



DETERMINATION OF MERGER NOTIFICATION M/23/010 – BWG/TUFFY WHOLESale

Section 21 of the Competition Act 2002

Proposed acquisition by BWG Foods Unlimited Company of sole control of Tuffy Wholesale Limited

Dated 3 May 2023

Introduction

1. On 28 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 transaction whereby BWG Foods Unlimited Company (“BWG”), a wholly owned indirect subsidiary of TIL JV Limited (“TIV JV”) which is 100% owned by The SPAR Group Limited,¹ would acquire the entire issued share capital and thus sole control of Tuffy Wholesale Limited² (“Tuffy Wholesale”) (together with BWG, referred to as “the Parties) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share purchase agreement between BWG and John Tuffy, Brian Tuffy, Seamus Tuffy (the “Sellers”) dated 28 February 2023 (the “SPA”). Pursuant to the SPA, BWG will acquire the entire issued share capital, and thus sole control, of Tuffy Wholesale from the Sellers.
3. The Proposed Transaction involves the transfer of goodwill and trade attached to Tuffy Wholesale,³ as well as employees, stocks, debtors, creditors, cash, vehicles, and

¹ The SPAR Group Limited is a plc quoted on the Johannesburg stock exchange.

² *Tuffy Wholesale Limited... [is] a newly incorporated company which owns the business previously carried on by, and certain assets previously owned by Padraic Tuffy Limited.*

³ Previously carried on by *Padraic Tuffy Limited*



manual handling equipment employed in the Tuffly Wholesale business. The leasehold premises at Collooney, Co. Sligo from which Tuffly Wholesale operates will not transfer under the Proposed Transaction. [...].

The Undertakings Involved

The Acquirer – BWG

4. BWG is a food retail and wholesale distribution company which operates in the State. BWG is a wholly owned subsidiary of BWG Group Unlimited Company, which in turn is a wholly-owned subsidiary of TIL JV.
5. BWG is active in both the retail and wholesale distribution of grocery goods in the State to its affiliated stores⁴ and to stores operated by independent retailers. BWG is active to a lesser degree in the wholesale distribution of food and beverages to foodservices customers and to the licensed trade throughout the State.
6. BWG operates a distribution centre at “Kilcarbery Business Park, Nangor Road, Dublin 22, a chain of 19 wholesale cash and carry outlets under the “Value Centre” brand throughout the State, and two wholesale cash and carry outlets under the “4 Aces” and “Better Deal” brands which it acquired as part of the 4 Aces acquisition.⁵ Following the acquisition of Roadfield Holdings Limited, BWG also operates a warehouse in Athenry and a smaller warehouse in Dublin, both of which are held under leases from third parties.⁶ Following the acquisition of Heaney Meats Catering Limited (now called Cruinniu Bia Limited), BWG operates a meat production factory at Liosbaun Industrial Estate, Galway.⁷

⁴ See paragraph 67 of the Merger Notification Form which states that “A wholesaler-franchisor licenses the use of a retail brand or fascia under a franchise agreement to retailers (its affiliated retailers) and sells goods at wholesale predominantly to its affiliated retailers, but also to other retailers (e.g. independent retailers) and other customers (e.g. catering services)”

⁵ See M/18/009 – BWG/4 Aces. Accessible at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/02/M-18-009-Full-Determination-BWG-4-Aces-1.pdf>

⁶ See M/18/077 – BWG/Roadfield (Corrib Foods). Accessible at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/09/Public-M-18-077-BWG-Roadfield-Determination.pdf>

⁷ M/19/039 – BWG/Heaney Meats. Accessible at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2019/11/M.19.039-BWG-Heaney-Meats-PUBLIC-Determination.pdf>



