



DETERMINATION OF MERGER NOTIFICATION M/22/065 – MUSGRAVE/CAULFIELD

Section 21 of the Competition Act 2002

Proposed acquisition by Musgrave Limited of Caulfield Supermarket Unlimited Company and certain properties and property management companies.

Dated 24 March 2023

Introduction

1. On 29 November 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”) would acquire sole control of: (i) Caulfield Supermarket Unlimited Company (“CSUC”); (ii) the properties described as and located at: Riverview Shopping Centre, Co. Cork; Loughboy Shopping Centre Co. Kilkenny; and The Hypercentre, Co. Waterford; (the “Shopping Centre Properties”) and (iii) the management companies of the Shopping Centre Properties, namely: Riverview Shopping Centre Management Limited; Loughboy Shopping Centre Management Limited; and Hypercentre Property Management Limited (the “Shopping Centre Property Management Companies”) (“the Proposed Transaction”). CSUC, the Shopping Centre Properties and the Shopping Centre Property Management Companies are collectively referred to as the “Target”. The Supervalu stores owned by the Target in each respective Shopping Centre Property are collectively referred to as the “Target Stores”.

The Proposed Transaction

2. The Proposed Transaction will be implemented by way of the following agreements:
 - (a) The acquisition of CSUC is to be implemented pursuant to a share purchase agreement dated 21 November 2022 between Caulfield McCarthy Group Retail Limited, [...] and Musgrave (the “CSUC SPA”).



- (b) The acquisition of each Shopping Centre Property is to be implemented pursuant to a property contract dated 21 November 2022 between each Shopping Centre Property's vendors and Musgrave (the "Property Contracts").
 - (c) The acquisition of the Shopping Centre Property Management Companies is to be implemented pursuant to a share purchase agreement dated 21 November 2022 between Balfort Limited, [...], and Musgrave (the "ManCo SPA").
3. Pursuant to the CSUC SPA, the Property Contracts and the ManCo SPA, Musgrave will acquire 100% of the issued share capital and thus sole control of the Target.

The Undertakings Involved

The Acquirer – Musgrave

- 4. Musgrave is the main operating entity within Musgrave Group Public Limited Company ("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.
- 5. 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.
- 6. For the financial year ending 31 December 2022, Musgrave Group's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

The Target

- 7. The principal activity of the Target is the operation of three retail grocery stores currently operating as franchises under the 'Supervalu' brand, as "Caulfield's SuperValu" and which are located in each of the Shopping Centre Properties.
- 8. The principal activity of each Shopping Centre Management Company is as follows:



- a. Riverview Shopping Centre Management Limited is active in the operation and management of the Riverview Shopping Centre, located at Bandon, Co. Cork which contains the Target Store and sixteen leased units including a hair salon, pharmacy, optician and post office;
 - b. Loughboy Shopping Centre Management Limited is active in the operation and management of the Loughboy Shopping Centre, located at Kilkenny, Co. Kilkenny which contains the Target Store and ten leased units including a butcher, a pharmacy, Kilkenny County Council library and a post office; and
 - c. Hypercentre Property Management Limited is active in the operation and management of The Hypercentre located at Morgan Street, Co. Waterford which contains the Target Store and eleven leased units including a pharmacy, barber, retail travel agent and a post office.
9. For the financial year ending 31 March 2022, the Target's turnover was approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

10. The parties state the following in the notification:

“It is Musgrave’s intention to maintain a presence of the SuperValu brand in the existing Target Store locations to ensure that the SuperValu brand continues to provide a service to customers in the Target areas.

From the perspective of the Beneficial Owners,¹ [...]”.²

Contact with the Undertakings Involved

11. On 6 January 2023, the Commission served a Requirement for Further Information (“RFI”) on each of Musgrave and CSUC 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.

¹ The Beneficial Owners are defined in the notification as [...].

² See paragraph 2.7.1 of the notification.



12. Upon receipt of full responses from both Musgrave and CSUC, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act)³ became 13 February 2023.
13. During its investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the parties.

