

DETERMINATION OF MERGER NOTIFICATION M/22/055 – MUSGRAVE / ITALICATESSEN

Section 21 of the Competition Act 2002

Proposed acquisition by Musgrave Limited of sole control of Italicatessen Limited and Italicatessen UK Limited.

Dated 18 November 2022

Introduction

1. On 11 October 2022, 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 Musgrave Limited (“Musgrave”), a wholly-owned subsidiary of Musgrave Group plc (“Musgrave Group”), would acquire sole control of Italicatessen Limited (“Italicatessen”) and Italicatessen UK Limited (together, the “Target Companies”) from P.E.Q Food Limited (the “Seller”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share purchase agreement dated 10 October 2022 between Musgrave and the Seller (the “SPA”). Pursuant to the SPA, Musgrave will acquire the entire issued share capital, and thus sole control, of the Target Companies from the Seller.

The Undertakings Involved

The Acquirer – Musgrave

3. Musgrave is the main operating entity within Musgrave Group, a food retail, wholesale and food-service group active on the island of Ireland and in Spain. Musgrave is principally a wholesaler-franchisor and operates through franchise agreements with independently-owned retail stores.



4. Musgrave Group, through its subsidiaries, owns a number of brands across the food retail, wholesale and foodservice sectors in the State, including *SuperValu*, *Centra*, *Donnybrook Fair*, *La Rousse Foods*, *Musgrave Marketplace* and *Daybreak*. Musgrave Group also operates cash and carry and retail outlets on the island of Ireland and in Spain.
5. For the financial year ending 31 December 2020, Musgrave Group's worldwide turnover was approximately €4.5 billion, of which approximately €3.8 billion was generated in the State.

The Target Companies – Italicatessen and Italicatessen UK Limited

6. The Target Companies are importers and distributors of Italian food and wine to the food retail and foodservice sectors. The Target Companies are currently part of an international group¹ operating in the food distribution, agri-food and tourism sectors in Ireland, the UK and Italy.
7. Italicatessen was founded in 2002 and is headquartered in Newtownmountkennedy, Co. Wicklow. Italicatessen imports and distributes Italian foods and wines to the food retail and foodservice sectors in Ireland. Italicatessen UK Limited is not active in the State.
8. For the financial year ending 31 December 2020, Italicatessen's worldwide turnover was approximately €[...], all of which was generated in the State.
9. For the financial year ending 31 December 2020, Italicatessen UK Limited's worldwide turnover was approximately €[...], none of which was generated in the State.

Rationale for the Proposed Transaction

10. The parties state in the notification:

“From Musgrave’s perspective, the Proposed Transaction is considered an attractive investment opportunity. The acquisition of

¹ The Target Companies are owned by the Seller, which is a subsidiary of P.E.Q. Holdings Limited.



Italicatessen will complement Musgrave's existing business and provide Musgrave with the opportunity to further optimize its product offering for its food service and retail customers, [...]."

"The Proposed Transaction also represents an opportunity for the current shareholders of the Target Companies to realise a fair valuation for their shareholding in these businesses, while ensuring that the Target Companies can continue to develop with an existing trading partner with the scale and expertise to manage the business and develop customer relationships."

Third-Party Submissions

11. No third-party submissions were received.

Competitive Analysis

Horizontal Overlap

12. There is a horizontal overlap between the activities of the parties as both Musgrave Group and Italicatessen are active in the food distribution sector in the State.
13. Musgrave is a full-line distributor supplying a wide range of food and drink products to the food retail and foodservice sectors.² Italicatessen is a specialist distributor providing a range of Italian food and drink products to the foodservice and food retail sectors.³

Relevant Product Market

14. 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 the precise relevant product market or markets because doing so will not

² See Musgrave Marketplace's website for an overview of the range of products it supplies, accessible at <https://www.musgravemarketplace.ie/home>

³ See Italicatessen's website for an overview of the range of products it supplies, accessible at: <https://www.italicatessen.ie/>



alter the Commission's assessment of the competitive impact of the Proposed Transaction.

15. The Commission has previously considered the food distribution sector in *M/17/067 – Musgrave/ La Rousse*.⁴ In that Determination, the Commission ultimately left the precise market definition open, but assessed the competitive impact of that transaction by reference to two potential product markets: (1) the supply of food and drink products to the foodservice sector; and (2) the supply of food and drink products to the food retail sector.
16. Bord Bia considers that the term foodservice can be used to describe “*all food and drink consumed out of home. It includes everything from restaurants, pubs, hotels and coffee shops to workplace, hospitals and education catering.*”⁵ In *M/17/067 – Musgrave/ La Rousse*, the Commission considered that the supply of food and drink to the foodservice sector included foodservice distributors. Foodservice distributors (such as Musgrave) source products from foodservice suppliers (who produce and/or sell products to foodservice distributors), before supplying these products on to foodservice operators, such as restaurants, pubs, and hotels. There are a number of full-line foodservice distributors which supply a wide range of products in State. There are also a number of specialised foodservice distributors which supply a smaller range of products.
17. The food retail sector includes a range of businesses which offer food and drink products to end consumers. Businesses within the food retail sector include large supermarkets such as *Tesco, Dunnes Stores, Lidl, Aldi, and SuperValu*, as well as smaller retail groups, such as *Centra* and *Mace*, and independent retailers.
18. The Commission has, in the course of its analysis of the Proposed Transaction, found no reason to depart from its approach in *M/17/067 – Musgrave/ La Rousse* and has,

