



# DETERMINATION OF MERGER NOTIFICATION M/18/089 – LAKELAND/LACPATRICK

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## Section 21 of the Competition Act 2002

### Proposed merger of Lakeland Dairies Co-Op Society Limited and LacPatrick Co-Operative Society Limited.

Dated 05 March 2019

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#### Introduction

1. On 6 November 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 merger of Lakeland Dairies Co-Op Society Limited (“Lakeland”) and LacPatrick Co-Operative Society Limited (“LacPatrick”) (the “Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a merger agreement between LacPatrick and Lakeland dated 3 October 2018 (the “Merger Agreement”), whereby Lakeland and LacPatrick will form a new industrial and provident society called Lakeland Dairies Co-Operative Society Limited (the “Merged Entity”) pursuant to the provisions of Section 53(1) of the Industrial and Provident Societies Act 1893. Following implementation of the Merger Agreement, 73% of the shareholdings of the Merged Entity are to be allocated between the members of Lakeland, with the remaining 27% to be allocated between the members of LacPatrick.
3. The Proposed Transaction was also notified to the Competition and Market Authority (“the CMA”) in the UK. The initial period for consideration of the Proposed Transaction under section 34ZA(3) of the UK Enterprise Act 2002 commenced on 16 January 2019. The Commission coordinated with the CMA and is satisfied that the outcome of the



CMA's investigation does not affect the conclusions of the Commission as set out in this determination.

## The Undertakings Involved

### *Lakeland*

4. Lakeland is a farmer-owned co-operative society. It has over 3,800 members and 2,370 milk suppliers across the State and Northern Ireland. It processes just over 1.2 billion litres of milk per annum (around 50 % of which is typically procured in the State and the remaining 50 % is procured in Northern Ireland).
5. Lakeland has three operating divisions, i.e., food ingredients, food services, and agri-business. Its food ingredients division accounts for the majority of revenues (€468 million or 60% of Lakeland's revenue in 2017). The majority of Lakeland's food ingredients are sold abroad. In 2017, [...] % of Lakeland's food ingredients revenue was generated from sales to customers in the State (domestically consumed) and the remaining [...] % was generated from exports.
6. Lakeland's food services division supplies dairy products, primarily milk powders, bulk butter and casein<sup>1</sup>. Lakeland also supplies dairy-based products (including UHT milk portions in pots and sticks, UHT creams, soft serve and frozen ice cream, frozen yoghurt and mini portions of butter) to international food service customers. Its customers include hotel chains, contract caterers, restaurants, local authorities, and specialist food service wholesalers. In 2017, 31 % of Lakeland's total revenue came from sales in the foodservice division and [...] % of these sales were generated within the State.
7. Lakeland does not supply fresh dairy products for retail sale in the State. Lakeland's sales to retail within the State are limited to small amounts of UHT/ long life milk, cream products and frozen ice cream.
8. Lakeland's agri-business division produces and supplies animal feed products and operates two retail agri-trade stores, located at (i) Lough Egish, Castleblaney, Co.

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<sup>1</sup> Acid casein provides functional and nutritional properties in a range of applications, including nutritional beverages, non-dairy creamers, low fat spreads, cream liqueurs and pharmaceuticals.



Monaghan, and (ii) at Richmond Street, Longford Town, Co. Longford. The agri-business generated €61 million or 9% of Lakeland's revenue in 2017.

9. Lakeland operates three milk processing facilities in the State located at: (i) Killeshandra, Co. Cavan, (ii) Bailieborough, Co. Cavan; and (iii) Lough Egish, Co. Monaghan, and two in Northern Ireland located at: (i) Newtownards, Co. Down, and (ii) Banbridge, Co. Down. Lakeland has its corporate headquarters at its site in Killeshandra, Co. Cavan.
10. For the financial year ending 31 December 2017, Lakeland's worldwide turnover was approximately €769 million, of which approximately €[...] was generated in the State.

#### *LacPatrick*

11. LacPatrick is a farmer-owned co-operative society. It has about 930 members and 848 milk suppliers across the State and Northern Ireland. It processes approximately 568 million litres of milk per annum (around [...] % of which is typically procured in the State and the remaining [...] % is procured in Northern Ireland).
12. LacPatrick's main business is the supply of bulk milk powder (for export to West Africa, the Middle East and South East Asia) and bulk butter (for the export market including the US, mainland Europe, the UK and the Middle East). In 2017, LacPatrick generated turnover of approximately € [...] from its sales of milk powder; [...] % of this was generated from sales to export markets and [...] % was generated from sales to customers in the State. Similarly, in the same year, the majority of LacPatrick's revenue from the sale of bulk butter was generated from export markets.<sup>2</sup>
13. LacPatrick also produces and supplies consumer packet butter which is marketed under the *Champion* brand to Irish retailers. It also produces own brand private label packet butter for *Aldi*, *Lidl* and *Dunnes Stores*. In addition, LacPatrick produces and supplies milk and cream under the *Champion* brand to Irish retailers. It also produces own brand private label milk and cream for *Marks & Spencer*, *Aldi* and *Lidl*.

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<sup>2</sup> In 2017, LacPatrick sold [...] tonnes of bulk butter, only [...] tonnes ([...] %) of which was sold to customers in the State.