7. BWG has [...] affiliated retail stores, including [...] affiliated Gala branded stores and supply agreements with [...] Maxol stores. [...] of BWG's affiliated stores are owned and operated by an indirect subsidiary of BWG, Triode Newhill Management Services Limited. Triode Newhill Finance Limited and Triode Newhill Finance Limited's subsidiaries own the freehold or leasehold interest in [...] retail premises which are franchised to third-party retailers.
8. At the retail level, BWG:
- Owns and operates the Spar franchise in the State (the *Spar*, *Eurospar* and *Spar Express* brands).
 - Owns and operates the Londis franchise in the State (the *Londis* brand).
 - Owns and operates the *XL* and the *Xpress Stop* brands which comprise smaller stores generally under 100m², who are supplied by BWG' cash and carry outlets;
 - Has the right to license the *Mace* brand throughout the State;
 - Has a supply agreement with Maxol Limited ("Maxol"). In January 2023, BWG entered into a new[...];
 - Owns [35-40]% of Fresh Opportunities Ltd which operates [...] Fresh retail stores in Dublin, all of which have trading agreements with BWG; and,
 - Supplies, via 4 Aces, [...] affiliated Gala branded stores.
9. BWG has been a party to various transactions which were notified to the Commission including those resulting in the following determinations: *M/22/047 - BWG/McCarrick Brothers Wholesale*,⁸ *M/22/012 - BWG/Certain assets of Thurles Wholesale*, *M/19/039 - BWG/Heaney Meats*,⁹ *M/18/077 - BWG/Roadfield (Corrib*

⁸ Accessible at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2022/09/M.22.047.-Public-Determination.pdf>

⁹ See Footnote 7.



Foods),¹⁰ *M/18/009 - BWG/4 Aces*,¹¹ in *M/15/009 – BWG/Londis*¹² and *M/08/014 – BWG/Mangan’s*.¹³

10. For the financial year ending 30 September 2022, TIL JV Limited’s worldwide turnover was approximately €1.8 billion, of which approximately €1.512 billion was generated in the State.

The Target – Tuffly Wholesale

11. Tuffly Wholesale is an Irish-owned grocery wholesale business operating nationwide but with a focus on the west of Ireland and, to a lesser extent, the midlands and east coast of Ireland.
12. Tuffly Wholesale is engaged in the wholesale distribution of tobacco products, confectionary, soft drinks, alcohol, chilled goods and general grocery products. Tuffly Wholesale supplies restaurants, hotels and fast food outlets as well as organisations such as schools, universities and hospitals. Tuffly Wholesale offers a ‘delivered business’ distribution channel to its customers and does not operate a walk-in cash and carry service.
13. Tuffly Wholesale supplies [...] *Gala* and [...] *Your Stop* franchise retailers. [...]. Ownership and control of the [...] retail stores will be unaffected by the Proposed Transaction which is limited to the acquisition of Tuffly Wholesale.
14. Tuffly Wholesale is a member of the Gala Retail Services Limited (“GRSL”) and Stonehouse Marketing Limited wholesaler-owned buying groups.
15. GRSL is a wholesaler-owned buyer group with six “members” or shareholders and it also effectively operates as a wholesaler-franchisor. GRSL owns the *Gala* brand, which it makes available to retailers with which it has a franchise agreement.

¹⁰ See Footnote 6.

¹¹ See Footnote 5.

¹² Accessible at <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/05/M-15-009-BWG-Foods-Londis-public.pdf>

¹³ Accessible at <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/05/M08014-BWG-Mangans-Determination-Public.pdf>



Approximately 200 retailers currently operate under the *Gala* brand in the State. GRSL also owns the *Your Stop* brand. GRSL is funded by annual payments (or “subscriptions”) from GRSL members and from Gala-branded franchisees. GRSL negotiates with manufacturers and suppliers on its members’ behalf and GRSL members (including Tuffy Wholesale) can avail of GRSL-negotiated terms for products supplied to GRSL-branded stores only or “otherwise sold through the Tuffy Business”. Tuffy Wholesale cannot avail of GRSL terms for products supplied to independent stores or otherwise sold through the Tuffy Business.

16. Stonehouse is a wholesaler-owned Irish marketing and buying group. Stonehouse has 15 “members” or shareholders,¹⁴ all of which are Irish grocery wholesalers. Stonehouse currently has seven directors, representing its larger members. Stonehouse negotiates with manufacturers and suppliers on behalf of its members. Stonehouse has two own-label brands, *Homestead* and *White Hat*, the latter of which is a foodservice brand.
17. For the financial year ending 31 March 2022, Tuffy Wholesale¹⁵ generated worldwide turnover of €47.7 million, all of which was generated in the State.

