

DETERMINATION OF MERGER NOTIFICATION -M/22/030 – BGF/DPB MEATS/STILLORGAN TRADING POST

Section 21 of the Competition Act 2002

Proposed acquisition by BGF Investments LP and BGF Ireland 1A LP, funds managed or advised by BGF Investment Management Limited, of a minority equity stake in DPB Meats Limited and the interrelated proposed acquisition by DPB Meats Limited of the entire issued share capital of Stillorgan Trading Post Limited.

Dated: 23 June 2022

1. On 7 June 2022 in accordance with s18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission received a notification of the proposed acquisitions whereby: (i) BGF Investments LP and BGF Ireland 1A LP (together “BGF”), as funds managed or advised by BGF Investment Management Limited, would acquire a 26.597% equity stake in DPB Meats Limited (“DPB Meats”); and, (ii) contemporaneously, DPB Meats would acquire the entire issued share capital of Stillorgan Trading Post Limited t/a Swift Fine Foods (“Stillorgan TP”) (the “Proposed Transaction”).¹

2. The business activities of the undertakings involved are:

BGF:

- BGF is an investor of equity capital in growing SME companies, backing entrepreneurs and innovators in the State and the United Kingdom. BGF invests in companies including earlier stage businesses, growth-stage businesses and quoted companies across multiple sectors including technology, consumer products & e-commerce, industrial, business & support services, life sciences, green growth, retail, leisure & hospitality, construction, health & education, media & marketing, infrastructure, transport & logistics, and energy & resources.

DPB Meats:

¹ The parties have confirmed that the two transactions are interrelated and interdependent.

- DPB Meats is currently solely controlled by Murtoa Holding Company ULC, which in turn is owned by Brian O’Leary (50%) and David O’Leary (50%). DPB Meats is a retail vendor of ready-meals and craft butchery products in Ireland. DPB Meats distributes ready meals under the “*Fit Foods*” brand to retailers in Ireland and operates six craft butcher outlets in the greater Dublin and Louth areas, with stores in Swords, Artane, Blanchardstown and Drogheda, selling meat products direct to consumers. DPB Meats also operates an online sales channel and vending sales channel selling a range of healthy ready meals under its “*Fit Foods*” brand direct to consumers.

Stillorgan TP:

- Stillorgan TP trades as Swift Fine Foods and is a manufacturer of chilled and frozen ready meals for customers in the retail and food service sectors in the UK and Ireland. It operates from its manufacturing facility located at Lough Egish Food Park, Castleblayney, Co. Monaghan. Stillorgan TP manufactures DPB Meats’ “*Fit Food*” range of ready meals on a sub-contract basis. Stillorgan TP also manufactures ready meals on a white label basis for a number of retailers including [...]. Stillorgan TP also sell its own “*Chef’s Cuisine*” branded range of ready meals through retailers.
3. After examination of the notification, the Commission has considered that the Proposed Transaction falls within the scope of paragraph 2.1 of the Simplified Merger Notification Procedure Guidelines for assessing certain notifiable mergers or acquisitions under section 18(1)(a) of the Act since: (i) BGF is not active in the same product or geographic markets as DPB Meats or Stillorgan TP; (ii) DPB Meats and Stillorgan TP are active in the same product and geographic market, but their combined market share is less than 15%; and (iii) Stillorgan TP is active in markets which are potentially upstream to markets in which DPB Meats is active, but both DPB Meats and Stillorgan TP estimated shares of supply in each market is less than 25%.
 4. In the light of this, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

5. In the notification the parties notified Clause 13 of the Investment Agreement and Clause 11 of Share Purchase Agreement as containing ancillary restraints. Following assessment by the Case team, the parties were informed that certain aspects of the notified clauses were not considered as non-compete and non-solicitation clauses. The parties withdrew the notification of Clauses 13.3.5(b), 13.3.5(c), 13.4, 13.5 and 13.6 of the Investment Agreement and Clauses 11.2(a) to 11.2(c), and Clauses 11.4 to 11.7 of the SPA as ancillary restraints.
6. Clauses 13.1, 13.2, 13.3.1 to 13.3.3, and 13.3.5 (a) of the Investment Agreement impose non-compete and non-solicitation obligations. The Commission notes that restrictions in clauses 13.1, 13.2, 13.3.1 to 13.3.3, and 13.3.5 (a) are limited in scope and do not exceed the maximum duration acceptable to the Commission and are therefore directly related and necessary to the implementation of the Proposed Transaction.
7. Clause 13.3.4 of the Investment Agreement states that “[...]”. The Commission considers clause 13.3.4 of the Investment Agreement not to be a ‘non-compete’ or ‘non-solicitation’ clause. For this reason, the Commission considers that this is not an ancillary restraint and therefore will not benefit from the protections offered by sections 4(8) and 5(3) of the Act.
8. Clauses 11.1 and 11.3 of Share Purchase Agreement contains non-compete and non-solicitation obligations. The duration, a period of [...], of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission.² The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction as far as they relate to the State.
9. Clause 11.2(d) of Share Purchase Agreement appears to have a duration of [...] and therefore exceeds the maximum duration acceptable to the Commission. For this reason, the Commission has considered that Clause 11.2(d) of the Share Purchase Agreement is not directly related to and necessary to the implementation of the Proposed Transaction.

² In this respect, the CCPC follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see [http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)

Therefore, Clause 11.2(d) of the Share Purchase Agreement will not benefit from the protections offered by sections 4(8) and 5(3) of the Act.

Determination

10. 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 acquisitions whereby: (i) BGF Investments LP and BGF Ireland 1A LP, as funds managed or advised by BGF Investment Management Limited, would acquire a 26.597% equity stake in DPB Meats Limited; and (ii) contemporaneously, DPB Meats Limited would acquire the entire issued share capital of Stillorgan Trading Post Limited t/a Swift Fine Foods, 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

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