



DETERMINATION OF MERGER NOTIFICATION M/20/023– UNITED MOLASSES/PREMIER MOLASSES AND KRUDEN

Section 21 of the Competition Act 2002

Proposed acquisition by United Molasses Group Limited of sole control of Premier Molasses Company Limited and Kruden Limited

Dated 25 November 2020

Introduction

1. On 31 July 2020, 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 United Molasses Group Limited (“United Molasses”) would acquire sole control of Premier Molasses Company Limited (“Premier Molasses”) and Kruden Limited (“Kruden”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a Share Purchase Agreement (“SPA”) dated 27 July 2020 between Greencore Holdings Designated Activity Company (“Greencore”) and two wholly owned subsidiaries of United Molasses namely [...] and [...].
3. Prior to implementation of the Proposed Transaction, Premier Molasses and Kruden are jointly controlled by United Molasses and Greencore. At the date of notification, United Molasses held, through its wholly owned subsidiaries [...] and [...] respectively, [...] of the issued share capital of Premier Molasses and [...] of the issued share capital of Kruden. Greencore held the remaining [...] of the issued share capital of Premier Molasses and [...] of the issued share capital of Kruden.
4. The SPA now provides that [...] will acquire [...] of the issued share capital of Premier Molasses from Greencore and [...] will acquire [...] of the issued share capital of Kruden from Greencore. Therefore, following the implementation of the Proposed Transaction, United Molasses, through its wholly owned subsidiaries [...] and [...] would hold 100% of the issued share capital of Premier Molasses and Kruden (the “Target Companies”) respectively, resulting in a change in the level of control exercised by United Molasses over the Target Companies, i.e. a change from joint control to sole control.

Background to the Proposed Transaction

5. The Target Companies were formed pursuant to a Joint Venture Agreement dated 10 October 1980 between Tate & Lyle Trading and Developments Limited (“Tate & Lyle”), a company incorporated under the laws of England and Wales and Cómhlucht Siúicre



- Éireann Teoranta (“Irish Sugar”), then a State-owned enterprise incorporated under the laws of Ireland (the “JVA”).
6. Pursuant to the JVA, Tate & Lyle and Irish Sugar agreed to establish two companies: (1) United Molasses (Ireland) Company Limited (“United Molasses Ireland”) in Northern Ireland; and (2) Premier Molasses in the State, to be [...]. Premier Molasses was incorporated on 15 October 1980 and United Molasses Ireland was incorporated on 22 September 1995 (and its name later changed to Kruden by special resolution passed on 27 August 1996).
 7. Irish Sugar was privatised in 1991 to form Greencore Group plc. Greencore Group plc is the parent company of Greencore, through which it currently holds [...] of the issued share capital of Kruden and [...] of the issued share capital of Premier Molasses. Towards the end of 2010, Tate & Lyle exited the Target Companies by selling its entire shareholding in Tate & Lyle Molasses (“TALM”) to W&R Barnett Limited (“W&R Barnett”). At that time, TALM was a subsidiary of Tate & Lyle and held Tate & Lyle’s shareholding in the Target Companies. W&R Barnett Limited is the ultimate parent company of United Molasses.
 8. The parties submit that, according to the constitutional documents of Premier Molasses, the purpose of the Target Companies was “[...]” The parties submit that a further rationale for the establishment of the Target Companies was to [...]. At the time of the notification, the parties informed the Commission that United Molasses and Greencore have [...] board representation and voting rights on the boards of the Target Companies and exercise joint control over the Target Companies.

The Undertakings Involved

The Acquirer – United Molasses

9. United Molasses is a company incorporated in Northern Ireland with its head office located at 48 Gracechurch Street, London EC3V 0EJ, United Kingdom. In the State, United Molasses does not control any company other than the Target Companies, which it currently jointly controls with Greencore. United Molasses’ ultimate parent company is W&R Barnett,¹ a privately held company which is controlled by the Barnett family.
10. United Molasses is the parent company of a group of businesses focused on the global trading and marketing of molasses and related products and the storage of bulk liquids. United Molasses is involved in the sale and marketing of molasses and related products through the Target Companies. United Molasses also controls United Molasses Trading Limited (“United Molasses Trading”), a company which has its registered office at 23 Clarendon road, Belfast BT1 3BG, UK and which solely supplies bulk molasses to the Target Companies in the State.
11. W&R Barnett is the holding company of a diversified group of international commodity trading, storage, agribusiness and industrial companies. In the State, W&R Barnett jointly