Rationale for the Proposed Transaction

18. The Parties state in the notification:

“The Sellers are exiting the business of the wholesale supply of grocery goods, and the Proposed Transaction represents a combination of two complementary businesses.”¹⁶

Contacts with the Undertakings Involved

¹⁴ Post-Transaction 14 “members” will remain. These 14 remaining “members” are: S. Barrett Ballina Ltd; J R Byrne & Sons Ltd; Sean Glennon & Sons Ltd; John McBride (Cranford) Limited; Hallissey & Co Ltd; F J Byrne & Co Ltd; D A Perry Athy Ltd; M Sheehan Wexford Ltd; H Murphy & Co Ltd; M & P O Sullivan Ltd; G Elliott & Sons Ltd; C Clifford & Sons Ltd; Caffreys (Millbrook) Limited – t/a Millbrook Foods; Applegreen Limited.

¹⁵ Through Patrick Tuffy Limited.

¹⁶ See Paragraph 40 of the Merger Notification Form.



19. During the Phase 1 investigation, the Commission requested and received further information and clarifications from the Parties on an ongoing basis. On 3 May 2023, BWG also submitted proposals to the Commission in accordance with section 20(3) of the Act. This adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1 from 30 to 45 working days
20. As part of the notification, the Parties submitted a competition economics report prepared by Compecon Limited entitled “*Economic Analysis of BWG Foods’ Proposed Acquisition of Tuffly Wholesale Limited*” (the “Compecon Report”).

Third Party Submissions

21. No third-party submissions were received.

Competitive Analysis

22. There is a horizontal overlap between the activities of the Parties in the wholesale supply of grocery goods in the State.

Relevant Product Market

Views of the Parties

23. The Parties state the following in the notification:

“In the Grocery Report No. 1, the CCPC (then the Competition Authority) identified three categories of wholesale grocery distributor in Ireland: (i) wholesaler-franchisor; (ii) cash and carry wholesalers; and (iii) buying groups. These three categories of wholesale grocery distributors each supply different sectors of the wholesale market, namely (i) retail, (ii) foodservice, and (iii) licensed trade. The Parties submit that the three categories of wholesale grocery distributor all compete for the wholesale distribution of grocery goods



to the above sectors and accordingly, that there is a single market for the wholesale distribution of grocery goods in the State.”¹⁷

Views of the Commission

24. The Commission, as set out in the Commissions Merger Guidelines, defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission does not need to come to a definitive view on the precise relevant product market in this instance since its conclusion on the competitive effects of the Proposed Transaction will be unaffected whether the relevant product market is defined more narrowly, (i.e. by reference to the retail, foodservice and licensed trade sectors separately) or more broadly (i.e. by reference to the overall wholesale supply of grocery goods).
25. In previous merger determinations, most recently M/22/047 – BWG/McCarrick, the Commission has focused its analysis on the wholesale supply of grocery goods.¹⁸ The Commission has not, in the course of its analysis of the Proposed Transaction, found reasons to depart from the approach previously adopted by the Commission.

Relevant Geographic Market

26. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant geographic market because doing so will not alter the Commission’s assessment of the competitive effects of the Proposed Transaction.
27. For the purpose of assessing whether the Proposed Transaction will result in a substantial lessening of competition, the Commission has analysed its impact by reference to the State.¹⁹

¹⁷ Paragraph 2.49 of the Compecon Report states the following: “the relevant market for the purposes of analysing the likely impact of the proposed transaction on competition is the wholesale grocery market”.

¹⁸ See, for example, M/15/009 – BWG/Londis; M/18/009 – BWG/4Aces; M/22/047 – BWG/McCarrick.

¹⁹ This follows the decisional practice of the Commission in recent determinations. See, for example, Footnote 8, Footnote 12 and Footnote 13.



Conclusion on Relevant Market

28. For the purposes of assessing the likely competitive effects of the Proposed Transaction, the Commission has found no reason to depart from its previous approach and, accordingly, has assessed the competitive effects of the Proposed Transaction in the wholesale supply of grocery goods in the State.