Third-Party Submissions

14. No third-party submissions were received.

Competitive Analysis

Horizontal Overlap

15. In the notification, the parties state that Musgrave is active in the market for the retail sale of grocery goods, as it operates [...] supermarkets under the *Supervalu* brand, [...] under the *Centra* brand and 6 under the *Donnybrook Fair* brand, which are all company owned and company operated (the “Musgrave CoCo Stores”⁴).⁵ In the notification, the parties state that the Target is also active in the market for the retail sale of grocery goods, as it operates three grocery stores as franchises under the *Supervalu* brand.⁶
16. In the notification, the parties state that both Musgrave⁷ and the Target⁸ are active in the market for the supply of rentable retail space.
17. There is therefore a horizontal overlap between the parties in respect of: (i) the retail sale of grocery goods, and; (ii) the supply of rentable retail space.

Vertical Relationship

18. There is a vertical relationship between Musgrave and the Target in respect of the supply of rentable retail space as the Target supplies rentable retail space and Musgrave rents properties from third parties.

³ The “appropriate date” is the date from which the time limits for making Phase 1 or Phase 2 determinations begin to run.

⁴ Musgrave CoCo Stores refer to those stores which are both owned and operated by Musgrave, as opposed to being owned by Musgrave and operated by a franchise (“Musgrave Franchise Stores”).

⁵ See paragraph 3.3.2 of the notification.

⁶ See paragraph 3.3.4 of the notification.

⁷ See paragraph 4.1.2 of the notification.

⁸ See paragraph 3.3.5 of the notification.



19. There is also a vertical relationship between Musgrave and the Target in respect of the wholesale supply of grocery goods, as Musgrave is active in the wholesale supply of grocery goods and the Target Stores are active in the retail sale of grocery goods.

The Operation of Musgrave CoCo and Franchise Stores

20. The Target has a franchise agreement with Musgrave and operates its three retail grocery stores as franchises under the *Supervalu* brand. At present, Musgrave CoCo Stores and Musgrave Franchise Stores, such as those owned by the Target, [...]. The franchise relationship means that at the retail level, Musgrave CoCo Stores and Musgrave Franchise Stores do not compete in a manner that retail grocery stores that are not part of a franchise group would be expected to. Musgrave CoCo Stores and Musgrave Franchise Stores do not differ substantially in terms of: [...], as discussed below.

(i) **Pricing:** The parties informed the Commission that both Musgrave CoCo Stores and Musgrave Franchise Stores tend to, in the majority of cases [...].⁹ According to the parties, both Musgrave CoCo Stores and Musgrave Franchise Stores do have the ability to [...]. Therefore, the pricing structure of the Target Stores will not differ substantially following implementation of the Proposed Transaction.

(ii) **Product Offering:** The Target Stores are [...]. Although Musgrave CoCo Stores do not have comparable requirements or agreements with Musgrave, they tend to purchase a higher percentage of their products from Musgrave.¹⁰ Following implementation of the Proposed Transaction, the Target Stores will continue to operate as *Supervalu* stores, and continue to have the vast majority of their grocery goods supplied by Musgrave.

(iii) **Promotions:** Musgrave CoCo Stores generally partake in all promotional activity offered by Musgrave. Musgrave Franchise Stores [...]. With regard to the Target Stores, the Target informed the Commission that they generally participate in

⁹ Email from CSUC to the Commission, dated 17 February 2023. [...].

¹⁰ Musgrave's response to Question 9(a) of its RFI.



promotional activity offered by Musgrave, and [...].¹¹ In the RFI Response, CSUC noted the following “[...]”.¹² In its RFI Response, Musgrave stated “[...]”.¹³

Market Definition

Relevant Product Market

Retail Sale of Grocery Goods and General Merchandise

21. The Commission defines the market to the extent necessary depending on the particular circumstances of a given case. The Commission and its predecessor, the Competition Authority, have previously considered that the appropriate definition for groceries is the retail sale of grocery goods i.e., the retail sale of “*food and drink for human consumption and household necessities*”¹⁴, based on a finding in a report¹⁵ published by the Competition Authority in 2008 (“Grocery Report 1”).
22. In its determination in *M/21/071 - Tesco/Joyces* (“*Tesco/Joyces*”), the Commission defined the relevant product market as: “*the retail sale of grocery goods and general merchandise in Large and Small supermarkets*”.¹⁶ In that determination, the Commission categorised grocery retail outlets based on categories set out in Grocery Report 1, as follows:

1. “Hypermarkets” (greater than 2,500 square metres);
2. “Large Supermarkets” (1,000 to 2,500 square metres);
3. “Small Supermarkets” (400 to 1000 square metres); and
4. “Convenience shops” (up to 400 square metres).¹⁷

¹¹ CSUC’s response to its RFI.

