



## DETERMINATION OF MERGER NOTIFICATION M/18/050 – BWG / KEATINGS LONDIS (NEWTOWN)

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### Section 21 of the Competition Act 2002

**Proposed acquisition by BWG Group Unlimited through its wholly owned indirect subsidiary, Triode Newhill Finance Limited, of the entire share capital of Keatings Newtown Limited**

**Dated 11 July 2018**

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#### **Introduction**

1. On 18 June 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 acquisition whereby BWG Group Unlimited Company (“BWG”), through its wholly owned indirect subsidiary, Triode Newhill Finance Limited (“Newhill”), would acquire the entire issued share capital and thereby sole control of Keatings Newtown Limited (“the Target”) (“the Proposed Transaction”).

#### **The Proposed Transaction**

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement (the “SPA”), dated 6 Jun 2018, between Raymond Keating and Maura Keating (collectively the “Vendors”) and Newhill. Pursuant to the SPA, Newhill will acquire sole control of the Target.
3. The Target owns and operates a single retail outlet in Cobh, Co. Cork, comprising of a convenience store and motor fuel forecourt, operating under the *Texaco* brand. Following implementation of the Proposed Transaction, the retail outlet will be owned and operated by BWG as a company-owned and company-operated retail motor-fuel service station and *BWG* symbol branded<sup>1</sup> forecourt convenience store, albeit not

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<sup>1</sup> BWG symbol brands include Spar, Eurospar, Spar Express, Londis, Londis Plus, XL, Xpress Stop, and Mace



necessarily under the Londis plus brand currently in operation. It is intended that the motor fuel retail service station would continue trading as Texaco until the current Valero Energy supply agreement expires<sup>2</sup>.

### The Undertakings Involved

#### *The Acquirer - BWG*

4. BWG is a food retail and wholesale distribution company which operates in the Republic of Ireland and the United Kingdom. BWG is a wholly owned subsidiary of TIL JV Limited which is 80% owned by the SPAR Group Limited - a quoted plc registered in South Africa - and 20% owned by members of the BWG management team (the “BWG shareholders”)<sup>3</sup>. The BWG shareholders hold their shares in [...]. Newhill, a private limited company incorporated in the State, is a wholly-owned indirect subsidiary of BWG.
5. At the retail level, BWG has the following business interests:
  - a) owns and operates the Spar franchise in the State which includes the *Spar*, *Eurospar* and *Spar Express* brands;
  - b) owns and operates the *Londis*<sup>4</sup> franchise in the State;
  - c) owns the *XL* and *Xpress Stop* brands, who are supplied by BWG's cash and carry outlets;
  - d) the right to license the *Mace* brand throughout the State; and
  - e) [...]
6. BWG has 1015 affiliated retailers operating under the following brands: *Spar*; *Spar Express*; *Eurospar*; *Mace*; *Londis*, *Londis Plus*, *XL* and *Xpress Stop* and 35 affiliated *Gala*

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<sup>2</sup> The agreement expires on [...].

<sup>3</sup> The BWG shareholders are as follows: [...].

<sup>4</sup> This includes Londis and Londis Plus.



branded retailers. All affiliated retailers, with the exception of eight<sup>5</sup>, are independent franchisees.

7. BWG is also involved in wholesale food and grocery distribution to its affiliated stores and to stores operated by independent retailers. It is also involved in the wholesale distribution of food and beverages to food service customers and to the licensed trade. BWG operates one distribution centre located in the Kilcarbery Business Park, Nangor Road, Dublin 22. BWG also operates a chain of 23 wholesale cash and carry outlets under the *Value Centre*(20) and 4 *Aces*(3) brands throughout the State.
8. BWG, through Newhill, owns the freehold or leasehold interests in 136 retail premises. These stores are operated as follows:
  - a) 104 of these premises are currently trading, of which 8 are managed by Newhill, and 96 are managed by franchisees under BWG brands. These stores operate under the *Spar*, *Eurospar*, *Mace*, *Londis* and *XL* brands; and
  - b) The remaining 32 stores are closed ([...] stores) or have been sublet to third parties ([...] stores).
9. For the financial year ending 30 September 2017, the worldwide turnover of the BWG group (i.e. TIL JV Limited and its subsidiaries) was approximately [...], of which approximately [...] <sup>6</sup> was generated in the State.

