



DETERMINATION OF MERGER NOTIFICATION M/21/041 – PILGRIM’S PRIDE/KERRY FOODS

Section 21 of the Competition Act 2002

Proposed acquisition by Pilgrim’s Pride Corporation of sole control of the meat business and ready meals business of Kerry Foods

Dated: 10 September 2021

Introduction

1. On 3 August 2021, 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 Pilgrim’s Pride Corporation (“PPC”), an indirect subsidiary of JBS S.A. (“JBS”), through its wholly owned indirect subsidiaries Onix Investments UK Limited (“Onix”) and Arkose Investments Unlimited Company (“Arkose”), would acquire sole control of the meat business and the ready meals business of the business division known as Kerry Foods (the “Target”) which are owned by certain subsidiaries of Kerry Group plc (“Kerry”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be effected pursuant to a sale and purchase agreement entered into on 17 June 2021 between Kerry, PPC, Onix and Arkose (the “SPA”).
3. Prior to the signing of the SPA, as part of Kerry’s preparations for the Proposed Transaction, certain assets, rights and liabilities of Kerry’s meats and ready meals business in the United Kingdom (“UK”) and the State (not previously held by companies subject to the Proposed Transaction, including the Target, were temporarily amalgamated¹ by Kerry into certain

¹ Agreements of this nature are often described as “hived-down” agreements, which involve transferring the most valuable parts of a business to a wholly owned subsidiary of the vendor, and then selling that subsidiary to the purchaser.



wholly owned indirect subsidiaries of Kerry which were newly incorporated to effect such temporary amalgamation. These companies are:

- Rollover Limited;
- Spurway Foods Limited;
- Noon Products Limited;
- Oakhouse Foods Limited;
- Duffy Meats Limited;
- Rye Valley Foods Limited;
- Consumer Foods Van Sales (Ireland) Limited;
- Northfield Foods Limited;
- Attleborough Foods Limited;
- Consumer Foods Van Sales Limited; and
- Pioneer Brands Limited.

(together, the “Target Companies”).

4. Pursuant to the SPA, PPC shall acquire the Target by buying the entire issued share capital of the Target Companies, such Target Companies being wholly-owned indirect subsidiaries of Kerry that conduct Kerry’s meats and ready meals businesses in the United Kingdom and the State.

The Undertakings Involved

The Acquirer – PPC

5. PPC is 80.2% owned by JBS,² a Brazilian multinational meat processing company with more than 150 plants in 15 countries.³ JBS is primarily active on the island of Ireland through the following wholly-owned subsidiaries:

² JBS has a majority ownership of 80.21% in PPC as of 17 August 2021. For more information, please see: <https://www.marketscreener.com/quote/stock/PILGRIM-S-PRIDE-CORPORATI-12243603/company/>

³ Further information on JBS is available from the company’s website: <https://jbs.com.br/en/>



(i) Moy Park Limited (“Moy Park”)⁴

Moy Park has its headquarters in Craigavon, Co. Armagh, and is registered in Northern Ireland under company registration number NI004842. Moy Park rears, slaughters and processes chicken in the UK, selling the final products (unprocessed and processed) and ready-to-cook (“RTC”) products to customers in the retail, catering and industrial processing segments in the State, the UK and the European Union.

(ii) Pilgrim’s Pride Limited (trading as Pilgrim’s UK) (“Pilgrim’s UK”)⁵

Pilgrim’s UK has its headquarters in Warwick in England and is registered in England and Wales under company registration number 608077. Pilgrim’s UK rears, slaughters, and butchers pork, selling the final products (unprocessed and processed) and RTC products to customers in the retail, catering and industrial processing segments in the State, the UK and the European Union.

6. JBS also sells its products to customers in the State through other JBS-owned entities based outside the State. For example, JBS-owned Seara Meats B.V.⁶ sells chicken into the State, and JBS Global UK Limited⁷ sells beef into the State.
7. Dungannon Proteins Limited (a subsidiary of Moy Park registered in Northern Ireland under company number NI038033) processes offal and sells meal and oil directly to customers in the State, but it predominantly supplies customers in the UK. These products are predominantly used in the pet food industry.
8. For the most recent financial year ended 31 December 2020, the JBS group’s worldwide turnover was approximately €[...], of which €[...] was generated in the State.