Competitive Effects Analysis

29. There is a horizontal overlap between the activities of BWG and Tuffy Wholesale in the State with respect to the wholesale supply of grocery goods.
30. The Commission notes that independent data on shares of sales at the wholesale level is not readily available. The Compecon Report states the following: *“Musgraves is generally considered to be the largest operate (sic) and the parties estimate that it accounts for approximately [55-60]% of the market. BWG is the second largest wholesaler with an estimated market share of [20-25]%. The Barry Group is estimated to have a [5-10]% market share. GRSL wholesalers and non-GRSL Stonehouse wholesalers are each estimated to have a market share of [0-5]%, with others, including Northern Ireland based wholesalers having [0-5]%. The Target had a turnover of €47.7 million which represents less than [0-5]% of the estimated €[...] wholesale grocery market.”*²⁰
31. Considering the above market share estimates and the very small increment in BWG’s market share following implementation of the Proposed Transaction, the Commission considers that the Proposed Transaction will not result in a substantial lessening in competition in the wholesale supply of grocery goods in the State.

The Potential for the Exchange of Competitively Sensitive Information

32. As described in paragraph 14 above, Tuffy Wholesale is a member of Stonehouse and GRSL. Due to Tuffy Wholesale’s membership in both GRSL and Stonehouse, the Commission identified the following potential effects on competition to which the Proposed Transaction could have given rise:

²⁰ See Paragraph 3.3 of the Compecon Report.



- the potential that the Proposed Transaction could provide BWG, through its proposed ownership of Tuffly Wholesale, with access to competitively sensitive information relating to GRSL or Stonehouse (e.g. information relating to current or future prices negotiated by GRSL or Stonehouse on behalf of their members with suppliers of grocery goods); and
 - the potential that the Proposed Transaction could provide Stonehouse or GRSL with access to competitively sensitive information relating to BWG (e.g. information relating to current or future prices negotiated by BWG on behalf of its members with suppliers of grocery goods).
33. For these reasons, the Commission identified potential effects arising from the Proposed Transaction as having the potential to restrict and/or distort competition in relation to the wholesale supply of grocery goods in the State.

Proposals Submitted by BWG

34. On 3 May 2023, BWG submitted proposals to the Commission in accordance with section 20(3) of the Act for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services in the State (the “Proposals”). The Proposals included commitments by BWG to divest fully Tuffly Wholesale’s shareholding in Stonehouse and GRSL. The Proposals further included commitments by BWG to ensure that, following the implementation of the Proposed Transaction, the part of the Tuffly Wholesale business which is involved in or related to GRSL will continue to have business with GRSL but not Stonehouse and will be managed by a separate management structure.²¹

²¹ This separate management structure is a pre-existing structure which was established pursuant to the 4 Aces Commitments to undertake management responsibilities in respect of 4 Aces Wholesale Limited, in order to prevent the exchange of competitively sensitive information between BWG and GRSL arising out of 4 Aces Wholesale Limited’s membership of GRSL. BWG acknowledged in the recitals to the Proposals that the 4 Aces Commitments remain in force in all respects and that BWG’s obligations under the 4 Aces Commitments regarding competitively sensitive information relating to GRSL will apply in respect of the business of Tuffly Wholesale following implementation of the Proposed Transaction. Accessible at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/02/M-18-009-Full-Determination-BWG-4-Aces-1.pdf>



35. The Proposals are intended to prevent the exchange of competitively sensitive information, which would constitute a breach of section 4(1) of the Act, between BWG and GRSL or between BWG and Stonehouse. The Commission is of the view that the Proposals are appropriate and effective to address the potential competition concerns identified by the Commission in the potential market for the wholesale supply of grocery goods in the State. In accordance with section 20(3) and section 26(1) and 26(4) of the Act, the Commission has taken the Proposals into account and the Proposals form the basis or part of the basis for this determination. Consequently, the Proposals have become commitments binding upon BWG. The Proposals are set out at Appendix A of this determination.
36. In light of the above, and having taken the Proposals into account, the Commission considers that the Proposed Transaction will not raise any horizontal competition concerns in the wholesale supply of grocery goods in the State.

