



# DETERMINATION OF MERGER NOTIFICATION

**M/23/006**

**DAWN MEATS/KILDARE CHILLING**

**20 September 2023**



Coimisiún um  
Iomáíocht agus  
Cosaint Tomhaltóirí

Competition and  
Consumer Protection  
Commission



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## 1. INTRODUCTION

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### Introduction

1.1 On 7 February 2023, 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 the proposed acquisition, whereby Dawn Meats Ireland Unlimited Company (“Dawn Meats”) would acquire sole control of Kildare Chilling Company Unlimited Company (Kildare Chilling”) (the “Proposed Transaction”). Dawn Meats and Kildare Chilling are collectively referred to as the “Parties” in this Determination.

### The Proposed Transaction

1.2 The Proposed Transaction is to be implemented pursuant to a share purchase agreement, dated 20 January 2023, between Dawn Meats, Dawn Meats Group Unlimited Company, [...] and [...] (the “SPA”). Following the implementation of the Proposed Transaction, Dawn Meats will acquire the entire issued share capital and thus sole control of Kildare Chilling.

### The Undertakings Involved

#### The Acquirer – Dawn Meats

1.3 Dawn Meats is active in the procurement and slaughtering of live animals and the processing and sale of meat products (beef and lamb) in the State. Dawn Meats is also active in the rendering of related by-products in the State.<sup>1</sup> Dawn Meats sells fresh cuts of meat, as well as processed products such as mince, burgers, ready-made meals and retail packs under a range of brands, including *Black Angus*, *Red*

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<sup>1</sup> Rendering refers to the conversion of waste animal tissue into usable materials. Dawn Meats’ rendering activities include the rendering down of bone and waste materials, while offal, hides and unprocessed carcasses are commodity products that can be sold separately and to different customers than primary cuts.

*Hereford, Charolais Gold, Nature’s Meadow, West Cork Beef, Dawn Chef and The Premium Butcher.*<sup>2</sup>

- 1.4 Beef accounted for [...] % of Dawn Meats’ sales in Ireland in 2021, while lamb accounted for [...] % during the same period.<sup>3</sup> The [...] of Dawn Meats’ domestic sales in 2021 were to the retail sector (supermarkets, butchers). Overall, most of Dawn Meats’ beef sales are for export.
- 1.5 Dawn Meats operates seven sites across the State, and one in Northern Ireland.<sup>4</sup> Each site’s location and operational focus is listed in Table 1 below. Dawn Meats also has production and sales operations across the United Kingdom, France, Germany, Italy, Spain, the Netherlands, Poland and Denmark.

*Table 1: Dawn Meats’ activities on the Island of Ireland*

Site	Slaughtering		Primary processing		Commodity trading	Rendering
	Beef	Lamb	Beef	Lamb		
Grannagh Co. Waterford		--		--		--
Carroll’s Cross Co. Waterford <sup>(1)</sup>	--	--		--	--	--
Rathdowney Co. Laois		--	--	--	--	--
Charleville Co. Cork		--		--	--	--
Ballyhaunis Co. Mayo					--	
Slane Co. Meath		--	--	--	--	--
Kilbeggan Co. Westmeath	--	--		--	--	--
Dungannon Co. Tyrone					--	--

Source: Merger Notification Form

<sup>2</sup> Dawn Meats also markets several other brands in the UK, namely *Caledonia Crown, Ridings Reserve, Highland Meats* and several *Dunbia* brands.

<sup>3</sup> Other meats accounted for the remainder of sales.

<sup>4</sup> Dawn Meats operates one site in County Tyrone.

- 1.6 Dawn Meats has been involved in two previous Commission merger reviews: *M/03/029 Dawn Meats/Galtee Meats*,<sup>5</sup> and *M/17/035 Dawn Meats/Dunbia*.<sup>6</sup> Both of these determinations are considered in more detail below.
- 1.7 For the financial year ending 31 December 2021, the worldwide turnover of the Dawn Meats' group<sup>7</sup> was approximately €[...], of which €[...] was generated in the State.

### The Target – Kildare Chilling

- 1.8 Kildare Chilling is also active in the procurement and slaughtering of live animals and the sale of meat products (beef and lamb) and related by-products. Kildare Chilling operates from a single slaughterhouse in Kildare town which focuses more on slaughtering lamb than cattle. The site has an annual capacity to slaughter [...] lambs (compared to [...] cattle) and to debone [...] cattle and [...] lambs.
- 1.9 Kildare Chilling markets its meat products under the *Kildara* and *Heritage Town* brands.
- 1.10 Lamb accounted for [...]% of Kildare Chilling's domestic sales in 2021, while beef accounted for the remaining [...]%.<sup>8</sup> Exports accounted for approximately [...]% of Kildare Chilling's total sales in 2021.<sup>9</sup>
- 1.11 For the financial year ending 31 March 2022, Kildare Chilling's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

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<sup>5</sup> Determination accessible at <https://www.ccpic.ie/business/wp-content/uploads/sites/3/2017/05/M-03-029-Galtee-Meats-Dawn-Meats-Public.pdf>

<sup>6</sup> Determination accessible at <https://www.ccpic.ie/business/wp-content/uploads/sites/3/2017/06/M-17-035-Dawn-Meats-Dunbia-Public-1.pdf>

<sup>7</sup> The Dawn Meats' group refers to the companies that are ultimately owned by QDB Holdings IOM Unlimited.

<sup>8</sup> By value.

<sup>9</sup> Almost [...]% of beef and approximately [...]% of lamb produced by Kildare Chilling in the financial year ending March 2022 was sold for export.

## Rationale for the Proposed Transaction

1.12 The Parties state the following in the Merger Notification Form<sup>10</sup>:

*“The proposed transaction has a strong underpinning commercial rationale and combines the complementary businesses of Dawn Meats and Kildare [Chilling].”<sup>11</sup>*

*“From Dawn Meats’ perspective, the acquisition of [Kildare Chilling] allows it to expand its base of raw materials, enabling it to better meet demand from the United Kingdom and the rest of Europe, in particular via greater opportunities to supply large international customers across the retail and food service industry. It is also expected that the Proposed Transaction will give rise to increased production efficiencies and better utilisation of the Kildare plant, with an expected initial capital injection of up to €10 million by Dawn Meats to modernise the plant.”<sup>12</sup>*

*“From the perspective of [Kildare Chilling’s] current sole shareholder, Mr Tom McParland, who is of retirement age [...]”<sup>13</sup>*

## Preliminary Investigation (“Phase 1”)

### Contact with the Undertakings Involved

1.13 On 20 March 2023, the Commission served a Requirement for Further Information (“RFI”) on each of Dawn Meats and Kildare Chilling pursuant to section 20(2) of the Act (the “Dawn Meats Phase 1 RFI” and the “Kildare Chilling Phase 1 RFI” respectively and together, the “Phase 1 RFIs”). The service of the Phase 1 RFIs

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<sup>10</sup> “Merger Notification Form” refers to the merger notification form relating to the Proposed Transaction, as was submitted to the Commission on 7 February 2023.

<sup>11</sup> Merger Notification Form, paragraph 5.

<sup>12</sup> Merger Notification Form, paragraph 6.

<sup>13</sup> Merger Notification Form, paragraph 7.



adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.

- 1.14 Dawn Meats provided a full response to the Dawn Meats Phase 1 RFI on 8 May 2023 (the “Dawn Meats Phase 1 RFI Response”).
- 1.15 Kildare Chilling provided a full response to the Kildare Chilling Phase 1 RFI on 12 May 2023 (the “Kildare Chilling Phase 1 RFI Response”).
- 1.16 Upon receipt of a full response to each of the Phase 1 RFIs, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 12 May 2023.
- 1.17 During the Phase 1 investigation, the Commission requested and received, on an ongoing basis, further information and clarifications from the Parties.

### **Third Party Submissions**

- 1.18 During the Phase 1 investigation, the Commission received submissions from three third parties in relation to the Proposed Transaction. These submissions were fully considered by the Commission insofar as they related to potential competition concerns arising from the Proposed Transaction.

### **Market Enquiries**

- 1.19 The Commission conducted a number of market enquiries during the Phase 1 investigation and engaged with third parties in relation to its assessment of the competitive effects of the Proposed Transaction.
- 1.20 During the Phase 1 investigation, the Commission contacted and held calls with various third party industry stakeholders. Such stakeholders included:
- agents;<sup>14</sup>
  - competitors of the Parties;

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<sup>14</sup> An agent is an individual that acts as an intermediary between a meat processor and a farmer in agreeing a price for livestock.

- farmer representative bodies;
- individual farmers; and
- supermarkets (“Grocery Retailers”).

### **The Phase 1 Investigation**

1.21 Having considered all the available information in its possession at the time, the Commission was unable to form the view, at the conclusion of its Phase 1 investigation, that the result of the Proposed Transaction would not be to substantially lessen competition in any market for goods or services in the State. Therefore, on 22 June 2023, the Commission determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22 of the Act.

### **Full Investigation (“Phase 2”)**

#### **Contact with the Undertakings Involved**

- 1.22 On 19 July 2023, the Commission served an RFI on each of Dawn Meats and Kildare Chilling pursuant to section 20(2) of the Act (the “Dawn Meats Phase 2 RFI” and the “Kildare Chilling Phase 2 RFI” respectively and together, the “Phase 2 RFIs”). The service of the Phase 2 RFIs adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 2.
- 1.23 Dawn Meats provided a full response to the Dawn Meats Phase 2 RFI on 25 August 2023 (the “Dawn Meats Phase 2 RFI Response”).
- 1.24 Kildare Chilling provided a full response to the Kildare Chilling Phase 2 RFI on 28 August 2023 (the “Kildare Chilling Phase 2 RFI Response”).
- 1.25 On 25 August 2023, Dawn Meats also submitted an economic report prepared by RBB Economics (the “RBB Economics Report”).
- 1.26 During the Phase 2 investigation, the Commission requested and received further information and clarifications from the Parties on an ongoing basis.

### **Third Party Submissions**

1.27 One third party submission was received during the Phase 2 investigation. This submission was fully considered by the Commission insofar as it related to potential competition concerns arising from the Proposed Transaction.

### **Market Enquiries**

1.28 During the Phase 2 investigation, the Commission continued the process initiated during the Phase 1 investigation of seeking the views of and engaging with third parties in relation to the potential competitive effects of the Proposed Transaction. Such stakeholders included:

- competitors of the Parties;
- individual farmers;
- farmer producer groups; and
- Grocery retailers.

### **Information Sources Relied Upon**

1.29 In forming its conclusions on the Proposed Transaction, as set out in this Determination, the Commission considered all the relevant information available to it at the time of making the Determination including information provided by the Parties in response to the Commission's RFIs and information requests, submissions made by the Parties, information obtained from third parties, and other information available in the public domain.

## 2. INDUSTRY BACKGROUND

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### Introduction

- 2.1 As noted in Section 1 above, both Dawn Meats' and Kildare Chilling's business activities include the procurement of live animals, slaughtering, processing and sale of meat products (beef and lamb) and related by-products. The purpose of this section is to provide context for the identification of relevant product markets and for the assessment of the likely competitive effects of the Proposed Transaction set out later in the Determination.
- 2.2 The Commission considered the procurement, processing and sale of beef and lamb meat in the State in *M/17/035 – Dawn Meats/Dunbia*.<sup>15</sup> The Commission's predecessor, the Competition Authority, also considered the procurement, processing and sale of beef meat in the State in *M/03/029 – Dawn Meats/Galtee Meats*.<sup>16</sup> The Commission has considered these determinations as part of its assessment of the Proposed Transaction.
- 2.3 The supply chain for the production of beef and lamb involves four main stages:
- **Rearing** – farmers rear cattle, lamb and sheep;
  - **Procurement** – meat processors (“Processors”) purchase cattle, lambs and sheep from farmers which are brought to slaughterhouses to be slaughtered. Processors may negotiate with farmers directly or through an agent. As noted above, an agent is an individual that acts as an intermediary between a Processor and farmer in agreeing a price for livestock;
  - **Processing** – the animal carcass is then de-boned to produce primary cuts of fresh beef and lamb meat, as well as other materials such as hides, offal

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<sup>15</sup> See Determination *M/17/035 Dawn Meats/Dunbia*, paragraphs 34-70.

<sup>16</sup> See Determination *M/03/029 Dawn Meats/Galtee*, paragraphs 2.6-2.33.

and waste. Bones and waste materials are rendered down, while hides and offal are commodity products sold separately to primary cuts; and

- **Sale of beef and lamb meat** – beef and lamb meat is sold directly to Grocery Retailers and butchers. Beef and lamb meat may also be sold to companies that will further process the meat into a range of products, such as burgers and ready-made meals (“Industrial Processors”).<sup>17</sup>

## Procurement

2.4 Processors purchase live animals directly from farmers or through agents. Small farmers typically supply Processors via agents, while larger farmers may supply Processors directly.

### Pricing of live animals for slaughter

2.5 The Commission previously outlined the pricing of live animals for slaughter in *M/17/035 - Dawn Meats/Dunbia*. In that determination, the Commission noted that:

- The purchase and sale of live animals is a spot business and prices can change daily;
- Farmers typically initiate negotiations with Processors or agents, and farmers often negotiate with a number of Processors to secure the best price for their livestock;
- There is a significant level of price transparency regarding the prices paid by Processors to farmers for live animals;<sup>18</sup> and

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<sup>17</sup> See Determination *M/17/035 – Dawn Meats/Dunbia*, paragraph 34.

<sup>18</sup> The beef processing industry operates a Quality Payment System Grid for steers and heifers whereby a base price is quoted for the animal and bonuses or penalties then apply for different muscle confirmations and fat scores. There is a similar system for young bulls and cows. The same system applies for the price of lamb. The prices paid through the Quality Payment System Grid are recorded and checked regularly by the Department of Agriculture, Food and the Marine (“DAFM”). The confirmed price is then published by DAFM and the Farmers Journal newspaper. Available at: <https://www.farmersjournal.ie/farm/beef-prices/288> and <https://www.farmersjournal.ie/tag/lamb-prices>.

- There is a well-established pricing structure for the price paid by Processors for live cattle, lambs and sheep.<sup>19</sup>

## Processing

- 2.6 Approximately 1.9 million cattle and 3.2 million lambs and sheep were slaughtered in the State in 2022.<sup>20</sup> Processors that slaughter between 100 and 1,000 cattle per annum are required to hold a license from the Department of Agriculture, Food and the Marine (“DAFM”) to sell beef in the State. Furthermore, any beef Processor that slaughters more than 1,000 cattle per annum is required to have a European Union export licence from DAFM whether or not it actually exports its product. Beef Processors must also apply for quality assurance certification from Bord Bia.
- 2.7 As noted in *M/17/035 - Dawn Meats/Dunbia*, export licences are not required by lamb Processors.<sup>21</sup> However, lamb slaughterhouses are licensed by DAFM and must comply with European Union hygiene legislation. As with beef, lamb Processors must also apply for quality assurance certification from Bord Bia.

## Sale of beef and lamb meat

- 2.8 The Parties state in the Merger Notification Form that the majority of fresh beef and lamb meat produced in the State is exported. Approximately 91% of the total beef meat processed in the State in 2021 was exported, while approximately 87% of the total lamb meat processed in the State in 2021 was exported.<sup>22</sup>
- 2.9 Fresh beef and lamb meat that is not exported is primarily sold to Grocery Retailers. The five major Grocery Retailers (Dunnes Stores Retailing Unlimited

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<sup>19</sup> See paragraphs 40-43.

<sup>20</sup> Central Statistics Office (“CSO”), accessible at <https://www.cso.ie/en/releasesandpublications/ep/p-ls/livestockslaughteringsdecember2022/>

<sup>21</sup> See paragraph 56.