14. LacPatrick is also contracted with specific customers to produce: (i) a specialised cheese called *Regato* sold exclusively outside the State (predominantly in Greece); (ii) texturised butter for use in specialised baking (croissant and pastry manufacture); and (iii) liquid skimmed milk to Abbott Ireland Nutrition as an ingredient for infant formula (which is exported outside the State).
15. LacPatrick operates a single retail agri-trade store at its site in Coolshannagh, Co. Monaghan that sells agriculture inputs such as fertiliser, feed, and other farming equipment.
16. LacPatrick operates a single processing facility in the State, at Coolshannagh, Co. Monaghan, and two in Northern Ireland, at Ballyrashane, Co. Derry and Artigarvan, Co. Tyrone. LacPatrick has its corporate headquarters at its site at Coolshannagh, Co. Monaghan.
17. For the financial year ending 31 December 2017, LacPatrick's worldwide turnover was approximately €303 million, of which approximately € [...] was generated in the State.

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

18. The notification states:

*“The parties believe that the Proposed Transaction represents an opportunity for sustainable strategic growth.*

*The Proposed Transaction will:*

- a) *bring together complementary commodity ingredients businesses; and*
- b) *[bring together] complementary retail and foodservices businesses. In terms of activities and product portfolios, Lakeland's business has a stronger presence in the foodservice channel, whilst LacPatrick's business has a stronger presence in the retail channel.*

*The merged entity will have an enhanced scale, product breadth and range of processing capabilities that will enable it to be a stronger competitor to European and global players, such as Friesland/Campina, Fonterra and others.*



*The parties' constitution as farmer-owned co-operative societies means that the Proposed Transaction is attractive for the parties from a commercial, operational and ethos/cultural perspective."*

### **Third Party Submissions**

19. During its review, the Commission received one third party submission that complained about the likely competitive impact of the Proposed Transaction. The third party raised a number of issues relating to the current competitive conditions in the sector:

[...]

20. Some of those issues outlined above, such as (i) and (ii), are not merger related. [...] The remaining issues could be merger specific and have been assessed by the Commission as part of its review of the likely competitive impact of the Proposed Transaction.

### **Market Enquires**

21. During the review process, the Commission circulated questionnaires to various third parties, including dairy suppliers, customers and competitors of Lakelands and LacPatrick. The Commission received a number of responses from third parties to whom it sent a questionnaire, none of whom expressed any competition concerns regarding the Proposed Transaction.

### **Cooperation with the CMA**

22. As noted above, the CMA launched its merger inquiry with respect to the Proposed Transaction on 15 January 2019.
23. The Commission conducted discussions with the CMA regarding possible theories of harm resulting from the Proposed Transaction.
24. The outcome of the CMA's investigation does not affect the conclusions of the Commission as set out in this determination.

### **Industry Background**



25. Unpasteurised milk or raw milk is collected in bulk from dairy farmers and then sold to (or procured by) dairy processors for processing into milk or other dairy products. Ireland's milk processors are predominantly co-operatives. A co-operative ("co-op") is a form of business organisation that is owned and controlled by its shareholder members. In the case of dairy co-ops, within the State many co-op shareholders are also suppliers of raw milk to the co-op of which they are a member. For example, the parties state that 62% of Lakeland's 3800 members are active suppliers of raw milk to Lakeland and 91% of LacPatrick's members are active milk suppliers of raw milk to LacPatrick.
26. As with most Irish dairy processing co-ops, Lakeland and LacPatrick both aim to process the entirety of raw milk collected from their members and suppliers. According to information provided by the parties that processing capacity is set to achieve this goal; namely, to process efficiently all raw milk supplied by members and contracted suppliers.

#### *Liquid milk and manufacturing milk*

27. Domestic raw milk supplies in the State totalled 7.26 billion litres in 2017.<sup>3</sup> Raw milk may be processed as liquid milk or manufacturing milk. According to The National Milk Agency Annual Report and Accounts for 2017 (the "NMA Report 2017") approximately 94% of domestic raw milk supplies were processed as manufacturing milk for the production of dairy products, which were mainly for export, while 6% of supplies were processed for liquid milk consumption on the domestic market.<sup>4</sup>
28. Liquid milk is processed into full fat milk, low fat milk, skimmed milk, or cream for human consumption. These products are sold by milk processors direct to retailers either as branded or own-label products. Milk processors also sell branded liquid milk and cream products directly to customers (e.g., the Health Service Executive) and food service companies (e.g., hotels).

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<sup>3</sup>National Milk Agency, *Annual Report and Accounts 2017*, p 2 (available at <http://nationalmilkagency.ie/uploads/files/annualreports/2017/annualreport2017.pdf>).

<sup>4</sup> Ibid, Section 1.1, p 12.



29. While there were approximately 17,000 active dairy farmers in the State in 2017, only 1,808 had registered liquid milk contracts.<sup>5</sup> Liquid milk supply contracts between the dairy farmer and the processor typically require farmers to supply the processor exclusively on a year round basis. The registration of liquid milk contracts is required by the Milk (Regulation of Supply) Act 1994.<sup>6</sup> A key element of most liquid milk supply contracts is a commitment to supply raw milk on a year round basis (i.e., 52 weeks a year) for which dairy farmers typically receive a premium price. Liquid milk is largely produced for consumption on the domestic market.
30. The vast majority of dairy farmers in the State produce milk only for processing as manufacturing milk. The registration of manufacturing milk contracts is not required. Lakeland only procures manufacturing milk from dairy farmers, while only [...] % of the milk LacPatrick procured from dairy farmers in 2018 was liquid milk.
31. Manufacturing milk is used as an input in the production of other dairy products such as butter, skimmed milk powder and cheese. A wide range of customers purchase manufacturing milk from milk processors. These include butter producers, cheese producers, and skimmed milk powder producers. Unlike liquid milk, products derived from manufacturing milk can be easily exported.
32. As stated above, the majority (94%) of Irish raw milk is processed as manufacturing milk both for domestic consumption and export. The NMA Report 2017 states *“Export markets drive the Irish dairy sector and are the destination for 90% of Irish milk supplies. The domestic market is the destination for 10% of domestic milk supplies for consumption as fresh milk and as manufactured dairy products”*.<sup>7</sup>
33. Products such as milk powders which are processed from manufacturing milk are exported to dairy deficient areas such as the Middle East, South East Asia, Southern Europe, Mexico and Africa. Ireland’s specialist dairy exporter, *Ornua*, provides a route

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<sup>5</sup>Ibid

<sup>6</sup>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.