Vertical Relationship

37. There is no vertical relationship between BWG and Tuffy Wholesale in the State. Tuffy Wholesale supplies [...] Gala and [...] Your Stop franchise retailers which are all independently owned and operated. Ownership, control and operation of these franchisees will not be affected by the Proposed Transaction.
38. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion of Competitive Analysis

39. In light of the above, and having taken the Proposals into account (which form the basis or part of the basis for its determination), the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints



40. The parties state in the notification that Clause 15 of the SPA contains certain obligations that are directly related and necessary to the implementation of the Proposed Transaction. These are Clause 15.2 (a), (b) and (e).
41. The Commission notes that Clause 15.2 (a), (b) and (e) of the SPA contain a non-compete obligation and non-solicitation obligations on Tuffy Wholesale. The Commission notes that Clause 15.2 (a), (b) and (e) of the SPA are limited in scope, and do not exceed the maximum duration acceptable to the Commission. The Commission considers the restrictions contained in Clause 15.2 (a), (b) and (e) to be directly related and necessary to the implementation of the Proposed Transaction, in so far as they relate to the State.

Determination

Pursuant to section 20(3) of the Competition Act 2002, as amended (“the Act”), BWG Foods Unlimited Company (“BWG”) has submitted to the Competition and Consumer Protection Commission (“the Commission”) the proposals set out below relating to the proposed acquisition by BWG, a wholly owned subsidiary of TIL JV Limited, of the entire issued share capital of Tuffy Wholesale Limited (the “Target”), for the purpose of ameliorating any effects



on competition in markets for goods or services, with a view to the proposals becoming binding on BWG.

The Commission has taken the proposals into account and in light of the said proposals (which form part of the basis of its determination) has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby BWG would acquire the entire issued share capital of the Target will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Brian McHugh

Member

Competition and Consumer Protection Commission

Appendix A

MERGER NOTIFICATION M/23/010 – BWG/ Tuffy Wholesale

PROPOSALS BY BWG FOODS UNLIMITED COMPANY TO THE COMPETITION AND CONSUMER PROTECTION COMMISSION RELATING TO THE PROPOSED ACQUISITION BY BWG FOODS UNLIMITED COMPANY OF TUFFY WHOLESALE LIMITED (“Proposals”)



RECITALS

- a) On 28 February 2023, the proposed acquisition by BWG Foods Unlimited Company (“**BWG**”), a wholly owned indirect subsidiary of TIL JV Limited, of the entire issued share capital of Tuffy Wholesale Limited (the “**Target**”), a newly incorporated company which owns the business previously carried on by, and certain assets previously owned by, Padraic Tuffy Limited (the “**Tuffy Business**”)(the “**Proposed Transaction**”), was notified to the Competition and Consumer Protection Commission (the “**Commission**”) under Part 3 of Competition Act 2002, as amended (the “**Act**”).
- b) Pursuant to section 20(3) of the Act, BWG has submitted to the Commission these Proposals relating to the Proposed Transaction for the purpose of ameliorating any effect of the Proposed Transaction on competition in markets for goods or services in the State, with a view to the Proposals becoming binding on BWG, and, following Completion, on the Target if the Commission takes the Proposals into account and states in writing that the Proposals form the basis or part of the basis of a Determination (as hereinafter defined).
- c) The Target is a member of the Stonehouse Marketing Limited (“**Stonehouse**”) and Gala Retail Services Limited (“**GRSL**”) buying groups. The Proposals submitted by BWG to the Commission are intended to (i) divest the Target’s shareholdings in Stonehouse and GRSL; and (ii) prevent the exchange of competitively sensitive information between BWG, Stonehouse and/or GRSL following Completion (arising by virtue of BWG’s ownership of the Target and by extension, the Tuffy Business, which would constitute a breach of section 4(1) of the Act).
- d) The binding commitments submitted to the Commission by BWG and which formed part of the basis of: (i) the Commission’s determination dated 2 May 2018 in respect of merger notification M/18/009 – BWG /4 Aces (the “**4 Aces Commitments**”) and (ii) the Commission’s determination dated 7 November 2022 in respect of merger notification M/22/047 – BWG / McCarrick Brothers Wholesale (the “**McCarricks Commitments**”) remain in force in all respects. For the avoidance of doubt, the term “GRSL Competitively Sensitive Information” as used in the 4 Aces Commitments is to be interpreted so as to include competitively sensitive information in respect of the Target’s GRSL Business (as hereinafter defined).