The Seller – Kerry

⁴ Further information on Moy Park is available from the company’s website: <https://moypark.com/>

⁵ Further information on Pilgrim’s Pride Ltd (trading as Pilgrim’s UK) is available from the company’s website at: <https://www.pilgrimsuk.com/>

⁶ <https://www.searafoodsme.com/>

⁷ <https://jbsglobal.co.uk/>



9. Kerry is a food manufacturer headquartered in Tralee, Co. Kerry and is quoted on the London and Euronext Dublin stock exchanges.⁸ Kerry is currently divided into two core business areas:

(i) Kerry Taste & Nutrition

A global developer of taste and nutrition solutions for the food, beverage and pharmaceutical markets; and,

(ii) Kerry Foods⁹

Kerry Foods refers to Kerry's consumer foods division spread across a number of different companies within Kerry, which manufactures a variety of chilled and frozen food products primarily for retail customers in the State and in the UK.

The Target

10. The Target comprises the meat and ready meals business of the business division known as Kerry Foods.¹⁰ The meat division of Kerry Foods produces processed meat products such as sausages, bacon and meat snacks as well as meat-free products in the UK and the State under well-known brands such as *Denny*, *Galtee*, *Shaws* and *Richmond*. The ready meals division comprises ready meals and RTC products. Kerry's ready meal division supplies some frozen ready meal products into the State (EUR [...] sales in 2020).

11. The Target's business is conducted primarily in the retail channel, with the Target selling its processed meat products to a number of retail outlets such as major multinationals, discounters, and convenience retailers. The Target estimates that over [...] % of its revenue is generated by the sale of its products to these groups.

⁸ <https://live.euronext.com/en/product/equities/IE0004906560-XDUB>

⁹ Kerry Foods is the name given to the consumer foods division within Kerry Group plc, and is not a standalone entity.

¹⁰ The parties note that the scope of the Proposed Transaction will also include a newly incorporated entity (Pioneer Brands Limited, UK company registration number: 13286849). The Commission notes that Pioneer Brands was established by Kerry to commercialise a new vitamin product range, and the Purchaser intends to acquire this entity as part of the Proposed Transaction. Vitamin products are currently not sold by either party, and there is no horizontal overlap or vertical relationship between the parties' activities in the State (or elsewhere) in the supply of these products.



12. The remainder of the Target's business activities are conducted in the wholesale channel trade in the State, to customers such as Musgrave Marketplace¹¹, and BWG Foods Unlimited Company¹².
13. The ready meals division comprises ready meals and RTC products and supplies retailers predominantly in the UK such as J Sainsbury plc, Wm Morrison Supermarkets plc, Asda Stores Ltd., Waitrose Limited and Aldi Inc. The Target's ready meals division supplies some frozen ready meals products into the State (€[...] in sales in 2020). The Target does not sell any unprocessed meat products in the State.
14. For the most recent financial year ended 31 December 2020, the Target's worldwide turnover amounted to approximately €[...], of which approximately €[...] was generated in the State.

Rationale for the Proposed Transaction

15. The parties state the following in the notification:

"The [Proposed] Transaction represents an opportunity for JBS to: (i) offer a greater range of products to customers by diversifying into a number of complementary product offerings, including other processed meat products such as sausages, rashers and sliced cooked meats; (ii) enhance its existing processed meat product portfolio; (iii) develop new and innovative products through the businesses' combined expertise; and (iv) realise efficiencies and cost synergies."

Market Enquiries

16. During its review of the Proposed Transaction, the Commission conducted market enquiries which included contacting customers of the Target, namely Tesco Ireland Limited, Aldi Stores (Ireland) Limited, BWG Foods Holding Unlimited Company, Dunnes Stores Unlimited Company, and Musgrave Marketplace. None of the parties contacted by the Commission raised competition concerns with regard to the Proposed Transaction.

¹¹ Musgrave Marketplace is registered with the Companies Registration Office under company number 399712.

¹² BWG Foods Unlimited Company is registered with the Companies Registration Office under company number 20469.



Third Party Submissions

17. No third-party submissions were received.

Competitive Analysis

Horizontal Overlap

18. There is a limited horizontal overlap between the parties' activities in the State in relation to the overall supply of processed meats in the State. JBS sells processed meat products in the State predominantly to retailers. The Target also sells processed meat products predominantly to retailers in the State, but does not supply processed meats to industrial processors or caterers.

19. Specifically, the parties overlap horizontally in the supply of the following processed meats:

- (i) The supply of sausages in the State;
- (ii) The supply of rashers in the State; and
- (iii) The supply of cooked meats in the State.

