



DETERMINATION OF MERGER NOTIFICATION M/21/050 ARD SERVICES (CIRCLE K) / GRIFFIN GROUP

Section 21 of the Competition Act 2002

Proposed acquisition by Ard Services Limited of certain companies from Griffin Property Holdings Limited

Dated 28 October 2021

Introduction

1. On 20 September 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 transaction whereby Ard Services Limited (“Ard Services”), an indirect wholly-owned subsidiary of Circle K Ireland Holding Limited (“Circle K Ireland”), would acquire the entire issued share capital and thus sole control of each of nine trading companies from Griffin Property Holdings Limited which operate *Londis*-branded grocery retail stores, namely:
 - (i) Griffin on Grafton Limited (company registration number 397850);
 - (ii) Kram Supermarkets Limited (company registration number 345222)¹;
 - (iii) Griffin Frontpage Limited (company registration number 427166);
 - (iv) Carleismo Limited (company registration number 370790);
 - (v) Westender Limited (company registration number 368354);
 - (vi) Griffin on the Green Limited (company registration number 390267);

¹ Kram Supermarkets Limited also operates an *Insomnia*-branded coffee outlet which adjoins its *Londis*-branded grocery retail store in Sandyford (“Sandyford Insomnia”).



- (vii) Sontip Limited (company registration number 684255);
 - (viii) Crestcliff Limited (company registration number 290057);
 - (ix) Griffin Central Limited (company registration number 280609),
- (collectively the “Target Companies”) (“the Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of (A) a share purchase agreement dated 9 September 2021 between Griffin Property Holdings Limited, Seamus Griffin and Ard Services (the “SPA”) and (B) [...] dated 9 September between Griffin Property Holdings Limited and Ard Services (the “...”). It is proposed that 95% of the issued share capital of the companies listed at (i) to (vii) of paragraph 1 above will be acquired by Ard Services on completion of the Proposed Transaction. Ard Services will have an option to purchase the remaining 5% of the issued share capital of those aforementioned companies [...] following the date of completion of the Proposed Transaction pursuant to [...]. It is proposed that 100% of the issued share capital of the companies listed at (viii) and (ix) of paragraph 1 above will be acquired by Ard Services on completion of the Proposed Transaction.

The Undertakings Involved

Acquirer – Ard Services

3. Ard Services is an indirect wholly-owned subsidiary of Circle K Ireland. Ard Services operates Circle K Ireland’s company owned company operated (“COCO”) stores in Ireland. Ard Services belongs to the group of companies comprising Alimentation Couche-Tard Inc. (“ACT”), which operates under three brands: (i) *Couche-Tard*, (ii) *Circle K*; and (iii) *Ingo*.
4. ACT operates a network of retail motor fuel service stations and convenience stores located worldwide, including in Canada, the United States of America, and Europe. It has a stand-alone retail convenience business in Canada and Hong Kong.



5. ACT entered the Irish market in 2016 with the purchase of Topaz Energy Group Limited.² All grocery retail stores operated by ACT in the State are forecourt convenience stores and are operated under the *Circle K* brand.
6. Circle K Ireland also operates water-fed terminal facilities at Dublin Port and in Galway. It also supplies fuel products to large commercial customers.
7. In addition, since 2016 Circle K Ireland has set up two stand-alone businesses in the State, namely:
 - (i) Circle K Procurement and Brands Limited – [...] and
 - (ii) Circle K Ireland Fuel Trading Limited – [...].
8. For the financial year ended 25 April 2021 ACT's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.³

The Seller Group – Griffin Retail Group

9. The Target Companies are currently wholly-owned by Griffin Property Holdings Limited, which is part of the Griffin Retail Group, which in turn is 100% owned by [...] (“the Seller Group”). The Seller Group is a family-run convenience store business, operating *Londis*-branded grocery retail stores (including Sandyford Insomnia). The Seller Group operates 14 grocery retail stores around Dublin, only 9 of which, together with Sandyford Insomnia, are being sold as part of the Proposed Transaction. The remaining 5 stores are all COCO stores, [...].

