

DETERMINATION OF MERGER NOTIFICATION M/23/036 – MUSGRAVE/DOYLES VEG PREP

Section 21 of the Competition Act 2002

Proposed acquisition by Musgrave Limited of sole control of Doyles Veg Prep Limited

Dated: 12 September 2023

Introduction

1. On 2 August 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 Musgrave Limited (“Musgrave”), a wholly-owned subsidiary of Musgrave Group plc (“Musgrave Group”), would acquire sole control of Doyles Veg Prep Limited (“Doyles Veg Prep”) (the “Proposed Transaction”).¹

The Proposed Transaction

2. The Proposed Transaction will be implemented pursuant to a share purchase agreement, dated 28 July 2023, between Musgrave and Kieran Doyle, Elser Limited, and Jason Ray² (the “SPA”). Under the terms of the SPA, Musgrave will acquire [...], and thus sole control, of Doyles Veg Prep on completion. [...].³

The Undertakings Involved

The Acquirer – Musgrave

3. Musgrave is the main operating entity within Musgrave Group, a food retail, wholesale and food-service group active on the island of Ireland and in Spain. Musgrave is principally a wholesaler-franchisor and operates through franchise agreements with independently-owned retail stores.

¹ In this Determination, together, Musgrave and Doyles Veg Prep are referred to as the “Parties”.

² Kieran Doyle, Elser Limited and Jason Ray are referred to in this Determination, together, as the “Sellers”.

³ [...].

4. Musgrave Group, through its subsidiaries, owns a number of brands across the food retail, wholesale and foodservice sectors in the State, including SuperValu, Centra, Donnybrook Fair, La Rousse Foods, Musgrave Marketplace and Daybreak. Musgrave Group also operates cash and carry and retail outlets on the island of Ireland and in Spain.
5. For the financial year ending 1 January 2022, the Musgrave Group generated worldwide revenues of €4.5 billion, of which €3.8 billion was generated in the State.

The Target – Doyles Veg Prep

6. Doyles Veg Prep is an Irish owned family-run business which focusses on supplying fresh produce to foodservice and catering customers from its temperature-controlled facility in Clondalkin, County Dublin.⁴ Doyles Veg Prep uses a combination of hand and machine cutting to prepare a range of fresh produce. Doyles Veg Prep supplies over 400 products, with a focus on the supply of fresh fruit, vegetables, exotics, salads, juices, cheese, and dairy products. Doyles Veg Prep supplies a variety of customers across the foodservice industry⁵ in the State, such as hotels, catering companies, and bars and restaurants, both on a delivered and central billing basis.
7. For the financial year ending 31 December 2022, Doyles Veg Prep's turnover was €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

8. The Parties state the following in the notification:

“From Musgrave’s perspective, the Proposed Transaction is considered [...]”.

*The Proposed Transaction also represents an opportunity for the current shareholders of [Doyles Veg Prep] [...]”.*⁶

Third-Party Submissions

⁴ Doyles Veg Prep distributes its products through a business to business model and not to the final customer. Doyles Veg Prep's geographic reach is limited to Dublin (including next day foodservice delivery to customers in County Dublin) and the immediately surrounding region.

⁵ The Parties also state in the notification that Doyles Veg Prep operates a very limited business to consumer (“B2C”) click-and-collect service on a range of pre-prepared vegetables for the Christmas period annually. The associated value of the Christmas period B2C sales is approximately €[...] annually. [...]. Therefore, they are discussed no further in this Determination.

⁶ Merger Notification, page 2.

9. No third-party submission was received.

Competitive Analysis

Horizontal overlap

10. There is a horizontal overlap between the Parties in respect of the supply of food and drink products to the foodservice sector in the State.

Relevant Markets

Product market

11. 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 market or markets because doing so will not alter the Commission's assessment of the horizontal competitive impact of the Proposed Transaction.
12. The parties in the notification rely on the fact that Bord Bia, in its *Irish Foodservice Market and Consumer Insights 2022* report (the "Bord Bia Report"), defines foodservice as "*the term used to describe all food and drink consumed and prepared out of the home. It includes everything from restaurants, pubs, hotels and coffee shops to workplace, hospitals and education catering.*"⁷
13. According to the notification, foodservice operators engage with distributors through both contractual and non-contractual trading arrangements. Public sector entities, such as hospitals and prisons, procure the majority of their foodservice produce requirements through competitive tendering processes. The Parties have described smaller independent operators as mainly conducting purchases on a non-contractual basis and are more inclined to source products from a number of distributors on a cash and carry basis.
14. In *M/17/067 – Musgrave/La Rousse*, it was noted that La Rousse primarily focused on the premium end of the wholesale network.⁸ However, the Commission in that case did not find it necessary to define the market on a narrower basis than the supply of food and drink products to the foodservice sector, as it would not alter the Commission's conclusion of its assessment of the transaction. Further, it was noted that full line wholesalers could and did