Market Definition

Views of the parties

20. In the notification the parties state that, "*the [Commission] does not need to come to a definitive view on the precise relevant product market in relation to the Proposed Transaction on the basis that the [Commission's] conclusion on the competitive impact of the Proposed Transaction will be unaffected regardless of how the market is defined as there is no possibility of the Transaction giving rise to an SLC [Substantial Lessening of Competition] on any basis.*"

Views of the Commission

21. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.



22. With respect to the potential market for processed meats, the European Commission has previously left open the question as to whether it should be further segmented depending on species (i.e. poultry, beef and pork), customer segmentation, and product type.¹³
23. In its previous determination *M/19/039 – BWG/Heaney Meats*, the Commission considered segmentation in respect of the market for processed meats, depending on meat product category (i.e. beef, poultry, bacon, pork and lamb).¹⁴ In that determination, the Commission did not come to a definitive view on the precise relevant product market. The Commission assessed the competitive impact of that proposed transaction in respect of the supply of beef, poultry, bacon, pork, and lamb products, respectively, to the food service sector in the State.
24. 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., by individual processed meat product category) or more broadly to encompass a single market for all processed meat product categories. For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest potential product markets, i.e., the supply of each processed meat product category (sausages, rashers, and cooked meats) to retailers.
25. Similarly, the Commission does not need form a definitive view with respect to the relevant geographic market in this instance since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant geographic market is defined narrowly (i.e., the State) or more broadly (i.e., the island of Ireland). Given that the parties sell to retailers that operate on a State-wide basis, the Commission has assessed the Proposed Transaction by reference to the State. This is consistent with the Commission's previous approach in *M/19/039 – BWG/Heaney Meats*.

¹³ See European Commission Decision in *Case No COMP/M.5933 – Marfrig/Keystone*, the text of which can be found here:

https://ec.europa.eu/competition/mergers/cases/decisions/M5933_20100922_20310_850920_EN.pdf

¹⁴ See Commission determination in *M/19/039 – BWG/Heaney Meats*, the text of which can be found here: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2019/11/M.19.039-BWG-Heaney-Meats-PUBLIC-Determination.pdf>



Competitive Assessment

26. As JBS is primarily active in the supply of poultry in Northern Ireland through its subsidiary Moy Park as opposed the State, it was unable to provide an estimate as to its individual share in the market for the supply of processed meat to retailers in the State. Accordingly, Table 1 below sets out the parties' estimated individual shares for the supply of processed meat to retailers in the State and Northern Ireland.

27. Table 2 below sets out the parties' estimated individual shares for the various sub-segments where both parties are active in the State.

Table 1: JBS and the Target's estimated market shares in the market for processed meats in the State and Northern Ireland for the 52 weeks up to 27 March 2021

	JBS sales (by value)	JBS estimated market share (%)	Target's sales (by value)	Target's estimated market share (%)	Total Size of Market (Value)
Processed Meat (total)	€[...] ¹⁵	0-5%%	€[...] ¹⁶	5-10%	€[...] million

Source: Commission based on information provided by the parties

Table 2: JBS and the Target's estimated market shares in the various sub-segments where both parties are actives of the market for processed meats in the State for the 52 weeks up to 27 March 2021

	JBS sales (by value)	JBS estimated market share (%)	Target's sales (by value)	Target's estimated market share (%)	Total Size of Market (Value)
Sausages¹⁷	€[...] ¹⁸	0-5%	€[...]	10-20%	€[...] ¹⁹

¹⁵ [...]

¹⁶ [...]

¹⁷ Data sources: Nielsen, total value sales in the State up to 27.03.21 and this includes private label and branded as these items compete and are considered substitutable.

¹⁸ [...]

¹⁹ Data sources: Nielsen sales data in the State up to 27.03.21.



Rashers²⁰	€[...] ²¹	0-5%	€[...]	20-30%	€[...] ²²
Cooked Meats	€[...] ²³	0-5%	€[...]	10-20%	€[...] ²⁴

Source: Commission based on information provided by the parties

28. As outlined above, the Commission has analysed the Proposed Transaction in respect of the narrowest possible markets, that being by the supply of each individual processed meat product (i.e. sausages, rashers, cooked meats) in the State:

(i) Sausages

The parties have a combined market share of 10-20% in the supply of sausages to retailers in the State. JBS's sales of sausages by value is approximately €[...] and therefore, the increment in the merged entity's market share as a result of the Proposed Transaction would be less than 0-5%. The Commission does not consider that the Proposed Transaction will raise any horizontal competition concerns in respect of the supply of sausages to retailers.

