



# DETERMINATION OF MERGER NOTIFICATION M/18/082 - GOLDREED HOLDINGS/ GREENE FARM

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## Section 21 of the Competition Act 2002

### Proposed acquisition by Goldreed Holdings Unlimited Company of sole control of Greene Farm Fine Foods Limited.

Dated 21 January 2019

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#### Introduction

1. On 12 October 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 Goldreed Holdings Unlimited Company (“Goldreed”) would acquire the entire issued share capital, and thereby sole control, of Greene Farm Fine Foods Limited (“Greene Farm”) from Kepcar Investments Limited (“Kepcar”) (the “Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share purchase agreement (the “SPA”) dated 4 October 2018 between Goldreed (as buyer); Bronzereed Unlimited Company (as guarantor) (“Bronzereed”); Kepcar (as seller) and Kepak Clonee Unlimited Company and Oliver Carty Unlimited Company (as covenantors) (collectively the “Covenantors”). Under the terms of the SPA, Goldreed will purchase the entire issued share capital of Greene Farm from Kepcar. As such, following the implementation of the Proposed Transaction, Goldreed will have sole control of Greene Farm.

#### The Undertakings Involved

##### *The Acquirer - Goldreed*

3. Goldreed is a private unlimited company incorporated in the State. Goldreed is an indirect wholly-owned subsidiary of Silverreed Unlimited, an Isle of Man incorporated



company, which is in turn a wholly-owned subsidiary of Bronzereed. Bronzereed, a private unlimited company incorporated in the State, is owned by William O'Brien, John O'Brien, Niall O'Brien and Orlaith O'Brien,<sup>1</sup> (collectively referred to as the "Purchaser Group").

4. Goldreed owns the following companies O'Brien Fine Foods Unlimited Company, Crinkle Fine Foods Unlimited Company, Ironreed Unlimited Company, Tombolo Unlimited Company and Faughan Foods Unlimited Company.
5. The Purchaser Group is a producer of various processed cooked meats under the Homebird and Brady Family brands and retailer own label brands. Specifically, the Purchaser Group produces:
  - Brady Family Ham (bulk<sup>2</sup> and prepack cooked ham).
  - Own-label ham (bulk and prepack) for [...].
  - Bulk and pre-pack cooked poultry meats under the Homebird brand.
  - Own label poultry meats (bulk and prepack) for [...].
  - Own-label beef (prepack) for [...].
6. The Purchaser Group's main production and distribution facilities are located at Timahoe, Donadea, Naas, Co. Kildare with a satellite site that produces chicken and turkey products located at Rathcairn, Athboy, Co. Meath. The Purchaser Group was established over 40 years ago and has been producing on site in Kildare for 30 years.
7. For the financial year ending 31 December 2017, the Purchaser Group's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

### ***The Target – Greene Farm***

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<sup>1</sup> The shareholding allocation in Bronzereed breaks down as follows: William O'Brien has a shareholding of [...]%, John O'Brien has a shareholding of [...]%, Niall O'Brien has a shareholding of [...]%, and Orlaith O'Brien has a shareholding of [...]%.

<sup>2</sup> Bulk sales refers to cooked meats that are supplied in log form to retailers which is then sliced and sold from the deli counter in retail outlets.



8. Greene Farm is a private limited company incorporated in the State. Greene Farm is solely controlled by Kepcar. Kepcar is a joint venture company jointly controlled by Kepak Group Unlimited Company and Oliver Carty Unlimited Company<sup>3</sup>. [...]
9. Greene Farm supplies a range of bulk and pre-pack branded poultry cooked meats, own label poultry cooked meats (bulk and pre-pack) and to a much lesser extent, sliced cooked pre-packed beef. Greene Farm's production facility is located at Rathowen, Co Westmeath.
10. For the financial year ended December 2017, Greene Farm's turnover was approximately €[...], of which €[...] was generated in the State.

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

11. The Purchaser Group state the following in the notification:

*“The Purchaser Group views the acquisition of the Target as a strategic acquisition for the Purchaser Group's business which is principally driven by the Purchaser Group's requirement to innovate, expand its current operational capacity to meet demand and facilitate the development of new products.”*

#### **Contacts with the Undertakings Involved**

12. On 22 November 2018, the Commission served a Requirement for Further Information (“RFI”) on Goldreed and on Greene Farm 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.
13. Upon receipt of the response to the RFI from both Goldreed and Greene Farm on 7 December 2018, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 7 December 2018<sup>4</sup>.

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<sup>3</sup> The issued share capital of Kepcar is owned [...] % by Kepak Group Unlimited Company and [...] % by Oliver Carty Unlimited Company

<sup>4</sup> The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.



14. During its investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the undertakings involved in the Proposed Transaction.

### **Third Party Submissions**

15. No submission was received.

### **Competitive Analysis**

#### *Horizontal Overlap*

16. There is a horizontal overlap between the activities of the parties in the State with respect to the production and wholesale supply of (i) bulk and pre-pack cooked beef products and (ii) bulk and pre-pack poultry cooked meats.
17. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. With respect to the relevant product market, it is not necessary for the Commission to define the precise relevant market in this instance because the product market definition adopted will not alter the Commission's assessment of the competitive impact of the Proposed Transaction. For the purposes of assessing the Proposed Transaction, the Commission has considered the likely competitive impact of the Proposed Transaction on the potential product market for the production and wholesale supply of bulk and pre-pack cooked beef products and for the production and wholesale supply of bulk and pre-pack poultry cooked meats.
18. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market because the geographic market definition adopted will not alter the Commission's assessment of the competitive impact of the Proposed Transaction. The parties have submitted that the relevant geographic market is the State and the Commission agrees with this view and this is consistent the Commission's previous approaches in similar cases<sup>5</sup>.