¹ W&R Barnett’s wholly owned subsidiary W&R Barnett Limited (W&R Barnett), registered in Northern Ireland holds [...] of the issued share capital of Ceres 2012 Limited (“Ceres 2012”), a company registered in Northern Ireland. Ceres 2012 in turn holds [...] of the issued share capital of United Molasses.



controls R&H Hall Unlimited Company trading as R&H Hall² (“R&H Hall”), which is a grain and feed commodities trader. W&R Barnett jointly controls John Thompson & Sons Ltd³ (“John Thompson”), which has its registered office at 35-39 York Rd, Belfast BT15 3GW, UK. John Thompson is involved in the supply of animal feed. John Thompson sources its supply of molasses for animal feed production from Precision Liquids Limited (“Precision Liquids”), a wholly owned subsidiary of W&R Barnett.⁴ The parties informed the Commission that John Thompson also sells molasses in the State, as an ancillary element of its animal feed business.

12. For the financial year ending 31 July 2019, W&R Barnett’s worldwide revenue amounted to [...], of which approximately [...], was generated in the State. For the financial year ending 31 July 2019, United Molasses’ worldwide revenue amounted to [...], of which approximately [...], was generated in the State.

The Target Companies – Premier Molasses and Kruden

13. Premier Molasses is a limited liability company with its registered office at Harbour Road, Foynes, Co. Limerick. Premier Molasses is a blender and distributor of molasses and other liquid feeds and produces a range of liquid feeds suitable for all types of stock.
14. Kruden is a limited liability company, which was incorporated in the Channel Islands and registered in the United Kingdom, with its registered address at IFC 5, St Helier, Jersey JE1 1ST. Kruden is the parent company of United Molasses Ireland Limited (“UMI”), having its registered address at Duncrue Street, Belfast, BT3 9AQ. Kruden is a distributor of molasses based products to animal feed manufacturers and farmers on the island of Ireland. UMI, through an agency agreement, acts as Kruden’s sole agent for the storage and distribution of molasses in the island of Ireland. However, sales of molasses to customers on the island of Ireland are conducted by Kruden rather than UMI. UMI charges a commission fee to Kruden which is intended to cover the operational and administrative costs of the Belfast terminal.
15. For the financial year ending 31 July 2019, Premier Molasses’s worldwide revenue amounted to approximately [...], all of which was generated in the State. For the financial year ending 31 July 2019, Kruden’s worldwide revenue amounted to approximately [...], of which approximately [...] was generated in the State.

Rationale for the Proposed Transaction

16. The parties state the following in the notification:

“The commercial objective of the Proposed Transaction is for Greencore to sell a non-core business and for United Molasses to increase its economic stake in a core business.”

² W&R Barnett Limited holds 50% of the issued share capital of R&H Hall (R&H Hall), the remaining 50% of the issued share capital of R&H Hall is held by Origin Enterprises PLC, an Irish company listed on the Irish Stock Exchange.

³ W&R Barnett jointly controls John Thompson with Origin Enterprises PLC, which holds [...], of the issued share capital of John Thompson.

⁴ Precision Liquids Limited is registered in Northern Ireland with company number NI010131 and having its registered address at Clarendon House, 23 Clarendon Road, Belfast, BT1 3BG, a vegetable oil trader based in Belfast.



Contact with the Undertakings Involved

17. On 8 September 2020, the Commission served a Requirement for Further Information (“RFI”) on each of United Molasses, Premier Molasses, Kruden and Greencore pursuant to section 20(2) of the Act. The service of these RFIs adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.
18. The Commission received responses from each of United Molasses and Kruden on 13 October 2020 and responses from each of Greencore and Premier Molasses on 16 October 2020. Therefore, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act)⁵ became 16 October 2020. The Commission requested and received, on an on-going basis, further information and clarifications from the undertakings involved in the Proposed Transaction.

