

DETERMINATION OF MERGER NOTIFICATION M/23/027 – EUROPEAN BAKERY GROUP/PANELTO

Section 21 of the Competition Act 2002

Proposed acquisition by European Bakery Group B.V. of sole control of Panelto Foods Unlimited Company.

Dated: 15 August 2023

Introduction

1. On 6 July 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 UK&I Bakery Group (“UKIBG”), a wholly owned subsidiary of European Bakery Group B.V. (“European Bakery Group”)¹, would acquire the entire issued share capital, and, thus, sole control of Malloy Limited, a holding company which is the ultimate parent company of Panelto Foods Unlimited Company (“Panelto”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction will be implemented pursuant to a share purchase agreement, dated 27 June 2023 between [...],^{2,3} (together the “Sellers”) and UKIBG (the “Purchaser”) and European Bakery Group (the “Guarantor”) (the “SPA”).⁴ Pursuant to the SPA, European Bakery Group will acquire the entire issued share capital and thus, sole control of Panelto from Malloy Limited.

The Undertakings Involved

¹ European Bakery Group is indirectly negatively controlled by 3i Group PLC (“3i Group”).

² [...].

³ [...].

⁴ [...].

The Acquirer – European Bakery Group

3. European Bakery Group, is a private limited company incorporated and headquartered in the Netherlands. It is a bakery company with six bakeries across the Netherlands and three bakeries across Germany. European Bakery Group sells frozen bakery goods such as bake-off breads,⁵ rolls and artisanal products to retailers across Europe, with a focus on the Benelux, DACH⁶ and Nordic regions. European Bakery Group does not operate any bakeries in the State and, in 2022, did not generate turnover in the State.⁷
4. UKIBG, is a private limited company incorporated and headquartered in Ireland. UKIBG is an Irish based subsidiary of European Bakery Group. UKIBG has been incorporated for the sole purpose of entering into the Proposed Transaction and, to date, has not generated any turnover in the State.
5. European Bakery Group operates under two brands:
 - *Dutch Bakery B.V (“Dutch Bakery”)* operates six bakeries in the Netherlands. *Dutch Bakery* specialises in home-bake-off-bread⁸ and snack products using modified atmosphere packaging (“MAP”) to ensure that its products have an average shelf life of 30 to 40 days. *Dutch Bakery’s* products portfolio consists mainly of MAP products and, to a lesser extent, refrigerated and frozen non-daily fresh bread products such as puff pastry; and
 - *coolback GmbH (“coolback”)* was acquired by European Bakery Group in July 2023. *coolback* is an industrial bakery group operating three bakeries in Germany. *coolback* is a producer and seller of private label frozen, MAP, bio⁹ and gluten-free bake-off goods to retail and foodservice customers. *coolback*

⁵ Bake-off refers to a product which has been partially baked in an industrial bakery, packed, stored and delivered to shops where they are oven baked to finish the baking process. Bake-off is also termed as par-bake, part-bake or brown and serve in the baking industry.

⁶ Germany, Austria and Switzerland

⁷ European Bakery Group, through *Dutch Bakery*, generated minimal revenue of approximately €[...] from sales to [...] (“[...]”) in FY2020 and FY2021. These sales were attributable to a one-off sale of a product which European Bakery Group does not produce. European Bakery Group entered a one-off contract to supply [...] with cookie jars to the value of €[...] in 2020 and €[...] in 2021. European Bakery Group’s sale of cookie jars to [...] related to a development action for [...] to which international [...] branches could subscribe, to which [...] subscribed. European Bakery Group ceased supplying [...] as the sale of cookie jars was a one-off action.

⁸ In-home bake-off refers to a product which has been partially baked in an industrial bakery, packed, stored and delivered to shops where they are sold to consumers who finish off the baking process in their own home.

⁹ Bio means that the item was grown following the rules of the EU Regulation on Organic Farming.

produces a variety of frozen and ambient bake-off goods including specialty rolls and artisan products, bread mixes and filled baguettes.

