



## DETERMINATION OF MERGER NOTIFICATION M/23/037 – KTC EDIBLES/TRILBY TRADING

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### Section 21 of the Competition Act 2002

### Proposed acquisition by K.T.C. (Edibles) Limited of sole control of Trilby Trading Limited

Dated 13 September 2023

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#### Introduction

1. On 3 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 K.T.C. (Edibles) Limited (“KTC Edibles”) would acquire the entire issued share capital, and thus sole control, of Trilby Trading Limited (“Trilby Trading”), a wholly owned subsidiary of Greencore Group plc (“Greencore Group”) (the “Proposed Transaction”).<sup>1</sup>

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement dated 27 July 2023 between KTC Edibles, Greencore Advances Designated Activity Company, and the Guarantor<sup>2</sup> (the “SPA”). Following the implementation of the Proposed Transaction, KTC Edibles will acquire sole control of Trilby Trading.

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<sup>1</sup> KTC Edibles and Trilby Trading are collectively referred to as “the Parties” in this Determination.

<sup>2</sup> The Guarantor is listed in the SPA as Greencore Group plc.



## The Undertakings Involved

### *The Acquirer – KTC Edibles*

3. KTC Edibles is a private company limited by shares incorporated in the United Kingdom. It is ultimately controlled by Endless Fund V A LP and Endless Fund V B LP, which are entities managed by Endless LLP, a UK manager of private equity funds.
4. On the island of Ireland, KTC Edibles is active in the supply of a variety of grocery goods (e.g., canned food, bakery products) and refined seed oils, both: (i) refined seed oils packaged for sale to end-users (“PRSO”); and (ii) refined seed oils sold in bulk (“BRSO”). Refined seed oils are considered in more detail at paragraph 11 below. KTC Edibles supplies its products to retail, wholesale, and food service customers through its subsidiary, Cardowan Creameries Limited (“Cardowan”).<sup>3</sup>
5. For the financial year ending 31 December 2022, KTC Edibles’ worldwide turnover was approximately €685,911,443,<sup>4</sup> of which approximately €[...]<sup>5</sup> was generated in the State. Cardowan generated a worldwide turnover of approximately €27,142,035,<sup>6</sup> of which approximately €[...]<sup>7</sup> was generated in the State.

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<sup>3</sup> Cardowan is a Scottish-based company, headquartered in Glasgow, and incorporated in the United Kingdom.

<sup>4</sup> The figure of £596.4m has been converted to euro using the average conversion rate of December 2022, €1 = €0.86950, as provided by the European Central Bank at:

[https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/eurofxref-graph-gbp.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-gbp.en.html).

<sup>5</sup> The figure of £[...] has been converted to euro using the average conversion rate of December 2022, €1 = €0.86950, as provided by the European Central Bank at:

[https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/eurofxref-graph-gbp.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-gbp.en.html).

<sup>6</sup> The figure of £26.3m has been converted to euro using the average conversion rate of December 2022, €1 = €0.86950, as provided by the European Central Bank at:

[https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/eurofxref-graph-gbp.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-gbp.en.html).

<sup>7</sup> The figure of £[...] has been converted to euro using the average conversion rate of December 2022, €1 = €0.86950, as provided by the European Central Bank at:

[https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/eurofxref-graph-gbp.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-gbp.en.html).



6. For the financial year ending 31 December 2022, the worldwide turnover for the majority owned portfolio company of funds managed by Endless LLP was approximately €[...],<sup>8</sup> of which approximately €[...]<sup>9</sup> was generated in the State.

#### **The Target – Trilby Trading**

7. Trilby Trading is a wholly owned subsidiary of Greencore Group. Greencore Group is a manufacturer of convenience goods.<sup>10</sup> Trilby Trading is active in the supply of BRSO to food manufacturers for use in food manufacturing, with the supply of palm oil accounting for most of its sales. Trilby Trading sells to customers in the State, the UK, and the Netherlands.
8. For the financial year ending September 2022, Trilby Trading generated worldwide turnover of €[...], of which €[...] was generated in the State.

#### **Rationale for the Proposed Transaction**

9. The Parties state in the notification that:

*“[Trilby Trading] is a complementary business to [KTC Edibles]’ group. Following the proposed acquisition of [Trilby Trading], [KTC Edibles]’ group can provide additional capital to grow the existing [Trilby Trading] business for its current customers in BRSO in Ireland.”*

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<sup>8</sup> The figure of £[...] has been converted to euro using the average conversion rate of December 2022, €1 = €0.86950, as provided by the European Central Bank at:

[https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/eurofxref-graph-gbp.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-gbp.en.html).