¹² CSUC’s response to question its RFI.

¹³ Musgrave’s response to its RFI.

¹⁴ See paragraph 36 of *M/11/022 Musgrave/Superquinn*, available [here](#).

¹⁵ See page ix of *A Description of the Structure and Operation of Grocery Retailing and Wholesaling in Ireland: 2001 to 2006, Grocery Monitor: Report No. 1, March 2008*, available [here](#).

¹⁶ See paragraph 3.31 of *Tesco/Joyces*, available [here](#).

¹⁷ See Table 22 on page 76 of *Grocery Report 1* and paragraph 2.5 of *Tesco/Joyces*, available [here](#).



23. In *Tesco/Joyces*, the following descriptions were provided for Large Supermarkets and Small Supermarkets:

“Large supermarkets provide a much wider range of groceries and general merchandise than Convenience shops, and accordingly, are sometimes referred to as “one-stop shops.” Whilst the size of these outlets varies, one consistent characteristic of Large supermarkets is that a broad range of grocery and general merchandise products are available. Large supermarkets are often located outside towns and cities. As a result, they are able to utilise larger sites and provide additional amenities, including customer parking and often, motor fuel service stations.

Small supermarkets fall in between Convenience and Large supermarkets. They have a larger choice of groceries and general merchandise than Convenience shops but less choice than Large supermarkets. There is also more variation observed amongst Small supermarkets in terms of product range, location and additional amenities which are made available to customers at their locations.”¹⁸

24. For the purpose of assessing the likely competitive effects of the Proposed Transaction, and based on the information available to it, the Commission has followed the approach taken in *Tesco/Joyces*, and has assessed the likely competitive impact of the Proposed Transaction in a single potential market for the retail sale of grocery goods and general merchandise in Large Supermarkets and Small Supermarkets.

Wholesale Supply of Grocery Goods

25. The Commission defines the market to the extent necessary depending on the particular circumstances of a given case. The Commission and its predecessor, the Competition Authority, have previously identified a market for the wholesale supply of grocery goods.¹⁹

¹⁸ See paragraphs 2.7 and 2.8 of *Tesco/Joyces*.

¹⁹ See [M/08/014 - BWG/Mangan's](#) and [M/15/009 - BWG/Londis](#).



Additionally, in Grocery Report 1, three categories of grocery wholesaler were identified: (i) wholesaler/franchisors; (ii) cash and carry wholesalers; and, (iii) and buying groups.²⁰

26. It is not necessary for the Commission to define the precise relevant product markets since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the potential product markets are defined on a narrow basis or more broadly. Therefore, for the purpose of assessing the likely competitive effects of the Proposed Transaction, the Commission has followed the approach taken in *M/08/014 - BWG/Mangan's* (“*BWG/Mangan's*”) and *M/15/009 – BWG/Londis* (“*BWG/Londis*”), and assessed the likely competitive impact of the Proposed Transaction in the market for the wholesale supply of grocery goods.

Supply of Rentable Retail Space

27. The Commission defines the market to the extent necessary depending on the particular circumstances of a given case. The European Commission in *M.8229 - Hammerson/Irish Life/ILAC Shopping Centre*²¹ (the “*Hammerson Decision*”), considered, but ultimately left open, a relevant product market for the supply of rentable retail space. In this decision, the European Commission also considered “*shopping centres only of at least 8,000 or 10,000 sqm*” and “*shopping centres of all sizes*”.²²

28. The Commission has also previously considered the market for the supply of rentable retail space. In its determination in *M/16/004 – Dekabank/Whitewater Development*, the Commission assessed the competitive impact of that transaction in a potential market for the “*supply of rentable commercial property (i.e., retail premises)*.”²³ The *Hammerson Decision* and the *M/16/004 - Dekabank/Whitewater Development* determination were referred to in *M/17/046 – Hammerson/TEBA*, in which the Commission assessed the potential market for the supply of rentable retail space.²⁴

²⁰ See page 23 of Grocery Report 1.