<sup>7</sup>National Milk Agency, *Annual Report and Accounts 2017*, p 2.



to export markets within the Irish dairy industry.<sup>8</sup> Many dairy processors sell to *Ornua*, which in turn exports the products abroad.

#### *Prices and Contracts*

34. According to the NMA Report 2017, the annual average price of manufacturing milk in 2017 was 35.39 cent per litre: an increase of 8.90 cent per litre on the annual average manufacturing price of 26.49 cent per litre in 2016.<sup>9</sup>
35. Prices paid by processors to dairy farmers are typically based on the quality of the raw milk, i.e., with reference to its protein per kilogram and butterfat per kilogram content, as well as the cost of processing the raw milk. Prices are set by individual co-ops on a monthly basis and will vary for various reasons including seasonal factors such as changes in the protein and butterfat density. Bonuses are often paid across the winter period in order to encourage a flatter milk supply curve. Prices paid by dairy processors to dairy farmers for raw milk are also influenced by the prices, domestic and particularly international, paid to dairy processors by their customers. Global dairy commodity prices are based on indices such as the EEX index<sup>10</sup> for dairy products including butter and skimmed milk powder. Given that the vast majority of raw milk procured by the parties is then processed into products sold on European Economic Area-wide (“EEA”) or global markets, these international benchmarks are critical in setting the appropriate level of input costs for processed dairy products, i.e., raw milk.
36. Lakeland suppliers in the State have [...] rolling contracts with a [...] notice period. A large proportion of farmers supply milk to LacPatrick on a no-contract basis or, where contracts are in place, on the basis of short-term contracts.

#### *Imports of Raw Milk*

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<sup>8</sup>Ornua is Ireland’s largest exporter of Irish dairy products, exporting to around 110 countries worldwide. Headquartered in Dublin, Ornua has annualised sales of over €2 billion and a global team of in excess of 2000 staff. It operates from 19 business units worldwide, including 14 production facilities, and has sales and marketing teams working in-market worldwide. The Group is structured across two divisions: Ornua Foods and Ornua Ingredients. See [www.ornua.com](http://www.ornua.com).

<sup>9</sup>NMA Report 2017, page 26

<sup>10</sup>European Energy Exchange AG provides a butter index.



37. The NMA Report 2017 states that bulk milk imports into the State for processing by creameries and pasteurisers were estimated at 803 million litres representing a decrease of 10 million litres (1%) on 2016 bulk milk imports. These bulk milk imports were mainly cross border movements of milk from Northern Ireland and were equivalent to 11% of domestic supplies and 35% of Northern Ireland's annual milk supplies in 2017. Bulk milk imports of 739 million litres for processing into manufactured dairy products in the State represented 92% of total milk imports while bulk imports of 64 million litres, for processing for liquid consumption in the State, represented 8% of bulk milk imports and represented an increase of 1 million litres (2%) on the previous year.<sup>11</sup>

## Competitive Assessment

### Horizontal overlap

38. Lakeland does not procure liquid milk from farmers and does not sell liquid milk to retailers. Therefore, there is no horizontal overlap between the parties' activities with respect to the procurement of liquid milk and the supply of liquid milk to retailers in the State or on the island of Ireland. Hence, the rest of the determination will not discuss procurement and sale of liquid milk.
39. There are a number of horizontal overlapping activities between the parties as described below.
- (i) the production and supply of bulk milk powder;
  - (ii) the production and supply of bulk butter;
  - (iii) the supply of individualised packet butter portions to the out-of-home foodservice; and
  - (iv) the retail sale of agricultural inputs to farmers;
  - (v) the procurement of raw milk.

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<sup>11</sup> NMA Report 2017 Section 1.4 Imports, p 14.



40. In light of the reasons outlined from paragraph 41 to paragraph 44, the Commission considers that the Proposed Transaction is unlikely to raise any competition concerns, in respect of activities listed at points (i) to (iv), above. However, there will be a more detailed discussion regarding the parties' overlapping activities in respect of the procurement of raw milk, i.e., (v), on the basis that there is a significant overlap in the activities in this area.
41. In respect of the parties overlapping activities listed at points (i) and (ii), i.e., the production and supply of bulk milk powder and the production and supply of bulk butter, the Commission's market enquires suggested that bulk milk powder and bulk butter are commodities and generally traded on the international market. This is in line with the market reality, where both Lakeland and LacPatrick process raw milk into milk powder and butter at their facilities on the island of Ireland<sup>12</sup> and supply bulk milk powder and bulk butter to customers, which primarily export the bulk milk powder<sup>13</sup> and bulk butter on international markets to internationally-based customers. This is also in line with established precedent, that the geographic scope for bulk milk powder, and bulk butter are at least the EEA.<sup>14</sup> Therefore, the Commission considers that the parties' combined market share is negligible in respect of their overlapping activities listed at points (i) to (ii) above.
42. In respect of the parties' overlapping activity listed at point (iii) above, i.e., the supply of individualised packet butter portions to the out-of-home foodservice, the Commission considers that the parties' overlapping activities with respect to the supply of individualised packet butter portions to out-of-home foodservice is negligible. LacPatrick does not process individualised packet butter portions itself, but acquires

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<sup>12</sup>Furthermore, LacPatrick's dedicated milk powder (skimmed milk powder, whole milk powder, instantised milk powder, and low/zero spore products) processing facility is located at Artigarvan, Co. Tyrone, Northern Ireland. Therefore, LacPatrick does not produce any milk powder in the State. The main markets for LacPatrick's range of whole milk and skimmed milk powders are West Africa and the Middle East.