<sup>9</sup> The figure of £[...] has been converted to euro using the average conversion rate of December 2022, €1 = €0.86950, as provided by the European Central Bank at:

[https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/eurofxref-graph-gbp.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-gbp.en.html).

<sup>10</sup> Convenience food is food that is usually processed and ready for consumption with minimal further preparation needed. It may also be easily portable, have a long shelf life, or offer a combination of other convenient traits. Convenience foods include ready-to-eat dry products, frozen foods such as TV dinners, shelf-stable foods, prepared mixes such as cake mix, and snack foods.



### Third-Party Submissions

10. No third-party submissions were received.

### Industry Background – The edible oils sector

11. The edible oils sector relates to the production, supply, and sale of edible oils, such as vegetable oils. Seed oils, a particular type of edible oil, are those extracted from seeds and include: (i) soya bean oil; (ii) rapeseed oil; (iii) sunflower oil; and (iv) palm oil.
12. Refined seed oils are purchased by customers in a range of sectors, including food manufacturing, catering, foodservice and retail (supermarkets).
13. The Parties state that there is a difference between BRSO and PRSO. BRSO are sold in much larger quantities to customers which use the product in manufacturing, while PRSO are sold in the retail channel to end-users in much smaller quantities. The Parties also state that the edible oils sector, and the separate potential product markets therein, are mature.

### Competitive Analysis

#### Horizontal Overlap

14. There is a horizontal overlap between the business activities of KTC Edibles and Trilby Trading in the State in relation to the supply of edible oils; specifically, the supply of BRSO.

#### Market Definition

##### Relevant Product Market

15. The Commission has not considered the supply of edible oils in a previous determination.
16. By contrast, the European Commission (“EC”) has considered the edible oils sector in several of its decisions. In *COMP/M.9495 – Fortenova Grupa / Poslovni Sistemi*



*Mercator*,<sup>11</sup> the EC held that the supply of crude seed oil, BRSO, and PRSO constituted separate product markets.<sup>12</sup> The EC has further left open the possibility of further segmenting the markets for the supply of BRSO and PRSO by seed type.<sup>13</sup>

17. Therefore, there are two questions for the Commission to consider: (i) whether BRSO and PRSO should be included in the same product market, or in separate product markets; and (ii) whether it is necessary to further segment the potential product market on the basis of seed type.

*Should BRSO and PRSO be included in the same product market?*

18. In respect of demand side substitutability between BRSO and PRSO, a previous EC market investigation found that:

*“PRSO is mostly purchased by end customers for their private use, whereas BRSO is generally used in the food service and manufacturing sector. Accordingly, BRSO is supplied in large quantities while PRSO is packaged in small containers that satisfy the needs of end-consumers. PRSO and BRSO are therefore not interchangeable since, as reported by a competitor, “end customers may not have the capability of taking bulk oils.”<sup>14</sup>*

19. In respect of supply side substitutability between BRSO and PRSO, the Commission notes that suppliers typically supply both BRSO and PRSO, but BRSO and PRSO’s packaging and customer requirements are different.
20. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, the Commission has seen no evidence which would contradict the findings of the EC in respect of whether BRSO and PRSO should be included within the same potential relevant product market or whether each of BRSO and PRSO should constitute separate product markets. Therefore, the Commission considers that, for the purposes of assessing the competitive effects of the

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<sup>11</sup> Case M.9495 – Fortenova Grupa / Poslovni Sistemi Mercator.

<sup>12</sup> *Ibid*, paragraph 55.

<sup>13</sup> For example, see Case M.9495 - Fortenova Grupa / Poslovni Sistemi Mercator; Case M.8068 – Bunge / Walter Rau Neusser Öl und Fett, paragraph 14.

<sup>14</sup> COMP/M.7625 - ADM/ AOR, paragraph 19.



Proposed Transaction, BRSO and PRSO should not be included in the same potential product market.<sup>15</sup>

*Is it necessary to further segment the potential product market on the basis of seed type?*

21. The Commission sought the views of customers of the Parties as to whether different types of refined seeds oils are substitutable. It is clear from the Commission's market enquires that the extent to which different types of refined seed oils are substitutable will depend on various factors, such as each customer's manufacturing requirements.
22. As noted above, the EC has left open the possibility of further segmenting the supply of BRSO by seed type.<sup>16</sup>
23. In this instance, it is not necessary for the Commission to define the precise relevant product markets because, regardless of whether the potential product market is defined broadly (e.g., to encompass BRSO) or narrowly (e.g., separate potential markets for the supply of different seed types of BRSO), doing so will not alter the Commission's assessment of the competitive effects of the Proposed Transaction.
24. Therefore, for the purpose of its competitive assessment, the Commission has assessed the likely competitive impact of the Proposed Transaction by reference to the supply of BRSO as well as the supply of different seed types of BRSO.