⁴ Accessible at <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m17067-musgravela-rousse-foods/>

⁵ Bord Bia (2021). *Irish Foodservice: Market & Consumer Insights 2021*, p. 9. Accessible at https://www.bordbia.ie/globalassets/irish-food-service-2021/2021_irish-foodservice-marketconsumer-insights-report.pdf



accordingly, assessed the competitive effects of the Proposed Transaction by reference to two potential product markets:

- (i) the supply of food and drink products to the foodservice sector; and
- (ii) the supply of food and drink products to the food retail sector.

Relevant Geographic Market

19. 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 the precise relevant geographic market because doing so will not alter the Commission's assessment of the competitive impact of the Proposed Transaction.
20. In *M/17/067 – Musgrave/ La Rousse*⁶, while ultimately leaving the precise geographic market definition open, the Commission considered both the supply of food and drink products to the foodservice sector and the supply of food and drink products to the food retail sector on a national basis.
21. The Commission has, in the course of its analysis of the Proposed Transaction, found no reason to depart from its approach in *M/17/067 – Musgrave/ La Rousse* and has, accordingly, assessed the competitive effects of the Proposed Transaction on a national basis.

Conclusion on relevant markets

22. For the purposes of carrying out its competitive assessment of the Proposed Transaction, the Commission analysed its impact by reference to two potential markets:
 - (i) The supply of food and drink products to the foodservice sector in the State; and
 - (ii) The supply of food and drink products to the food retail sector in the State.

⁶ Accessible at <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m17067-musgravela-rousse-foods/>



Competitive Analysis – Horizontal

Supply of Food and Drink Products to the Foodservice Sector

23. The parties provided 2021 market share estimates for the supply of food and drink products to the foodservice sector in the State that were based on a Bord Bia Report.⁷ Within the supply of food and drink products to the foodservice sector in the State in 2021, Musgrave has an estimated [20-25%] market share, while Italicatessen has an estimated [0-5%] market share. Consequently, the Proposed Transaction would result in a minimal increase in Musgrave's market share in the supply of food and drink products to the foodservice sector. Furthermore, there are several suppliers which will continue to operate as a competitive constraint on Musgrave in relation to the supply of food and drink products to the foodservice sector in the State following the Proposed Transaction, including BWG Foods UC ("BWG") ([5-10%] market share), Sysco Ireland ("Sysco") ([15-20%] market share) and Lynas Foodservice ("Lynas") ([0-5%] market share).⁸
24. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in relation to the supply of food and drink products to the foodservice sector in the State.

Supply of Food and Drink Products to the Food Retail Sector in the State

25. There is a horizontal overlap between the parties in relation to the supply of food and drink products to the food retail sector. The Commission has previously noted that independent market share data at the wholesale level is not readily available.⁹ In this

⁷ Bord Bia (2021). *Irish Foodservice: Market & Consumer Insights 2021*, p. 34, accessible at https://www.bordbia.ie/globalassets/irish-food-service-2021/2021_irish-foodservice-marketconsumer-insights-report.pdf

⁸ BWG, Sysco and Lynas' market shares in the supply of food and drink products to the foodservice sector are based on the parties' estimates and the Bord Bia Report (see footnote 7).

⁹ See the Commission's determination in M/18/009 – BWG/4 Aces, accessible at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/02/M-18-009-Full-Determination-BWG-4-Aces-1.pdf>



case, the Commission was unable to verify the market share estimates provided by the parties.

26. Italicatessen generated sales of approximately €[...] to the food retail sector in 2021, while Musgrave generated sales of approximately €[...] to the food retail sector in 2021.¹⁰ In addition to the parties, there is a range of distributors active in the State, including full-line distributors such as BWG, Sysco and Lynas, and Italian product-focused suppliers, such as Little Italy, K&C Norton Foods and The Italian Pantry. Nonetheless, and on a conservative basis, if the total value of the supply of food and drink products to the food retail sector was the combined sales revenue of the parties in 2021, Italicatessen's market share is less than [0-5%]. Therefore, the parties' sales revenue figures suggest that Italicatessen is not a significant competitor in the supply of food and drink products to the food retail sector in the State. Furthermore, following the Proposed Transaction, there will remain a number of suppliers in the State, such as BWG, Sysco and Lynas, that will continue to provide a competitive constraint to Musgrave in the supply of food and drink products to the food retail sector in the State.
27. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in relation to the supply of food and drink products to the food retail sector in the State.