Market enquiries

19. During its investigation, the Commission conducted market enquiries which included issuing questionnaires to a number of suppliers of molasses and customers of the Target Companies. The Commission received full responses from the majority of the parties it contacted and undertook a series of follow-up phone calls with the suppliers of molasses.

Third Party Submissions

20. No third party submission was received.

Industry Background of the supply of molasses

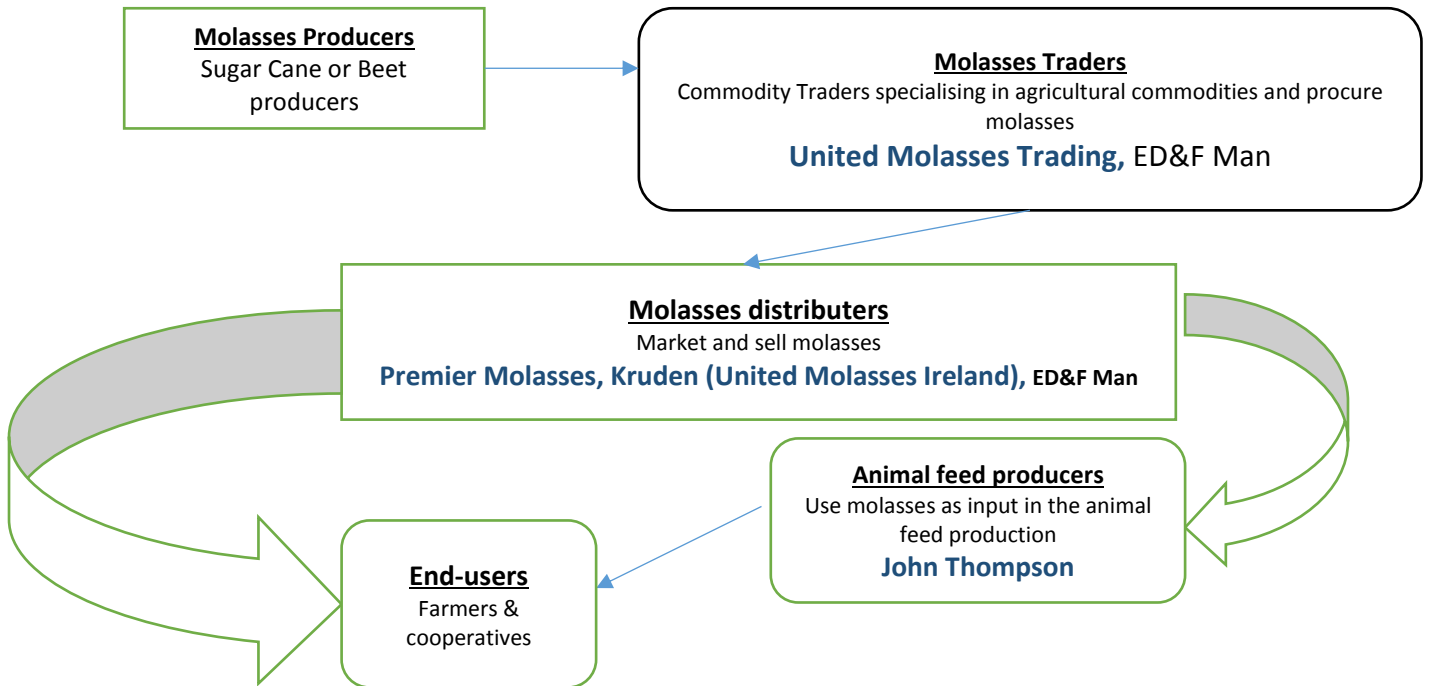
21. Molasses is a by-product of the processing of cane and beet sugar. It is a sticky liquid with around 45-50% sugar content which also contains a number of minerals and other elements and may be used as an input for animal feed production. Molasses is used in compound feed as a source of energy and as a binding agent in forming compound feed pellets. The parties also submitted that animal feed producers can replace molasses with other sugar inputs like glycerol or sugar syrups. The parties submitted that, unlike other traditional sugar products, with molasses there is a certain level of substitutability from the customer's point of view, since other types of sugar may fulfil the same requirements. As far as the binding function provided by molasses is concerned, this can provide some demand for molasses but compounders can eliminate this need for a binding agent by applying steam and pressure to form the compound feed pellet. Molasses can also be used in a blend of liquid feed on farms. In response to the Commission’s questionnaire, [...] submitted, “[...]”
22. There is no molasses production on the island of Ireland: therefore all molasses supplied on the island of Ireland is imported. Figure 1 below shows the various levels of the supply chain for molasses, which consist of: (i) **Producers**: companies that process sugar and/or beet and produce molasses as a by-product of their operations; (ii) **Molasses Traders**: companies that focus on importing molasses and bulk spot sales rather than continued supply relations with customers; and (iii) **Molasses Distributers**: companies that