<sup>22</sup> Merger Notification Form, paragraph 58. For more information see: <https://www.bordbia.ie/contentassets/936b94d5cba14ccb9a0e0a1fd95479b/bord-bias-export-performance--prospects-2021---2022-pdf-report.pdf>

Company (“*Dunnes Stores*”), Tesco Ireland Limited (“*Tesco*”), *SuperValu*<sup>23</sup>, Lidl Ireland GmbH (“*Lidl*”) and Aldi Stores (Ireland) Limited (“*ALDI*”) represent approximately 92% of the grocery retail market.<sup>24</sup> Beef and lamb meat is also sold to Industrial Processors to be used in the manufacture of products such as burgers and ready meals.

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<sup>23</sup> SuperValu forms part of Musgrave Group plc.

<sup>24</sup> Kantar, Irish retailer performance update, accessible at <https://www.kantar.com/uki/inspiration/fmcg/2023-wp-irish-grocery-price-inflation-soars-to-a-new-record-16-3#:~:text=Tesco%20is%20close%20behind%20with,of%20the%20market%20and%200.9%25>.

### 3. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

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#### Introduction

- 3.1 In this section, the Commission identifies the potential product and geographic markets that are relevant for the assessment of the likely effects of the Proposed Transaction. This section sets out the general principles that apply to market definition, the overlaps in the activities of the Parties, the views of the Parties and third parties and then sets out the Commission's view of the potential relevant product and geographic markets.
- 3.2 Market definition provides a framework for assessing the competitive effects of a merger; it is a means to an end. The boundaries of a market do not in themselves determine the range of competitive effects to be assessed by the Commission in its merger review, as there may be competitive constraints on the merging parties from outside the relevant market or segment within the relevant market.<sup>25</sup> The Commission has taken such factors into account in its assessment of competitive effects of the Proposed Transaction, where relevant.

#### Horizontal and Vertical Overlaps

- 3.3 In the Merger Notification Form, the Parties identified the following areas of horizontal overlap between their respective activities:
- Purchase of live animals for slaughter, namely cattle and lamb and sheep; and
  - Sale of fresh beef and lamb meat.
- 3.4 The Commission agrees with the Parties' views on horizontal overlap. There are two horizontal overlaps between the activities of the Parties in the State: (i) the

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<sup>25</sup> Guidelines for Merger Analysis, adopted by the Commission on 31 October 2014 (the "Merger Guidelines"), paragraph 2.1 and 2.3.



purchase of cattle and lambs and sheep for slaughter; and (ii) the sale of beef and lamb meat.<sup>26</sup>

3.5 With respect to vertical overlaps between their respective activities, the Parties stated in the Merger Notification Form that Kildare Chilling supplies a small amount of beef and lamb meat to Dawn Meats.<sup>27</sup>

3.6 The Commission agrees with the Parties' views on vertical overlap. There are two vertical relationships between the parties in the State, as Dawn Meats currently sources small amounts of (1) beef meat and (2) lamb meat from Kildare Chilling for further processing.

## Relevant Principles

3.7 The role of market definition is explained in the Merger Guidelines as follows:

*“Market definition is a conceptual framework within which relevant information can be organised for the purposes of assessing the competitive effect of a merger. Identifying the precise relevant market involves an element of judgement. It is often not possible or even necessary to draw a clear line around the fields of rivalry. Indeed, it is often possible to determine a merger’s likely impact on competition without precisely defining the boundaries of the relevant market.”<sup>28</sup>*

*“...if an SLC can be shown when a merger is evaluated with respect to a number of alternative markets, there is no need to choose between them; it will be sufficient to show that the merger will result in an SLC regardless of the choice of market definition.”<sup>29</sup>*

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<sup>26</sup> As lamb meat represents the vast majority of lamb and sheep meat sold in the State, the Commission considers that an assessment of a potential market for the sale of lamb and sheep meat (including mutton and hogget) is unlikely to materially differ from an assessment of the potential market for the sale of lamb meat.

<sup>27</sup> Merger Notification Form, paragraph 68.

<sup>28</sup> Merger Guidelines, paragraph 2.3.

<sup>29</sup> Merger Guidelines, paragraph 2.4.

3.8 According to the Merger Guidelines:

*“The relevant product market is defined in terms of products rather than producers. It is the set of products that customers consider to be close substitutes. In identifying the relevant product market, the Commission will pay particular attention to the behaviour of customers, i.e., demand-side substitution. Supply-side substitution (i.e., the behaviour of existing and/or potential suppliers in the short term) may also be considered”.*<sup>30</sup>

3.9 The relevant market contains the most significant alternatives available to the customers of the merging parties. Identifying the precise relevant market involves an element of judgement, with appropriate weight being given to factors on both the demand and supply side.<sup>31</sup>

3.10 The Merger Guidelines note that:

*“Whether or not a product is a close substitute of a product supplied by one or more of the merging parties will depend on the willingness of customers to switch from one product to the other in response to a small but significant and non-transitory increase in price (or an equivalent decrease in quality). This will involve an assessment of the characteristics and functions of the products in question”.*<sup>32</sup>

3.11 The standard economic test for defining the relevant market is the Small but Significant Non-transitory Increase in Price (“SSNIP”) test. The SSNIP test seeks to identify the smallest group of products and geographic areas within which a hypothetical monopolist could profitably impose a SSNIP without a sufficient number of customers switching to alternative products to render the price increase non-profitable. However, the Commission notes that the SSNIP test is just one of the tools used in defining the relevant product market, and its applicability

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<sup>30</sup> Merger Guidelines, paragraph 2.8.

<sup>31</sup> Merger Guidelines, paragraph 2.2.

<sup>32</sup> Merger Guidelines, paragraph 2.9.

varies depending on pricing practices in the sector. A substantial emphasis should also be placed on product characteristics, price and intended use as well as observed substitution patterns between various products that can potentially be included in the same product market.

- 3.12 Market definition should not restrict the range of competitive effects to be assessed by the Commission in its merger review. In coming to a view of the relevant product and geographic markets, the Commission may therefore consider segmentation within the relevant market or factors outside the relevant market that impose competitive constraints on firms in the relevant market.<sup>33</sup>
- 3.13 Ultimately, the Commission's definition of the relevant market or markets depends on the specific facts, circumstances, and evidence of the merger under investigation.<sup>34</sup>
- 3.14 In relation to geographic market definition, the Merger Guidelines state:

*“The product market(s) affected by a merger may be geographically bounded if geography limits some customers' willingness or ability to switch products or some suppliers' willingness or ability to supply to customers. The relevant geographic market is usually defined in terms of the location of suppliers and it includes those suppliers that customers consider to be feasible substitutes. The relevant geographic market may be local, regional, national or wider.”<sup>35</sup>*

*“The approach to defining the relevant geographic market is similar to that of product market definition. Both can use the SSNIP test as an analytical tool.”<sup>36</sup>*

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<sup>33</sup> Merger Guidelines, paragraph 2.1.

<sup>34</sup> Merger Guidelines, paragraph 2.6.

<sup>35</sup> Merger Guidelines, paragraph 2.19.

<sup>36</sup> Merger Guidelines, paragraph 2.20.

3.15 According to the Merger Guidelines:

*“The relevant geographic market consists of all supply locations that would have to be included for the hypothetical monopolist to find it profitable to impose a small but significant non-transitory increase in price. Beginning with the location of each of the merging parties, the SSNIP test is applied by considering what would happen if a hypothetical monopolist of the relevant product at that location imposed a small but significant non-transitory increase in price. If a sufficient number of customers switch to suppliers in other locations, the next closest location where customers can purchase the relevant product is included. The SSNIP test is thus iteratively applied until a hypothetical monopolist could profitably increase the price of the relevant product in a location or group of locations by a small but significant non-transitory amount. This location or group of locations is thus defined as the relevant geographic market.”<sup>37</sup>*

## Relevant Product Markets

### Previous Decisions

3.16 The Commission has considered previous merger decisions in the beef and lamb sector that are of some relevance to its assessment of the Proposed Transaction.

3.17 The Commission has previously considered two mergers in the beef and lamb sector.<sup>38</sup> In its most recent determination, *M/17/035 – Dawn Meats/Dunbia*, while ultimately leaving the precise market definition open, the Commission distinguished between the purchase of live cattle for slaughter and the purchase of live lambs and sheep for slaughter. Furthermore, the Commission also distinguished between the sale of fresh beef meat and fresh lamb meat. Finally, the Commission distinguished between the sale of meat (either beef or lamb) to Grocery Retailers and the sale of meat (beef or lamb) to Industrial Processors.

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<sup>37</sup> Merger Guidelines, paragraph 2.21.

<sup>38</sup> See *M/03/29 – Dawn Meats/Galtee Meats* and *M/17/035 – Dawn Meats/Dunbia*.

3.18 The European Commission has also considered the beef and lamb sector in several merger decisions<sup>39</sup> under the EU Merger Regulation.<sup>40</sup> The European Commission has previously distinguished between the procurement of cattle for slaughter and the procurement of lambs and sheep for slaughter.<sup>41</sup> Furthermore, the European Commission has also distinguished the sale of beef meat from the sale of lamb meat. Finally, the European Commission has also distinguished the sale of beef meat and lamb meat by customer channel (Grocery Retailers, Industrial Processors, etc.).<sup>42</sup>

### Views of the Parties

3.19 The Parties stated in the Merger Notification Form that the relevant product markets can be left open but stated that a distinction can be drawn between: (i) the procurement of live animals for slaughter (and, within procurement, between cattle and lambs); and (ii) the downstream markets for the sale of each of fresh boneless beef and lamb cuts.<sup>43</sup> Furthermore, the Parties stated that it is not necessary for the Commission to define precise markets by reference to distribution channel but noted that the primary areas of overlap between the Parties is in the sale of fresh beef cuts and fresh lamb cuts to the retail channel, and the supply of beef and lamb to Industrial Processors.<sup>44</sup>

### Views of Third Parties

3.20 Based on the Parties' view of the market definition expressed in the Merger Notification Form, the Commission engaged with a number of third parties in

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<sup>39</sup> For example, see Case M.7930 ABP Group/Fane Valley Group/Slaney Foods & Case M.8481 ABP Food Group/Fane Valley/Linden Foods.

<sup>40</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).

<sup>41</sup> Case M.7930 ABP Group/Fane Valley Group/Slaney Foods, paragraphs 107-114.

<sup>42</sup> Case M.7930 ABP Group/Fane Valley Group/Slaney Foods, paragraph 178. Case M.8481 ABP Food Group/Fane Valley/Linden Foods, paragraph 46.

<sup>43</sup> Merger Notification Form, paragraph 88.

<sup>44</sup> Merger Notification Form, paragraph 112.

relation to the market definition. In relation to the purchase of live cattle for slaughter and the purchase of live lambs and sheep for slaughter, no Processor expressed the view that the purchase of live cattle and live lambs and sheep for slaughter are within the same potential market. Furthermore, no farmers expressed the view that they could easily switch between supplying live cattle and live lambs and sheep for slaughter.

### **Commission's Analysis**

#### *The purchase of live cattle and live lambs and sheep for slaughter*

- 3.21 The Commission has taken the Parties' overlap in the purchase of live cattle and live lambs and sheep for slaughter as the starting point for identifying the relevant product market(s).
- 3.22 The central question for the Commission is whether: (i) the purchase of cattle for slaughter; and (ii) the purchase of lambs and sheep for slaughter are within the same relevant product market or occupy distinct product markets.

#### Demand side substitution

- 3.23 In accordance with its Merger Guidelines, the Commission begins by considering demand side substitution, that is, whether a purchaser of one of: (i) live cattle for slaughter or (ii) live lambs and sheep for slaughter would consider the other animal(s) to be a close substitute, such that they would switch to the alternative animal(s) and render a price increase unprofitable. This would be the case where a Processor would consider the other animal(s) to have sufficiently similar characteristics and pricing such that they would switch in response to a SSNIP.
- 3.24 As noted above, the Parties stated that a distinction can be drawn between (i) the purchase of cattle for slaughter and (ii) the purchase of lambs and sheep for slaughter.<sup>45</sup> The Parties outlined three ways in which the purchase of cattle and lambs and sheep differ:

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<sup>45</sup> Merger Notification Form, paragraph 88.

- Slaughtering lines in slaughterhouses differ between cattle and lamb and sheep. Owing to the difference in size between cattle and lamb and sheep, various pieces of machinery and equipment, such as the stun box,<sup>46</sup> are different depending on whether cattle or lamb and sheep are being slaughtered. Furthermore, the animals would require completely separate slaughtering lines;<sup>47</sup>
- Regulatory conditions are different for the slaughter of cattle and lamb and sheep, particularly as regards the need for an export licence for the slaughtering of cattle at scale; and
- Differences in the price paid for (i) cattle and (ii) lambs and sheep, which in turn reflects differences between the two species as regards the size of the animal, maturity, composition of the meat and retail prices available for fresh meat and processed products.<sup>48</sup>

3.25 The Commission previously considered the purchase of live cattle for slaughter separately from the purchase of live lambs and sheep for slaughter. The European Commission has also previously distinguished between the purchase of live cattle and lambs and sheep.<sup>49</sup>

3.26 For these reasons, the Commission is of the view that, from a demand side perspective, the purchase of: (i) live cattle for slaughter; and (ii) live lambs and sheep for slaughter are likely to constitute distinct product markets.

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<sup>46</sup> Stunning involves making an animal immobile or unconscious, with or without killing them, during the slaughtering process. The stun box is where an animal is restrained while being stunned.

<sup>47</sup> While there are differences between the slaughter of cattle and lamb and sheep, a Processor currently slaughtering cattle would likely be able to incorporate lamb and sheep slaughtering into its facilities owing to the smaller size of lamb and sheep than cattle.

<sup>48</sup> Merger Notification Form, paragraph 91.

<sup>49</sup> *Case M.7930 ABP Group/Fane Valley Group/Slaney Foods*, paras. 79-93 and & paras. 107-114.

### Supply side substitution

- 3.27 While the boundaries of the relevant product market are generally determined by reference to demand-substitution alone,<sup>50</sup> for completeness the Commission has considered whether a farmer not currently supplying one of (i) live cattle for slaughter or (ii) live lambs and sheep for slaughter would switch to supplying the other animal(s) in a response to a SSNIP. For the purposes of market definition, the Commission considers that supply side substitution would involve a farmer responding to a price increase in one of the animals by switching to supplying the other live animal(s) promptly and without significant costs.<sup>51</sup>
- 3.28 The Parties stated that farmers tend to rear one species and would not be able to quickly switch between the supply of cattle and of lamb and sheep.<sup>52</sup>
- 3.29 The European Commission has previously defined the market for procurement of cattle and lamb (and indeed other animals) separately owing to the lack of supply-side substitutability.<sup>53</sup>
- 3.30 Farmers not currently supplying live cattle are unlikely to be able to switch quickly to supplying live cattle in the event of a SSNIP. This switch may require the purchase of new livestock, investment in new facilities and equipment, the repurposing of farmland, and complying with new regulatory requirements. Furthermore, there is a significant price difference between cattle and lambs and sheep.

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<sup>50</sup> Merger Guidelines, paragraphs 2.15 and 2.16.

<sup>51</sup> The approach to supply-side substitution in market definition is distinct from the approach to the analysis of potential competition carried out in section 5.

<sup>52</sup> Merger Notification Form, paragraph 91.

<sup>53</sup> Case No IV/M.1313 – *Danish Crown / Vestjyske Slagterier*, paras 20-21. See also Case M.7930 – *ABP Group / Fane Valley Group / Slaney Foods*, see paragraph 84.



3.31 Therefore, the Commission's view is that a farmer that does not currently supply live cattle for slaughter would not be able to switch promptly and without significant costs to supplying live cattle in response to a SSNIP.<sup>54</sup>

Conclusion on whether the purchase of cattle for slaughter and the purchase lambs and sheep for slaughter are two distinct potential product markets

3.32 In light of the analysis set out above and the evidence available to it, the Commission has not, in the course of its assessment of the competitive impact of the Proposed Transaction, found reasons to depart from the approach previously taken by the Commission and the European Commission in relation to the purchase of live cattle for slaughter and the purchase of live lambs and sheep for slaughter.

3.33 Therefore, for the purposes of its assessment of the Proposed Transaction, the Commission will assess the competitive effects of the Proposed Transaction in the potential product markets for the purchase of live cattle for slaughter separately from the purchase of live lambs and sheep for slaughter.