Vertical Relationship

28. There is an existing vertical relationship between the parties. Musgrave purchases a number of Italian food and drink products from Italicatessen which Musgrave resells through its retail stores.

Supply of Food and Drink Products to the Foodservice Sector

29. The Commission considers that the Proposed Transaction is unlikely to give rise to vertical foreclosure concerns in relation to the supply of food and drink products in the foodservice sector for the following reasons:

¹⁰ Musgrave (including its independent retailers) is Italicatessen's largest customer in the food retail sector, and represents approximately [...] of Italicatessen's overall sales.

- Input foreclosure: With regard to the supply of food and drink products to the foodservice sector, Italicatessen is a minor supplier. There remain numerous suppliers of the foodservice sector following the Proposed Transaction, including large suppliers such as BWG, Sysco and Lynas, and Italian product-focused suppliers, such as Little Italy, K&C Norton Foods and The Italian Pantry. Consequently, the Commission considers that input foreclosure in the supply of food and drink products in the foodservice sector as a result of the Proposed Transaction is unlikely.
- Customer foreclosure: Musgrave's foodservice operations are limited to delicatessens/cafes located within *SuperValu*, *Centra* and *Donnybrook Fair* stores. All of these stores contain delicatessen counters and coffee machines, whilst some also contain cafes for shoppers to dine in. Additionally, Musgrave owns two *Frank and Honest* branches which operate outside of its retail stores as stand-alone cafes. Considering Musgrave's minor participation in the foodservice market in the State and Italicatessen's small size as a supplier to the foodservice sector in the State, the Commission considers that customer foreclosure in the supply of food and drink products in the foodservice sector as a result of the Proposed Transaction is unlikely.

Supply of Food and Drink Products to the Food Retail Sector

30. The Commission considers that the Proposed Transaction is unlikely to give rise to vertical foreclosure concerns in relation to the supply of food and drink products in the food retail sector for the following reasons:

- Input foreclosure: With regard to the supply of food and drink products to the food retail sector, Italicatessen is a minor supplier. Furthermore, Musgrave (including its independent retailers) currently represents Italicatessen's largest retail customer, with Italicatessen making minor sales to Musgrave's retail competitors.¹¹ There remain numerous suppliers of the food retail sector

¹¹ Musgrave accounts for approximately [...] % of Italicatessen's overall sales. Information provided by the parties indicated that sales to Musgrave's retail competitors accounted for less than [...] of Italicatessen's overall sales.

following the Proposed Transaction, including large suppliers such as BWG, Sysco and Lynas, and Italian product-focused suppliers, such as Little Italy, K&C Norton Foods and The Italian Pantry. Consequently, the Commission considers that input foreclosure in the supply of food and drink products to the food retail sector in the State is unlikely.

- Customer foreclosure: Musgrave has an estimated [20-25%] share in the downstream grocery sector.¹² Suppliers of food and drink to the food retail sector will continue to have access to a number of food retailers, such as *Tesco*, *Dunnes Stores*, *Lidl*, *Aldi* and others, who will continue to source food and drink products following the Proposed Transaction. Furthermore, *Italicatessen* is a minor supplier, which primarily supplies Musgrave. Musgrave currently sources Italian food and drink products from a wide range of suppliers, and intends to continue to do so following the Proposed Transaction. Consequently, the Commission considers that customer foreclosure in the supply of food and drink products in the food retail sector is unlikely.

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

Conclusion of Competitive Analysis

32. 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

33. The SPA contains certain restrictive non-compete and non-solicitation obligations on the Seller and the Seller's parent company including clauses 15 (a), (b) and (e).

¹² The grocery sector includes the provision of products beyond food and drink products. Nonetheless, given the lack of independent market share data relating to the food retail sector, the Commission, in this instance, used grocery market share estimates to inform its analysis of the potential for customer foreclosure in the supply of food and drink products to the food retail sector. See Kantar data, accessible at <https://www.kantarworldpanel.com/grocery-market-share/ireland/snapshot/02.10.22/>. The Kantar data only lists the market shares for *Supervalu*, one of Musgrave's retail chains. Consequently, Musgrave's share may be higher when *Centra* and *DonnyBrook Fair* are included.



34. The Commission notes that Clause 15 (a), (b) and (e) of the SPA are limited in scope and do not exceed the maximum duration acceptable to the Commission. The Commission considers the restrictions contained in Clause 15 (a), (b) and (e) to be directly related and necessary to the implementation of the Proposed Transaction, in so far as they relate to the State.



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 Musgrave Limited, a wholly-owned subsidiary of Musgrave Group plc, would acquire the entire issued share capital, and thus sole control, of Italicatessen Limited and Italicatessen UK Limited from P.E.Q Food 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