<sup>13</sup>Please see paragraph 20 of COMP/M.3535 - Van Drie /Schile which can be accessed at [http://ec.europa.eu/competition/mergers/cases/decisions/m3535\\_20041208\\_20310\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m3535_20041208_20310_en.pdf). Please see paragraphs 76-77, COM/M.6348 Arla Foods/Allgauland, which can be accessed at: <http://www.antitrustitalia.it/wordpress/wp-content/uploads/2012/02/M.6348.pdf>

<sup>14</sup> Please see paragraph 837 of COMP/M.5046-Friesland/Campina, which can be accessed at [http://ec.europa.eu/competition/mergers/cases/decisions/m5046\\_20081217\\_20600\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m5046_20081217_20600_en.pdf)



them for resale from a third-party processor, [...]. The parties state in the notification that LacPatrick resells around [...] tonnes per annum of individualised packet butter portions to foodservice providers on the island of Ireland, which is negligible in respect of the overall segment size.

43. In respect of the parties' overlapping activity listed at point (iv) above, i.e., the retail sale of agricultural inputs to farmers<sup>15</sup>, the Commission sees no reason to deviate from its *M/09/010 - LL/TPDL/Freshmills/Drummonds* approach, accordingly the geographic scope of the market for the retail sale of agricultural inputs is regional<sup>16</sup>. The Commission notes that at least 10 competing agri-trade stores operate within close distance of the LacPatrick store at Coolshannagh.<sup>17</sup> Therefore, the Commission considers that the Proposed Transaction is unlikely to raise any competition concerns in respect of the retail sale of agricultural inputs to farmers in the State.
44. In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise any competition concern in respect of the parties' overlapping activities listed at point (i) (ii) (iii) and (iv).

### *The Procurement of Raw Milk*

## **Market Definition**

### Product Market Definition

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<sup>15</sup> LacPatrick operates a single agri-trade store located a Coolshannagh, Co. Monaghan, while Lakeland operates two agri-trade stores, one at Lough Egish, Co. Monaghan (approximately 33km from LacPatrick's Coolshannagh store) and one at Richmond Street, Longford Town, Co. Longford (approximately 104km from Coolshannagh).

<sup>16</sup> Paragraph 29 of its, *M/09/010 - LL/TPDL/Freshmills/Drummonds*, states that "[i]t is unlikely that farmers would be prepared to switch in response to a permanent price rise given their preference for dealing with agri-merchants in their locality. As stated by the IFA, if a farmer decides to source supplies of agricultural inputs from an agri-merchant located outside the farmer's locality, he will face additional transport costs for the supply of agricultural inputs as well as for the delivery of his grain to the agri-merchant. Thus, it is likely that agri-merchants compete in regional geographic markets for the retail supply of agricultural inputs to farmers."

<sup>17</sup> These include: Ballybay Mart, Ballybay, Co. Monaghan (14km from Coolshannagh); Ambrose Irwin, York St, Castleblaney, Co. Monaghan (26.1km); Corcaghan Co-op, Corcaghan, Co. Monaghan (9.1km); Maudabawn Co-op, Maudabawn, Co. Cavan (31.8km); Kill Co-op, Tullyvin, Cootehill, Co. Cavan (31.1km); Bunnoe Agri Supplies, Lisboduff, Cootehill, Co. Cavan (35km); Dooley Agri, Carrickmacross, Co. Monaghan ( 40.9km); Allen Agri, Ballybay, Co. Monaghan (16.4km); Hollands Agri, Emyvale, Co. Monaghan, (9.7km); Clones Mart, Clones Mart, Co Monaghan (23km), and Caddens, Ballinode, Co. Monaghan (17.6km).



45. Both parties are involved in the procurement of raw milk on the island of Ireland. In its determinations in cases *M/18/012 North Cork / Feale Bridge and Headley's Bridge* and *M/18/094 – North Cork/Newtownsandes*<sup>18</sup> (the “2018 Decisions”) the Commission found that it was not necessary to define the precise relevant product market, but assessed the competitive effects of the merger on the basis of the potential market for “*the procurement of raw milk*”, this follows the approach of the Competition Authority<sup>19</sup> (the “Authority”) in its *M/11/037 Connacht Gold / Donegal Creameries*<sup>20</sup> (the “2011 Decision”) and *M/13/036 – Glanbia / Wexford Creamery* determinations (the “2013 Decision”).
46. The Commission sees no reason to deviate from the approach set out in the 2018 Decisions in respect of the product market definition and does not need to come to a definitive view on the precise relevant product market. For the purpose of examining the Proposed Transaction, the Commission will follow its previous approach and assess the potential competitive effects of the Proposed Transaction, in respect of the procurement of raw milk.