²¹ See paragraph 18 of the *Hammerson Decision*, available [here](#).

²² See paragraph 17 of the *Hammerson Decision*, available [here](#).

²³ See paragraph 15 of *M/16/004 - Dekabank/Whitewater Development*, available [here](#).

²⁴ See paragraph 17 of *M/17/046 – Hammerson/TEBA*, available [here](#).



29. In *M/18/096 – Davy Target Investments/Navan SC*²⁵ and *M/20/033 – Goldman Sachs/Blanchardstown Shopping Centre*,²⁶ the Commission considered the markets for rentable retail space in shopping centres of at least 8,000 square metres.

30. The parties provided to the Commission the following sizes of the Shopping Centre Properties:

- The Hypercentre (Waterford): 6,604 sqm;
- Loughboy Shopping Centre (Kilkenny): 3,198 sqm; and,
- Riverview Shopping Centre (Bandon, Cork): 8,682 sqm.

31. It is not necessary for the Commission to define the precise relevant product markets since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the potential product markets are defined on a narrow basis (e.g., a potential market for rentable retail space in shopping centres of a certain size) or more broadly (e.g., the potential market for the supply of all rentable retail space). For the purpose of assessing the likely competitive effects of the Proposed Transaction, the Commission has assessed the likely competitive impact of the Proposed Transaction in the potential market for the supply of all rentable retail space.

Relevant Geographic Market

Retail Sale of Grocery Goods and General Merchandise

32. In previous merger determinations, the Commission has identified possible local markets based on a 10-kilometre distance or a 10-minute drive time,²⁷ from the relevant target location for the purposes of assessing the competitive effects of a transaction in local markets.²⁸

²⁵ See paragraph 22 of *M/18/096 – Davy Target Investments/Navan SC*, available [here](#).

²⁶ See paragraph 24 of *M/20/033 – Goldman Sachs/Blanchardstown Shopping Centre*, available [here](#).

²⁷ For more, see: [M/11/022 – Musgrave/Superquinn](#); [M/17/050 – Joyce's/Nestors](#).

²⁸ For more, see: [M/18/079 Musgrave / Donnybrook Fair](#), [M/17/050 - Joyces/Nestors](#)



33. In *Tesco/Joyces*,²⁹ the Commission did not come to a definitive view on the relevant geographic market, however for the purposes of assessing that transaction, the Commission used a drive time catchment of 10 minutes from the target outlets.
34. It is not necessary for the Commission to define the precise relevant geographic markets since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the potential geographic markets are defined narrowly (e.g. a 10-minute drive time from each Target Store) or more broadly (e.g. regionally or state-wide). For the purpose of assessing the likely competitive effects of the Proposed Transaction, and based on the information available to it, the Commission has followed the approach taken in *Tesco/Joyces*, and has assessed the likely competitive impact of the Proposed Transaction in the potential market for the retail sale of grocery goods and general merchandise in Large Supermarkets and Small Supermarkets within a 10-minute drive time from each of the Target Stores.

Wholesale Supply of Grocery Goods

35. In its determinations in *BWG Foods/Londis*³⁰ and *BWG/Mangan's*,³¹ the Commission identified a national market for the wholesale supply of grocery goods.
36. It is not necessary for the Commission to define the precise relevant geographic markets in this instance. For the purpose of assessing the likely competitive effects of the Proposed Transaction, the Commission has followed the approach taken in previous determinations and has assessed the likely competitive impact of the Proposed Transaction on the wholesale supply of grocery goods in the State.

Supply of Rentable Retail Space

37. The European Commission, in the Hammerson Decision considered, but ultimately left open, whether real estate markets can be regarded as national, regional or local. For the purposes of considering the competitive effects of the transaction in the Hammerson

²⁹ See paragraphs 3.52 - 3.53 of *Tesco/Joyces*.