⁵ The “appropriate date” is the date from which the time limits for making Phase 1 or Phase 2 determinations begin to run.



distribute molasses directly to end customers. With respect to **end-users**, the parties and other suppliers contacted by the Commission stated that the primary end-users of molasses on the island of Ireland are animal feed producers and co-operatives. This is because in the State there is no demand for molasses by other industries such as distilleries and yeast producers.

Diagram 1: The supply chain of molasses on the island of Ireland



Source: The Commission's investigation

23. As illustrated in Figure 1 above, there are two molasses traders (i.e. United Molasses and ED&F Man) and three distributors (i.e. ED&F Man, Premier Molasses and Kruden) active on the island of Ireland. United Molasses is vertically integrated as it operates as both a molasses trader (through United Molasses Trading) and distributor (through the Target Companies). The Target Companies are only active as distributors in the supply chain through the blending and sale of molasses to customers.

Market Definition

24. There is a horizontal overlap between the parties' activities in the sale of molasses as United Molasses⁶ and the Target Companies are involved in the sale of molasses.⁷

⁶ United Molasses is a parent company of United Molasses GB Ltd, a company registered in London. United Molasses GB Ltd supplies molasses to customers in England, Scotland and Wales (not on the island of Ireland) since 1912 to animal feed, fermentation and industrial customers across Great Britain. More details in <https://www.unitedmolasses.com/>.

⁷ The parties state in the notification that W&R Barnett's subsidiary United Molasses distributes molasses, in the island of Ireland, only to its joint venture, John Thompson, through its wholly owned subsidiary, Precision Liquids Limited.



25. As stated in paragraph 11 above, the parties informed the Commission that John Thompson sells molasses as an ancillary element of its animal feed business and thus does not actively compete as a distributor of molasses and only sells minimal volumes⁸ of the molasses for its animal feed production operation to some of its animal feed customers. The Commission has reached the view that the activities of John Thompson in the sale of molasses are not material to its competitive assessment and would not give rise to any horizontal competition concerns. Accordingly, the activities of John Thompson in the sale of molasses will not be discussed further in this determination.
26. There is an existing vertical relationship between the Target Companies and United Molasses Trading as United Molasses Trading supplies bulk molasses to the Target Companies for further resale. There is also a potential vertical relationship between the activities of the Target Companies and John Thompson⁹ as John Thompson is involved in the manufacturing of animal feed and molasses is an input in the production of animal feed.

Product Market

Views of the parties

27. The parties state the following in the notification:

“There is currently no competition between the Acquirer [United Molasses] and the Target Companies on the island of Ireland in relation to the supply of molasses....In order to assist the [Commission], however, the [p]arties consider that, on a conservative basis, the appropriate frame of reference is the market for molasses.”

Views of the Commission

28. As stated in paragraph 21 above, molasses is derived from processing either sugar cane or sugar beet which yields cane or beet molasses. The market for the supply of molasses was considered by the European Commission (the “EC”) in its decision in *COMP/M.5449 - ABF/Azucarera (“ABF/AZUCARERA”)*.¹⁰In *ABF/AZUCARERA* the EC assessed the substitutability between cane molasses and beet molasses and found that *“there is a degree of substitution between [beet and cane molasses], but substitution depends on the types of customers involved. Animal feed producers typically are more indifferent as to the origin of the molasses and can readily substitute the two types when adding them into their final animal feed products. On the other hand, yeast producers (and also distilleries, who also use molasses in their fermentation process like yeast producers) have certain limitations to switch between the two types.”*
29. The parties submit that Premier Molasses and Kruden mainly supply molasses to animal feed producers. [...] also stated that the primary customers of molasses in the State are animal feed producers and co-operatives. As indicated in *ABF/AZUCARERA*, there is

⁸ According to the parties, John Thompson supplied [...], out of a total of approximately [...], tonnes of molasses supplied in the State, representing [0-5%], of the market.