#### Geographic Market Definition

47. In terms of geographic market, the Commission (and its predecessor the Authority) did not come to a definitive view on the precise relevant geographic market in its previous decisions; however, it has examined different potential geographic scopes for different transactions. For example, in its 2011 Decision, the Commission assessed the transaction by reference to the regional geographic market of Co. Donegal without deciding whether the relevant market should be broader than this, on the basis that this was the only county in which the merging parties’ procurement activities overlapped.<sup>21</sup> In its 2013 Decision, the Commission considered that it could not rule out the possibility of geographic markets smaller than the island of Ireland. In its 2018 Decisions, for the purpose of the assessing the transactions, the Commission assessed the potential

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<sup>18</sup>Available at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/02/M-18-012-North-Cork-Feales-Bridge-and-Headleys-Bridge-Public-1-3.pdf>.

<sup>19</sup>In 2014, the Commission was established following an amalgamation of the Competition Authority and the National Consumer Agency pursuant to the Competition and Consumer Protection Act 2014.

<sup>20</sup>Available at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-11-037-Connacht-Gold-Donegal-Creameries-Public.pdf>.

<sup>21</sup> See para 55 of the 2011 Decision.



market for the procurement of raw milk in the counties of Limerick, Cork, and Kerry, as well as the region of Munster.

48. The parties state the following in the notification:

*“The parties consider that the geographic market is at least as wide as the State. Technological developments together with better roads increases the distance that milk can be transported and that competing dairy processors enter into agreements regarding the delivery of raw milk thereby facilitating the supply of raw milk across Ireland.”*

*The Commission’s view*

49. In this instance, the Commission disagrees with the parties’ view regarding the potential geographic market and cannot rule out the possibility that the potential relevant geographic market for procurement of milk could be smaller than the State.
50. Information provided by the parties suggests that almost all (99%) raw milk delivered to the parties’ processing facilities originates from within a 100 km radius of the processing facilities. The Commission notes that the parties procure the majority of raw milk from Northern Ireland and the border counties with approximately [...] % (by volume) of all the raw milk procured by LacPatrick coming from milk suppliers located in Northern Ireland. Meanwhile, approximately 51 % (by volume) of all the raw milk procured by Lakeland is from milk suppliers located in Northern Ireland. Almost all of LacPatrick’s raw milk is processed at its two facilities located in Northern Ireland as LacPatrick’s facility located in the State (Coolshannagh, Co. Monaghan) is the hub for LacPatrick’s consumer foods division.<sup>22</sup>
51. In light of the above, the Commission will follow its previous approach and assess the likely impact of the Proposed Transaction in the relevant geographic region where the parties procure their milk from, i.e., the province of Ulster.<sup>23</sup>

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<sup>22</sup> Own-brand liquid milk and packet butter is also produced at the Coolshannagh facility for retailers [...] for sale in those retailers’ stores in the State..

<sup>23</sup>The province of Ulster is the north of the island of Ireland. It is made up of nine counties, six of which are in Northern Ireland and three of which are in the State.



52. Therefore, the Commission will assess the potential competitive effects of the Proposed Transaction, in respect of the procurement of raw milk in the province of Ulster.

### Competitive Assessment

53. In this section, the Commission sets out its analysis of the likely competitive effects of the Proposed Transaction in the market for the procurement of raw milk in the province of Ulster.
54. Paragraph 3.1 of the Commission's "Guidelines for Merger Analysis" states that "A central element in assessing the competitive impact of a merger is identifying its effect on market structure."<sup>24</sup> Market structure can be characterised by the number, size and distribution of firms in a market. A merger or acquisition will have an impact on market structure as the merging parties, which were two firms pre-acquisition, become one firm post-acquisition.
55. Table 1 below represents the estimated market shares of the milk processors in respect of procurement of raw milk in Ulster.

| Table 1: Estimated Market Share of Milk Processors in respect of the Total Raw Milk Procured in Ulster <sup>25</sup> |   |   |   |
|--|---|---|---|
|  | Estimated Share of raw milk procured in Ulster (%) 2018 <sup>26</sup> | Estimated Share of raw milk procured in Ulster (%) 2017 | Estimated Share of raw milk procured in Ulster (%) 2016 |
| Lakeland   | [30-40]%  | [30-40]%  | [20-30]%  |
| LacPatrick   | [20-30]%  | [20-30]%  | [20-30]%  |
| Dale Farm  | [20-30]%  | [20-30]%  | [20-30]%  |

<sup>24</sup> The Commission's "Guidelines for Merger Analysis" can be accessed at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/CCPC-Merger-Guidelines-1.pdf>

<sup>25</sup> Lakeland used the CSO figures for the State, Northern Ireland Department of Agriculture figures for Northern Ireland, and Irish Cattle Breeding Federation statistics for cattle numbers by county.

<sup>26</sup> Lakeland provided the 2018 estimate on the basis of data from the first ten months of 2018.



|                        |         |         |         |
|------------------------|---------|---------|---------|
| <b>Glanbia Cheese</b>  | [5-10]% | [5-10]% | [5-10]% |
| <b>Aurivo</b>          | [5-10]% | [5-10]% | [5-10]% |
| <b>Glanbia Milk</b>    | [5-10]% | [5-10]% | [5-10]% |
| <b>Strathroy</b>       | [0-5]%  | [5-10]% | [0-5]%  |
| <b>Natural Dairies</b> | [0-5]%  | [0-5]%  | [0-5]%  |

Source: Parties

56. Based on the market share estimation provided in Table 1 above, the combined estimated market shares of the parties is approximately [50-60] % in the potential market for procurement of raw milk in the province of Ulster.
57. Given the high market share of the Merged Entity in respect of the procurement of raw milk in the province of Ulster, the Commission focused on two theories of harm as part of its assessment of the likely competitive impact of the Proposed Transaction in of the province of Ulster: unilateral effects and coordinated effects.