*The sale of fresh beef meat and fresh lamb meat*

3.34 The Commission has taken the Parties' overlap in the sale of beef meat and lamb meat as the starting point for identifying the relevant product market(s).

3.35 Similar to the discussion of the purchase of live cattle for slaughter and the purchase of live lamb and sheep for slaughter above, a central question for the Commission is whether the sale of fresh beef meat and the sale of fresh lamb meat constitutes a single relevant product market or constitute two distinct product markets. The Commission then also considers whether the different sales channels constitute separate potential product markets.

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<sup>54</sup> Similarly, the Commission also considers that a farmer that does not currently supply live lamb and sheep for slaughter would not be able to switch promptly and without significant costs to supplying live lamb and sheep in response to a SSNIP.

Does the sale of fresh beef meat and the sale of fresh lamb meat constitute a single relevant product market or two distinct potential product markets?

3.36 As noted above, the Parties stated that a distinction can be drawn between the sale of different types of meat, such as beef and lamb.<sup>55</sup> The Parties expanded on this view, stating:

*“From a demand-side perspective, consumers are generally unlikely to view different types of meat as substitutable, having regard to factors such as availability, price, nutritional value, taste, tenderness, cost, ease and versatility of cooking etc. Beef and lamb are marketed differently, with specific promotional campaigns and industry support for each type of meat and limited overlap between the two. There are also significant differences in the cost of different types of fresh beef and lamb to consumers”.*<sup>56</sup>

3.37 As noted above, there are differences between the slaughtering of live cattle and the slaughtering of live lambs and sheep. These differences include: (i) differing slaughtering lines; (ii) different regulatory conditions; and (iii) differences in price. Owing to such differences, the Commission concluded above that a Processor not currently slaughtering live cattle, and therefore not supplying beef meat, would not be able to quickly switch to the supply of beef meat.

3.38 The Commission agrees with the Parties’ views of the factors which differentiate different types of meat from a demand perspective. Therefore, and for the purposes of its assessment of the Proposed Transaction, the Commission has considered the sale of beef meat and the sale of lamb meat separately.

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<sup>55</sup> Merger Notification Form paragraph 107.

<sup>56</sup> Merger Notification Form, paragraph 107

Does the sale of beef meat and lamb meat to different sales channels constitute separate potential product markets?

- 3.39 Both the Commission and the European Commission have previously distinguished between sales channels in the sale of beef meat and the sale of lamb meat.
- 3.40 The Parties stated that it is unnecessary for the Commission to define precise markets by reference to distribution channel in relation to the Proposed Transaction.
- 3.41 The Commission notes that there are clear differences between the beef meat and lamb meat that is sold to Grocery Retailers and Industrial Processors. The meat that is sold to Grocery Retailers is deboned and is in turn sold on to the end user without further processing. In contrast, the beef and lamb meat that is sold to Industrial Processors is usually in boned or carcass form. This meat is then subjected to further processing in the manufacture of various food products, such as burgers, lasagnes, and cottage pies.
- 3.42 Supply-side substitution could arise where a Processor active in the sale of beef meat to Industrial Processors switches to supplying beef meat to Grocery Retailers in the event of a SSNIP in the sale of beef meat to Grocery Retailers. However, all beef Processors sell beef meat to both Grocery Retailers and Industrial Processors. Consequently, there are no beef Processors that solely supply Grocery Retailers or Industrial Processors.
- 3.43 For the purposes of its assessment of the Proposed Transaction, the Commission has considered the sale of beef meat and the sale of lamb meat to different sales channels separately. These sales channels include: (i) sales to Grocery Retailers; and (ii) sales to Industrial Processors.

*Conclusion on potential product market for the sale of fresh beef meat and the sale of fresh lamb meat*

- 3.44 In light of the analysis set out above and in light of the evidence available to it, the Commission has not, in the course of its assessment of the competitive impact of the Proposed Transaction, found reasons to depart from the approach previously

taken by the Commission and the European Commission in relation to the sale of fresh beef meat and the sale of fresh lamb meat.

3.45 Accordingly, the Commission has assessed the Proposed Transaction by reference to two distinct potential product markets, (i) fresh beef meat and (ii) fresh lamb meat.

3.46 Furthermore, for the purposes of its assessment of the Proposed Transaction, the Commission considers it appropriate to distinguish between the sale of each of fresh beef and fresh lamb to Grocery Retailers and the sale of each of fresh beef and fresh lamb to Industrial Processors.

### **Conclusion on relevant product markets**

3.47 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission has, in the course of its assessment of the Proposed Transaction, found no reason to depart from its general approach in *M/17/035 Dawn Meats/Dunbia*, and has, accordingly, assessed the competitive effects of the Proposed Transaction by reference to six potential product markets:

- the purchase of live cattle for slaughter;
- the purchase of live lambs and sheep for slaughter;
- the sale of fresh beef meat to Grocery Retailers;
- the sale of fresh beef meat to Industrial Processors;
- the sale of fresh lamb meat to Grocery Retailers; and
- the sale of fresh lamb meat to Industrial Processors.

### **Relevant Geographic Markets**

3.48 Having identified six potential relevant product markets, the Commission now assesses the geographic dimension of each of these markets.

## Previous Decisions

- 3.49 As noted above, the Commission has considered previous merger decisions in the beef and lamb sector when assessing the Proposed Transaction.
- 3.50 With respect to the relevant geographic market, while leaving the precise market definition open, the Commission has previously considered the purchase of live cattle for slaughter on a national basis, as well as within a 100km radius of the target's slaughterhouse.<sup>57</sup> The Commission considered the purchase of live lambs and sheep for slaughter on an all-island basis.<sup>58</sup> The sale of beef meat and lamb meat was considered on a national basis.<sup>59</sup>
- 3.51 The European Commission considered the purchase of live cattle for slaughter on a national basis, as well as within a 60-mile radius of the target's slaughterhouse.<sup>60</sup> The European Commission considered the purchase of lambs and sheep for slaughter on an island of Ireland basis.<sup>61</sup> Finally, the European Commission left the geographic market open in relation to the sale of beef meat and lamb.<sup>62</sup>

## Views of the Parties

- 3.52 With respect to the relevant geographic market, the Parties stated that each of the relevant markets they identified are at least national in scope. The Parties stated that the relevant geographic market for the purchase of lambs and sheep may be the island of Ireland in scope.
- 3.53 In the Merger Notification Form, the Parties stated that:

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<sup>57</sup> *M/17/035 – Dawn Meats/Dunbia*, paragraph 77.

<sup>58</sup> *M/17/035 – Dawn Meats/Dunbia*, paragraph 146.

<sup>59</sup> *M/17/035 – Dawn Meats/Dunbia*, paragraph 60.

<sup>60</sup> *Case M.7930 - ABP Group / Fane Valley Group / Slaney Foods*, paragraph 106. 60 miles is approximately 96.5 kilometres.

<sup>61</sup> *Case M.7930 - ABP Group / Fane Valley Group / Slaney Foods*, paragraph 123.

<sup>62</sup> *Case M.7930 - ABP Group / Fane Valley Group / Slaney Foods*, paragraph 156.

- the relevant geographic market for the purchase of live cattle for slaughter is national in scope;<sup>63</sup>
- the relevant geographic market for the purchase of live lambs and sheep for slaughter may be all island in scope;<sup>64</sup> and
- the relevant geographic markets for the sale of fresh beef meat and fresh lamb meat to each of Grocery Retailers and Industrial Processors is national in scope.<sup>65</sup>

### Views of Third Parties

3.54 Based on the Parties' view of the market definition expressed in the Merger Notification Form, the Commission engaged with a number of third parties in relation to the market definition. In relation to the purchase of live cattle for slaughter and the purchase of live lambs and sheep for slaughter, most Processors stated that they source supply nationally, but with a focus on their local area.<sup>66</sup> Most farmers stated that they supply livestock to local Processors, but there are instances of farmers supplying Processors further afield.<sup>67</sup>

### Commission's Analysis

#### *The Purchase of Live Cattle for Slaughter*

3.55 As noted above, the Commission has previously considered the purchase of live cattle for slaughter on the geographic bases of: (i) the State; as well as (ii) within a

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<sup>63</sup> Merger Notification Form, paragraph 97.

<sup>64</sup> Merger Notification Form, paragraph 89.

<sup>65</sup> Merger Notification Form, paragraph 113.

<sup>66</sup> See [Processor 1] Call Note, dated 4 April 2023, p. 4.; [Processor 5] Call Note, dated 25 April, p.2; [Processor 2] Call Note, dated 21 April, p. 1; and [Processor 3] Call Note, dated 12 April 2023, p. 1.

<sup>67</sup> See: Page 1-2 [...] Call Note, dated 9 June 2023; Page 2 of [Farming Association 2] Call Note, dated 27 March 2023; Page 4 of [Farming Association 1] Call Note, dated 22 March 2023; page 3 of [Processor 1] Call Note, dated 4 April 2023; page 2 of [Processor 5] Call Note, dated 25 April 2023; page 1 of [Processor 4] Call Note, dated 19 April 2023; page 1 of [Processor 2] Call Note, dated 21 April 2023; page 2 of [Processor 3] Call Note, dated 12 April 2023; page 3 of [Producer Group 1], dated 24 July 2023; [Producer Group 2] Call Note, dated 3 August; and See page 1 of [Producer Group 3], Call Note, dated 2 August 2023.

100km radius of the target slaughterhouse. The European Commission has also previously followed a similar approach.

- 3.56 The Commission's market enquiries indicated Processors purchase cattle from across the State, but often with a focus on the local area. Therefore, the Commission has, in the course of its analysis of the Proposed Transaction, found no reason to depart from its previous approach to the appropriate geographic frame of reference in the purchase of live cattle for slaughter, and will assess this potential market on both a national basis as well as within a 100km radius of Kildare Chilling's slaughterhouse.

#### *The Purchase of Live Lambs and Sheep for Slaughter*

- 3.57 As noted above, the Commission has previously considered the purchase of live lambs and sheep for slaughter on an island of Ireland basis. The European Commission has also previously assessed the purchase of live lambs and sheep for slaughter on an island of Ireland basis.
- 3.58 In *M/17/35 Dawn Meats/Dunbia*, the Commission assessed the purchase of live lambs and sheep for slaughter on the wider island of Ireland basis, as there was no overlap between the parties in the purchase of live lambs and sheep for slaughter in the State (Dunbia's (the target in that transaction) slaughterhouse was located in Northern Ireland and did not purchase lambs and sheep from the State).<sup>68</sup> In contrast, the Proposed Transaction involves the acquisition of a State-based Processor by another State-based Processor.<sup>69</sup>
- 3.59 The European Commission previously assessed the purchase of live lambs and sheep for slaughter on an island of Ireland basis as a result of its market investigation at that time.<sup>70</sup>

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<sup>68</sup> See paragraph 145.

<sup>69</sup> As noted above, Dawn Meats also operates a slaughterhouse in Northern Ireland.

<sup>70</sup> *Case M.7930 - ABP Group / Fane Valley Group / Slaney Foods*, paragraph 123.

3.60 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 in relation to the purchase of live lambs and sheep for slaughter because, regardless of whether the potential geographic market is defined broadly (i.e., the island of Ireland) or narrowly (i.e., the State), doing so will not alter the Commission's assessment of the competitive effects of the Proposed Transaction. For the purposes of its competitive assessment, the Commission has assessed the Proposed Transaction by reference to the narrow potential geographic market, namely the purchase of live lambs and sheep for slaughter in the State.

*The Sale of Fresh Beef Meat and Fresh Lamb Meat to Grocery Retailers and Industrial Processors*

3.61 As noted above, the Commission has previously considered the sale of beef meat and lamb meat to Grocery Retailers and Industrial Processors on a national basis.

3.62 The Parties state in the Merger Notification Form that:

*“the relevant geographic markets for the sale of beef and lamb to the retail sector and industrial processors are at least national in scope. Retailers can easily source beef and lamb from locations across Ireland, and each of the parties’ main customers (i.e., the major national retailers) operates nationwide and generally deals with suppliers on a nationwide basis. The same is true of industrial processors, which operate and source on a national basis.”<sup>71</sup>*

3.63 The Commission has, in the course of its analysis of the Proposed Transaction, found no reason to depart from its previous approach to the appropriate geographic frame of reference in the sale of beef meat and lamb meat to Grocery Retailers and Industrial Processors, and will assess each of these potential markets on a national basis.

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<sup>71</sup> Merger Notification Form, paragraph 113.



### Conclusion on relevant geographic markets

3.64 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission has, in the course of its assessment of the Proposed Transaction, found no reason to depart from its general approach in *M/17/035 Dawn Meats/Dunbia*, and has, accordingly, assessed the competitive effects of the Proposed Transaction by reference to seven potential geographic markets:

- the purchase of live cattle for slaughter in the State;
- the purchase of live cattle for slaughter within a 100km radius of Kildare Chilling's slaughterhouse;
- the purchase of live lambs and sheep for slaughter in the State;
- the sale of fresh beef meat to Grocery Retailers in the State;
- the sale of fresh beef meat to Industrial Processors in the State;
- the sale of fresh lamb meat to Grocery Retailers in the State; and
- the sale of fresh lamb meat to Industrial Processors in the State.

### Overall conclusion on relevant market definition

3.65 Having regard to the evidence available to it, the Commission has assessed the competitive effects of the Proposed Transaction by reference to the following potential markets:

- the purchase of live cattle for slaughter in:
  - the State; and,
  - within a 100km radius from Kildare Chilling's slaughterhouse;
- the purchase of live lambs and sheep for slaughter in the State;

- the sale of fresh beef meat to Grocery Retailers in the State;
- the sale of fresh beef meat to Industrial Processors in the State;
- the sale of fresh lamb meat to Grocery Retailers in the State; and
- the sale of fresh lamb meat to Industrial Processors in the State

(as the Commission has not come to a definitive view in respect of any relevant market, throughout this Determination whenever we refer to “market” or “markets” we are referring to a potential market or potential markets).

## 4. RELEVANT COUNTERFACTUAL

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### Introduction

4.1 The test in section 22(3) of the Act requires an assessment of whether a merger or acquisition will, or will not, on the balance of probabilities, result in a substantial lessening of competition (an “SLC”, the “SLC test”) in a relevant market. In assessing the likely effects of a merger on competition, the Commission, as in the present case, typically compares the situation that may be expected to arise following the merger with that which would have prevailed without the merger. The market situation without the merger is often referred to as the “*counterfactual*”.

4.2 The Merger Guidelines state that:

*“The term ‘counterfactual’ refers to the state of competition without the merger or acquisition. In other words the “actual” situation is the merger being put into effect and the “counterfactual” is the situation in the absence of the merger being put into effect. The counterfactual provides the reference point, or the point of comparison, for assessing competitive effects arising from a merger.”<sup>72</sup>*

4.3 The Commission generally adopts the prevailing conditions of competition as the counterfactual against which it assesses the competitive impact of a merger. Inevitably there is a degree of uncertainty as regards hypothetical future events, and the Commission will consider all the evidence adduced by parties as to the relevant counterfactual.

4.4 Paragraph 1.15 of the Merger Guidelines states that:

*“[T]he Commission will expect the merging parties to substantiate any counterfactual they propose with objective evidence supported, where necessary, by independent expert analysis. Such evidence and analysis*

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<sup>72</sup> See paragraph 1.12 of the Merger Guidelines.

*should obviously be consistent with the parties' own internal pre-merger assessments of the likely counterfactual."*

### **Views of the Parties**

4.5 The Parties did not comment on the relevant counterfactual in the Merger Notification Form.

4.6 Subsequently, the Parties stated the following:

*"Kildare [Chilling] is owned and managed by its sole shareholder, Mr Tom McParland, who is 76 years old [...]. Mr McParland has developed and led the Kildare business for [...]."*<sup>73</sup>

4.7 The Commission has seen no evidence to indicate that Kildare Chilling will cease operating in the absence of the Proposed Transaction. Therefore, the Commission considers that, in absence of the Proposed Transaction, Kildare Chilling will continue to operate as a Processor in the State, either under current ownership or new ownership.