³⁰ See paragraph 48 of *BWG Foods/Londis*.

³¹ See paragraph 31 of *BWG/Mangan's*



Decision, the European Commission did so with reference to a geographic market of a 50km radius around Dublin City (the “Greater Dublin Area”).

38. In *M/17/046 – Hammerson/Teba*, *M/18/095 – Davy Target Investments/Navan SC* and *M/20/033 – Goldman Sachs/Banchardstown Shopping Centre*, the Commission did not define a precise relevant geographic market but considered the effects of each transaction with reference to the area within a 50-kilometre radius of the shopping centres or properties being considered in those determinations.

39. In this instance, the Commission does not need 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 relevant geographic market is defined broadly (i.e., encompassing the entire State) or narrowly (i.e., encompassing the area within 50 kilometres of each of the Shopping Centre Properties).

40. For the purpose of its competitive assessment of the Proposed Transaction, the Commission has followed the approach taken in previous determinations and assessed the likely competitive impact of the Proposed Transaction on the supply of rentable retail space within a 50-kilometre radius of the Shopping Centre Properties.

Conclusion on relevant markets

41. For the purposes of carrying out its competitive assessment of the Proposed Transaction, the Commission analysed its impact by reference to three potential markets:

- (i) The retail sale of grocery goods and general merchandise in Large Supermarkets and Small Supermarkets within a 10-minute drive-time from each of the Target Stores;
- (ii) The wholesale supply of grocery goods in the State; and,
- (iii) The supply of rentable retail space within a 50km radius of each of the Shopping Centre Properties.

Horizontal Overlap



The market for the retail sale of grocery goods and general merchandise in Large Supermarkets and Small Supermarkets.

Table 1: The Target Stores

Target Store	Size (square metres)	Size classification
Supervalu Hypercentre (Waterford)	[...]	Large Supermarket
Supervalu Loughboy (Kilkenny)	[...]	Large Supermarket
Supervalu Bandon (Cork)	[...]	Large Supermarket

Source: CSUC

42. As shown in Table 1 above, the Target Stores are all Large Supermarkets based on the classification of Large Supermarkets identified in Grocery Report 1 and applied by the Commission in *Tesco/Joyces*.

43. The Commission has applied the geographic market described at paragraph 34, i.e. a 10-minute drive time from each of the Target Stores which are Large Supermarkets, in order to identify whether any geographic overlap exists with an existing Musgrave CoCo Store or Musgrave Franchise Store.³²

(i) Stores with no geographic overlap

44. There is no Musgrave CoCo Store within a 10-minute drive of the Target Store located in Riverview Shopping Centre, Bandon, County Cork, thus no geographic overlap exists in this market.

45. In the absence of a geographic overlap between a Musgrave CoCo Store and the Target Store located in Riverview Shopping Centre, Bandon, County Cork, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the potential local market for the retail sale of grocery goods and general merchandise in Large Supermarkets and Small Supermarkets within a 10-minute drive-time

³² In this case, there are no other Musgrave Franchise Stores which are Large Supermarkets or Small Supermarkets within a 10-minute drive time of each of the Target Stores, and so the Commission's examination will only be in relation to existing Musgrave CoCo Stores which are Large Supermarkets or Small Supermarkets within a 10-minute drive time of each of the Target Stores.



of the Target Store located in Riverview Shopping Centre, Bandon, County Cork. As such, this potential market is not further considered in this determination.

(ii) Stores with geographic overlap

46. In the following locations, there is a geographic overlap between an existing Musgrave CoCo Store which is a Large Supermarket and a Target Store:

(a) Loughboy Shopping Centre, Kilkenny which is within a 10-minute drive time of one Musgrave CoCo Store which is a Large Supermarket at *Supervalu* Market Cross Centre, James' Street, Kilkenny³³; and,

(b) The Hypercentre, Waterford, which is within a 10-minute drive of one Musgrave CoCo Store which is a Large Supermarket at *SuperValu*, Kilbarry Centre, Tramore Road, Waterford.³⁴

47. Table 2 below details the Large and Small Supermarkets selling grocery goods at a retail level located within a 10-minute drive from each of these two Target Stores.