### *Unilateral Effects*

58. Unilateral effects, as explained in paragraph 4.8 of the Commission's "*Guidelines for Merger Analysis*", occur when "*a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors.*"
59. In considering the likelihood of unilateral effects occurring following implementation of the Proposed Transaction, the Commission assessed whether the Merged Entity may unilaterally worsen the procuring terms or withhold demand from milk suppliers.<sup>27</sup>

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<sup>27</sup> For example, by refusing or delaying to procure all the milk the farmer could supply.



60. For the reasons set out below, the Commission considers that the Proposed Transaction will not make it more likely for the Merged Entity to unilaterally worsen the terms of procurement for milk suppliers, or withhold demand from its milk suppliers in the State.
61. First, as discussed in paragraph 32 above, the vast majority of raw milk procured by the parties is processed into products sold to global markets; therefore, international benchmarks are critical in assessing the appropriate level of input costs for raw milk. The Commission considers that a significant portion of the price of raw milk is significantly influenced by the price of processed dairy products (i.e., the price of milk powder and cheese, etc.) on the international market. In the State, the *Irish Farmers Journal* publishes a monthly review of milk prices paid by the processors procuring milk in the State. Therefore, there is certain level of transparency in respect of the price of raw milk in the State. It is unlikely that the Merged Entity would decrease the price of raw milk it pays to milk suppliers without reasonable justifications, such as changes in global benchmarking.
62. Furthermore, the majority of raw milk purchased by the parties is procured from its own members. Following implementation of the Proposed Transaction, the Merged Entity will continue to source raw milk from its own members who will own and control the Merged Entity.<sup>28</sup> The Commission therefore considers that it is unlikely the Merged Entity will worsen its own members' terms of supply.
63. For the same reason stated in paragraph 62, it is unlikely that the Merged Entity will choose to withhold demand for raw milk from its members. There is no incentive for the Merged Entity to withhold demand for raw milk, because it will have a greater financial incentive to maximise utilisation of its dairy processing facilities. In particular, as discussed in paragraph 26 above, the Commission understands that the parties' processing capacity is set to efficiently process all of the raw milk supplied by members and contracted suppliers.

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<sup>28</sup> In 2017, Lakeland processed approximately 1.2 billion litres from its farmer suppliers; over the same period, LacPatrick processed approximately 570 million from its farmer suppliers.



64. Second, if the Merged Entity were to worsen supply terms for its milk suppliers or to engage in demand withholding, the milk suppliers would be able to switch to other milk processors. As discussed in paragraph 36 above, no milk suppliers [in the State] are bound to LacPatrick or Lakeland on long term supply contracts;<sup>29</sup> therefore milk suppliers would be able to switch to other milk processors. As outlined in Table 1 above, there are alternative milk processors, which procure milk in the province of Ulster, such as *Dale Farm*, *Glanbia Cheese*, *Aurivo*, *Glanbia Milk* and *Natural Dairies*. Given the location of the parties' processing facilities, there are alternative processing facilities that milk suppliers could send their milk to which are close substitutes to the parties' milk processing facilities.<sup>30</sup> Therefore, the Commission considers that if the Merged Entity were to worsen supply terms for its milk suppliers or to engage in demand withholding, the milk suppliers could switch to other milk procurers who have processing facilities located in the same region.
65. In practice, milk suppliers do switch to different milk processors. For example, in 2018 [...] farmers who formerly supplied LacPatrick with raw milk switched their supply of raw milk to other milk processors, such as [...].<sup>31</sup> The parties state in the notification that, in the last two years, [...] farmers have switched to Lakeland and [...] have switched away from it (with a further [...] suppliers considering switching).
66. Third, the Commission contacted a wide range of third parties during its investigation and none raised any concern regarding the possibility that the Proposed Transaction may give the Merged Entity the ability or incentive to worsen milk suppliers' terms or to withhold demand from milk suppliers.
67. Therefore, for the reasons set out above and considering the evidence available to it, the Commission considers that the Merged Entity would not have the ability or incentive following implementation of the Proposed Transaction to unilaterally worsen milk

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<sup>29</sup> Namely contracts of more than two years' duration.

<sup>30</sup> Such as, Glanbia, Lough Egish, Glanbia Fivemiletown, Omagh Strathroy, Dale Farm Cookstown, Natural Dairies Convoy, Aurivo, Killygordon, Dale Farm Cullybackey, Dale Farm Ballymena, Glanbia Virginia, Glanbia Magheralin are mostly located within the province of Ulster..

<sup>31</sup> In 2016 and 2017, [...] and [...] farmers respectively, who formerly supplied LacPatrick raw milk switched to supply other milk processors.



suppliers' terms of supply for the procurement of raw milk or withhold demand from milk suppliers in the province of Ulster.

### *Coordinated Effects*

68. Coordinated effects occur where a proposed transaction changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will coordinate their behaviour by, for example, raising prices and/or decreasing output. Such coordination refers to actions that are profitable only as a result of each firm accommodating the reactions of others. Thus, the key question is whether a proposed transaction would materially increase the likelihood that firms in the market would successfully coordinate their behaviour or would strengthen existing coordination between firms in the market.

#### No Evidence of Coordinated behaviour prior to the Proposed Transaction

69. The Commission has found no evidence of coordinated behaviour between competitors in the market for the procurement of raw milk in the province of Ulster prior to implementation of the Proposed Transaction. The Commission contacted a wide range of third parties during its investigation and none raised any concern about existing coordinated behaviour between competitors in the relevant market. However, one third party made a submission to the Commission and alleged that there would be increased collusion and coordination in the market following the implementation of the Proposed Transaction.