⁹ John Thompson is jointly controlled by W&R Barnett, the parent company of United Molasses.

¹⁰For more information see *COMP/M.5449 - ABF/Azucarera*, which is accessible at: https://ec.europa.eu/competition/mergers/cases/decisions/M5449_20090330_20310_265127_EN.pdf



evidence that animal feed producers are more indifferent than other molasses customers as to whether beet or cane molasses is supplied and thus do not differentiate between cane and beet molasses.

30. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission does not need to come to a definitive view on the precise relevant product market in this instance since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant product market is defined narrowly (e.g., separate product markets for cane molasses and beet molasses) or more broadly to encompass a single product market for both cane molasses and beet molasses. Given that the Target Companies and the only other supplier in the State, ED&F Man, supply both beet and cane molasses, for the purposes of its competitive analysis of the Proposed Transaction, the Commission has analysed the likely effects of the Proposed Transaction in the potential market for the sale of molasses (encompassing beet and cane molasses).

Geographic Market

Views of the parties

31. With respect to the relevant geographic market, the parties state in the notification that *“competitors import molasses into the island of Ireland from other parts of Europe And the distribution of molasses occurs on the island of Ireland on a regional basis.”*
32. The parties submit in the notification that Kruden is based in Belfast, and as such primarily focusses on supplying customers in Northern Ireland and the north of the State, whilst Premier Molasses has a customer base in the south of the State since its facilities are located in Co. Limerick and Co. Cork. Figure 1 shows the location of the Target Companies' customers and how the parties view the geographic market.

Figure 1: Map of Premier Molasses and UMI customers

[...],

Source: The notification

Views of the Commission

33. All molasses supplied in the State is imported as there is no domestic production of molasses. According to the Commission's market enquiries, most customers of the parties (i.e. farmers, animal feed producers) stated that transport costs account [...] of the final price for molasses. As stated above, according to the parties Kruden primarily supplies to customers located in Northern Ireland and the northern half of the State whereas Premier Molasses primarily supplying to the south and south-west of Ireland. [...], informed the Commission that “[...]” On the Island of Ireland, United Molasses does not supply molasses outside of the Target Companies at the distribution level.
34. It is not necessary for the Commission to come to a definitive view on the precise geographic market definition for the sale of molasses in this instance since the choice of geographic market will not materially alter the Commission's conclusions as to the likely competitive impact of the Proposed Transaction. For the purposes of its competitive



analysis, however, the Commission has assessed the likely competitive effects of the Proposed Transaction within the State.

Conclusion on the relevant market

35. For the purposes of its competitive analysis of the Proposed Transaction, the Commission has analysed the likely effects of the Proposed Transaction in the potential market for the sale of molasses in the State.

Competitive Assessment

36. The Commission notes that, in many instances, a move from joint control to sole control of an undertaking may not result in any significant anti-competitive impact since the purchaser already exercises some degree of control in the relevant market. However, where the purchaser and the target compete with each other, there is a possibility that, post-acquisition, the competitive incentives of the acquirer may change such that competition concerns may arise.
37. In this instance, the acquirer, United Molasses, is not involved in the supply of molasses outside of the Target Companies in the State. Therefore, the competitive incentives of the United Molasses are unlikely to be adversely altered following implementation of the Proposed Transaction.
38. In the notification, the parties submitted to the Commission information which indicates that the Target Companies' combined estimated market share for 2019 in the potential market for the supply of molasses in the State was [60-70%]¹¹ with the remaining [20-30%]¹² held by ED&F Man. The implementation of the Proposed Transaction would not result in changes to market shares or market structure in the potential market for the sale of molasses on the State.
39. Given that United Molasses would have sole control of the Target Companies following implementation of the Proposed Transaction, the Commission has assessed the likely effects of the Proposed Transaction by assessing (i) the extent of Greencore's influence on the operation and key decisions of the Target Companies prior to the implementation of the Proposed Transaction and (ii) whether the implementation of the Proposed Transaction would remove a significant constraint on United Molasses such that United Molasses would have the ability and incentive to unilaterally raise prices following implementation of the Proposed Transaction.
40. The parties submit that in practice, "[...]."
41. Internal documents submitted by the parties to the Commission in response to the RFIs appear to corroborate the parties' submissions that [...]. Although Greencore has representatives on the board of the Target Companies, the Commission did not find evidence of [...]. Therefore, United Molasses's and Greencore's incentives appear to be aligned and, in the Commission's view based on the above, the implementation of the