Table 2: Effective competitors within 10 minute drive time radius from the Target Stores

	Supervalu	Aldi	Lidl	Dunnes	Tesco	Total
Supervalu Loughboy (Kilkenny)	1	2	2	2	0	7³⁵
Supervalu Hypercentre (Waterford)	1	4	2	1	4	12³⁶

³³ Supervalu Loughboy is an approximately 9 minute drive from the Musgrave CoCo Store which is a Large Supermarket at Supervalu, Market Corss Centre, Kilkenny.

³⁴ Supervalu Hypercentre Waterford is an approximately 8-minute drive from the Musgrave CoCo Store which is a Large Supermarket at Supervalu, Kilbarry Centre, Waterford.

³⁵ The parties also identify a *Spar* located at Newpark Shopping Centre, Co. Kilkenny as a "large supermarket". The Commission does not have evidence that this store is greater than 1000 sqm and have left it out of the table to be conservative.

³⁶ Two of the *Tesco* stores (*Tesco* Ardkeen, and *Tesco* Ballybeg) and one *Aldi* store (*Aldi* Ardkeen) are approximately 9-10 minutes from Supervalu Hypercentre. Depending on the time of day the route is calculated due to traffic, these stores may, at certain times during the day appear to be between 10-14 minutes away from *Supervalu* Hypercentre.



Source: *The parties and the Commission*³⁷

48. In *Tesco/Joyces*, the Commission considered that *Aldi* and *Lidl* do pose a material price constraint on traditional grocery retailers but, as a result of their smaller product range, their focus on own branded goods, and their lack of in-store amenities, they likely pose an appreciably weaker constraint on large traditional grocery stores.³⁸

Supervalu Loughboy (Kilkenny)

49. As explained above in paragraph 20, the Target operates its retail grocery stores, including *Supervalu Loughboy*, under a franchise agreement with Musgrave. This franchise relationship means that *Supervalu Loughboy* and the Musgrave-owned *Supervalu*, Market Cross Centre do not compete closely with each other. *Supervalu Loughboy* and *Supervalu Market Cross Centre* do not differ substantially in terms of the price of the grocery goods, the products they offer, and their promotional activity. The Commission is of the view that, following implementation of the Proposed Transaction, the competitive landscape for consumers in this local market will not change. The number of fasciae under each supermarket brand will not change following implementation of the Proposed Transaction; there will only be a change in ownership.

50. Additionally, Table 2 above indicates that, following implementation of the Proposed Transaction, there will remain a number of competitors to Musgrave in respect of the sale of grocery goods within a 10-minute drive time of the Target Store, located at Loughboy, Kilkenny.

Supervalu Hypercentre (Waterford)

51. As explained above in paragraph 20, the franchise relationship which exists between the Target and Musgrave means that *Supervalu Hypercentre* and the Musgrave-owned *SuperValu*, Kilbarry Centre, do not compete closely with each other. *Supervlau Hypercentre* and *Supervalu Kilbarry Centre* do not differ substantially in terms of the price

³⁷ Based on drive time data provided by Google maps.

³⁸ See paragraph 3.28 of the *Tesco/Joyces* Determination.



of the grocery goods, the products they offer, and their promotional activity. The Commission is of the view that, following the implementation of the Proposed Transaction, the competitive landscape for consumers in this local market will not change. The number of fasciae under each supermarket brand will not change following implementation of the Proposed Transaction; there will only be a change in ownership.

52. Additionally, Table 2 above indicates that, following implementation of the Proposed Transaction, there will remain a number of competitors to Musgrave in respect of the sale of grocery goods within a 10-minute drive time of the Target Store, located at the Hypercentre, Waterford.

53. In light of the above, including that the competitive landscape will remain substantially unchanged following implementation of the Proposed Transaction, and the number of competitors that will remain within a 10-minute drive time of each of the Target Stores, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the market for the retail sale of grocery goods and general merchandise in Large Supermarkets and Small Supermarkets within a 10-minute drive-time from each of the Target Stores located in Loughboy Shopping centre, Co. Kilkenny and in the Hypercentre, Co. Waterford.