#### Conditions and Evidence Considered for Coordinated Behaviour

70. In assessing the potential for a proposed transaction to result in coordinated effects, the Commission will assess whether the conditions and incentives that are generally necessary for successful coordination between competitors are present or likely to arise, which includes assessing:

- i. the ability of competitors to identify common terms of coordination; and



- ii. the ability of competitors to detect deviations from the terms of coordination, and the ability to punish deviations that would undermine the coordinated interaction.<sup>32</sup>
71. In this instance, the Commission assessed whether the Proposed Transaction would increase the possibility of coordination between competitors in the relevant market for procurement of raw milk in the province of Ulster and then examined whether it would increase the sustainability of any such coordination.
72. For the reasons set out below and considering all of the evidence available to it, the Commission considers that the Proposed Transaction will not make it more likely that the Merged Entity and its competitors will engage in coordinated behaviour in the market for the procurement of raw milk in the State with the effect of substantially lessening competition in the relevant market.
73. First, competitors may find it easier to reach a common understanding on the terms of coordination if they are relatively symmetric, especially in terms of market shares.
74. The Proposed Transaction will lead to an increase in the level of asymmetry between the market shares of market participants. Following implementation of the Proposed Transaction, the market will change from having three<sup>33</sup> medium size dairy processors with estimated market share between [20-30] % having one large dairy processor (the Merged Entity) with an estimated [50-60] % market share, one medium dairy processor with an estimated market share of around [20-30] % and five other dairy processors with a smaller market presence (less than 10% market share). Furthermore, it will reduce by two the number of medium dairy processors currently active in the province of Ulster.
75. However, the number of firms in a market is also an important factor as it is easier to coordinate among few players than among many. Following completion of the Proposed Transaction, there will still be at least six dairy processors of different sizes

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<sup>32</sup> See paragraphs 4.25-4.31 of the Commission's "*Guidelines for Merger Analysis*" for a detailed discussion of the conditions and incentives conducive to coordinated behaviour.

<sup>33</sup> Lakeland, LacPatrick and Dale Farmers.



active in the purchase of raw milk in Ulster. Therefore, it is unlikely to be easy for dairy processors to coordinate on the price to be paid to milk suppliers for raw milk.

76. Second, as discussed in paragraph 36 above, the price a raw milk dairy processor pays to its milk suppliers is calculated according to a multiple component pricing system.<sup>34</sup> A significant portion of the price of raw milk is influenced by the price of processed dairy products (i.e., the price of milk powder and cheese etc.) on the international markets. Other factors that affect the price raw milk dairy processors pay to milk suppliers are the performance of the dairy processor as well as the business forecast. Therefore, this price varies from month to month and from dairy processor to dairy processor with a large disparity currently existing. Therefore, it is unlikely that the Proposed Transaction will make the dairy processors more likely to coordinate on the price to be paid to milk suppliers for raw milk on a monthly basis.
77. Third, dairy processors face a strong competitive constraint from international markets, which can make reaching terms of coordination more difficult for dairy processors. The fact that Irish dairy processors face strong competition on the international dairy market is likely to prevent or limit coordinated behaviour by dairy processors in respect of the procurement of raw milk in the province of Ulster.
78. In light of the above, the Commission considers that the Proposed Transaction will not in itself result in an increase in the sustainability of coordination between competitors in the market for procurement of raw milk in the province of Ulster.
79. Overall, the Commission considers that the Proposed Transaction will not substantially lessen competition in the market of procurement of raw milk in the State.

### **Vertical relationship**

80. There are three vertical relationships between the parties:
- LacPatrick supplies bulk buttermilk to Lakeland

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<sup>34</sup> This payment system calculates milk price based on the value of protein and butterfat delivered.



- LacPatrick supplies bulk yoghurt to Lakeland,<sup>35</sup> and
- a potential vertical relationship whereby, following implementation of the Proposed Transaction Lakeland could supply animal feed to LacPatrick.

81. Vertical relationships such as the Proposed Transaction can substantially lessen competition through integration of a production/distribution chain.<sup>36</sup> This integration can result in the creation or strengthening of a dominant position. For instance, a non-horizontal merger may result in input and/or customer foreclosure.

82. In its assessment of the Proposed Transaction, the Commission examined the likelihood that the merger would raise the costs of downstream rivals by restricting their access to an important input (input foreclosure) - in this case (i) the supply of bulk buttermilk; (ii) the supply of bulk yoghurt, and (iii) the supply of animal feed.

#### *The supply of bulk buttermilk*

83. Buttermilk production runs in parallel to butter, as it is a by-product of butter production: for every ton of butter produced a ton of buttermilk is also produced. Buttermilk comes in two forms: (i) traditional sweet-cream buttermilk, which is effectively the liquid left behind after churning butter out of cream and is commonly used as an emulsifying agent to improve functionality of many dairy products; and (ii) cultured buttermilk, which is traditionally used for home-made bread such as wheat, soda breads and pancakes.

84. Buttermilk is consumed in small quantities in the retail and bakery channels but the vast majority of the volume is dried as buttermilk powder or incorporated into dried milk powders of UHT products. Lakeland procures sweet-cream buttermilk from LacPatrick. Lakeland uses this buttermilk in the production of certain of its milk powders and liquid UHT products.

