relevant market for the purposes

⁴ 'Co-packing' (or contract packing) refers to a customer's proprietary formulation, which the co-packer produces and/or packages under a contractual agreement. The customer retains all rights to, and ownership of, the proprietary formula.

⁵ Of this approximately €[...] turnover generated in the State by 3V, only €[...] was attributable to Rocks with the remainder generated by Meridian.

⁶ There is no horizontal overlap between SHS Group and 3V in the State with respect to the supply of carbonated soft drinks since 3V did not generate any turnover in the State for the financial year ending 30 September 2017 from the supply of carbonated soft drinks.



of assessing the competitive impact of the proposed transaction is the squashes market.”⁷

20. In the paragraph 41 of its determination in *M/07/027 - Britvic/C&C*, the Authority noted the following in relation to the relevant geographic market for the supply of squashes:

“...the Authority has taken the view that the relevant geographic market is at least the State.”⁸

21. The Commission considers that there is no reason to depart from the views expressed in the Authority’s 2007 determination on relevant product and geographic market definition. Thus, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition in the State, the Commission has assessed its competitive impact by reference to the potential market for the supply of squashes in the State.

The Supply of Squashes in the State

22. 3V generated negligible turnover (approximately €[...]) from the supply of squashes to customers in the State in the financial year ending 30 September 2017.⁹ SHS Group also has a relatively small presence in the State with respect to the supply of squashes. For the financial year ending 31 December 2017, SHS Group generated turnover of approximately €[...]) from the supply of squashes to customers in the State. These turnover figures indicate that the combined turnover of SHS Group and 3V from the supply of squashes in the State was just under €[...]) in 2017. Information provided to the Commission by SHS Group indicates that total retail sales of squashes in the State for the year ending 25 March 2017 was approximately €33 million. Thus, following completion of the Proposed Transaction, SHS Group’s share of the supply of squashes in the State will be approximately [0-5]%.
23. Following completion of the Proposed Transaction, SHS Group will continue to compete with a number of suppliers of branded squashes in the State including Britvic (Ireland) Limited (*MiWadi, Robinsons*), Coca-Cola Ireland (*Kia-Ora*) and Lucozade Ribena Suntory Ireland Limited (*Ribena*).
24. In light of the above and considering 3V’s negligible sales of squashes to customers in the State, the Commission considers that the Proposed Transaction raises no competition concerns in the potential market for the supply of squashes in the State.

Vertical Relationship

25. The parties informed the Commission that there is no vertical relationship between them in the State. The Commission has not identified any vertical relationship between

⁷ See paragraphs 11-39 of the Authority’s decision in *M/07/027 - Britvic/C&C* for a detailed discussion of product market definition which can be accessed at <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/05/M-07-027-Britvic-C-and-C.pdf>.

⁸ See paragraphs 40-41 of the Authority’s decision in *M/07/027 - Britvic/C&C* for a discussion of geographic market definition.

⁹ SHS Group also has a relatively small presence in the State with respect to the supply of squashes. For the financial year ending 31 December 2017, SHS Group generated turnover of approximately €[...]) from the supply of squashes to customers in the State.



SHS Group and 3V in the State. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

26. 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

27. Both the Sale and Purchase Agreement and the Shareholders' Agreement contain a number of non-compete, non-solicitation and confidentiality restrictions on the Vendors and Russell Smart.¹⁰ The duration of these non-solicitation, non-compete and confidentiality obligations does not exceed the maximum duration acceptable to the Commission.¹¹ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

¹⁰ Clause 6 and Clause 11 of the Shareholders Agreement.

¹¹ 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

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 SHS Group Limited would acquire sole control of 3V Natural Foods 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