The market for the supply of rentable retail space

54. Both parties are active in the supply of rentable retail space in the State. Musgrave provide rentable retail space within a 50-kilometre radius of the Loughboy Shopping Centre.³⁹ This 181-square-metre rentable retail space is located at Mulligan's Pharmacy, Dublin Road, Thomastown, Kilkenny, and is currently being rented out to [...].⁴⁰ Musgrave do not supply any rentable retail space within a 50-kilometre radius of the Hypercentre or Riverview Shopping Centre.

55. The Target supplies rentable retail space in each of the three Shopping Centre Properties.

³⁹ Musgrave's response to Question 17 of its RFI response.

⁴⁰ Ibid. This space is approximately 16 kilometres away from the Loughboy Shopping Centre.



56. Due to the minimal nature of this overlap, i.e. that the area of the rentable retail space rented by Musgrave is only 181 square metres, the Commission is of the view that the Proposed Transaction does not raise any horizontal competition concerns in the market for the supply of rentable retail space in the State.

Vertical Overlap

The wholesale supply of grocery goods by Musgrave to the Target Stores

57. There is an existing vertical relationship between Musgrave and the Target in the State. Specifically, each of the Target Stores operate as a Musgrave Franchise Store, and purchase [...] % of their products from Musgrave.⁴¹ The Target Stores have purchased approximately [...] % of their goods from Musgraves since they entered into their respective licence agreements with Musgrave, which commenced on the following dates:⁴²

- The Loughboy Shopping Centre, Kilkenny, was entered into on [...];
- The Riverview Shopping Centre, Bandon, Co. Cork, was entered into on [...]; and,
- The Hypercentre, Waterford, was entered into on [...].

58. The remaining [...] % of products are provided to the Loughboy Supervalu from [...] other suppliers; to the Hypercentre from [...] other suppliers and to the Riverview Shopping Centre from [...] other suppliers.⁴³

59. The Commission is of the view that Musgrave is unlikely to have the ability or incentive to engage in the foreclosure of other wholesale suppliers of grocery goods in the State for the following reasons:

⁴¹ Paragraph 1.1.18(i) of the notification.

⁴² CSUC's response to Question 8 of its RFI.

⁴³ CSUC's response to Question 8 of its RFI.



- (a) The Proposed Transaction is unlikely to significantly alter the existing structure of the market, and therefore has a minimal competitive impact, as: (i) it internalises a pre-existing relationship and supply agreement between the parties, and; (ii) the Target Stores are currently operated as *Supervalu* stores, and will continue to be operated as *Supervalu* stores following implementation of the Proposed Transaction; and,
- (b) The parties state in the notification that the Target Stores hold a *de minimis* share in the retail sale of grocery goods in the State,⁴⁴ and that there are a number of other competitors to Musgrave at wholesale level in the State, including Barry Group, BWG Foods Unlimited Company, and buying groups who operate as wholesalers such as the Stonehouse Marketing Limited⁴⁵.

60. In light of the above, the Commission considers that the Proposed Transaction will not lead to any vertical foreclosure concerns in the market for the wholesale supply of grocery goods in the State.

The supply of rentable retail space by the Target and the renting of retail space by Musgrave

61. In the notification, the parties state that the Target supplies rentable retail space at each of the Shopping Centre Properties. Separately, Musgrave rents two properties from third parties within 50 kilometres of the Shopping Centre Properties. These properties are both used to operate *Supervalu* stores, and are located in: (i) *Supervalu* Kilbarry, Kilbarry Centre, Tramore Road, Waterford; and (ii) *Supervalu* Kilkenny, Market Cross Centre, James's St, Kilkenny.⁴⁶

62. Table 3 below contains the number of other suppliers of rentable retail space in shopping centres within 50 kilometres of each of the Shopping Centre Properties.⁴⁷

⁴⁴ Paragraph 5.3.4 (iv) of the notification.

⁴⁵ Page 42 of Grocery Report 1.

⁴⁶ Musgrave's response to Question 18 of the Musgrave RFI.

⁴⁷ Paragraph 5.2.6 of the notification.