85. The Commission has not to date defined relevant product or geographic markets for buttermilk. In case M.5046 Friesland/Campina, the European Commission concluded that “*fresh buttermilk*” was a separate relevant product market and that (after

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<sup>35</sup> The parties state in the notification that in common with other dairy processing co-op, Lakeland and LacPatrick, on an ad hoc basis, may sell and/or swap excess supplies with other processors (as well as each other).

<sup>36</sup> See the Commission’s Guidelines for Merger Analysis, sections 5.5-5.6.



examination of supply-side substitution and demand-side substitution in Germany, Denmark and the Netherlands) the relevant geographic market in those countries was national. In case *ME/6524/15 Muller UK & Ireland Group LLP/Dairy Crest Group plc* the CMA examined buttermilk markets generally without concluding on market definition. The CMA noted that *“buttermilk is a by-product of butter production”* and that the parties’ position on relevant bulk butter markets therefore *“provides some indication that the Parties are unlikely to have a significant share of supply in any buttermilk product at EEA-level”*.<sup>37</sup>

86. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant product markets. The Commission’s conclusion concerning the competitive effects of the Proposed Transaction would be unaffected whether the relevant product market in the present case is defined broadly or narrowly. In this instance it is also not necessary to define a precise geographic market since the size of the geographic market will not materially alter the competitive impact of the Proposed Transaction. However, for the purposes of the review of the Proposed Transaction, the Commission has analysed the effects of the Proposed Transaction based on the narrowest possible relevant product and geographic market, namely the market for the supply of bulk buttermilk in the State.

#### *The Commission’s view*

87. In 2017, Lakeland purchased [...] tonnes of liquid buttermilk from LacPatrick, accounting for approximately [...] % of LacPatrick’s buttermilk production. The parties estimate that the buttermilk Lakeland purchased from LacPatrick accounted for approximately [5-10] % of total buttermilk production on the island of Ireland. Lakeland also purchases buttermilk from [...] (around [...] tonnes per annum), and in small quantities from [...] and [...].

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<sup>37</sup> CMA *ME/6524/15 Muller UK & Ireland Group LLP/Dairy Crest Group plc*, paragraph 293 (available at [https://assets.publishing.service.gov.uk/media/55a9086d40f0b6156200000b/Muller - Dairy Crest - full text decision on reference.pdf](https://assets.publishing.service.gov.uk/media/55a9086d40f0b6156200000b/Muller_-_Dairy_Crest_-_full_text_decision_on_reference.pdf)).



88. Given that LacPatrick already sells approximately [...] % of its buttermilk supply to Lakeland it is unlikely that the Merged Entity could partake in input foreclosure following implementation of the Proposed Transaction. There are a large number of butter producers in the State, all of which produce buttermilk as a by-product. Such producers include Glanbia, Kerry, Arrabawn, Aurivo and Tipperary Co-Op. Of the buttermilk produced in the State, LacPatrick has an estimated share of supply of [0-5] %. The Merged Entity would not be in a position to restrict its competitors' access to the supply of bulk buttermilk following implementation of the Proposed Transaction.

*The supply of bulk yoghurt*

89. The CCPC has not to date defined relevant product or geographic markets for yoghurts. In case *M.5046 Friesland/Campina*, the European Commission concluded that yoghurt was a separate relevant product market and that in Germany, Belgium and the Netherlands the relevant geographic markets were national. The parties have noted that imported products make up more than 50% of the overall yoghurt market value in the State.
90. In this instance, it is not necessary for the Commission to define precise relevant product and geographic markets. The Commission's conclusion concerning the competitive effects of the Proposed Transaction would be unaffected whether the relevant product market in the present case is defined broadly or narrowly, and regardless of the size of the geographic market. However, for the purposes of the review of the Proposed Transaction, the Commission has analysed the effects of the Proposed Transaction based on the narrowest possible relevant product and geographic market, namely the market for the supply of bulk yoghurt in the State.
91. In 2017, Lakeland purchased [...] tonnes of yoghurt from LacPatrick which amounted to approximately €[...] or approximately [...] % of LacPatrick's bulk yoghurt supplies. In trade terms this accounts for less than [0-5] % of the yoghurt produced in the State. As Lakeland already purchases the majority of LacPatrick's bulk yogurt supply, which accounts for a small proportion of the total yoghurt produced in the State, the Proposed Transaction is unlikely to foreclose upstream yoghurt producers from access to a



significant input even if Lakeland was to purchase the remainder of LacPatricks' bulk yoghurt supply.

#### *The Production and Supply of Animal Feed on the Island of Ireland*

92. Lakeland supplies animal feed to a number of agri-retail stores. These are all independent agricultural retail stores who purchase animal feed from not just Lakeland alone, but also from several other animal feed producers. Lakeland competes with many other animal feed producers based in both the State and Northern Ireland for this business. LacPatrick operates a single agri-trade store from its processing site at Coolshannagh, Co Monaghan. While LacPatrick does not sell Lakeland animal feed products at its agri-retail store, Lakeland is a potential supplier of animal feed products to LacPatrick.
93. The total animal feed market size is 6 million tonnes in the State, and 3 million tonnes in Northern Ireland. Lakeland has a [0-5] % market share in the State and [0-5] % market share in Northern Ireland. Given Lakeland's small market share in the animal feed market they will not be in a position to foreclose competing agri-retail stores from accessing a significant input post transaction.
94. In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise any vertical competition concerns in the State.

#### **Conclusion**

95. 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**

96. No ancillary restraints were notified.



### **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 merger of Lakeland Dairies Co-Op Society Limited and LacPatrick Co-Operative 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**