### **Commission's conclusion on the counterfactual**

4.8 For the purposes of assessing the competitive effects of the Proposed Transaction, the Commission considers that the relevant counterfactual is that, absent the Proposed Transaction, Kildare Chilling would remain active in each of the potential relevant markets. The prevailing conditions of competition would be maintained, and Kildare Chilling would remain active in the potential relevant markets.

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<sup>73</sup> Parties' submission dated 19 July, paragraph 5.

## 5. COMPETITIVE ASSESSMENT UNILATERAL EFFECTS

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### Introduction

- 5.1 In this section, the Commission sets out its analysis of the likelihood of unilateral effects occurring from the implementation of the Proposed Transaction in each of the potential relevant markets identified in Section 3 above.
- 5.2 Unilateral effects, as explained in paragraph 4.8 of the Merger Guidelines, occur when *“a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors.”*
- 5.3 In addition, the European Commission’s “Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings” (the “EC Horizontal Merger Guidelines”) state the following in respect of *“Non-coordinated effects”*:

*“A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers, who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms’ price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.*

...

*A number of factors, which taken separately are not necessarily decisive, may influence whether significant non-coordinated effects are likely to*

*result from a merger. Not all of these factors need to be present for such effects to be likely.”<sup>74</sup>*

5.4 In considering the likelihood of the implementation of the Proposed Transaction resulting in unilateral effects, the Commission has considered evidence provided by the Parties and third parties. Unilateral effects occur when:

*“a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors.”<sup>75</sup>*

5.5 The Commission assesses each of the potential relevant markets in turn below.

- the purchase of live cattle for slaughter in:
  - the State; and
  - within a 100km radius of Kildare Chilling’s slaughterhouse;
- the purchase of live lambs and sheep for slaughter in the State;
- the sale of fresh beef meat to Grocery Retailers in the State;
- the sale of fresh beef meat to Industrial Processors in the State;
- the sale of fresh lamb meat to Grocery Retailers in the State; and
- the sale of fresh lamb meat to Industrial Processors in the State.

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<sup>74</sup> See paragraphs 24, 25, and 26 of the EC Horizontal Merger Guidelines. These factors include but are not limited to: merging firms having large market shares; merging firms being close competitors; the merged entity being able to hinder expansion by competitors; and the merger eliminating an important competitive force.

<sup>75</sup> Merger Guidelines, paragraph 4.8.

## The purchase of live cattle for slaughter

- 5.6 In this section, the Commission assesses the competitive effects of the Proposed Transaction in respect of the purchase of live cattle for slaughter in: (i) the State; and, (ii) within a 100km radius of Kildare Chilling's slaughterhouse.
- 5.7 In considering the extent to which the Proposed Transaction is likely to raise unilateral effects concerns, the Commission sets out below:
- (a) Views of the Parties;
  - (b) The Commission's assessment of unilateral effects, including:
    - (i) the impact of the Proposed Transaction on market structure;
    - (ii) the impact of the Proposed Transaction on market concentration; and,
    - (iii) closeness of competition between the Parties; and,
  - (c) Conclusion in respect of unilateral effects in the purchase of live cattle for slaughter.

### Views of the Parties

- 5.8 The Parties submitted that the Proposed Transaction would not result in an SLC. In particular, the Parties stated that, in relation to the State:
- *"The extent of the overlaps between Dawn Meats and Kildare [Chilling] in terms of product focus and geographic area are limited."<sup>76</sup>*
  - *"Dawn Meats will not have, or acquire, any position of market power as a result of the Proposed Transaction. This is evident from the parties' modest combined share of the kill of approximately [20-25]% for cattle in the State*

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<sup>76</sup> Merger Notification Form, paragraph 9.

*(with a minimal increment of just [0-5]% to Dawn Meats' existing position)”<sup>77</sup>*

- *“There is, and will remain, a large number of strong competitors to the merged entity in relation to the slaughter and processing of both cattle and lamb. These competitors include major export-approved processors such as the ABP Group (comprising ABP, Slaney and Linden), Kepak, Liffey, Foyle Meats, Euro Farm Foods, Ashbourne Meats, Ballon Meats, Jennings, Moyvalley Meats, Kavanagh Meats and others. All of these well-established competitors are understood to have substantial spare capacity at their processing plants, as recognised in previous merger decisions.”<sup>78</sup>*
- *“The large majority of beef and lamb produced by both Dawn Meats and Kildare [Chilling] is exported. The Proposed Transaction will not have any adverse impact on export competition, as the parties have no control over export prices (a fact acknowledged in previous decisions of the Competition Authority, the CCPC and the European Commission).”<sup>79</sup>*
- The degree of competitive overlap between Dawn Meats and Kildare Chilling in relation to cattle procurement and processing is limited. Dawn Meats sources only limited volumes of cattle (around [...] % of total volume processed) from County Kildare.”<sup>80</sup> and
- There is substantial spare capacity in the slaughtering of live cattle in the State.<sup>81</sup>

5.9 In relation to a narrower geographic catchment, the Parties stated that:

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<sup>77</sup> Merger Notification Form, paragraph 9.

<sup>78</sup> Merger Notification Form, paragraph 9.

<sup>79</sup> Merger Notification Form paragraph 10.

<sup>80</sup> Merger Notification Form paragraph 147.

<sup>81</sup> Merger Notification Form, paragraph 9.



- *“Given the differences in their respective product focuses and geographic footprints, Dawn Meats and Kildare [Chilling] are not each other’s closest competitors in relation to the purchase of live cattle or sheep for slaughter in the State.”;*<sup>82</sup>
- *“For logistical reasons, farmers tend to sell their cattle to nearby abattoirs/processing plants.”;*<sup>83</sup>
- *“As stated by the European Commission in ABP/Fane Valley Group/Slaney Foods, farmers would be willing to switch to selling to slaughterhouses in another locality if prices for cattle dropped by 5-10%.”;*<sup>84</sup>
- *“While there exists substantial spare capacity in the market, there are no significant barriers to further expansion in relation to the slaughtering and processing of cattle.”;*<sup>85</sup> and,
- *“There are no significant costs for farmers in switching the supply of live lamb and sheep between different purchasers and, reflecting the wide range of options available to farmers, switching does occur frequently in practice.”*<sup>86</sup>

## **The Commission’s assessment of unilateral effects**

### *The impact of the Proposed Transaction on market structure*

5.10 Paragraph 3.1 of the Merger Guidelines states that “[a] central element in assessing the competitive impact of a merger is identifying its effect on market structure.” Market structure can be characterised by the number, size and distribution of firms in a market. A merger or acquisition will have an impact on

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<sup>82</sup> Merger Notification Form, paragraph 153.

<sup>83</sup> Merger Notification Form, paragraph 43.

<sup>84</sup> Merger Notification Form, paragraph 43.

<sup>85</sup> Merger Notification Form, paragraph 156.

<sup>86</sup> Parties’ submission, dated 19 July, paragraph 66.

market structure as the merging parties which were two firms pre-acquisition become one firm post-acquisition.

### The State

- 5.11 The Commission first sets out the likely effects of the Proposed Transaction on the structure of the market for the purchase of live cattle for slaughter in the State.
- 5.12 The Commission has considered the kill volume of the Parties and their competitors when assessing market shares.<sup>87</sup>
- 5.13 Table 2 below sets out the pre- and post-Proposed Transaction market shares in the purchase of live cattle for slaughter in 2021 in the State.

*Table 2: Estimated share of live cattle kill by volume, the State in 2021*

Processor	Number of slaughterhouses	Share of Kill (Ireland)	% Share (Ireland)
Dawn Meats	6	[...]	[20-25]%
Kildare Chilling	1	[...]	[0-5]%
<b>Combined</b>	<b>7</b>	<b>[...]</b>	<b>[25-30]%</b>
ABP <sup>88</sup>	8	[...]	[25-30]%
Kepak <sup>89</sup>	5	[...]	[10-15]%
Liffey Meats <sup>90</sup>	3	[...]	[5-10]%
Foyle <sup>91</sup>	3	[...]	[0-5]%

<sup>87</sup> The Commission has followed its previous approach in *M/17/035 – Dawn Meats/Dunbia* by using Processors’ estimated volume of cattle slaughtered as the basis for assessing shares in the purchase of live cattle for slaughter in the State.

<sup>88</sup> ABP Food Group (“ABP”).

<sup>89</sup> Kepak Group (“Kepak”).

<sup>90</sup> Liffey Meats Limited (“Liffey Meats”).

<sup>91</sup> Foyle Food Group (“Foyle”).

<b>C&amp;J Meats<sup>92</sup></b>	1	[...]	[0-5]%
<b>Moyvalley Meats<sup>93</sup></b>	1	[...]	[0-5]%
<b>Euro Farm Foods<sup>94</sup></b>	1	[...]	[0-5]%
<b>Ashbourne Meats<sup>95</sup></b>	1	[...]	[0-5]%
<b>Jennings<sup>96</sup></b>	1	[...]	[0-5]%
<b>Others</b>	-	[...]	[5-10]%
<b>Total</b>	<b>31</b>	<b>[...]</b>	<b>100%<sup>97</sup></b>

Source: The Parties and third parties <sup>98</sup>

5.14 As can be seen in Table 2 above, following the implementation of the Proposed Transaction, Dawn Meats will have an estimated share of approximately [25-30]% in respect of the purchase of live cattle for slaughter in the State, an increase of approximately [0-5] percentage points on its pre-merger share. Following the implementation of the Proposed Transaction, Dawn Meats, *ABP* and *Kepak* would represent the three largest Processors, holding a combined estimated share of [65-70]% in the purchase of live cattle for slaughter in the State.

5.15 On a State-wide basis, *ABP* and *Kepak* will continue to exert a competitive constraint on Dawn Meats following the implementation of the Proposed

<sup>92</sup> C & J Meats (“C&J Meats”).

<sup>93</sup> Moyvalley Meats (“Moyvalley Meats”).

<sup>94</sup> Euro Farm Foods (“Euro Farm Foods”).

<sup>95</sup> Ashbourne Meats Processors UC (“Ashbourne Meats”).

<sup>96</sup> Martin Jennings Wholesale Ltd (“Jennings”).

<sup>97</sup> Share percentages have been rounded.

<sup>98</sup> Merger Notification Form, section 5.2.

Transaction. Furthermore, the Proposed Transaction results in a modest increase in Dawn Meats’ share in the purchase of live cattle for slaughter in the State.

Catchment of 100km of Kildare Chilling’s slaughterhouse

5.16 Dawn Meats operates three slaughterhouses within 100km of Kildare Chilling’s slaughterhouse. As listed in Table 3 below, there are currently 8 beef Processors (operating 12 slaughterhouses) within 100km of Kildare Chilling’s slaughterhouse (excluding the Parties).

*Table 3: Estimated share of live cattle kill by volume within 100km of Kildare Chilling’s slaughterhouse in 2021*

Beef Processor	Location of slaughterhouse	Distance from Kildare Chilling (km)	Estimated slaughtering capacity (heads/year)		Estimated share (by kill)
<b>Kildare Chilling</b>	Kildare Town, Co. Kildare	N/A	[...]		[10-15]%
<b>Dawn Meats</b>	Rathdowney, Co. Laois.	57	[...]	[...]	[20-25]%
	Slane, Co. Meath	61	[...]		
	Grannagh, Co. Waterford.	98	[...]		
<b>Combined</b>			[...]		[30-35]%
<b>Liffey Meats</b>	Hacketstown, Co. Carlow.	39	[...]	[...]	[15-20]%
	Ballyjamesduff, Co. Roscommon.	81	[...]		
	Ballinasloe, Co. Roscommon.	90	[...]		
<b>ABP</b>	Nenagh, Co. Tipperary.	93	[...]	[...]	[10-15]%
	Bunclody, Co. Wexford	60	[...]		

<b>Kepak</b>	Clonee, Co. Meath.	44	[...]	[...]	[10-15]%
	Kilbeggan, Co. Westmeath.	45	[...]		
<b>Moyvalley Meats</b>	Broadford, Co. Kildare.	27	[...]		[5-10]%
<b>Ashbourne Meats</b>	Roscrea, Co. Tipperary.	63	[...]		[5-10]%
<b>Euro Farm Foods</b>	Duleek, Co. Meath.	63	[...]		[5-10]%
<b>Kavanagh Meats<sup>99</sup></b>	Enniscorthy, Co. Wexford.	73	[...]		[0-5]%
<b>Ballon Meats<sup>100</sup></b>	Ballon, Co. Carlow.	49	[...]		[0-5]%
<b>Total</b>			[...]		100% <sup>101</sup>

Source: Commission analysis of information provided by the Parties

5.17 Following the implementation of the Proposed Transaction, Dawn Meats would have an estimated [30-35]% share in the purchase of cattle for slaughter within 100km of Kildare Chilling’s slaughterhouse in Kildare town, an increase of approximately [10-15] percentage points on its pre-merger share. *Liffey Meats* ([15-20]%), *ABP* ([10-15]%) and *Kepak* ([10-15]%) will continue to exert a competitive constraint on Dawn Meats following the implementation of the Proposed Transaction.

#### *The impact of the Proposed Transaction on market concentration*

5.18 Market concentration refers to the degree to which production or supply in a particular market is concentrated in the hands of a few large firms. The Merger Guidelines state the following:

<sup>99</sup> Kavanagh Meats (“Kavanagh Meats”).

<sup>100</sup> Ballon Meats (“Ballon Meats”).

<sup>101</sup> Share percentages have been rounded.

*“Market concentration provides a snapshot of market structure and is often a useful indicator of the likely competitive impact of a merger. It is of particular relevance to the assessment of horizontal mergers. A horizontal merger that has little impact on the level of concentration in the market under consideration is unlikely to lead to an SLC.*

*Market concentration, however, is not determinative in itself. A high level of market concentration post-merger is not sufficient, in and of itself, to conclude that a merger is likely to lead to an SLC. Other relevant factors (such as, for example, the closeness of competition between the merging parties, market dynamics, barriers to entry and expansion, etc.) will be examined by the Commission before any conclusion is reached concerning the likely competitive impact of a merger.*

*Market shares are important when measuring concentration. The market shares of firms in the market can give an indication of the extent of a firm’s market power. The combined market share of the merging parties, when compared with their respective market shares pre-merger, can provide an indication of the change in market power resulting from the merger. Competition concerns are more likely to arise when the merger creates a merged entity with a large market share.”<sup>102</sup>*

- 5.19 Paragraphs 3.9 to 3.10 of the Merger Guidelines set out that the Commission utilises the Herfindahl-Hirschman Index (“HHI”) as a measure of market concentration. The Merger Guidelines state that the Commission will have regard to the following HHI thresholds:

*“A post-merger HHI below 1,000 is unlikely to cause concern.*

*Any market with a post-merger HHI greater than 1,000 may be regarded as concentrated and highly concentrated if greater than 2,000.*

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<sup>102</sup> Merger Guidelines, paragraphs 3.2 to 3.4.

*Except as noted below, in a concentrated market a delta of less than 250 is unlikely to cause concern and in a highly concentrated market a delta of less than 150 is unlikely to cause concern.”*

5.20 The Merger Guidelines explain, at paragraph 3.11 that:

*“[t]he purpose of the HHI thresholds is not to provide a rigid screen in order to determine whether or not a merger is likely to result in an SLC. Rather, the HHI is a screening device for deciding whether the Commission should intensify its analysis of the competitive impact of a merger.”*

The State

5.21 The market for the purchase of live cattle for slaughter in the State is concentrated. Table 4 below illustrates that the HHI in the market for the purchase of live cattle for slaughter in the State following implementation of the Proposed Transaction would be [1,700-1800]. However, the change in the HHI would be [100-200], which, as set out in paragraph 3.10 of the Merger Guidelines, would typically indicate that the Proposed Transaction is unlikely to raise horizontal competition concerns in that market. Notwithstanding this finding and for the reasons set out below, the Commission is of the view that its analysis of the competitive effects of the Proposed Transaction should proceed.