(ii) Rashers

The parties have a combined market share of 20-25% in the supply of rashers to retailers in the State. However, JBS's share in the supply of rashers is minimal. JBS's sales of rashers by value is approximately €[...] and therefore the increment in the merged entity's market share as a result of the Proposed Transaction would be 0-5%. The Commission does not consider that the Proposed Transaction will raise any horizontal concerns in respect of the supply of rashers to retailers.

(iii) Cooked Meats

The parties have a combined market share of 10-20% in the supply of cooked meats to retailers in the State. However, JBS's share in the supply of cooked meats is

²⁰ Data sources: Nielsen, Total value sales in the State up to 27.03.21 and this includes private label and branded as these items compete and are considered substitutable.

²¹ [...]

²² Data sources: Nielsen sales data in the State up to 27.03.21.

²³ [...]

²⁴ Data sources: Nielsen sales data in the State up to 27/3/21 and this includes private label and branded as these items compete and are considered substitutable.



minimal. JBS's sales of cooked meats by value is approximately €[...] and the increment in the merged entity's market share as a result of the Proposed Transaction would be 0-5%. The Commission does not consider that the Proposed Transaction will raise any horizontal concerns in respect of the supply of cooked meats to retailers.

29. Following implementation of the Proposed Transaction, the parties are likely to continue to face considerable competition from a number of competitors in the State, such as O'Briens Fine Foods Unlimited Company (Prepack & Deli Cooked Meats), Carroll Cuisine Limited (Prepack & Deli Cooked Meats), Karro Food Group Limited, Cookstown (Prepack Cooked Meats, Sausages, Rashers), Clonakilty Food Company Limited (via Mallons 3PM) (Sausages, Branded), and Loughnanes Limited (Sausages Private Label).
30. Furthermore, the parties' key customers are large retailers, all of which exercise buyer power during the course of negotiations. These large retailers have a wide choice of suppliers and typically multi-source.
31. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the potential markets for the supply of sausages, rashers, and cooked meats to retailers in the State.

Vertical Relationship

32. The parties have confirmed that Moy Park supplies chicken to Kerry in the UK for ready meals, with turnover of approximately €[...] per annum in 2020. However, there is currently no vertical relationship between the parties' activities in the State. In 2020, Pilgrim's UK supplied Kerry with [...] of bacon trim in the State at a value of [...]. However, no such sales were made by Pilgrim's UK to Kerry in the State in 2021 to date.

Conclusion

33. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for good or services in the State.



Ancillary Restraints

34. The parties state in the notification that Clause 17 of the SPA contains certain restrictive covenants, including non-compete and non-solicitation clauses which the parties believe are directly related and necessary to the implementation of the Proposed Transaction.
35. The Commission notes that the restrictions referred to by the parties appear to be contained in Clause 17.1 and 17.2 of the SPA.
36. The Commission notes that Clause 17.1 of the SPA contains restrictive obligations on Kerry, including a number of non-compete, non-solicitation, and confidentiality provisions. The duration of those non-compete, non-solicitation, and confidentiality obligations do not exceed the maximum duration acceptable to the Commission.²⁵ The Commission considers these non-compete, non-solicitation and confidentiality obligations to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.
37. The Commission notes that Clause 17.2 of the SPA contains a non-solicitation obligation on PPC. As the non-solicitation obligation [...], and does not exceed the maximum duration acceptable to the Commission, the Commission considers it to be directly related to and necessary for the implementation of the Proposed Transaction insofar as it relates to the State.
38. The Commission notes that Clause 17.5 of the SPA imposes an obligation [...]. In addition, the Commission notes that, unlike the restrictions contained in Clauses 17.1 and 17.2 of the SPA, the restriction contained in Clause 17.5 of the SPA is not limited in time. The Commission is of the view that, when read in the context of Clause 17 as a whole, Clause 17.5 of the SPA appears to function as a 'non-disparagement' clause rather than a 'non-compete' clause. For this reason, the Commission has not reached a view as to whether or not Clause 17.5 of the SPA is directly related and necessary to the implementation of the Proposed Transaction. Therefore, the Commission considers that Clause 17.5 of the SPA will not benefit from the protections offered by section 4(8) and 5(3) of the Act.

²⁵ 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 (the "European Commission Notice"). For more information, see [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Confidential



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 Pilgrim's Pride Corporation, an indirect subsidiary of JBS S.A., through its wholly owned indirect subsidiaries Onix Investments UK Limited and Arkrose Investments Unlimited Company, would acquire sole control of the meat business and the ready meals business of the business division known as Kerry Foods which are owned by certain subsidiaries of Kerry Group plc, 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