Target companies

10. The companies comprising the Target Companies operate 9 *Londis*-branded grocery retail stores and Sandyford Insomnia in the following locations across Dublin:
 - (i) 15/17 Lower O’Connell Street, Dublin;

² ACT acquired Topaz Energy Group Limited and Esso Ireland Limited in a transaction approved by the European Commission on 25 January 2016:
https://ec.europa.eu/competition/mergers/cases/decisions/m7899_71_3.pdf.

³ Calculated using ECB exchange rate of €:\$ 1.1617.



- (ii) 36 Upper O'Connell Street, Dublin;
- (iii) Westmoreland Street, Dublin;
- (iv) 49 Grafton Street, Dublin;
- (v) 4/5 College Green, Dublin;
- (vi) 16 Nassau Street, Dublin;
- (vii) Unit 24, Oak Road Business Park, Dublin;
- (viii) Fonthill Retail Park, Dublin;
- (ix) Sandyford, Dublin (Sandyford U1/2, Londis); and
- (x) Sandyford, Dublin (Sandyford U3, Insomnia),

11. With the exception of the store located at 16 Nassau Street and Sandyford Insomnia, the remaining 8 target stores operate a *Subway* concession. Furthermore, 3 of those 8 stores also include a *Chopped* concession instore. During 2017, a new initiative in four of the city centre target stores was launched, which comprised a doughnut counter branded as '*Boomerang Donuts*'. In August 2019, a unit adjacent to the target store in Sandyford commenced trading under the brand '*Insomnia*', i.e., Sandyford Insomnia. Many of the Target Companies also operate a full suite of online delivery services, including shop food sales and concession food sales, through Deliveroo, Just Eat and Lunch Team.
12. For the financial year ending 31 December 2020, the Target Companies' worldwide turnover was €[...] all of which was generated in the State.

Rationale for the Proposed Transaction

13. The parties state the following in the notification:

“ACT has a stand-alone retail convenience business in Canada and Hong Kong. Ard Services sees the Proposed Transaction as a natural progression of its convenience offer / expertise into stand-alone retail stores in Ireland and a good entry point for it into this



new market for it in Ireland (i.e. convenience stores that are not forecourt convenience stores)”.

Third Party Submissions

14. No submission was received.

Competitive Analysis

Horizontal Overlap

Product Market: Retail Sales of Grocery Goods

15. There is a horizontal overlap between the activities of the parties in respect of the retail sale of grocery goods in the State as both the Target Companies and Ard Services are involved in that activity.
16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission and its predecessor, the Competition Authority, has on a number of occasions⁴ considered that the retail grocery sector comprises a wide spectrum of stores including large supermarkets known as “multiples” (such as *Dunnes Stores*, *SuperValu* and *Tesco* as well as *Aldi* and *Lidl*, who are sometimes referred to as ‘discounters’), medium-sized shops which are usually part of a “symbol” group (such as *Centra*, *Londis* and *Spar*) and smaller stores, categorised as “convenience” stores (such as *Daybreak*, *MACE*, *Costcutter* and smaller *Londis* and *Spar* stores and independent retailers). Forecourt convenience stores fall within the third category. The parties state that the Target Companies also fall within the category of “convenience” stores.
17. The Commission and the Competition Authority have previously taken the view that the appropriate product definition for groceries is the retail sale of grocery goods, i.e. the

⁴ M/17/058 – Musgrave/Whelan Centra <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m17058-musgravewhelan-centra/> M/16/02 Dunnes/Whelan/Tipperary; see: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m16002-dunnes-whelelan-tipperary/> M/15/09 BMG/Londis; see: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m15009-bwg-londis/> see: M/11/22 Musgrave/Superquinn; <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m11022-musgrave-superquinn/> and



retail sale of “*food and drink for human consumption and household necessities*”⁵ and has not defined product markets either in terms of types of shopping behaviour (e.g. ‘one stop’, ‘top up’ or ‘convenience’) or in terms of business models (e.g. independent, franchise, multiples).

18. The Commission has not, in the course of its analysis of the Proposed Transaction, or of other recent transactions⁶ found reasons to depart from the approach previously adopted by the Commission and the Competition Authority. Accordingly, for the purposes of evaluating the competitive effects of the Proposed Transaction, the Commission has conducted its competitive assessment by reference to the potential relevant product market for the retail sale of grocery goods.