#### *The Target - Keatings Newtown Limited*

10. Keatings Newtown Limited is a family owned company which owns a retail motor fuel service station, comprising a motor fuel (road diesel (DERV) and petrol) forecourt operating under the *Texaco* brand and an associated forecourt convenience store operating under the *Londis Plus* brand, which is located at Newtown Road, Ballyvoloon, Cobh, Co. Cork.

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<sup>5</sup>These eight stores are operated by Triode Newhill Management Services Limited a subsidiary of Newhill.

<sup>6</sup>This does not include the turnover of 4Aces Wholesale Limited which was recently acquired by BWG after receiving clearance from the CCPC – see [M/18/009-BWG/4 Aces](#)



11. For the financial year ended 30 June 2017, the total worldwide turnover of Keatings Newtown Limited was approximately [...], all of which was generated in the State.

#### **Rationale for the Proposed Transaction**

12. The parties state in the notification:

*“The owners of the Target, who have operated a Londis outlet at the premises for many years, wish to retire. BWG’s acquisition of the Target will facilitate that, while also presenting an opportunity to acquire a local business with a longstanding association with BWG/Londis. ...”*

#### **Third Party Submissions**

13. No submission was received.

#### **Competitive Analysis**

##### *Horizontal Overlap*

14. There is a horizontal overlap between the activities of the parties with respect to the retail sale of motor fuels (diesel (DERV), petrol and automotive lubricants) and the operation of forecourt convenience stores in the State.

##### *Retail sale of motor fuels and operation of forecourts*

15. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this case, the Commission considers that there are no strong reasons to depart from its previous approach<sup>7</sup> to market definition in relation to the retail sale of motor fuels and the operation of forecourt convenience stores for the purpose of assessing the competitive effects of the Proposed Transaction.<sup>8</sup>

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<sup>7</sup> Please see paragraph 15 in M/17/020 – Maxol/Great Gas (Turvey) which can be accessed at [https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/06/M\\_17\\_020-Maxol-Great-Gas-Turvey-1.pdf](https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/06/M_17_020-Maxol-Great-Gas-Turvey-1.pdf).

<sup>8</sup> In relation to the operation of forecourt convenience stores, the Commission has on a number of occasions considered the retail grocery sector, which is comprised of a wide spectrum of outlets. Given that there are two BWG symbol brand franchised convenience stores in the local catchment area of Cobh, Co. Cork the CCPC considered the impact of the merger on competition in this market separately.



16. In previous determinations, the Commission has followed the approach to geographic market definition adopted by its predecessor, the Competition Authority, which previously found that there are local markets in relation to the retail sale of motor fuels and operation of forecourts. The radius of the local market may vary in size depending on whether the retail motor fuels station and forecourt is located in an urban or a rural location (i.e. a radius of 2 miles/3.2km from a retail motor fuels station and forecourt in an urban location and a radius of 5 miles/8km in a rural location).<sup>9</sup> BWG does not own or operate any retail motor fuel service stations and forecourt convenience stores within a radius of 8km of where the Target's retail motor fuel service station and forecourt is located. In fact, BWG's only retail motor fuel service station and forecourt is located at Main Street, Ballyboughal, Co Dublin which is 288km away from the location of the Target's retail motor fuel service station and forecourt. Therefore, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in respect of the operation of retail motor fuel service stations and forecourt convenience stores in the State.