*Table 4: The HHI in the market for the purchase of live cattle for slaughter in the State, 2021.*

	HHI
<b>Pre-Proposed Transaction</b>	[1,500-1,600]
<b>Post-Proposed Transaction</b>	[1,700-1800]
<b>HHI delta</b>	[100-200]

*Source: Commission calculations based on market shares provided by the Parties and third parties*

Catchment of 100km of Kildare Chilling’s slaughterhouse

5.22 Based on the market share estimates set out in Table 3 above, the potential market for the purchase of live cattle for slaughter within 100km of Kildare Chilling’s slaughterhouse is concentrated. Table 5 below illustrates that the HHI in the

market for the purchase of live cattle for slaughter within 100km of Kildare Chilling’s slaughterhouse following implementation of the Proposed Transaction would be [1,800-1,900]. Furthermore, the HHI delta is above 250, the threshold above which the Commission would normally intensify its analysis.

*Table 5: The HHI in the market for the purchase of cattle for slaughter within 100km of Kildare Chilling’s slaughterhouse in 2021.*

	HHI (trade value of purchases)
<b>Pre-Proposed Transaction</b>	[1,400-1,500]
<b>Post-Proposed Transaction</b>	[1,800-1,900]
<b>HHI delta</b>	[400-500]

*Source: Commission calculations based on market shares provided by the Parties and third parties*

5.23 In light of the above market shares and concentration, the Commission has intensified its analysis of the likely competitive impact of the Proposed Transaction in respect of the purchase of live cattle for slaughter within 100km of Kildare Chilling’s slaughterhouse.

5.24 In addition, some third parties have raised concerns to the Commission that following the implementation of the Proposed Transaction a strong competitor would be lost in this potential relevant market.<sup>103</sup>

5.25 Therefore, the Commission has assessed below whether Kildare Chilling competes closely with Dawn Meats.

*Closeness of competition*

5.26 Close competitors are likely to exert greater competitive constraints on one another and, therefore, a merger between close competitors is more likely to raise concerns than a merger between suppliers who do not compete closely. In some cases, mergers between suppliers with high combined market shares may not raise

<sup>103</sup> Paragraph 3.12 of the Merger Guidelines explain that, in some circumstances, a merger that falls below the HHI thresholds may still raise competition concerns. One such circumstance set out in that paragraph is that the parties to a merger could be considered close competitors by customers.



competition concerns if the suppliers are not close competitors. Conversely, mergers between suppliers with relatively low combined market shares may raise competition concerns if the suppliers are close competitors and exert strong competitive constraints on one another.

- 5.27 Two farming associations raised concerns that the Proposed Transaction could result in the loss of close competition between Dawn Meats and Kildare Chilling.
- 5.28 The [Farming Association 1] (the “[Farming Association 1]”) stated the Parties compete closely in terms of their purchasing trends. The [Farming Association 1] stated that *“Dawn Meats and Kildare Chilling are certainly close competitors on the cattle side, as they are both strong cow buyers.”* The [Farming Association 1] stated that Dawn Meats and Kildare Chilling compete closely in respect of *“cow beef”* and stated that it *“has real concern in that singular category, as the parties are probably the only two competitors in that one space.”*<sup>104</sup>
- 5.29 The [Farming Association 2] (the “[Farming Association 2]”) was of the view that, for some farmers, that farmer’s location would mean that the Parties would be considered close competitors to one another. The [Farming Association 2] stated that *“a farmer in Laois will sell their cattle stock to either Dawn Rathdowney or Kildare Chilling, but that after the merger there will be one fewer phone calls to be made to processors to obtain a better price per head for cattle.”* When asked who it sees as Kildare Chilling’s closest competitor, the [Farming Association 2] stated that *“Kildare Chilling do not compete particular closely with a specific processor more than any other processor.”* The [Farming Association 2] also stated *“that in terms of beef cow processing Kildare Chilling are very strong.”*
- 5.30 The concerns of these third parties can be summarised broadly as the following:
- (a) Kildare Chilling and Dawn Meats compete closely in the purchase of cattle;
- and,

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<sup>104</sup> [Farming Association 1] Call Note dated 22 March 2023, p. 3.

- (b) the Parties are in close geographic proximity to one another.

#### Views of Third Parties

5.31 Before assessing these concerns, the Commission summarises below the information and evidence provided to it by third party Processors during its review of the Proposed Transaction. It was clear from the Commission’s engagement with third party Processors that:

- All Processors consider that they compete with all other Processors;<sup>105</sup>
- [Processor 1] was identified as the closest Processor (by distance) to Kildare Chilling;<sup>106</sup>
- *Moyvalley* and *Euro Farm Foods* were also identified as close competitors to Kildare Chilling.<sup>107</sup>

#### Type of cattle

5.32 Certain third parties indicated that Dawn Meats and Kildare Chilling have a large share within the slaughter of a specific type of cattle, namely cow, and therefore, compete more closely within that potential segment of the purchase of live cattle for slaughter.<sup>108</sup>

5.33 Dawn Meats would have an estimated [25-30]% share in the purchase of live cows for slaughter in the State following the Proposed Transaction, an increase of [5-10] percentage points on its pre-merger share.<sup>109</sup> The Commission considers that there will remain a number of competitors that will continue to exert a competitive constraint on Dawn Meats following the implementation of the Proposed

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<sup>105</sup> See Processors Call Notes.

<sup>106</sup> [Processor 1] Call Note, dated 4 April 2023, p. 5.

<sup>107</sup> [Processor 4] Call Note, dated 19 April 2023, p. 3.

<sup>108</sup> The word “cattle” is plural without regard to sex, whereas the word “cows” refers only and strictly to mature female bovines. Other segments of cattle include bulls, steers and heifers.

<sup>109</sup> Dawn Meats’ response to the CCPC Questions dated 7 June 2023, question 4.

Transaction, including *ABP*, *Liffey Meats* and *Kepak*. Furthermore, the Parties and each of the third party Processors contacted by the Commission stated that they slaughter all types of cattle and do not focus on specific types of cattle. The Commission has seen no evidence to indicate that the Parties are close competitors in the purchase of live cows (or any other specific type of cattle) for slaughter in the State.

The Parties’ geographic proximity to one another

5.34 Table 6 below lists each beef Processor operating slaughterhouses within 100km of Kildare Chilling’s slaughterhouse in Co. Kildare.

*Table 6: Processors operating slaughterhouses within 100km of Kildare Chilling’s slaughterhouse in Co. Kildare*

Processor	Location of slaughterhouse	Distance from Kildare Chilling (km)
<b>Moyvalley Meats</b>	Broadford, Co. Kildare	27
<b>Liffey Meats</b>	Hacketstown, Co. Carlow	39
<b>Kepak</b>	Clonee, Co. Meath	44
<b>Kepak</b>	Kilbeggan, Co. Westmeath	45
<b>Ballon Meats</b>	Ballon, Co. Carlow	49
<b>Dawn Meats</b>	Rathdowney, Co. Laois	57
<b>ABP</b>	Bunclody, Co. Wexford	60
<b>Dawn Meats</b>	Slane, Co. Meath	63
<b>Ashbourne Meats</b>	Roscrea, Co. Tipperary	63

<b>Euro Farm Foods</b>	Duleek, Co. Meath	63
<b>Kavanagh Meats</b>	Enniscorthy, Co. Wexford	73
<b>Liffey</b>	Ballyjamesduff, Co. Roscommon	81
<b>Liffey Valley</b>	Ballinasloe, Co. Roscommon	90
<b>ABP</b>	Nenagh, Co. Tipperary	93
<b>Dawn Meats</b>	Grannagh, Co. Waterford	98

Source: The Commission, based on information provided by the Parties and third parties<sup>110</sup>

5.35 Dawn Meats currently operates three beef slaughterhouses within 100km of Kildare Chilling’s slaughterhouse: (i) Rathdowney, Co. Laois (approximately 57km from the Kildare plant); (ii) Slane, Co. Meath (approximately 63km from the Kildare plant); and (iii) Grannagh, Co. Waterford (approximately 98km from the Kildare plant). Excluding Dawn Meats, there are currently 8 beef Processors (operating 12 slaughterhouses) located within 100km of Kildare Chilling’s slaughterhouse.

5.36 As shown in Table 6 above, there are five beef slaughterhouses (two of which are operated by *Kepak*) located closer to Kildare Chilling than Dawn Meat’s closest beef slaughterhouse (Rathdowney, Co Laois). Together these five beef slaughterhouses:

- (a) purchased approximately [10-15]% of the total number of live cattle procured for slaughter in the State in 2021; and
- (b) represent approximately [20-25]% of the purchase of live cattle for slaughter within this 100km catchment.

<sup>110</sup> Merger Notification Form, table 5.3.

5.37 Owing to their closer proximity to Kildare Chilling, these four Processors have been found to exert a greater competitive constraint on Kildare Chilling than Dawn Meats. While the Commission’s market enquires indicated that farmers tend to supply cattle to nearby Processors, farmers also supply further afield. Indeed, the European Commission has previously stated that cattle can travel throughout the State and that small prices difference of 1-2% could incentivise farmers to switch supply to another slaughterhouse.<sup>111</sup> This indicates that Dawn Meats would face constraints not only from Processors within 100km of Kildare Chilling, but also from Processors beyond this catchment area.

Parties’ purchases of live cattle by county

5.38 The Parties also provided the breakdown of their purchases of cattle on a county-by-county basis, as shown in Table 7 below.

Table 7: Total volume Of Cattle Purchased by the Parties, 2022

County	Dawn Meats’ purchases of live cattle		Kildare Chilling’s purchases of live cattle	
	Volume	Percentage of Dawn Meats’ national purchases	Volume	Percentage of Kildare Chilling’s national purchases
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[10-20]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[20-30]%

<sup>111</sup> Case M.7930 - ABP Group/ Fane Valley Group / Slaney foods, paragraph 245.

[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[10-20]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[10-20]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[10-20]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
<b>Total</b>	[...]	100% <sup>112</sup>	[...]	100% <sup>113</sup>

Source: The Parties<sup>114</sup>

5.39 As shown in Table 7 above, the Parties purchase live cattle from a wide range of counties. While the Parties do purchase live cattle from the same counties, the counties from which they source the most live cattle are mainly different:

<sup>112</sup> Percentages have been rounded.

<sup>113</sup> Percentages have been rounded.

<sup>114</sup> See appendix 2 of Dawn Meats’ response to the CCPC Questions dated 7 June 2023; and appendix 2 of Kildare Chilling’s response to the CCPC Questions dated 7 June 2023.

- [...] are the [...] counties from which Kildare Chilling purchases the most live cattle, with approximately [40-50]% of its live cattle for slaughter purchased from these counties. Dawn Meats purchased approximately [10-20]% of its cattle from these counties.
- [...] are the [...] counties from which Dawn Meats purchases the most live cattle, with approximately [30-40]% of its live cattle for slaughterer purchased from these counties. Kildare Chilling purchased approximately [20-30]% of its cattle from these counties.

5.40 There are significant differences between the Parties' main purchase locations of live cattle, as Dawn Meats and Kildare Chilling purchase significant amounts of their supply from different counties. This further indicates that they are not close competitors in the purchase of live cattle for slaughter in the State or within 100km of Kildare Chilling's slaughterhouse.

**Overall conclusion for unilateral effects in the purchase of live cattle for slaughter in the State and within 100km of Kildare Chilling's slaughterhouse**

5.41 In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the potential market for the purchase of live cattle for slaughter: (i) in the State or (ii) within 100km of Kildare Chilling's slaughterhouse.

5.42 Therefore, the Commission concludes that Dawn Meats will not have the ability to unilaterally lower the price paid to farmers for live cattle for slaughter: (i) in the State or (ii) within 100km of Kildare Chilling's slaughterhouse.

5.43 The Commission has therefore concluded that the Proposed Transaction will not result in an SLC in the potential market for the purchase of live cattle for slaughter: (i) in the State or (ii) within 100km of Kildare Chilling's slaughterhouse.

## The purchase of live lambs and sheep for slaughter in the State

5.44 In this section, the Commission assesses the competitive effects of the Proposed Transaction in respect of the purchase of live lamb and sheep for slaughter in the State.

5.45 In considering the extent to which the Proposed Transaction is likely to raise unilateral effects concerns in the purchase of lamb and sheep for slaughter in the State, the Commission sets out below:

- (a) Views of the Parties;
- (b) The Commission's assessment of unilateral effects, including:
  - (i) the impact of the Proposed Transaction on market structure and concentration; and,
  - (ii) closeness of competition between the Parties; and,
- (c) Conclusion in respect of unilateral effects in the purchase of live lamb and sheep for slaughter in the State.

### Views of the Parties

5.46 The Parties submitted that the Proposed Transaction would not result in an SLC.

5.47 Expanding on this view, the Parties stated that:

- Dawn Meats will not have, or acquire, any position of market power as a result of the Proposed Transaction;<sup>115</sup>

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<sup>115</sup> Merger Notification Form, paragraph 9.



- There is, and will remain, a large number of strong competitors to the merged entity in relation to the slaughter and processing of both cattle and lamb;<sup>116</sup>
- There are no significant barriers to expansion;<sup>117</sup>
- Dawn Meats and Kildare Chilling are not each other's closest competitors in relation to the purchase of live lambs and sheep for slaughter in the State;<sup>118</sup>
- Given the distance between Dawn Meats and Kildare Chilling, it is highly unlikely that farmers would view Dawn Meats and Kildare Chilling as each other's closest competitors;<sup>119</sup>
- Dawn Meats does not source a significant quantity of lamb and sheep from the Leinster region, which is the region in which Kildare Chilling focuses its purchasing;<sup>120</sup> and
- there is spare capacity in the slaughtering of lamb and sheep in the State.<sup>121</sup>

### **The Commission's assessment of unilateral effects**

#### *The impact of the Proposed Transaction on market structure and concentration*

5.48 The Commission first sets out the likely effect of the Proposed Transaction on the structure of the potential market for the purchase of live lamb and sheep for slaughter in the State.

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<sup>116</sup> Merger Notification Form, paragraph 9.

<sup>117</sup> Merger Notification Form, paragraph 9.

<sup>118</sup> Merger Notification Form, paragraphs 153.

<sup>119</sup> Merger Notification Form, paragraph 155.

<sup>120</sup> Parties' submission on 19 July, paragraph 4(b).

<sup>121</sup> Merger Notification Form, paragraphs 151-152.

5.49 The Commission has considered the kill capacity of the Parties and their competitors when assessing market shares.

5.50 Table 8 below sets out the market shares of the Parties and their competitors in the purchase of live lambs and sheep for slaughter in the State in 2021.

*Table 8: Estimated share of lamb kill by volume in the State in 2021*

Processor	Number of plants	Share of Kill (Ireland)	% Share (Ireland)
<b>Dawn Meats</b>	1	[...]	[5-10]%
<b>Kildare Chilling</b>	1	[...]	[20-25]%
<b>Combined</b>	<b>3</b>	[...]	<b>[25-30]%</b>
<b>ABP</b>	4	[...]	[40-45]%
<b>Kepak</b>	1	[...]	[15-20]%
<b>Jennings</b>	1	[...]	[0-5]%
<b>Other</b>	-	[...]	[5-10]%
<b>Total</b>	-	[...]	<b>100%</b> <sup>122</sup>

*Source: the Parties and third parties*<sup>123</sup>

5.51 *ABP* is the largest Processor of live lamb and sheep in the State with an estimated market share of approximately [40-45]%. Following the implementation of the Proposed Transaction, Dawn Meats would become the second largest Processor of live lamb and sheep in the State with an estimated share of approximately [25-30]%, an increase of approximately [20-25] percentage points on its pre-Proposed Transaction share.

*The impact of the Proposed Transaction on market concentration*

5.52 Based on the market share estimates set out in Table 8 above, the potential market for the purchase of live lamb and sheep for slaughter in the State is highly

<sup>122</sup> Share percentages have been rounded.

