

DETERMINATION OF MERGER NOTIFICATION M/23/008 – AURIVO CO-OP/CERTAIN ASSETS OF ARRABAWN CO-OP

Section 21 of the Competition Act 2002

Proposed acquisition by Aurivo Consumer Foods Limited, a wholly owned subsidiary of Aurivo Co-operative Society Limited, of certain assets of Arrabawn Co-Operative Society Limited

Dated 12 July 2023

Introduction

1. On 15 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 a proposed acquisition, whereby Aurivo Consumer Foods Limited (“Aurivo Consumer Foods”), a wholly-owned subsidiary of Aurivo Co-operative Society Limited (“Aurivo Co-Op”), would acquire certain assets (the “Target Assets”), of Arrabawn Co-Operative Society Limited (“Arrabawn”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of Business Transfer Agreement dated 3 February 2023 between Arrabawn and Aurivo Consumer Foods (the “BTA”). Under the terms of the BTA, Aurivo Consumer Foods will acquire certain assets of Arrabawn.

The Undertakings Involved

The Acquirer – Aurivo Co-Op

3. Aurivo Co-Op is an industrial and provident society, which is registered on the Register of Friendly Societies and is owned by approximately 14,000 members.¹ Aurivo Co-Op,

¹ No individual shareholder owns more than 1% of the shares in Aurivo Co-Op. The members are mostly farmers who trade with Aurivo Co-Op.



together with all of Aurivo Co-Op's subsidiaries, including Aurivo Consumer Foods, are referred to in this Determination as "Aurivo Group".

4. Aurivo Group is a diversified agri-business co-operative that is active across four main areas: (i) Consumer Foods; (ii) Dairy Ingredients; (iii) Agri-Business; and (iv) Marts.²

Consumer Foods

5. Aurivo, through Aurivo Consumer Foods, supplies both branded and unbranded food products – predominantly liquid milk, cream and butter - to retailers, food-service operators and food wholesalers/distributors in the State.

6. Aurivo Group sells branded products under four brand names:

- *Connacht Gold* – branded liquid milk and cream that are sold predominantly in the west/north-west of the State;³ branded butter that is sold in both the State and Northern Ireland;
- *Donegal Creameries* – branded liquid milk and cream that are sold primarily in County Donegal;
- *Organic For Us* – branded organic milks, aimed at high-end hospitality sector, that are sold throughout the State; and,
- *For Goodness Shakes* – UK-based brand of health and nutrition ready-to-go shakes that are sold in both the State and the UK.

Dairy Ingredients

7. Aurivo Group's dairy ingredients division processes between 300 million and 400 million litres of manufacturing milk annually into a wide array of milk powder/dairy ingredient and butter products for export to over 50 countries.

² Aurivo Group's Marts division operates four livestock marts.

³ In paragraph 4.3 of the merger notification form, the parties state that [REDACTED]



Agri-Business

8. With regard to its agri-business division, Aurivo Group owns 34 retail stores which range from 21 Homeland Agri stores through to 11 Homeland stores and 2 Homeland Plus stores.⁴ It also operates through homeland.ie, an online store which delivers on an all-island basis.

Marts

9. Aurivo Group's Marts division operates four livestock marts.
10. For the financial year ending 31 December 2021, the total worldwide consolidated turnover of Aurivo Group was approximately €570.3 million, approximately [REDACTED] million of which was generated in the State.

The Target – Certain Assets of Arrabawn

11. The Target Assets comprise the van sales business and certain specified assets of Arrabawn. The van sales business of Arrabawn is described in the BTA as being the van/vehicle business of Arrabawn relating to the supply of certain defined liquid milk, cream and butter products⁵ and comprising the entire business of Arrabawn relating to the supply of such products (but excluding the supply by Arrabawn of similar products to Lidl and Aldi (the "Business"). The merger notification form states that the Business relates to the supply of packaged milk and butter to food service operators, wholesalers and grocery retailers for sale to/consumption by individual customers/consumers.⁶
12. More specifically, the Target Assets include the following to enable Aurivo Group to carry on the Business following the completion of the Proposed Transaction:
- The goodwill and customer relationships to the Business;

⁴ Homeland Agri also offers DIY, fuel, paint, electrical and household products, as well as clothing, footwear and pet products – including a range of animal feed under Aurivo Group's Nutrias brand.