*Retail sale of grocery goods*

17. There are two independent BWG symbol brand franchises operating in the retail sale of grocery goods market within the local catchment area of Cobh, Co. Cork<sup>10</sup>. Accordingly, the CCPC also considered whether the Proposed Transaction could substantially lessen competition in the product market for the retail sale of grocery goods, i.e. the retail sale of food and drink for human consumption and household necessities.
18. 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 local, regional or national. However, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the

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<sup>9</sup> M/16/043 Petrogas Group Limited (Applegreen plc)/Certain Assets of M.K.M.H Limited.

Please see <http://www.ccpc.ie/enforcement/mergers/merger-notices/m16043-petrogas-applegreen-certain-assets-mkmh-limited>.

<sup>10</sup> Spar in Middleton Street, Cobh and Spar in Paddy O'Sullivan Place, Ballyvoloon



Commission analysed its impact by reference to the narrowest possible geographic market, i.e., the local area in which the Target's forecourt convenience store is located.

19. For the reasons set out below, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in the potential relevant market for the retail sale of grocery goods within the local catchment area of Cobh, Co. Cork.

- The Commission has confirmed there will be no change in the number of retail *fascia* in the potential market for the retail sale of grocery goods within the Cobh area as a result of the Proposed Transaction. The Target currently operates a forecourt store under the BWG symbol brand *Londis Plus*; post-transaction, this may change to one of BWG's other symbol brands.
- Post-transaction, there will remain a sufficient number of competitors to BWG within the local catchment area of Cobh, Co. Cork. These competitors, who operate multiple retail outlets within the local catchment area of Cobh Co. Cork, include *SuperValu*, *Aldi*, *Lidl* and *Centra*.
- Having conducted an individual retail grocery store analysis, the Commission found that within a 3.0 km distance of the Target's<sup>11</sup> *Londis Plus* branded forecourt convenience store, there are the following competing retail outlets: *SuperValu* in Ticknock (2.3 km), *Aldi* in Ticknock (2.3km), *Centra* in West Beach (1.8km) and *Centra* in Rushbrooke (700m).

20. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition for retail sale of grocery goods in the local catchment area of Cobh, Co. Cork.

#### *Vertical Relationship*

21. There is a vertical relationship between BWG and the Target. BWG currently wholesale supplies the Target's *Londis Plus* branded forecourt convenience store with grocery

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<sup>11</sup> There is also a Lidl in Ticknock which is 3.01km from the Target's *Londis Plus* branded forecourt convenience store.



goods.<sup>12</sup> The Commission therefore assessed whether this vertical relationship is likely to result in vertical competition concerns.

22. The Commission considers that, post-transaction, as the Target will continue to trade under a BWG symbol brand and BWG will continue to supply the Target with grocery goods on a wholesale basis, there will be little or no change to the pre-transaction *status quo*. Also, there are a number of significant competitors to BWG, such as *Lidl*, *Aldi* and *Musgraves* (who own *Centra* and *SuperValu*), which are currently active in supplying grocery goods to other retailers in the local catchment area of Cobh Co. Cork.
23. For the reasons set out above, the Commission considers that the Proposed Transaction will not result in any vertical foreclosure concerns in the local catchment area of Cobh Co. Cork.

### Conclusion

24. 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

25. Paragraph 12 of the SPA contains restrictive covenants on the Vendors, in particular non-compete and non-solicitation obligations. The duration of these restrictive covenants does not exceed the maximum duration acceptable to the Commission. The Commission considers that these restraints are directly related to and necessary for the implementation of the Proposed Transaction<sup>13</sup>.

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<sup>12</sup> BWG has a number of company-owned and company-operated retail grocery stores in the State, and BWG also operates a wholesaler-franchisor model in the State, pursuant to which its franchisees source most of their grocery goods from BWG.

<sup>13</sup> 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 BWG Group Unlimited Company through its wholly owned indirect subsidiary, Triode Newhill Finance Limited, would acquire the entire share capital and thereby sole control of Keatings Newtown 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**