<sup>123</sup> Merger Notification Form, table 5.2.

concentrated. Following the implementation of the Proposed Transaction, the three largest Processors of live lamb and sheep in the State (*ABP*, *Dawn Meats* and *Kepak*) would have a combined market share of approximately [90-95]%.

5.53 Table 9 below illustrates that the HHI in the potential market for the purchase of live lamb and sheep for slaughter in the State following implementation of the Proposed Transaction would be [3,000-3,100]. The change (i.e., the delta) in the HHI would be well above 250, the threshold above which the Commission is likely to intensify its analysis of a transaction.

*Table 9: The HHI in the market for the purchase of live lamb and sheep slaughter in the State in 2021.*

	HHI (trade value of purchases)
<b>Pre-Proposed Transaction</b>	[2,600-2,700]
<b>Post-Proposed Transaction</b>	[3,000-3,100]
<b>HHI delta</b>	[300-400]

*Source: The Commission’s calculations based on information provided by the Parties and third parties.*

5.54 In light of the above market shares and concentration, the Commission has intensified its analysis of the likely competitive impact of the Proposed Transaction in the potential market for the purchase of live lamb and sheep for slaughter in the State. The Commission has considered the closeness of competition between the Parties and the competitive constraint imposed by third party competitors below.

*Closeness of competition*

5.55 The Commission has examined a range of evidence in its assessment of the closeness of competition between *Dawn Meats* and *Kildare Chilling* in the potential market for the purchase of live lamb and sheep for slaughter in the State.

5.56 The Commission engaged with a range of third parties throughout the course of its review of the Proposed Transaction, including two farmer associations:

- The [Farming Association 1] stated that “*Kildare Chilling competes all over the country – in Kerry, Cork, Meath, Monaghan, etc*”<sup>124</sup> but did not state that Kildare Chilling competes particularly closely with Dawn Meats.
- The [Farming Association 2] stated that “*Kildare Chilling do not compete particular [sic] closely with a specific processor more than any other processor.*”<sup>125</sup>

5.57 During the course of its investigation into the Proposed Transaction, the Commission also engaged with lamb and sheep producer groups<sup>126</sup> that supplied lamb and sheep to Kildare Chilling. It was clear from the Commission’s engagement with these producer groups that:

- One producer group’s concern was that Kildare Chilling’s slaughterhouse would close following the implementation of the Proposed Transaction;
- All of the producer groups indicated that they do not consider Dawn Meats and Kildare Chilling to be close competitors; and
- If certain producer groups decided not to supply Kildare Chilling, they do not consider Dawn Meats as an alternative purchaser and would supply other Processors and/or marts.

5.58 Finally, the Commission engaged with lamb and sheep Processors during its review of the Proposed Transaction. No third-party Processor considered the Parties to be each other’s closest competitors in the purchase of lamb and sheep in the State. [Processor 1], the [...] Processor of lamb and sheep in the State, expressed the view to the Commission that it “*considers itself to be Kildare Chilling’s closest competitor with respect to the purchase of live lamb and sheep for slaughter*” in the State.<sup>127</sup>

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<sup>124</sup> [Farming Association 1] Call Note, dated 22 March 2023, p. 4.

<sup>125</sup> [Farming Association 2] Call Note, dated 27 March 2023, p. 3.

<sup>126</sup> Producer groups are groups of farmers that collectively negotiate supply terms with Processors.

<sup>127</sup> [Processor 1] Call Note, dated 4 April 2023, p. 5. This is unsurprising since, as detailed in Table 10 below, [Processor 1]’s [...] in the State [...] located [...] from Kildare Chilling’s processing plant.

In addition, [Processor 2], the [...] Processor of live lamb and sheep in the State, expressed the view to the Commission that its two main competitors in the purchase of live lambs and sheep for slaughter in the State are [Processor 1] and Dawn Meats.<sup>128</sup>

5.59 For the reasons set out below, the Commission considers that while the Parties compete in the potential market for the purchase of live lambs and sheep for slaughter in the State, the evidence shows that they are not particularly close competitors.

*The Parties’ geographic proximity to one another*

5.60 First, the Parties’ live lamb and sheep slaughterhouses are not located in close geographic proximity to each other. Dawn Meats currently operates one live lamb and sheep slaughterhouse in the State, which is located in Ballyhaunis, Co. Mayo, approximately 167km from the Kildare Chilling slaughterhouse.

5.61 Table 10 below lists lamb and sheep Processors operating slaughterhouses located closer to Kildare Chilling than Dawn Meats’ slaughterhouse at Ballyhaunis, Co. Mayo.

*Table 10: Lamb and Sheep Processors located closer to Kildare Chilling than Dawn Meats*

Lamb and Sheep Processor	Location of slaughterhouse	Distance from Kildare Chilling (km)	Estimated slaughtering capacity (heads/year)
Moyvalley Meats	Broadford, Co. Kildare.	27	[...] <sup>129</sup>
Ballon Meats	Ballon, Co. Carlow.	49	[...] <sup>130</sup>

<sup>128</sup> [Processor 2] Call Note, dated 21 April 2023, p. 3.

<sup>129</sup> Merger Notification Form, p. 31. The Parties do not provide a breakdown of how much of this slaughtering capacity is related to the slaughter of cattle, and how much is related to the slaughter of lamb.

<sup>130</sup> Merger Notification Form, p. 31. The Parties do not provide a breakdown of how much of this slaughtering capacity is related to the slaughter of cattle, and how much is related to the slaughter of lamb.

<b>ABP</b>	Navan, Co. Meath.	56	[...]
	Camolin, Co. Wexford.	68	[...]
<b>Kavanagh Meats</b>	Enniscorthy, Co. Wexford.	73	[...] <sup>131</sup>
<b>Kepak</b>	Athleague, Co. Roscommon	103	[...]
<b>ASBA Meats</b>	Shannon, Co. Clare	141	Not provided.

*Source: The Commission's analysis, based on information provided by the Parties and third parties*

5.62 There are currently six lamb and sheep Processors (operating seven lamb and sheep slaughterhouses) located closer to Kildare Chilling's slaughterhouse than Dawn Meats' slaughterhouse at Ballyhaunis, Co. Mayo. Together these six lamb and sheep Processors represent approximately [60-65]% share of the purchase of live lambs and sheep for slaughter in the State in 2021.<sup>132</sup>

#### *Parties' purchases of live lambs and sheep by county*

5.63 Second, the geographic distance between the Parties' lamb and sheep slaughterhouses means that they purchase a significant proportion of their live lamb and sheep from different parts of the State. Table 11 below breaks down the Parties' purchases of live lamb and sheep for slaughter in 2022 on a county-by-county basis.

<sup>131</sup> Merger Notification Form, p. 31. The Parties do not provide a breakdown of how much of this slaughtering capacity is related to the slaughter of cattle, and how much is related to the slaughter of lamb.

<sup>132</sup> As noted in footnotes 129 to 131 above, the Parties do not provide a breakdown of how much of the slaughtering capacity attributed to each of the slaughterhouses of *Moyvalley Meats*, *Ballon Meats*, and *Kavanagh Meats* is related to the slaughter of cattle and the slaughter of lamb. In this regard, the Commission has assigned the entire slaughtering capacity to lamb and sheep processing and has therefore generated an overestimate of the share of the purchase of live lamb and sheep for slaughter on the island of Ireland.

Table 11: Total volume of lamb and sheep purchased by the Parties in the State, 2022

County	Dawn Meats		Kildare Chilling	
	Volume	Percentage of Dawn Meats' national purchases	Volume	Percentage of Kildare Chilling's national purchases
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[10-20]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[10-20]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[10-20]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[10-20]%	[...]	[0-10]%

[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[10-20]%	[...]	[0-10]%
[...]	[...]	[10-20]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
[...]	[...]	[0-10]%	[...]	[0-10]%
<b>Total</b>	[...]	100%	[...]	100%

Source: *The Parties*<sup>133</sup>

5.64 As can be seen in Table 11 above, while the Parties purchase live lamb and sheep from the same counties, the counties from which they source the most live lamb and sheep are different.<sup>134</sup> This indicates that they are not close competitors in the purchase of live lambs and sheep for slaughter in the State.

5.65 Over [70-80]% of the live lambs and sheep purchased by Dawn Meats in 2022 came from the following [...] counties: [...]. In contrast, only [10-20]% of Kildare Chilling’s total purchases of live lamb and sheep in 2022 came from these [...] counties.

5.66 Only [0-10]% of the live lambs and sheep purchased by Dawn Meats in 2022 were from [...], with just [...] animals ([0-10]%) sourced from [...]. In contrast, [40-50]% of the live lambs and sheep purchased by Kildare Chilling in 2022 came from [...].

5.67 As noted above, the Parties submitted a RBB Economics Report which analysed the Parties’ patterns of purchasing live lambs and sheep across the State. The RBB Economics Report outlined that the degree of overlap between the Parties’

<sup>133</sup> See appendix 2 of Dawn Meats’ response to the CCPC Questions dated 7 June 2023; and appendix 2 of Kildare Chilling’s response to the CCPC Questions dated 7 June 2023.

<sup>134</sup> The only exception is [...] where both Dawn Meats and Kildare Chilling purchased just over [0-10]% of their respective total purchases of live lamb and sheep in the State in 2022. There are [...].



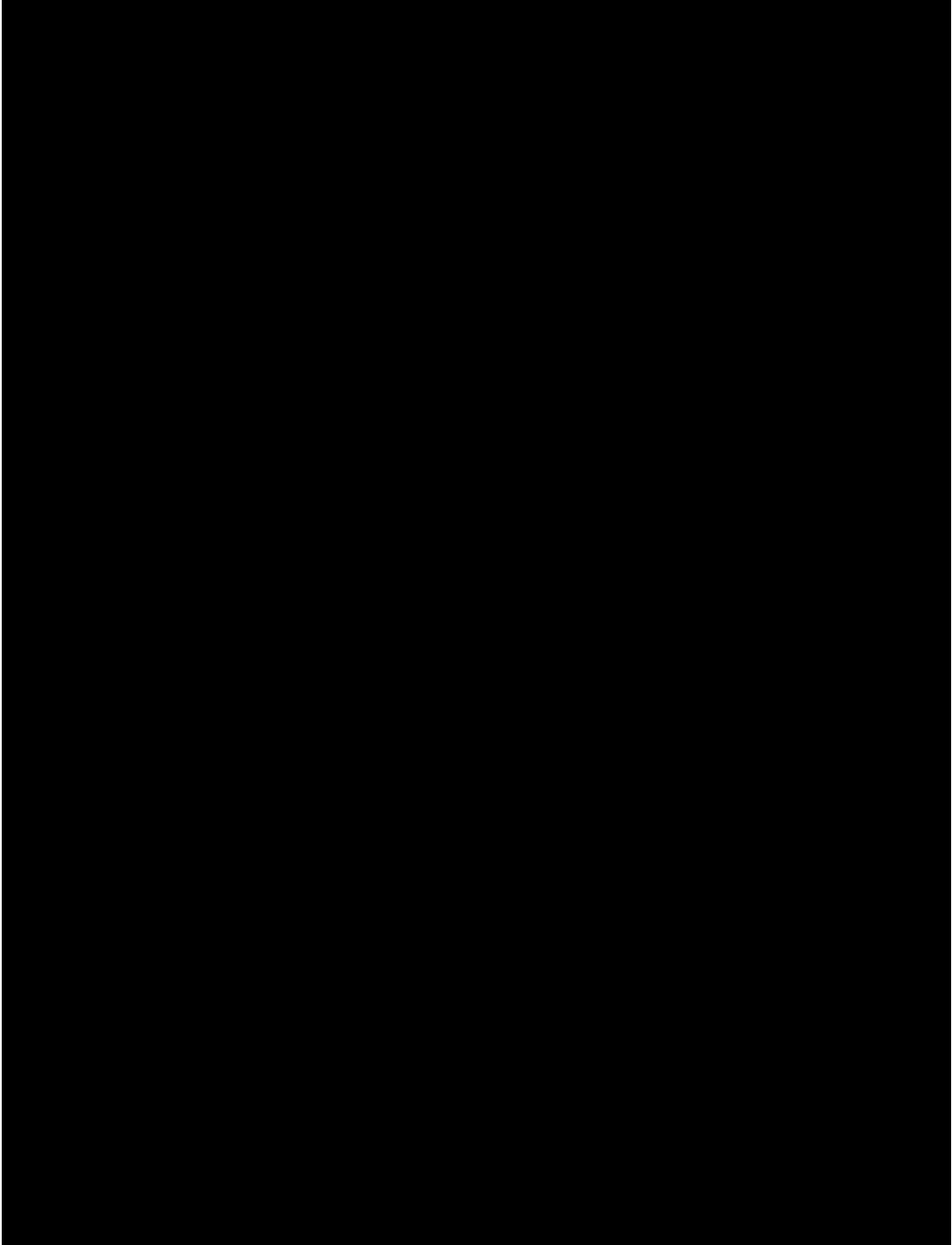
purchasing of live lamb and sheep is small and stated that “[i]n 2022, only [...] herds located in the State supplied both Dawn and Kildare, amounting to [0-10]% of the [...] herds which supplied Dawn and [0-10]% of the [...] herds which supplied Kildare in that year.”<sup>135</sup>

- 5.68 The RBB Economics Report also provided the following figure which shows the distribution of the Parties’ purchases of live lamb and sheep across the island of Ireland on a county basis.

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<sup>135</sup> RBB Economics Report, p. 11.

*Figure 1: Share of the Parties' purchases of live lamb and sheep by county in 2022*



*Source: RBB Economics Report*

- 5.69 Third, the Commission considers it significant that, as noted above, all third parties contacted by the Commission expressed the view that the Parties are not each other's closest competitor in the purchase of live lamb and sheep for slaughter in the State. The Commission also considers it significant that a number of farmers contacted by the Commission who currently supply live lamb and sheep to either Dawn Meats or Kildare Chilling (but not both), and who are located in relatively close proximity to one of the Parties, expressed the view that they would not consider supplying the other.
- 5.70 As noted above, the Commission sought the views of lamb producer groups, and spoke with three producer groups that supplied Kildare Chilling. Each lamb producer group informed the Commission that they do not consider Dawn Meats as an alternative to Kildare Chilling and listed other Processors and marts as alternative options for selling their lamb and sheep.
- 5.71 The Commission considers that the Parties are not close competitors in the market for the purchase of live lambs and sheep for slaughter in the State in light of:
- (a) the significant distance between the Parties' live lamb and sheep slaughterhouses;
  - (b) the large number of lamb and sheep Processors (including two of the three largest in the State: *ABP* and *Kepak*) currently located closer to Kildare Chilling than Dawn Meats;
  - (c) the limited degree of overlap between the geographic areas in which the Parties respectively purchase live lamb and sheep from farmers; and,
  - (d) the views of third parties (including customers and competitors) that the Parties are not particularly close competitors.

**Overall conclusion for horizontal unilateral effects in the purchase of live lambs and sheep for slaughter in the State**

- 5.72 While the Proposed Transaction will result in a [20-25]% increase in Dawn Meats' share in the purchase of live lamb and sheep for slaughter in the State, thereby

making it the second largest Processor, the Proposed Transaction does not raise horizontal competition concerns in respect of the purchase of live lambs and sheep for slaughter in the State for the following reasons:

- (a) Dawn Meats will continue to face competition from *ABP* and *Kepak* and a number of smaller lamb and sheep Processors currently active in the State, such as *Jennings Meats*, following the implementation of the Proposed Transaction;
- (b) While the Parties compete with one another in the purchase of live lambs and sheep for slaughter in the State, the evidence clearly shows that they are not close competitors as:
  - (i) Dawn Meats' only live lamb and sheep slaughterhouse in the State is approximately 167km away from Kildare Chilling's slaughterhouse, and farmers indicated that Dawn Meats and Kildare Chilling are not close competitors;
  - (ii) There are six Processors operating seven slaughterhouses that are closer to Kildare Chilling's slaughterhouse than Dawn Meats' closest slaughterhouse; and
  - (iii) The Parties' supply of live lamb and sheep is not concentrated in the same counties.