Geographic Market

19. The Commission has previously⁷ identified possible local markets based on a 10 kilometre distance or 10 minute drive time from any relevant target location. In this instance, it is not necessary for the Commission to come to a definitive view on the precise relevant geographic market since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant geographic market is defined as local, regional or national.
20. The parties submitted that the Target Companies are mainly based in Dublin city centre (and as such have predominantly pedestrian and ‘walk-in’ trade) and therefore carried out the analysis of the Proposed Transaction on the basis of a 5 km radius around each of the Target Companies. The parties stated that to carry out a mapping exercise mapping competing stores within a 10 km radius of each Target Company within a city centre environment would have been a considerable and costly exercise for the parties to undertake as that information was not to hand. Carrying out a mapping exercise within a smaller local market area (i.e. within a 5 km radius of each Target Company)

⁵ M/11/22 Musgrave/Superquinn; <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m11022-musgrave-superquinn/>

⁶ [M/17/050 - Joyces/Nestors](#), [M/17/052 - Cedarglade \(Musgrave\) / Ballybrit Centra & Service Station](#), [M/17/058 - Musgrave / Whelan Centra](#), [M/18/054 – Cedarglade \(Musgrave\) / Assets comprising Supermarket Premises at Fortunestown](#), and [M/18/079 Musgrave / Donnybrook Fair](#).

⁷ See [M/18/079 Musgrave / Donnybrook Fair](#), [M/17/050 - Joyces/Nestors](#) and [M/17/052 - Cedarglade \(Musgrave\) / Ballybrit Centra & Service Station](#).



was a more manageable exercise for the parties as that information was more readily available.

21. Furthermore, the parties stated that the number of competing convenience stores for each Target Company is likely to be significantly greater, as it was not feasible to map all possible competing convenience stores within each 5 km catchment area. The parties stated that if the catchment area was increased to a 10 km radius then the number of competing stores could only be greater.
22. Therefore, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to the narrowest potential geographic markets, i.e., the local areas in which each of the nine Target Companies are located.

Competitive Analysis

23. The Target Companies are based in the Greater Dublin Area⁸ and have a very small share of supply within the Greater Dublin Area, and an even smaller share of supply nationally, for the retail sale of grocery goods. The parties state the target stores would have a share of supply [0-5] % in the Greater Dublin Area and [0-5]% nationally.
24. For the reasons set out below, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in the potential relevant markets for the retail sale of grocery goods within the local areas of each of the Target Companies.
25. Based on information provided by the parties, there are a significant number of competitors within a 5 km radius of each of the Target Companies, as shown below:
 - 15/17 Lower O'Connell Street, Dublin: there will be no less than 40 competing grocery retailers within a 5 km radius of the target store, including *Spar* (9), *Centra* (3), *Lidl* (1), and *Dunnes Stores*. There are 12 *Circle K* forecourt

⁸ The Dublin Transport Authority Act 2008 has defined the Greater Dublin Area as including the counties of Dublin (Dublin City, South Dublin, Dún Laoghaire–Rathdown and Fingal), Meath, Kildare, and Wicklow.



convenience stores within 5 km of the target store. There are 6 Target Companies within 5 km of the target store.