⁵ The relevant products are defined in the BTA as being (i) liquid milk, cream and butter products [REDACTED] and (ii) butter [REDACTED]

⁶ Paragraph 1.1 of the merger notification form.



- The supplier contracts of the Business (excluding contracts/arrangements for the procurement of raw milk);
- Information concerning, among other things, customers, suppliers, sales and technical literature, title documents and other documentation relating to the Business;
- Certain intellectual property rights relating to the Business;
- Storage, processing, packaging and transportation equipment;
- Delivery vans and approximately ■ drivers of these vans; and
- Stock in trade (including liquid milk and butter products).

13. Under the terms of the Proposed Transaction, Aurivo Group will not acquire any of Arrabawn's contracts for the procurement of raw milk from dairy farmers. ■■■■■

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14. Aurivo Group will not be acquiring formal customer contacts from Arrabawn as part of the Proposed Transaction as, according to the merger notification form, suppliers of liquid milk, cream and butter typically do not enter into formal written supply contracts with customers.⁸ However, the parties state in the merger notification form, that it is anticipated that Aurivo will continue to supply the Business's branded Dawn and Arrabawn customers.

15. Under the terms of the Proposed Transaction, Aurivo Group will acquire certain processing, packaging, storage and distribution equipment currently in use at Arrabawn's liquid milk processing facility in Ballinasloe, County Galway. Aurivo Group will not acquire the facility itself.

16. For the financial year ending 31 December 2021, the worldwide turnover generated from the Target Assets' was approximately ■ million, all of which was generated in the State.

⁷ Paragraph 1.1 of the merger notification form.
⁸ See Footnote 1 of the merger notification form.



The Seller – Arrabawn

17. Arrabawn is an industrial and provident society which is registered on the Register of Friendly Societies and is an agri-based organisation headquartered in Nenagh, Co. Tipperary. Separate to the Target Assets, Arrabawn has other business divisions, namely its: (i) ingredients division; and (ii) agri-business division.
18. Arrabawn’s ingredients business includes the production and sale of approximately [REDACTED] tonnes of butter for export. Arrabawn’s ingredient business processes approximately [REDACTED] million litres of milk into milk powder products, [REDACTED] for export.
19. Arrabawn’s agri-business division supplies animal feed products through its Dan O’Connor Feeds and Greenvale Animal Feeds divisions.⁹ Arrabawn, with its brand Homevalue, also operates retail stores selling agricultural and hardware products at 13 locations across the west of Ireland.
20. Neither Arrabawn’s ingredients division nor its agri-business division form part of the Proposed Transaction. The Target Assets are contained in other divisions in Arrabawn.

Third-Party Submissions

21. No third-party submissions were received.

Investigation

22. On 28 March 2023, the Commission served a Requirement for Further Information on Aurivo Co-Op pursuant to section 20(2) of the Act (“the “Aurivo Phase 1 RFI”). The service of this RFI adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1. On 28 March 2023, the Commission issued an information request to Arrabawn.

⁹ <https://arrabawn.ie/our-divisions/agri-business/>.



23. Upon receipt of a full response to the Aurivo Phase 1 RFI, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 1 June 2023.¹⁰
24. The Commission conducted market enquiries which included sending questionnaires to competitors of the parties.¹¹ In some cases, the Commission also contacted these third parties by online video call and/or e-mail to seek further details regarding their responses.

Analysis

25. The Commission is unable, at this stage, to make a determination that in the opinion of the Commission the result of the Proposed Transaction will not be to substantially lessen competition in markets for goods or services in the State. Accordingly, the Commission intends to carry out a full investigation under section 22 of the Act.

¹⁰ The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.

¹¹ These competitors consisted of other co-operatives, milk processors, and wholesalers of dairy products.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(b) of the Competition Act 2002, as amended (the “Act”), has determined that it intends to carry out a full investigation under section 22 of the Act in relation to the proposed acquisition by Aurivo Consumer Foods Limited, a wholly-owned subsidiary of Aurivo Co-operative Society Limited, of certain assets of Arrabawn Co-Operative Society Limited.

For the Competition and Consumer Protection Commission

Brian McHugh

Member

Competition and Consumer Protection Commission