#### *Production and wholesale supply of bulk and pre-packed cooked beef products*

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<sup>5</sup> See, for example, merger determination M/17/002 – Silvereed/Tombolo which can be accessed at: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M-17-002-Silvereed-Tombolo-Public-pdf>



19. There is minimal overlap between the activities of the parties in the production and wholesale supply of bulk and pre-pack cooked beef products in the State, with Greene Farm having an estimated [0-10]% of such market<sup>6</sup>, and Goldreed having an estimated [50-60]% of the market<sup>7</sup>. The incremental increase in Goldreed's market share resulting from the Proposed Transaction would be minimal at [0-10]%, therefore the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the production and wholesale supply of bulk and pre-packed cooked beef products.

Production and wholesale supply of bulk and pre-pack poultry cooked meats.

20. Considering the production and wholesale supply of bulk and pre-pack poultry cooked meats market in the State, Table 1 below shows information on the estimated market shares for said market for 2016 to 2018.

**Table 1: Estimated Market Shares - Poultry Cooked Meats in the State -2016 - 2018**

|             | <b>Goldreed</b> | <b>Greene Farm</b> | <b>Carroll's</b> | <b>Kerry Group</b> | <b>Moy Park</b> | <b>Other</b>   | <b>Total</b> |
|-------------|-----------------|--------------------|------------------|--------------------|-----------------|----------------|--------------|
| <b>2016</b> | [10-20]%        | [40-50]%           | [0-10]%          | [10-20]%           | [0-10]%         | [10-20]%       | 100%         |
| <b>2017</b> | [20-30]%        | [30-40]%           | [10-20]%         | [10-20]%           | [0-10]%         | [0-10]%        | 100%         |
| <b>2018</b> | <b>[20-30]%</b> | <b>[30-40]%</b>    | <b>[20-30]%</b>  | <b>[0-10]%</b>     | <b>[0-10%]</b>  | <b>[0-10%]</b> | <b>100%</b>  |

Source: Commission based on Parties estimates from Kantar data.

21. The estimated market shares for each of Goldreed and Greene Farm in the market for the production and wholesale supply of bulk and pre-pack poultry cooked meats in the State in 2018 is approximately [20-30]% and [30-40]%, respectively. The other main competitors being Carroll's and Kerry Group with estimated market shares of [20-30]% and [0-10]% respectively. Even considering Goldreed's estimated market share in the production and wholesale supply of bulk and pre-pack poultry cooked meats following

<sup>6</sup> Green Farm's market share relates only to branded products.

<sup>7</sup> Goldreed's market share relates only to own label products.



the Proposed Transaction, the Commission does not have a substantial concern for the reasons outlined below, mainly due to the nature of the market involved.

22. Own label products account for almost two thirds of the market. The market for wholesale supply of own label poultry cooked meats is a market categorised by a tendering process and sophisticated buyers being large multiple retailers with considerable bargaining power, such as Dunnes Stores, Tesco, Musgrave/SuperValu, Aldi and Lidl. Also the contracts awarded are generally for a relatively short term period, typically six months to one year. Therefore considering these aspects of the market, the potential exists for market share figures to change significantly in a relatively short period of time, as can be observed from the movement in market share figures indicated in Table 1, such as, Carroll's market share going from [0-10]% in 2016 to [20-30]% in 2018, Goldreed's from [10-20]% to [20-30]% and Greene Farm's from [40-50]% to [30-40]% in the same three year period.
23. In addition, information provided by the parties indicates that some of the large multiple retailers, [...], have switched suppliers on a number of occasions and one of the largest of such multiple retailers also sources poultry cooked meats from a UK-based supplier.
24. Following implementation of the Proposed Transaction, there will remain significant competitors, such as Carroll's, Kerry Group, Moy Park<sup>8</sup> and UK suppliers<sup>9</sup>, producing and supplying bulk and pre-pack poultry cooked meat to retailers in the State. Indeed Kerry moved into supplying own label cooked poultry meats in 2016 and has shown the capability to expand and further compete in this market.
25. In light of the above, the Commission considers that the Proposed Transaction does not raise any substantial horizontal competition concerns in respect of the production and wholesale supply of bulk and pre-pack poultry cooked meats in the State.

### *Vertical Relationship*

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<sup>8</sup> Moy Park which is based in Northern Ireland, previously supplied Dunnes Stores.

<sup>9</sup> Tesco has used a combination of Irish and UK based suppliers.



26. The parties informed the Commission that there is no vertical relationship between Goldreed and Greene Farm in the State. The Commission has not identified any vertical relationships between the parties. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

### **Conclusion**

27. 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**

28. The SPA contains restrictive covenants, in particular non-compete obligations, on [...]. The duration of these restrictive covenants does not exceed the maximum duration acceptable to the Commission.<sup>10</sup> The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction.

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<sup>10</sup> In this respect, the CCPC 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://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 Goldreed Holdings Unlimited Company would acquire the entire issued share capital, and thereby sole control, of Greene Farm Fine Foods Limited, from Kepcar Investments 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**