6. For the financial year ending 10 September 2022, European Bakery Group's worldwide turnover was approximately €[...], none of which was generated in the State.¹⁰

3i

7. 3i Group PLC, and, together with its directly and indirectly controlled portfolio companies and subsidiary companies ("3i"), is a public limited company incorporated and headquartered in London in the United Kingdom. 3i is a global investment firm offering alternative asset management, capital markets and insurance solutions.¹¹ 3i specialises in private equity and infrastructure by acquiring stakes in portfolio companies through investment structures which are managed and advised by certain of its subsidiaries. 3i operates mainly in Europe and North America and the shares of 3i are listed on the London Stock Exchange.
8. 3i acquired European Bakery Group in October 2021. [3i controls a number of portfolio companies which generate revenue in the State.]
9. For the financial year ending 31 March 2023, 3i's worldwide turnover was approximately €[...], €[...] of which was generated by the portfolio companies of 3i from sales to customers located in the State.

The Target - Panelto

10. Panelto, a private unlimited company incorporated and headquartered in Longford in Ireland, is a manufacturer of artisan-style par-baked bread¹² servicing major retail customers in the UK and Ireland, such as [...]. Panelto supplies a range of frozen artisan breads including pre-packed sandwich bread and rolls, bake-off sandwich bread and rolls, bake-off loaves and bake-

¹⁰ *coolback*, which was acquired by European Bakery Group in July 2023 and generated worldwide revenues of approximately €[...] for the financial year ending 31 December 2022. European Bakery Group did not generate any turnover in Ireland in its 2022 financial year.

¹¹ The investors in European Bakery Group are 3i Group and certain investment entities managed by 3i Investments plc, which is a wholly-owned subsidiary of 3i Group, specifically: 3i PE 2019-22A LP, 3i PE 2019-22B LP and PE 2019-22 Coinvest LP.

¹² Par-baked means that the product has been partially baked. Par-baked dough can be stored frozen or in modified atmosphere packaging to prolong its shelf-life for future consumption. The purchaser bakes the dough to finish the baking process.

off baguettes which are then baked in store. Panelto also sells bake-off seed and grain loaves and heat-and-eat¹³ baguettes as own-brand products.

11. For the financial year ending 30 October 2022, Panelto's worldwide turnover was €62.9 million, €[...] of which was generated in the State.

Rationale for the Proposed Transaction

12. The parties state the following in the notification:

“The Proposed Transaction is complementary from a geographic perspective. The acquisition of Panelto represents an investment opportunity for [European Bakery Group] to expand its activities in supplying customers in the UK and Ireland, where it currently does not have a strong presence. In addition, the Proposed Transaction will enable [European Bakery Group] to drive its international growth strategy in the fragmented European private label market for bake-off bread products within Europe.

The Proposed Transaction also represents an opportunity for Panelto Foods to reach new markets, to capitalise further on growth opportunities in the UK, Ireland, Europe, and to benefit from the efficiencies resulting from the combined platform.”

Competitive Analysis

Horizontal overlap

Market Definition

Relevant Product Market

13. The parties state in the notification that the Proposed Transaction does not give rise to any meaningful horizontal overlap in the State. The parties state in the notification that Panelto supplies frozen par-baked bakery products to retailers in the State, and European Bakery Group does not supply any bakery products in the State.
14. In 2020 and 2021, European Bakery Group, through Dutch Bakery, generated minimal revenue from sales to [...] (“[...]”). European Bakery Group entered a one-off contract to supply [...] with cookie jars to the value of approximately €[...] and €[...], in 2020 and 2021 respectively.

¹³ Heat-and-eat means that the product has been partially baked and that the purchaser finishes off the baking process.

European Bakery Group then ceased supplying [...] as the sale of cookie jars was a one-off, and thus generated no turnover in the State in 2022.

15. The Commission considers that the activities of the parties do not overlap in the State, and as such does not need to come to a definitive view on product or geographic market definition.
16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product markets because doing so will not alter the Commission's assessment of the competitive effects of the Proposed Transaction.
17. For the purpose of assessing the likely competitive effects of the Proposed Transaction, the Commission has followed the approach taken by the Commission's predecessor, the Competition Authority (the "Authority"), in *M/08/020 – IAWS/Hiestand*¹⁴ and the European Commission (the "EC") in *M.7669 Lion Capital/Aryzta/Picard Groupe*¹⁵ and has assessed the likely competitive impact of the Proposed Transaction to be the potential market for the sale of frozen bakery products in the State.
18. In the determination *M/08/020 – IAWS/Hiestand*,¹⁶ the Authority, while ultimately leaving the precise product market definition open, assessed the competitive impact of that transaction by reference to the supply of frozen bakery products in the State.¹⁷
19. The Commission also notes that the European Commission (the "EC") has previously considered the manufacture and supply of frozen food to the retail sector in *M.7669 Lion Capital/Aryzta/Picard Groupe*.¹⁸ The EC, while ultimately leaving the precise product market definition open, assessed the manufacture and supply of frozen food to various customer segments, namely (i) retail; and (ii) end consumers.¹⁹ In its determination in *M.7669 Lion Capital/Aryzta/Picard Groupe*, while ultimately leaving the precise geographic market