#### Relevant Geographic Market

25. The EC has left open the exact geographic scope of the market for the supply of BRSO, and has analysed EEA-wide, regional, and national markets.
26. The Commission does not need to come to a definitive view on the precise relevant geographic market in this instance, as doing so will not alter the Commission's assessment of the competitive effects of the Proposed Transaction. Accordingly, for the purpose of its competitive assessment of the Proposed Transaction, the Commission

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<sup>15</sup> The Parties do not overlap in respect of the supply of PRSO.

<sup>16</sup> For example, see *Case M.9495 - Fortenova Grupa / Poslovni Sistemi Mercator*; *Case M.8068 – Bunge / Walter Rau Neusser Ol und Fett*.



has followed the general approach of the EC with respect to the potential geographic market and assessed the likely competitive impact of the Proposed Transaction on a national basis (i.e., the State).

#### Conclusion on relevant markets

27. Accordingly, for the purposes of carrying out its competitive assessment of the Proposed Transaction, the Commission has analysed the impact of the Proposed Transaction by reference to the following potential relevant markets:

- a) the supply of BRSO in the State; and
- b) the supply of different seed types of BRSO in the State.

#### **Competitive Analysis – Horizontal**

##### *Supply of BRSO in the State*

28. The Parties' shares in the supply of BRSO in the State in 2022 are listed in Table 1 below.

*Table 1: Estimated shares for the supply of BRSO by volume, all oils, in the State in 2022*

Supplier	Volume (tonnes)	Share(%)
<b>Trilby Trading</b>	[...]	[35-40]%
<b>KTC Edibles</b>	[...]	[0-5]%
<b>Combined</b>	[...]	<b>[35-45]%</b>
<b>Others</b>	[...]	[55-65]%
<b>TOTAL</b>	[...]	<b>100%</b>

*Source: Parties' estimates based on OECD and FAO data*

29. Table 1 shows that KTC Edibles and Trilby Trading's shares in the supply of BRSO in the State were approximately [0-5]% and [35-40]%, respectively, in 2022. Thus, following implementation of the Proposed Transaction, with an increment of less than [0-5]%,



KTC Edibles would hold an estimated [35-45]% share in respect of the supply of BRSO in the State.

30. The Parties stated in the notification that the supply of BRSO in the State is highly fragmented and characterised by the presence of large competitors, including Sime Darby Oils, Olenex Sàrl, Bunge Limited, Yelo Enterprises Ltd, Kerfoot Group, AAK AB, and Van Wijk & Olthuis B.V.
31. As noted above, the Commission sought the views of customers and competitors of the Parties during the course of its investigation into the Proposed Transaction. The Commission's market enquires made clear that there are several alternative suppliers of BRSO, including large competitors such as Sime Darby Oils, AAK AB and Olenex Sàrl that supply BRSO in the State. Furthermore, no customers or competitors contacted by the Commission raised any competition concerns about the Proposed Transaction.
32. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the supply of BRSO in the State.

*Supply of different seed types of BRSO in the State*

33. The Parties supply a range of different seed types of BRSO in the State, but only overlap in the supply of coconut oil BRSO and rapeseed oil BRSO.
  - **Coconut oil BRSO:** KTC Edibles has a minimal presence in the supply of coconut oil BRSO in the State, holding an estimated [0-5]% share. Trilby Trading holds an estimated [35-40]% share in the supply of coconut oil BRSO in the State.
  - **Rapeseed oil BRSO:** KTC Edibles holds an estimated [5-10]% share in the supply of rapeseed oil BRSO in the State. Trilby Trading holds an estimated [10-15]% share in the supply of rapeseed oil BRSO in the State. Following the implementation of the Proposed Transaction, KTC Edibles would hold an estimated [15-20]% share in the supply of rapeseed oil BRSO in the State.







## **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 Transaction whereby K.T.C. (Edibles) Limited would acquire the entire issued share capital, and thus sole control, of Trilby Trading Limited, a wholly owned subsidiary of Greencore Group plc, 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**