A. Definitions

1. For the purpose of the Proposals, the following terms shall have the following meaning:



“Act” means the Competition Act 2002, as amended;

“BWG” means BWG Foods Unlimited Company, a private unlimited company incorporated under the laws of Ireland (Registration No. 20469), which has its registered address at BWG House, Greenhills Road, Tallaght, Dublin 24, and all its subsidiaries (which, following Completion, will include the Target);

“BWG Competitively Sensitive Information” means any specific disaggregated information concerning BWG where the disclosure of such information (in particular information relating to the current and future strategic intentions of BWG) would constitute a breach of section 4(1) of the Act, in particular information relating to BWG’s negotiations with manufacturers and suppliers (including any rebate schemes provided by those manufacturers and suppliers to BWG) and/or information relating to planned BWG discounts, pricing and promotional activity. For the avoidance of doubt, information that is available in any form to the public by lawful means, other than as a result of a breach of the Proposals, shall not be considered to constitute “BWG Competitively Sensitive Information”;

“BWG Personnel” means any director, officer, manager, employee, representative, agent, or person holding equivalent functions, of BWG;

“Commencement Date” means the date of the Commission’s Determination;

“Commission” means the Competition and Consumer Protection Commission and its successors;

“Completion” means completion of the Proposed Transaction as defined in the share purchase agreement dated 28 February 2023 between (1) BWG and (2) John Tuffy, Brian Tuffy and Seamus Tuffy;

“Determination” means the Determination of the Commission pursuant to section 21(2)(a) of the Act that the Proposed Transaction may be put into effect;

“GRSL” means Gala Retail Services Limited, a private limited company incorporated under the laws of Ireland (Registration No. 288855), which has its registered address at Summit House, Embassy Office Park, Kill, Co. Kildare, W91 VK0T;

“GRSL Competitively Sensitive Information” means any specific disaggregated information concerning GRSL or any of its members where the disclosure of such information (in particular information relating to the current and future strategic intentions of GRSL or its members) would constitute a breach of section 4(1) of the Act, in particular information relating to GRSL’s or its members’ negotiations with manufacturers and suppliers (including any rebate schemes provided by those manufacturers and suppliers to GRSL) and/or information relating to planned GRSL discounts, pricing and promotional activity. For the avoidance of doubt,



information that is available in any form to the public by lawful means, other than as a result of a breach of the Proposals, shall not be considered to constitute “GRSL Competitively Sensitive Information”;

“**McCarricks Commitments**” means the binding commitments submitted to the Commission by BWG and which form part of the basis of the Commission’s determination dated 7 November 2022 in respect of merger notification M/22/047 – BWG / McCarrick Brothers Wholesale;

“**Proposed Transaction**” means the proposed acquisition by BWG of the entire issued share capital of the Target as notified to the Commission on 28 February 2023;

“**Stonehouse**” means Stonehouse Marketing Limited, a private limited company incorporated under the laws of Ireland (Registration No. 316849), which has a registered address at 16 Priory Office Park, Stillorgan, Dublin, A94 RH10;

“**Target**” means Tuffy Wholesale Limited, a private limited company incorporated under the laws of Ireland (Registration No. 730182), which owns the business previously carried on by, and certain assets previously owned by, Padraic Tuffy Limited, and which has its registered address at Collooney Roundabout, Collooney, Sligo, F91 FY7A;

“**Target’s GRSL Business**” means the Target’s business involved in or related to GRSL including in particular the Target’s activities in respect of existing GRSL branded *Gala* and *Your Stop* retail outlets which the Target currently supplies;

“**Target’s Historic Stonehouse Business**” means the Target’s business involved in or related to Stonehouse prior to Completion;