⁷ See page 8 of the Bord Bia Report, accessible at https://www.bordbia.ie/globalassets/bordbia.ie/industry/insights/2022_irish-foodservice-marketconsumer-insights_report_final.pdf.

⁸ See page 2 of the determination, accessible at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/12/M-17-067-Determination-Musgrave-La-Rousse-1.pdf>.

compete in the premium end category, along with other ‘premium’ providers, such as Redmond Fine Foods, Odaios Foods, and Artisan Foods.⁹

15. The Commission has previously considered the supply of food and drink products to the foodservice sector in its determination in *M/22/055 – Musgrave/Italicatessen*.¹⁰ In that determination, the Commission, while ultimately leaving the precise product market definition open, assessed the competitive impact of that transaction by reference to the supply of food and drink products to the foodservice sector.¹¹
16. The Commission has, in the course of its analysis of the Proposed Transaction, found no reason to depart from its previous approach and has, accordingly, assessed the competitive effects of the Proposed Transaction by reference to the potential product market of the supply of food and drink products to the foodservice sector.

Geographic market

17. 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, as doing so will not alter the Commission’s assessment of the horizontal competitive impact of the Proposed Transaction.
18. In *M/12/010 – Pallas/Crossgar*, while ultimately leaving the precise geographic market definition open, the Commission’s predecessor, the Competition Authority, assessed the competitive impact of that transaction by reference to the supply of food and drink products to the foodservice sector on the island of Ireland.¹² In *M/17/067 – Musgrave/La Rousse*¹³ and in *M/22/055 – Musgrave/Italicatessen*,¹⁴ the Commission assessed the competitive impact of the relevant transactions by reference to the supply of food and drink products to the foodservice sector in the State.
19. In *M.7986 Sysco/Brakes* (which concerned the distribution of food products to foodservice customers) the European Commission, whilst ultimately leaving the relevant geographic

⁹ A list of 37 Foodservice Distributors is noted on page 7 in the Bord Bia Report, accessible at <https://www.bordbia.info/Foodservices2022/>.

¹⁰ Determination accessible at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2022/10/M-22-055-Musgrave-Italicatessen-Public-Determination-.pdf>.

¹¹ See page 3 of the determination, accessible at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2022/10/M-22-055-Musgrave-Italicatessen-Public-Determination-.pdf>.

¹² Determination accessible at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-12-010-Pallas-Crossgar.pdf>.

¹³ Determination accessible at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/12/M-17-067-Determination-Musgrave-La-Rousse-1.pdf>.

¹⁴ Determination accessible at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2022/10/M-22-055-Musgrave-Italicatessen-Public-Determination-.pdf>.

market definition open, assessed that transaction by reference to a national geographic market.¹⁵

20. The Commission has, in the course of its analysis of the Proposed Transaction, found no reason to depart from its previous approach and has, accordingly, assessed the competitive effects of the Proposed Transaction on a national basis (i.e., the State).

Conclusion on relevant markets

21. 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 market for the supply of food and drink products to the foodservice sector in the State.

Competitive Assessment

Supply of food and drink products to the foodservice sector in the State

22. In the notification, the Parties provided market share estimates for the supply of food and drink products to the foodservice sector in the State in 2022, as shown in Table 1 below.