Table 3: The number of suppliers of rentable retail space in shopping centres within 50km of each of the Shopping Centre Properties

Shopping Centre Property	Number of shopping centres providing rentable retail space within 50 kilometres
Hypercentre (Waterford)	6 ⁴⁸
Loughboy (Kilkenny)	6 ⁴⁹
Riverview (Bandon, Cork)	6 ⁵⁰

Source: the parties.

63. The Commission notes that two of the competing suppliers included in Table 3 above for the Hypercentre and Loughboy Shopping Centre are the same (City Square Shopping Centre, Waterford; and, Waterford Shopping Centre, Waterford). Table 3 also only considers suppliers of rentable retail space in shopping centres. Thus, it does not include the presumed many other suppliers providing rentable retail space outside of shopping centres in the relevant 50 kilometre catchment areas.

64. The Commission is of the view that, following completion of the Proposed Transaction, Musgrave is unlikely to have the ability or incentive to engage in the foreclosure of other providers of rentable retail space for the following reasons:

- (a) There are a number of other providers of rentable retail space within the respective catchment areas of each of the Shopping Centre Properties, for example, those outlined in Table 3, along with any other stand-alone rentable retail space units;

⁴⁸ These are: City Square Shopping Centre, Waterford; Waterford Shopping Centre, Waterford; Ardkeen Shopping Centre, Waterford; Ballinakill Shopping Centre, Waterford; Dungarvan Shopping Centre, Dungarvan; and, Showgrounds Shopping Centre, Clonmel.

⁴⁹ These are: McDonagh Junction Shopping Centre, Kilkenny; Newpark Shopping Centre, Kilkenny; Fairgreen Shopping Centre, Carlow; Thurles Shopping Centre, Thurles; City Square Shopping Centre, Waterford; and, Waterford Shopping Centre, Waterford.

⁵⁰ These are: Douglas Court Shopping Centre, Cork; Mahon Point Shopping Centre, Cork; Wilton Shopping Centre, Cork; Castlewest Shopping Centre, Cork; Blackpool Shopping Centre, Cork; and, Ballyvolane Shopping Centre, Cork.



- (b) The Proposed Transaction is unlikely to significantly alter the existing structure of the market, thus has a minimal competitive impact, as the Shopping Centre Properties will continue to be operated as shopping centres following implementation of the Proposed Transaction; and,
- (c) the minimal nature of the vertical relationship, as Musgrave rents only two properties within 50 kilometres of each of the three Shopping Centre Properties, and does not rent any property from the Target.

65. In light of the above, the Commission considers that the Proposed Transaction will not lead to any vertical foreclosure concerns in the market for the supply of rentable retail space.

Conclusion of Competitive Analysis

66. 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

67. Clause 11.1.1 of the CSUC SPA contains a non-compete obligation on the Seller⁵¹ and [...].⁵² The duration of that non-compete obligation does not exceed the maximum duration acceptable to the Commission⁵³. Therefore, the Commission considers that Clause 11.1.1 of the CSUC SPA is directly related to and necessary for the implementation of the Proposed Transaction, insofar as it relates to the State.

68. Clause 11.1.1 of the ManCo SPA contains a non-compete obligation on the Seller⁵⁴ and [...].⁵⁵ The duration of that non-compete obligation does not exceed the maximum

⁵¹ The Seller is Caulfield McCarthy Group Retail Limited.

⁵² [...].

⁵³ In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” [2005] OJ C56/24, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XC0305%2802%29>.

⁵⁴ The Seller is Balfort Limited.

⁵⁵ [...].



duration acceptable to the Commission. Therefore, the Commission considers that Clause 11.1.1 of the ManCo SPA is directly related to and necessary for the implementation of the Proposed Transaction, insofar as it relates 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 would acquire sole control of: (i) Caulfield Supermarket Unlimited Company; (ii) the properties described as and located at: Riverview Shopping Centre, Co. Cork; Loughboy Shopping Centre, Co. Kilkenny; and The Hypercentre, Co. Waterford; and (iii) Riverview Shopping Centre Management Limited, Loughboy Shopping Centre Management Limited, and Hypercentre Property Management 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