- 36 Upper O'Connell Street, Dublin: there will be no less than 40 competing grocery retailers within a 5 km radius of the target store, including *Spar* (9), *Centra* (3), *Lidl* (1), and *Dunnes Stores*. There are 12 *Circle K* forecourt convenience stores within 5 km of the target store. There are 6 Target Companies within 5 km of the target store.
- Westmoreland Street, Dublin: there will be no less than 40 competing grocery retailers within a 5 km radius of the target store, including *Spar* (12), *Centra* (3), *Daybreak* (3), *SuperValu* and a *Tesco Express*. There are 12 *Circle K* forecourt convenience stores within 5 km of the target store. There are 6 Target Companies within 5 km of the target store.
- 49 Grafton Street, Dublin: there will be no less than 40 competing grocery retailers within a 5 km radius of the target store, including *Spar* (4), *Dunnes Stores* (2), *Tesco Express* (2), *Lidl*, and *SuperValu*. There are 7 *Circle K* forecourt convenience stores within 5 km of the target store. There are 6 Target Companies within 5 km of the target store.
- 4/5 College Green, Dublin; there will be no less than 40 competing grocery retailers within a 5 km radius of the target store, including *Spar* (7), *Centra* (4), *SuperValu*, *Lidl* and *Costcutter*. There are 7 *Circle K* forecourt convenience stores within 5 km of the target store. There are 6 Target Companies within 5 km of the target store.
- 16 Nassau Street, Dublin: there will be no less than 40 competing grocery retailers within a 5 km radius of the target store, including *Spar* (7), *Centra* (4), *Dunnes Stores*, *Tesco Express* (2), *Euro Giant* and *Costcutter*. There are 7 *Circle K* forecourt convenience stores within 5 km of the target store. There are 6 Target Companies within 5 km of the target store.
- Unit 24, Oak Road Business Park, Dublin: there will be no less than 25 competing grocery retailers within a 5 km radius of the target store, including *Dunnes*



Stores, Polonez, Centra (2), Applegreen, Tesco Express and Aldi (2). There are 10 *Circle K* forecourt convenience stores within 5 km of the target store. There are no Target Companies within 5 km of the target store.

- Fonthill Retail Park, Dublin: there will be no less than 25 competing grocery retailers within a 5 km radius of the target store, including *Lidl, Marks and Spencer, SuperValu (2), Eurospar,* and *Centra (2).* There are 6 *Circle K* forecourt convenience stores within 5 km of the target store. There are no Target Companies within 5 km of the target store.
- Sandyford, Dublin (Sandyford U1/2, Londis): there will be no less than 25 competing grocery retailers within a 5 km radius of the target store, including *Londis (2), SuperValu, Centra (2), Dunnes Stores* and *Maxol.* There are 2 *Circle K* forecourt convenience stores within 5 km of the target store. There are no Target Companies within 5 km of the target store.

26. As shown above, there are not less than between 25 to 40 competing grocery retail stores within a 5 km radius of each of the Target Companies. The parties state in the notification that in reality the number of competing grocery retail stores for each target store is likely to be significantly greater as it has not been feasible to map all possible competing grocery retail stores (e.g. large supermarkets, medium sized shops and smaller shops) within each relevant local area.

27. Furthermore, the parties submit that the Target Companies are involved in convenience retailing, which would fall within the category of ‘convenience’ of retail grocery stores (as described in paragraph 16 above). In contrast, the stores operated by Ard Services fall within the category of forecourt convenience stores associated with the retail sale of motor fuels. Whilst there is overlap in the types of product being sold by both the Target Companies and Ard Services’ forecourt convenience stores, the customer profile for each set of stores is different. The parties state in the notification that the Target Companies are mainly located in Dublin city centre and as such are predominantly pedestrian and ‘walk-in’ trade, while more than [50-60]% of Ard Services’ forecourt convenience store customers travel to the forecourt convenience stores by vehicle, and such customers may purchase motor fuel. This indicates that the customer base/profile



associated with the Target Companies and the customer base/profile associated with Ard Services' forecourt convenience stores is different.

28. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in the potential market for the retail sale of grocery goods within the local areas in which each of the Target Companies are located.

Vertical Relationship

29. The parties state in the notification that there is no vertical relationship between the parties in the State. The Commission has not identified any vertical relationships between the parties in the State.
30. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

31. 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

32. Clause [...] of the SPA contains non-compete and non-solicitation obligations on [...] and [...]. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission⁹. The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction.

⁹ In this respect, the CCPC follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its "Commission Notice on restrictions directly related and necessary to concentrations" [2005] OJ C56/03 (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XC0305%2802%29>).



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 Ard Services Limited an indirect wholly-owned subsidiary of Circle K Ireland Holding Limited would acquire the entire issued share capital and thus sole control of each of nine trading companies from Griffin Property Holdings Limited which operate *Londis*-branded grocery retail stores namely Griffin on Grafton Limited, Kram Supermarkets Limited, Griffin Frontpage Limited, Carleismo Limited, Westender Limited, Griffin on the Green Limited, Sontip Limited, Crestcliff Limited and Griffin Central 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