Table 1: The supply of food and drink products to the foodservice sector in the State in 2022

| Supplier | Value (€, millions) | Share of supply (%) |
|-------------------------|---------------------|---------------------|
| Musgrave | [...] | [20-25]% |
| Doyles Veg Prep | [...] | [0-5]% |
| Parties Combined | [...] | [20-25]% |
| Sysco | [...] | [15-20]% |
| BWG | [...] | [5-10]% |
| Lynas | [...] | [0-5]% |
| Henderson | [...] | [0-5]% |
| Others | [...] | [40-45]% |
| TOTAL | [...] | 100% |

¹⁵ https://ec.europa.eu/competition/mergers/cases/decisions/m7986_918_4.pdf

Source: Parties estimates, drawn from Bord Bia Report and publicly available information¹⁶

23. According to the Parties' estimates, following the implementation of the Proposed Transaction, Musgrave would have an estimated [20-25]% share in the supply of food and drink products to the foodservice sector in the State, a marginal increase of approximately [0-5]% on its current estimated share.
24. Following the implementation of the Proposed Transaction, there will remain a number of competitors to Musgrave, including full-service suppliers such as Sysco Foods Ireland Unlimited Company, BWG Foods Unlimited Company,¹⁷ Lynas Foodservice Ireland Limited, and Henderson Foodservice Limited as well as other suppliers such as Aryzta Food Solutions Ireland Unlimited Company and Gleneely Foods Limited.¹⁸ Following the implementation of the Proposed Transaction, there will also remain a number of specialist suppliers of fresh produce to the "premium end" of the market, such as Total Produce Limited, Keelings Unlimited Company, Simply Fresh Limited t/a Begleys Fresh Produce, Limerick Fruit Suppliers (Trading) Limited, and Allfresh Wholesale Limited.
25. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the potential market for the supply of food and drink products to the foodservice sector in the State.

Vertical Overlap

26. There is an existing vertical relationship between the Parties. The Parties state in the notification that there is a limited vertical relationship between Musgrave Group and Doyles Veg Prep, as Doyles Veg Prep supplies certain fresh and prepared produce to Musgrave Group, which Musgrave resells through six of its retail stores, and also through La Rousse Foods, to premium foodservice operators.
27. The Commission considers that the Proposed Transaction is unlikely to give rise to vertical foreclosure concerns in relation to the supply of food and drink products to the foodservice sector in the State for the following reasons:
 - Input foreclosure: With regard to the supply of food and drink products to the foodservice sector, Doyles Veg Prep is a small supplier. There will remain a number of

¹⁶ Merger Notification, page 18.

¹⁷ BWG/BWG Foodservice is similar to Musgrave as BWG is also vertically integrated into downstream grocery wholesaling and retailing.

¹⁸ See the Bord Bia Foodservices Directory 2022, accessible at: [Irish Foodservices Directory 2022 \(bordbia.info\)](https://www.bordbia.info/foodservices-directory-2022).

alternative suppliers of the foodservice sector following implementation of the Proposed Transaction, including large suppliers such as BWG, Sysco and Lynas as well as specialist suppliers of fresh produce, such as Total Produce Limited, Keelings Unlimited Company, Simply Fresh Limited t/a Begleys Fresh Produce, and Allfresh Wholesale Limited to which customers of Doyles Veg Prep could switch following the implementation of the Proposed Transaction. Therefore, the Commission considers that Musgrave Group will be unlikely to have the ability or incentive to successfully engage in input foreclosure in the supply of food and drink products to the foodservice sector as a result of the Proposed Transaction.

- Customer foreclosure: While Doyles Veg Prep does supply to some of Musgrave Group stores, these sales amounted to €[...] in 2022, which represents less than [0-5]% of Doyles Veg Prep's total revenue in 2022 and [0-5]% of the Musgrave Group's total purchases. Musgrave Group is active in a limited manner in the downstream food service sector through a small number of Musgrave Group outlets. Considering Musgrave Group's minor participation in the downstream foodservice market in the State, and Doyles Veg Prep's small size as a supplier, the Commission considers that Musgrave Group will be unlikely to have the ability or incentive to successfully engage in customer foreclosure in the supply of food and drink products to the foodservice sector as a result of the Proposed Transaction.

28. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion of Competitive Analysis

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

Ancillary Restraints

30. Clause 15.1(a) of the SPA imposes non-compete obligations on the Sellers. The Commission notes that these obligations are limited in scope and do not exceed the maximum duration acceptable to the Commission.¹⁹ Therefore, the Commission considers Clause 15.1(a) of the

¹⁹ 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 [c_05620050305en00240031.pdf \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2005/0030/01/en00240031.pdf)

SPA to be directly related to and necessary for the implementation of the Proposed Transaction.

Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Musgrave Limited, a wholly-owned subsidiary of Musgrave Group plc, would acquire sole control of Doyles Veg Prep Limited, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission.

Úna Butler

Member

Competition and Consumer Protection Commission