5.73 Therefore, the Commission concludes that Dawn Meats will not have the ability to unilaterally lower the price paid to farmers for live lamb and sheep for slaughter in the State following the implementation of the Proposed Transaction.

5.74 The Commission has therefore concluded that the Proposed Transaction will not result in an SLC in the potential market for the purchase of live lambs and sheep for slaughter in the State.

## The sale of fresh beef meat to Grocery Retailers in the State

5.75 In considering the extent to which the Proposed Transaction is likely to raise unilateral effects concerns in the potential market for the sale of fresh beef meat to Grocery Retailers in the State, the Commission sets out below:

- (a) Views of the Parties;
- (b) The Commission's assessment of unilateral effects;
- (c) Conclusion in respect of unilateral effects in the sale of fresh beef meat to Grocery Retailers in the State.

### Views of the Parties

5.76 The Parties submitted that the Proposed Transaction would not result in an SLC.

5.77 Expanding on this view, the Parties stated that:

- The degree of competitive overlap between Dawn Meats and Kildare Chilling at an individual customer level is minimal and no Grocery Retailer is reliant on the Parties for the supply of meat products;<sup>136</sup>
- Large Grocery Retailers are sophisticated and powerful buyers, with significant bargaining strength, the ability to switch supplier and numerous alternative options from which to choose;<sup>137</sup>
- The Proposed Transaction has a negligible impact on the supply of beef to the retail sector in Ireland. Following the Proposed Transaction, the Parties will have a combined share of supply of around 20-25%, with an increment of less than [0-5]% to Dawn Meats' existing position;<sup>138</sup>

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<sup>136</sup> Merger Notification Form, paragraph 10.

<sup>137</sup> Merger Notification Form, paragraph 167-169.

<sup>138</sup> Merger Notification Form, paragraph 131.

- Dawn Meats and Kildare Chilling do not overlap with each other to any material extent on a customer level (Kildare Chilling does not supply beef to either [...]).<sup>139</sup>

### The Commission’s assessment of unilateral effects

5.78 The Commission considers that the Proposed Transaction raises no horizontal competition concerns in this market for the following reasons.

5.79 First, the Proposed Transaction would result in a minimal increase to Dawn Meats’ share in this market.

5.80 Table 12 below sets out the pre- and post-Proposed Transaction market shares in the sale of fresh beef meat to Grocery Retailers in the State in 2021.

*Table 12: Estimated shares of supply of fresh beef to retail channel (Grocery Retailer) in the State in 2021*

Processor	Share (%)	Primal cut supplier to:
Dawn Meats	[20-25]%	[...]
Kildare Chilling	[0-5]%	[...]
Combined	[20-25]%	--
ABP	30-35%	[...]
Kepak	20-25%	[...]
Liffey Meats	10-15%	[...]
Jennings	5-10%	[...]
Others	5-10%	[...]
<b>Total</b>	<b>100%</b>	<b>--</b>

<sup>139</sup> Merger Notification Form, paragraph 133.

Source: *The Parties*<sup>140</sup>

- 5.81 Following the implementation of the Proposed Transaction, Dawn Meats would have an estimated 20-25% share in the sale of fresh beef to Grocery Retailers in the State, an increase of approximately [0-5] percentage points on its pre-merger share.
- 5.82 Following the implementation of the Proposed Transaction, Dawn Meats, *ABP*, and *Kepak* would represent the three largest suppliers, holding an estimated [70-75]% share in the sale of fresh beef meat to Grocery Retailers in the State at a minimum.
- 5.83 Second, *ABP* and *Kepak* will continue to exercise a competitive constraint on Dawn Meats following the implementation of the Proposed Transaction as the largest and second largest, respectively, competitors active in this market.
- 5.84 Third, *Kildare Chilling* has a minimal presence in the supply of beef to Grocery Retailers and does not supply beef to [...]. While Dawn Meats supplies fresh beef meat to [...]. *Kildare Chilling* does not supply fresh beef meat to any of these [...].
- 5.85 The Commission sought the views of Grocery Retailers in relation to the sale of fresh beef to Grocery Retailers in the State. Overall, Grocery Retailers expressed the following views:
- All Grocery Retailers source fresh beef from multiple Processors,<sup>141</sup>
  - All Grocery Retailers have specific requirements that Processors need to meet;<sup>142</sup>
  - Grocery Retailers expressed differing views on switching between Processors in relation to the sale of fresh beef meat. All Grocery Retailers stated that they have sourced from their current suppliers for several

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<sup>140</sup> Merger Notification Form, table 5.5.

<sup>141</sup> See Grocery Retailers Call Notes.

<sup>142</sup> See Grocery Retailers Call Notes.

years. While most Grocery Retailers stated they would have no issue in switching between Processors, one Grocery Retailer stated that it may be difficult to find a supplier that could meet its demand that was not already supplying other Grocery Retailers. All Grocery Retailers issue tenders when sourcing fresh beef meat;<sup>143</sup> and

- One Grocery Retailer stated that the Proposed Transaction will remove an option when it negotiates with Processors.<sup>144</sup>

5.86 Fourth, the Grocery Retailers are likely to possess some significant buyer power. Five major retailers (*Dunnes, Tesco, SuperValu, Lidl* and *Aldi*) represent approximately 92% of the grocery retail market,<sup>145</sup> with each Grocery Retailer being a large customer with appreciable buyer power.

5.87 Indeed, a previous European Commission market investigation<sup>146</sup> into the beef and lamb sector in the State found that *“downstream customers have significant degree of buyer power and are thus likely to demand from the Parties to pass-on benefits of lower input prices that are relatively easy to monitor. This would also contribute to the pass on of any reduction in input prices to consumers”*.<sup>147</sup>

5.88 This view was confirmed by the Commission’s market enquiries, with one Grocery Retailer informing the Commission that *“it has significant buying power due to the fact that it is a large retailer with large efficiencies, which can help mitigate international price increases, to an extent”*.<sup>148</sup>

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<sup>143</sup> See Grocery Retailers Call Notes.

<sup>144</sup> See [Grocery Retailer 1] Call Note, dated 18 April, p. 4.

<sup>145</sup> Kantar, Irish retailer performance update, accessible at <https://www.kantar.com/uki/inspiration/fmcg/2023-wp-irish-grocery-price-inflation-soars-to-a-new-record-16-3#:~:text=Tesco%20is%20close%20behind%20with,of%20the%20market%20and%200.9%25>.

<sup>146</sup> This market investigation was conducted as part of a European Commission merger investigation - Case M.7930 - ABP Group / Fane Valley Group / Slaney Foods.

<sup>147</sup> Case M.7930 - ABP Group / Fane Valley Group / Slaney Foods, paragraph 283.

<sup>148</sup> [Grocery Retailer 2] Call Note, dated 28 April, p. 2.



### **Conclusion in respect of unilateral effects in the sale of fresh beef meat to Grocery Retailers in the State**

- 5.89 In light of the above, the Commission is of the view that the Proposed Transaction does not raise horizontal competition concerns in the potential market for the sale of fresh beef meat to Grocery Retailers in the State.
- 5.90 Therefore, the Commission concludes that Dawn Meats will not have the ability to unilaterally raise the price of fresh beef meat that is sold to Grocery Retailers in the State.
- 5.91 The Commission has therefore concluded that the Proposed Transaction will not result in an SLC in the potential market for the sale of fresh beef meat to Grocery Retailers in the State.

### **The sale of fresh beef meat to Industrial Processors in the State**

- 5.92 In considering the extent to which the Proposed Transaction is likely to raise unilateral effects concerns in respect of the sale of fresh beef meat to Industrial Processors in the State, the Commission sets out below:
- (a) Views of the Parties;
  - (b) The Commission's assessment of unilateral effects; and
  - (c) Conclusion in respect of unilateral effects in the sale of fresh beef meat to Industrial Processors in the State.

### **Views of the Parties**

- 5.93 The Parties submitted that the Proposed Transaction would not result in an SLC.
- 5.94 Expanding on this view, the Parties stated that:
- *“There is no prospect of a substantial lessening of competition arising in this channel [fresh beef meat to Industrial Processors] following the*

*Proposed Transaction. ... to the extent that Dawn Meats sells beef to third parties in this channel, it is [..].”<sup>149</sup>*

- *“[T]he parties’ customers are in no way dependent on either Kildare or Dawn Meats for their supplies. The most significant customers in the channel, such as ABP, Liffey and Kepak, are among the largest beef producers in the State, operating multiple plants with substantial spare capacity that could readily cater for the entire volume of beef being supplied by Kildare and Dawn Meats. Self-supply is also an option for other, smaller customers, who could also readily source beef from the numerous export-approved alternatives active in Ireland”.*<sup>150</sup>
- *“Industrial processors are sophisticated purchasers of beef products. Indeed, as previously noted by the European Commission in in [sic] ABP/Fane Valley Group/Slaney Foods, industrial processors active in Ireland have stated in terms that they have sufficient buyer power vis-à-vis suppliers of fresh beef meat to ensure ongoing effective competition. The Proposed Transaction does not in any way change this established competitive dynamic.”*<sup>151</sup>

### **The Commission’s assessment of unilateral effects**

5.95 For the reasons set out below, the Commission considers that the Proposed Transaction does not raise unilateral effects concerns in the potential market for the sale of fresh beef meat to Industrial Processors in the State.

5.96 First, the Parties stated that the sale of fresh beef meat to Industrial Processors represents less than 5% of all beef production in Ireland. The Parties explained that most beef Processors (slaughterhouses) are also active as Industrial Processors (further processing) and do not rely on external suppliers of fresh beef meat, and

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<sup>149</sup> Merger Notification Form, paragraph 171.

<sup>150</sup> Merger Notification Form, paragraph 172.

<sup>151</sup> Merger Notification Form, paragraph 173.

that the domestic market is both small and ad-hoc in nature. The Parties were unable to provide market share estimates in the sale of fresh beef meat to Industrial Processors.<sup>152</sup> Dawn Meats stated that it expects *“that its share of the supply of beef to Industrial Processors in the State would be no higher than its share of the cattle kill in Ireland by volume, and is likely to be much lower.”*<sup>153</sup>

5.97 Second, while approximately [...]% of Kildare Chilling’s beef sales in the State are to Industrial Processors, Dawn Meats makes relatively minor sales to Industrial Processors. Dawn Meats made fresh beef meat sales of approximately €[...] to Industrial Processors in the State in 2021 compared to €[...] for Kildare Chilling in 2021.

5.98 Third, it is clear that Kildare Chilling’s sales of fresh beef meat to Industrial Processors is highly focused to one customer, as approximately [...]% of its sales in this channel went to [...], a large Industrial Processor.

5.99 Fourth, Kildare Chilling’s main Industrial Processor customer, [...], stated that it: (i) sources a minimal amount of its beef from Kildare Chilling; (ii) sources beef from other Processors in addition to Kildare Chilling as well as slaughtering its own live cattle; and (iii) did not raise any concerns regarding the Proposed Transaction’s effect with respect to beef.<sup>154</sup>

5.100 Fifth, Dawn Meats will continue to face competition from several suppliers of fresh beef meat to Industrial Processors in the State following completion of the Proposed Transaction. These include *ABP, Kepak, Jennings Meats* and *Liffey Meats*.

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<sup>152</sup> As far as the Commission is aware, there is no third party market share information relating to the sale of fresh beef meat to Industrial Processors.

<sup>153</sup> Dawn Meats Phase 1 RFI Response, Question 33.

<sup>154</sup> [...] Call Note, dated 4 April 2023, p. 2

5.101 Sixth, the European Commission has previously noted that: “...most respondents (industrial processors) consider that they have sufficient buyer power vis-à-vis suppliers of fresh beef meat.”<sup>155</sup>

### **Conclusion in respect of unilateral effects in the sale of fresh beef meat to Industrial Processors in the State**

5.102 In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise unilateral effects concerns in the potential market for the sale of fresh beef meat to Industrial Processors in the State.

5.103 Therefore, the Commission concludes that Dawn Meats will not have the ability to unilaterally raise the price of fresh beef meat that is sold to Industrial Processors in the State.

5.104 The Commission has therefore concluded that the Proposed Transaction will not result in an SLC in the potential market for the sale of fresh beef meat to Industrial Processors in the State.

### **The sale of fresh lamb meat to Grocery Retailers in the State**

5.105 In considering the extent to which the Proposed Transaction is likely to raise unilateral effects concerns in respect of the sale of fresh lamb meat to Grocery Retailers in the State, the Commission sets out below:

- (a) Views of the Parties;
- (b) The Commission’s assessment of unilateral effects; and,
- (c) Conclusion in respect of unilateral effects in the sale of fresh lamb meat to Grocery Retailers in the State.

### **Views of the Parties**

5.106 The Parties submitted that the Proposed Transaction would not result in an SLC.

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<sup>155</sup> Case M.7930 – ABP Group/Fane Valley Group/Slaney Foods, paragraph 396.

5.107 Expanding on this view, the Parties stated that:

- The degree of competitive overlap between Dawn Meats and Kildare Chilling at an individual customer level is minimal and no retailer is reliant on the Parties for the supply of meat products;<sup>156</sup>
- Large Grocery Retailers are sophisticated and powerful buyers, with significant bargaining strength, the ability to switch supplier and numerous alternative options from which to choose;<sup>157</sup> and
- It is unlikely that the Parties will have any form of market power. The combined share in the supply of fresh lamb meat to the retail sector is modest, at just [15-20]%.

### The Commission's assessment of unilateral effects

5.108 The Commission considers that the Proposed Transaction raises no horizontal competition concerns in this market for the following reasons.

5.109 First, the Proposed Transaction would result in a minimal increase in Dawn Meats' share in this market.

5.110 Table 13 below sets out the pre- and post-Proposed Transaction market shares in the sale of fresh lamb meat to Grocery Retailers in the State in 2021.

*Table 13: Estimated shares of supply of fresh lamb to retail channel (Grocery Retailer) in the State in 2021*

Processor	Share (%)	Primal cut supplier to:
Dawn Meats	[10-15]%	[...]
Kildare Chilling	[0-5]%	[...]

<sup>156</sup> Merger Notification Form, paragraph 10.

<sup>157</sup> Merger Notification Form, paragraph 167-169.

<b>Combined</b>	<b>[15-20]%</b>	--
<b>ABP</b>	[30-35]%	[...]
<b>Kepak</b>	[25-30]%	[...]
<b>Others</b>	[15-20]%	[...]
<b>Total</b>	<b>100%</b>	--

Source: *The Parties*<sup>158</sup>

5.111 Following the implementation of the Proposed Transaction, Dawn Meats would have an estimated [15-20]% share in the sale of fresh lamb meat to Grocery Retailers in the State, an increase of approximately [0-5] percentage points on its pre-merger share.

5.112 Second, following the implementation of the Proposed Transaction, *ABP* and *Kepak* will continue to exert a competitive constraint on Dawn Meats in the sale of fresh lamb meat to Grocery Retailers in the State.

5.113 Third, Kildare Chilling only supplies fresh lamb meat to [...].

5.114 The Commission sought the views of Grocery Retailers in relation to the sale of fresh lamb meat to Grocery Retailers in the State. Overall, Grocery Retailers expressed the following views:

- All Grocery Retailers source fresh lamb meat from multiple Processors;<sup>159</sup>
- All Grocery Retailers have specific requirements that Processors need to meet;<sup>160</sup>

<sup>158</sup> Merger Notification Form, table 5.7.

<sup>159</sup> See Grocery Retailers Call Notes.

<sup>160</sup> See Grocery Retailers Call Notes.

- Grocery Retailers expressed differing views on switching between Processors in relation to the sale of fresh lamb meat. All Grocery Retailers stated that they have sourced from their current suppliers for several years. While most Grocery Retailers stated they would have no issue in switching between Processors, one Grocery Retailer stated that it may be difficult to find a supplier that could meet its demand that was not already supplying other Grocery Retailers. All Grocery Retailers issue tenders when sourcing fresh lamb meat;<sup>161</sup>
- One Grocery Retailer stated that the Proposed Transaction will remove an option when it negotiates with Processors.<sup>162</sup>

5.115 Fourth, for similar reasons to those expressed in relation to the sale of fresh beef meat to Grocery Retailers in the State above, the Commission considers it likely that Grocery Retailers possess some significant buyer power.