“**Term**” means the period beginning on the Commencement Date and ending on the Termination Date;

“**Termination Date**” means the date on which 4 Aces disposes of its shareholding in GRSL;

“**4 Aces**” means 4 Aces Wholesale Limited, a private limited company incorporated under the laws of Ireland (Registration No. 102166), which has its registered address at BWG House, Hibernian Industrial Estate, Greenhills Road, Tallaght, Dublin 24, D24 Y722;

“**4 Aces Commitments**” means the binding commitments submitted to the Commission by BWG and which form part of the basis of the Commission’s determination dated 2 May 2018 in respect of merger notification M/18/009 – BWG /4 Aces;



“4 Aces Personnel” means any director, officer, manager, employee, representative, agent, or person holding equivalent functions, of the 4 Aces business;

“4 Aces Manager” means the person appointed by BWG to undertake the day-to-day management of the 4 Aces business and the McCarricks’ GRSL Business (in accordance with the 4 Aces Commitments and the McCarricks Commitments respectively), and who has now been appointed to manage the Target’s GRSL Business and the matters referred to in paragraph 7 of these Proposals, and his successors in this role; and

“4 Aces Management Team” means the restricted group of 4 Aces Personnel (i) who directly support the 4 Aces Manager in administering those parts of the 4 Aces business and the McCarricks business that require access to GRSL Competitively Sensitive Information and (ii) who, to fulfil properly their role and functions, must have access to GRSL Competitively Sensitive Information; provided that, in all events, the 4 Aces Management Team is kept at all times to the least number of 4 Aces Personnel possible (consistent with good commercial practice).

B. Undertakings by BWG

Divestment Commitment

1. On Completion, BWG undertakes to immediately take the steps necessary to:
 - a. divest fully of the Target’s shareholding in Stonehouse;
 - b. divest fully of the Target’s shareholding in GRSL;
 - c. ensure the resignation of John Tuffy as a director of Stonehouse;
and
 - d. ensure the resignation of Brian Tuffy as a director of GRSL.
2. For the avoidance of doubt, the divestments in paragraph 1(a) and 1(b) of the Proposals will involve the purchase by Stonehouse and GRSL respectively of the Target’s shareholdings in both Stonehouse and GRSL respectively.
3. BWG undertakes to inform the Commission in writing upon receipt of confirmation from Stonehouse and GRSL that the purchase of the Target’s shareholdings in both Stonehouse and GRSL, respectively, has been effected.
4. BWG undertakes that it shall not exercise any rights that arise by virtue of the Target’s shareholding in either GRSL or Stonehouse during the period



following Completion and prior to confirmation that the divestments in paragraph 1(a) and 1(b) have been effected.

5. Subject to paragraphs 6 and 7, BWG undertakes that it shall not engage with Stonehouse or GRSL in respect of the Target's shareholding in each respective entity, other than to arrange the divestments in paragraph 1(a) and 1(b), respectively.
6. On Completion, any communication with GRSL in relation to the Target's GRSL Business shall be managed in accordance with paragraph 9 below.
7. In the period following Completion and prior to the divestment in paragraph 1(a) being effected, and notwithstanding that it is not anticipated, to the extent that any communication is received from Stonehouse in relation to the Target's Historic Stonehouse Business, this shall be managed by the 4 Aces Manager.
8. On Completion, BWG undertakes that it shall not during the Term (whether via any holding company, subsidiary or otherwise) attempt to acquire any shareholding (or otherwise acquire an interest) in Stonehouse or GRSL, save with the prior notification to, and consent of, the Commission.

Firewall Commitment

9. On Completion, BWG undertakes that:
 - a. The Target's GRSL Business will be managed by BWG's 4 Aces Management Team.
 - b. BWG shall ensure that the 4 Aces Manager shall, in addition to managing the 4 Aces business and the McCarricks' GRSL Business (as required under the 4 Aces Commitments and the McCarricks Commitments respectively), manage the Target's GRSL Business.
 - c. BWG shall, within one month of Completion, confirm to the Commission in writing that the name and contact details of each member of the 4 Aces Management Team, as previously provided to the CCPC on 30 May 2018 consistent with the McCarricks Commitments, has not changed.