¹¹ The parties' sales figures are based on their actual sales for 2019, Premier molasses supplied [...] tonnes and Kruden supplied [...] tonnes.

¹² The parties estimated ED&F Man's sales based on local knowledge of the demand not served by the parties and declared imports of ED&F Man into its Dublin facility.



Proposed Transaction is unlikely to lead to the removal of a significant competitive constraint on United Molasses.

42. In addition to the above, documentation provided by the parties to the Commission in response to the RFIs indicates that the parties' customers can exert some resistance to potential price increases. In particular, the Commission noted internal documentation in which [...] indicated that its price increases "[...]"¹³ and that some buyers [...].¹⁴ The parties indicate in the notification that customers can also reduce the volume of molasses in compound feed and blended feed by replacing molasses with other solid sources of energy (such as maize and wheat) (see also paragraph 21 above). Some customers have also indicated to the Commission that [...] can be included in their product as a partial substitute for molasses.
43. Furthermore, information [...] shows that there are no impediments to customers' ability to switch suppliers as supply contracts are not exclusive; they are short term based [...]; and there are no termination costs. Contracts are price- and tonnage-specific, and the demand is influenced by external factors such weather and demand for animal feed.
44. In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in the potential market for the sale of molasses in the State.

Vertical Relationship

a) Bulk procurement and supply of molasses

45. There is an existing vertical relationship between United Molasses and the Target Companies because United Molasses currently supplies molasses to the Target Companies through its wholly owned subsidiary United Molasses Trading. The Commission considers that the Proposed Transaction raises no input or customer foreclosure concerns in the State in relation to the bulk procurement and supply of molasses because, prior to the implementation of the Proposed Transaction, the Target Companies only buy their molasses from United Molasses Trading. In addition, United Molasses Trading does not sell molasses to any third party in the State.

b) Supply of molasses and manufacturing and supply of animal feed

46. As noted at paragraph 21 above, molasses is an input in the production of animal feed. John Thompson is an animal feed producer which uses molasses in its operation. The Commission considers that the Proposed Transaction is unlikely to raise customer foreclosure concerns as John Thompson does not procure molasses from third parties but procures all its molasses from Precision Liquids. In addition, the Commission considers that the Proposed Transaction is unlikely to raise any input foreclosure concerns as there will be no incentive for the Target Companies to stop supplying John Thompson's competitors in the animal feed market, given that John Thompson's share in the supply of animal feed in the State and on the island of Ireland is minimal. Based on information

¹³ See, for example, [...] response to the RFI. See also, for example, [...] of Kruden's response to the RFI respectively.

¹⁴ See, for example, [...]s' response to the RFI.



provided by the parties to the Commission, John Thompson's share in the animal feed market in the State was [1%-5%] for 2019 and [1%-5%] for 2020.¹⁵

47. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

48. 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

49. Clause 10 of the SPA contains restrictive obligations on Greencore, including non-compete and non-solicitation obligations. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission.¹⁶ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction.

¹⁵ The parties estimate market shares based on tonnes supplied in the State according to data from The Department of Agriculture, Food and the Marine Official Animal Feed Statistics reformulated and published by the Irish Grain & Feed Association.

¹⁶ In this respect the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its Notice on restrictions directly related and necessary to concentrations (2005) OJ C56/03. 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)



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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 United Molasses Group Limited would acquire sole control of Premier Molasses Company Limited and Kruden 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