### **Conclusion in respect of unilateral effects in the sale of fresh lamb meat to Grocery Retailers in the State**

5.116 In light of the above, the Commission is of the view that the Proposed Transaction does not raise horizontal competition concerns in the potential market for the sale of fresh lamb meat to Grocery Retailers in the State.

5.117 Therefore, the Commission concludes that Dawn Meats will not have the ability to unilaterally raise the price of fresh lamb meat that is sold to Grocery Retailers in the State.

5.118 The Commission has therefore concluded that the Proposed Transaction will not result in an SLC in the potential market for the sale of fresh lamb meat to Grocery Retailers in the State.

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<sup>161</sup> See Grocery Retailers Call Notes.

<sup>162</sup> [Grocery Retailer 1] Call Note, dated 18 April 2023, p. 4.

## The sale of fresh lamb meat to Industrial Processors in the State

5.119 In considering the extent to which the Proposed Transaction is likely to raise unilateral effects concerns in respect of the sale of fresh lamb meat to Industrial Processors in the State, the Commission sets out below:

- (a) Views of the Parties;
- (b) The Commission’s assessment of unilateral effects; and
- (c) Conclusion in respect of unilateral effects in the sale of fresh lamb meat to Industrial Processors in the State.

### Views of the Parties

5.120 The Parties submitted that the Proposed Transaction would not result in an SLC.

5.121 Expanding on this view, the Parties stated that:

*“No material overlap arises in relation to the supply of lamb to this channel (as Dawn Meats’ sales were [...]).”<sup>163</sup>*

### The Commission’s assessment of unilateral effects in the sale of fresh lamb meat to Industrial Processors in the State

5.122 The Parties were unable to provide market share estimates in the sale of fresh lamb meat to Industrial Processors in the State.

5.123 However, the Parties state that there is no material overlap in relation to the sale of lamb meat to Industrial Processors in the State. The Commission has seen no evidence which would disprove this view.

5.124 Approximately [...] % of Kildare Chilling’s domestic sales of lamb meat were to Industrial Processors. In contrast, Dawn Meats made minor sales of lamb meat to

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<sup>163</sup> Merger Notification Form, paragraph 139.



Industrial Processors in 2021, with total sales amounting to [...]. A further [...] % of Dawn Meats' lamb sales to Industrial Processors were to [...].

5.125 For the reasons set out below, the Commission considers that the Proposed Transaction does not raise unilateral effects concerns in the potential market for the sale of fresh lamb meat to Industrial Processors in the State:

- (a) Dawn Meats will continue to face competition from several suppliers of fresh lamb meat to Industrial Processors in the State following the implementation of the Proposed Transaction. These include *ABP, Kepak, Jennings Meats* and *Liffey Meats*;
- (b) Dawn Meats has a minimal presence in the sale of lamb meat to Industrial Processors. Its sales of fresh lamb meat to Industrial Processors in 2021 amounted to [...].

#### **Conclusion in respect of unilateral effects in the sale of fresh lamb meat to Industrial Processors in the State**

5.126 In light of the above, the Commission is of the view that the Proposed Transaction does not raise horizontal competition concerns in the potential market for the sale of fresh lamb meat to Industrial Processors in the State.

5.127 Therefore, the Commission concludes that Dawn Meats will not have the ability to unilaterally raise the price of fresh lamb meat that is sold to Industrial Processors in the State.

5.128 The Commission has therefore concluded that the Proposed Transaction will not result in an SLC in the potential market for the sale of fresh lamb meat to Industrial Processors in the State.

## Overall conclusions on unilateral effects

5.129 For the reasons set out in this section and considering all of the evidence described above, the Commission is of the view that the Proposed Transaction does not raise unilateral effects concerns in the following potential relevant markets:

- the purchase of live cattle for slaughter in:
  - the State; and,
  - within a 100km radius from Kildare Chilling's slaughterhouse;
- the purchase of live lambs and sheep for slaughter in the State;
- the sale of fresh beef meat to Grocery Retailers in the State;
- the sale of fresh beef meat to Industrial Processors in the State;
- the sale of fresh lamb meat to Grocery Retailers in the State; and
- the sale of fresh lamb meat to Industrial Processors in the State.

## 6. COMPETITIVE ASSESSMENT COORDINATED EFFECTS

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6.1 Coordinated effects can occur where a proposed transaction changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will coordinate their behaviour by, for example, raising prices and/or decreasing output. Thus, the key questions are whether a proposed transaction would: (i) materially increase the likelihood that firms in the relevant markets would successfully coordinate their behaviour; or (ii) strengthen existing coordination between firms in the relevant market.

6.2 Based on the information available to the Commission in the course of its review of the Proposed Transaction, no plausible coordinated effects theory of harm was identified given the relevant counterfactual in respect of:

- the purchase of live cattle for slaughter:
  - in the State; and,
  - within 100km of Kildare Chilling's slaughterhouse;
- the sale of fresh beef meat to Grocery Retailers in the State;
- the sale of fresh beef meat to Industrial Processors in the State;
- the sale of fresh lamb meat to Grocery Retailers in the State; and
- the sale of fresh lamb meat to Industrial Processors in the State.

6.3 Following the implementation of the Proposed Transaction, three Processors – *Dawn Meats*, *ABP* and *Kepak* – will have a combined market share of approximately [90-95]% of the purchase of live lamb and sheep for slaughter in the State. As outlined in more detail below, there is a high degree of price transparency in the purchase of live lambs and sheep for slaughter in the State. In

light of this and consistent with previous Commission determinations, <sup>164</sup> during the course of its investigation, the Commission considered whether the Proposed Transaction was likely to give rise to coordinated effects in respect of the purchase of live lambs and sheep for slaughter in the State.

## Assessment of coordinated effects in the purchase of live lambs and sheep for slaughter in the State

6.4 The Commission<sup>165</sup> and European Commission<sup>166</sup> have previously considered coordinated effects in the context of mergers in the purchase of live lambs and sheep for slaughter on the island of Ireland. In *M/17/035 Dawn Meats/Dunbia*, the Commission ultimately concluded that that transaction would not give rise to coordinated effects for the following reasons:

- The Commission found no evidence of coordinated behaviour prior to that transaction and no concerns were raised by third parties regarding coordinated effects;<sup>167</sup>
- Coordination by Processors following that transaction on the prices paid to farmers for live lamb and sheep for slaughter did not appear feasible due to the volatile nature of demand in the downstream markets for the sale of fresh lamb meat in the State;<sup>168</sup> and
- The transaction would not result in an increase in the sustainability of coordination because the reaction of both current and future competitors and customers was likely to jeopardise any attempt by slaughterhouses to

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<sup>164</sup> The Commission has previously considered coordinated effects in the purchase of live lamb and sheep for slaughter in *M/17/035 – Dawn Meats/Dunbia*, paragraph 158.

<sup>165</sup> *M/17/035 - Dawn Meats/ Dunbia*.

<sup>166</sup> *Case M.7930 – ABP Group/Fane Valley Group/Slaney Foods*.

<sup>167</sup> *M/17/035 - Dawn Meats/ Dunbia*, paragraph 115-118.

<sup>168</sup> *M/17/035 - Dawn Meats/ Dunbia*, paragraph 132.

coordinate on the prices paid to farmers for live lamb and sheep for slaughter in the State.<sup>169</sup>

6.5 The European Commission has previously considered coordinated effects in the context of an acquisition relating to the market for the purchase of live lambs and sheep for slaughter on the island of Ireland, and determined that the transaction was unlikely to give rise to coordinated effects for the following reasons:

- The transaction did not increase market symmetry;
- Coordination in the purchase of live lambs and sheep for slaughter would require coordination in the sale of fresh lamb meat downstream (absent constant demand). Such downstream coordination is unlikely given the likely reaction of international Processors and downstream customers;
- Downstream demand for fresh lamb varies, impeding the ability of upstream Processors to coordinate in the purchase of live lambs and sheep; and
- The reaction of outsiders would be likely to jeopardise any attempt at coordination. For example, downstream customers could respond to the public availability of input prices (live lamb and sheep) to leverage with Processors to pass through the benefit of lower input prices.<sup>170</sup>

6.6 During its review of the Proposed Transaction, the Commission has not seen any evidence which would contradict the previous findings of the Commission and the European Commission. Therefore, the Commission does not consider that the Proposed Transaction, of itself, raises any coordinated effects concerns.

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<sup>169</sup> *M/17/035 - Dawn Meats/Dunbia*, paragraph 133 & 155.

<sup>170</sup> See paragraphs 367-390 of Case *M.7930 – ABP Group/Fane Valley Group/Slaney Foods*.

## 7. VERTICAL RELATIONSHIP

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7.1 The Commission has identified two vertical relationships between Dawn Meats and Kildare Chilling:

- Kildare Chilling supplies fresh beef meat to Dawn Meats; and
- Kildare Chilling supplies fresh lamb meat to Dawn Meats.

7.2 These two vertical relationships are considered in more detail below.<sup>171</sup>

7.3 Vertical effects can occur where a transaction changes the ability and incentives of the parties involved in the transaction, making it more likely that the merged entity will engage in either input foreclosure or customer foreclosure. Thus, the key question for the Commission to consider is whether a transaction would materially increase the likelihood of input foreclosure or customer foreclosure due to the transaction's effects on the merged entity's ability and incentive to foreclose its upstream and/or downstream competitors.<sup>172</sup>

### Vertical Relationship 1: The sale of fresh beef meat to Dawn Meats

7.4 The Commission has identified a minor vertical relationship between Dawn Meats and Kildare Chilling. Kildare Chilling supplies fresh beef meat to Dawn Meats which Dawn Meats uses for further processing. Dawn Meats purchased [...] worth of fresh beef meat from Kildare Chilling in 2021.

7.5 Vertical foreclosure concerns would arise where Dawn Meats, following the Proposed Transaction, would have the ability and incentive to foreclosure (i) its rival Industrial Processors' access to an important input, i.e., fresh beef meat

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<sup>171</sup> The Commission also identified a potential vertical relationship between the Parties, as Kildare Chilling is active in the purchase of live cattle and lambs and sheep for slaughter (upstream), while Dawn Meats is active in the rendering of by-products (downstream). The Commission considers that this potential vertical relationship is unlikely to give rise to vertical foreclosure concerns in relation to the rendering of by-products for the following reasons: (i) there will be several alternative Processors from which those active in the rendering of by-products can purchase waste materials and other products following the Proposed Transaction; (ii) Dawn Meats primarily uses animal waste from its own processing activities when rendering by-products and is not increasing its presence in the rendering of by-products as a result of the Proposed Transaction; and (iii) no concerns were raised by Processors or those active in the rendering of by-products during the Commission's investigation.

<sup>172</sup> See the Merger Guidelines, paragraphs 5.7 – 5.17.

(input foreclosure); or (ii) its competitors in the sale of fresh beef meat to Industrial Processors (customer foreclosure).

- 7.6 Over [...] % of Kildare Chilling’s beef sales to Industrial Processors were made to [...]. Therefore, there would be the potential for Dawn Meats to engage in input foreclosure with regards to [...] following the implementation of the Proposed Transaction.
- 7.7 As noted above, the Commission engaged with [...] during the course of its investigation. [...] informed the Commission that: (i) Kildare Chilling supplies a minor amount of its beef supply; (i) [...] also sources beef from other Processors (as well as its self-supply); and (iii) [...] did not have any concerns regarding the Proposed Transaction’s effect with respect to beef.<sup>173</sup> The Commission considers that the implementation of the Proposed Transaction would not give Dawn Meats the ability or incentive to foreclose [...] from purchasing fresh beef meat in the State.<sup>174</sup> Therefore, the Commission has not identified any credible vertical theory of harm with respect to the sale of fresh beef meat to Industrial Processors in the State.
- 7.8 In light of the above, the Commission considers that the Proposed Transaction is unlikely to give rise to vertical foreclosure concerns in the supply of fresh beef meat to Industrial Processors in the State.

## **Vertical Relationship 2: The sale of fresh lamb meat to Dawn Meats**

- 7.9 There is a vertical relationship between the Parties, as Kildare Chilling supplies fresh lamb meat to Dawn Meats. Dawn Meats purchased €[...] worth of fresh lamb meat from Kildare Chilling in 2021.

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<sup>173</sup> See [...] Call Note, dated 4 April 2023, p. 2.

<sup>174</sup> The Commission also considers that the implementation of the Proposed Transaction would not give Dawn Meats the ability or incentive to engage in customer foreclosure in the sale of fresh beef meat to Industrial Processors in the State. Kildare Chilling is not active as an Industrial Processor. Therefore, Dawn Meats is not increasing its presence as an Industrial Processor in the State as a result of the Proposed Transaction.

7.10 Vertical foreclosure concerns would arise where Dawn Meats, following the Proposed Transaction, would have the ability and incentive to foreclosure (i) its rival Industrial Processors' access to an important input, i.e., fresh lamb meat (input foreclosure); or (ii) its competitors in the sale of fresh lamb meat to Industrial Processors (customer foreclosure). The Commission considers that the Proposed Transaction is unlikely to give rise to vertical foreclosure concerns in relation to the sale of fresh lamb meat to Industrial Processors for the following reasons:

- Dawn Meats' sales of fresh lamb meat to Industrial Processors amounted to €[...]. This reflects Dawn Meats' minimal presence in this sales channel. Following the Proposed Transaction, there will be several alternative lamb processors from which Industrial Processors can purchase fresh lamb meat. Furthermore, certain Industrial Processors also slaughter lamb and sheep and, as such, are not reliant on other Processors for their supply of lamb meat. Therefore, the Commission considers that the Proposed Transaction does not give rise to input foreclosure concerns.
- As noted above, Kildare Chilling, unlike many other lamb and sheep Processors, is not active as an Industrial Processor. Consequently, Dawn Meats is not increasing its presence as an Industrial Processor in the State. Therefore, the Commission considers that the Proposed Transaction does not give rise to customer foreclosure concerns.
- No Industrial Processor raised vertical concerns in relation to the Proposed Transaction.

## Conclusion

7.11 On the basis of the information in the possession of the Commission, no plausible vertical effects theory of harm was identified. Therefore, no further discussion of vertical effects is carried out for the purposes of assessing the likely effects of the Proposed Transaction in the identified potential relevant markets.



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

## 8. ANCILLARY RESTRAINTS

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- 8.1 The Parties state that Clause 16.1(a) of the SPA contains a restriction that is directly related and necessary to the implementation of the Proposed Transaction.
- 8.2 The Commission notes that Clauses 16.1 (a) of the SPA contains a non-compete restriction on the Vendors.<sup>175</sup> The Commission considers that the duration and scope of this obligation does not exceed the maximum duration and scope acceptable to the Commission<sup>176</sup>. The Commission therefore considers the restriction contained in Clauses 16.1(a) of the SPA to be directly related and necessary to the implementation of the Proposed Transaction, in so far as it relates to the State.

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<sup>175</sup> [...] and [...].

<sup>176</sup> In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 of its Notice on restrictions directly related and necessary to concentrations (2005) OJ C56/03.

## 9. CONCLUSION

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- 9.1 In the light of its analysis of all the information and evidence available to it, as set out in this Determination, the Commission has formed the view that the Proposed Transaction will not result in a substantial lessening of competition in any of the relevant markets.

## 10. DETERMINATION

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The Competition and Consumer Protection Commission (the “Commission”), in accordance with section 22(3)(a) of the Competition Act 2002, as amended, (the “Act”) has determined that the result of the proposed acquisition whereby Dawn Meats Ireland Unlimited Company would acquire sole control of Kildare Chilling Company Unlimited Company 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.

Before making a determination in this matter, the Commission, in accordance with section 22(8) of the Act, had regard to any relevant international obligations of the State, and concluded that there were none.

For the Competition and Consumer Protection Commission

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**Brian McHugh**

Chairperson  
Competition and Consumer Protection Commission