¹⁴ *M/08/020 – IAWS/Hiestand* determination accessible at: <https://www.ccpic.ie/business/wp-content/uploads/sites/3/2017/05/M08020-IAWS-Hiestand.public.pdf>.

¹⁵ In the European Commission's decision in *Case M.7669*, the EC defined the manufacture and supply of food products as "(i) frozen foods, (ii) chilled foods, and (iii) fresh foods". The European Commission defined the market for the manufacture and supply market for bakery products as "(i) bread, (ii) bread substitutes and (iii) cake products". See paragraphs 19-20, accessible at: https://ec.europa.eu/competition/mergers/cases/decisions/m7669_179_2.pdf

¹⁶ The Competition Authority's determination in *M/08/020 – IAWS/Hiestand* determination accessible at: <https://www.ccpic.ie/business/wp-content/uploads/sites/3/2017/05/M08020-IAWS-Hiestand.public.pdf>.

¹⁷ The Competition Authority's determination in *M/08/020 – IAWS/Hiestand*, see paragraphs 13-14.

¹⁸ In the EC's decision in *Case M.7669 Lion Capital/Aryzta/Picard Groupe*, the EC defined the manufacture and supply of food products as "(i) frozen foods, (ii) chilled foods, and (iii) fresh foods". The EC defined the market for the manufacture and supply market for bakery products as "(i) bread, (ii) bread substitutes and (iii) cake products". See paragraphs 19-20, accessible at: https://ec.europa.eu/competition/mergers/cases/decisions/m7669_179_2.pdf

¹⁹ See *M.7669 Lion Capital/Aryzta/Picard Groupe*, accessible at: https://ec.europa.eu/competition/mergers/cases/decisions/m7669_179_2.pdf

definition open, the EC assessed the competitive impact of that transaction by reference to the manufacture and supply of frozen food on a national basis.

20. For the purposes of carrying out its competitive assessment of the Proposed Transaction, the Commission has assessed the Proposed Transaction by reference to the potential relevant markets of the supply of frozen bakery products in the State.
21. The Commission considers that, as European Bakery Group's minimal sales to the State in 2020 and 2021 were not in relation to the supply of frozen bakery products, which is Panelto's main business activity in the State, the parties' activities in the State do not overlap.
22. For the reasons outlined above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State in respect of the potential markets for the sale of frozen bakery products in the State.

Vertical relationship

23. The parties state in the notification that there is no vertical relationship between 3i, European Bakery Group and Panelto in the State. The Commission notes that certain 3i portfolio companies provide consulting services in the State. Nonetheless, these services are not targeted at clients active in the frozen bakery products market, and accordingly, any foreclosure concerns are very unlikely. The Commission has not identified any actual or potential vertical relationship between the parties. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion of Competitive Analysis

24. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

25. Clause 13.1.1(c) and Clause 13.1.1(d) of the SPA contain non-compete and non-solicitation obligations on the warrantors.²⁰ The duration of those non-compete and non-solicitation

²⁰ Warrantors means the Sellers, other than Malstone and Enterprise Ireland. The Sellers are set out at paragraph 2 of this determination.

obligations does not exceed the maximum duration acceptable to the Commission.²¹ Therefore, the Commission considers Clause 13.1.1(c) and Clause 13.1.1(d) of the SPA to be directly related to and necessary for the implementation of the Proposed Transaction, in so far as they relate to the State.

²¹ In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” [2005] OJ C56/24, available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:056:0024:0031:EN:PDF>

Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby UK&I Bakery Group, a wholly owned subsidiary of European Bakery Group B.V., would acquire the entire issued share capital, and, thus, sole control of Malloy Limited, a holding company which is the ultimate parent company of Panelto Foods 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.

For the Competition and Consumer Protection Commission.

Brian McHugh

Member

Competition and Consumer Protection Commission