C. Compliance



10. BWG undertakes to inform both BWG Personnel and 4 Aces Personnel of their responsibilities pursuant to these Proposals and shall provide training to them in that regard.
11. BWG shall, within five working days of Completion, notify the Commission in writing of the date of Completion.
12. BWG shall submit to the Commission one year from Completion, and thereafter at intervals of one year from the date of the previous certificate submitted to the Commission by BWG pursuant to the 4 Aces Commitments, a written certificate in the form set out in the Schedule hereto (a “**Compliance Certificate**”), signed by the CEO of BWG, confirming that BWG has complied with its obligations set out in these Proposals.
13. BWG shall procure that the 4 Aces Manager submit to the Commission one year from Completion, and thereafter at intervals of one year from the date of the previous certificate submitted to the Commission by the 4 Aces Manager pursuant to the 4 Aces Commitments, a written certificate in the form set out in the Schedule hereto (a “**Compliance Certificate**”), signed by the 4 Aces Manager, confirming that BWG has complied with its obligations set out in these Proposals.
14. The Commission reserves the right to require BWG to provide to the Commission, at any time and on reasonable notice, such additional information as the Commission requires which is necessary in order for the Commission to verify BWG’s compliance with its obligations set out in these Proposals. BWG shall promptly provide to the Commission all such information in its possession.
15. The Commission may provide with reasonable notice and on reasonable terms such written directions to BWG from time to time as needed to require compliance with these Proposals. BWG shall comply promptly with any written direction issued by the Commission pursuant to these Proposals.
16. BWG shall provide written notice to the Commission in advance of any change of the 4 Aces Manager or the 4 Aces Management Team and shall promptly provide to the Commission the name and contact details of any person who is to replace the prior nominated 4 Aces Manager or a member of the 4 Aces Management Team. BWG shall take all reasonable steps to provide such written notice one month in advance of any change.



17. BWG shall nominate an executive who will have responsibility for monitoring compliance by BWG with these Proposals and for responding to any request for information received from the Commission in connection with these Proposals. BWG shall provide the name and contact details of such executive to the Commission within one month of Commencement and shall promptly inform the Commission of any change of executive nominated pursuant to this paragraph of the Proposals and shall promptly provide to the Commission the name and contact details of any executive who is to replace the prior nominated executive.

18. These Proposals will, with the exception of paragraphs 3 to 7 of Part B, come into effect on the Commencement Date and will remain in force during the Term. Paragraphs 3 to 7 of Part B will come into force on Completion. For the avoidance of doubt, the Proposals shall have no retrospective effect.



SCHEDULE TO THE PROPOSALS

[BWG Headed Paper]

[date]

Ibrahim Bah

Competition Enforcement and Mergers Division

Competition and Consumer Protection Commission

Bloom House

Railway Street

Dublin 1

Merger Notification: M/23/010 – BWG / Tuffly Wholesale

Dear Mr Bah,

I refer to Merger Notification M/23/010 in relation to the proposed acquisition by BWG Foods Unlimited Company (“BWG”) of the entire issued share capital of Tuffly Wholesale Limited, a company which owns the business previously carried on by, and certain assets previously owned by, Padraic Tuffly Limited (the “Tuffly Business”), which was notified to the Competition and Consumer Protection Commission (the “Commission”) on 28 February 2023 (“the Proposed Transaction”).

The Commission issued its Determination approving the Proposed Transaction on 3 May 2023.

In accordance with the terms of the proposals given by BWG to the Commission on [] [•] 2023 in relation to the Proposed Transaction which, in accordance with section 20(3), section 26(1) and section 26(4) of the Competition Act 2002, as amended, have become commitments binding upon BWG (“the Commitments”), I hereby confirm BWG’s compliance with the terms of the Commitments during the period commencing on [date of Completion of the Proposed Transaction] / [date of the previous certificate issued by BWG] / [date of the previous certificate issued by 4 Aces Manager] and ending on the date hereof.

Yours faithfully,

[Name]

[CEO BWG] [4 Aces Manager]

