

# DETERMINATION OF MERGER NOTIFICATION M/24/019 – DUNNES STORES / BA TRADING

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## Section 21 of the Competition Act 2002

### Proposed acquisition by Dunnes Stores Unlimited Company of the entire issued share capital, and thus sole control, of BA Trading Limited

Dated: 12 April 2024

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#### Introduction

1. On 22 March 2024 in accordance with s18(1)(a) of the Competition Act 2002, as amended (the “**Act**”), the Competition and Consumer Protection Commission received notification of a proposed transaction whereby Dunnes Stores Unlimited Company (“**Dunnes**” or the “**Purchaser**”), a wholly-owned subsidiary of Dunnes Holding Company Unlimited Company (“**Dunnes Group**”) would acquire, through BM BidCo Limited (“**BidCo**”), the entire issued share capital and thus sole control of BA Trading Limited and its subsidiary BA (Finglas) Limited (together, “**BA Trading**” or the “**Target**”) (the “**Proposed Transaction**”).

#### The Proposed Transaction

1. The Proposed Transaction is to be implemented pursuant to a Share Purchase Agreement (“**SPA**”), dated 21 March 2024, between the sellers<sup>1</sup> and BidCo. Pursuant to the SPA, BidCo, on behalf of Dunnes, will acquire sole control of BA Trading.
2. The business activities of the undertakings involved are:

##### *Purchaser: Dunnes*

- Dunnes is a private unlimited company incorporated under the Companies Acts 1963 – 2014, having its registered office at 46-50 South Great George’s Street, Dublin 2, D02 RX86.
- Dunnes is a wholly owned subsidiary of Dunnes Group, which is the ultimate holding company for the *Dunnes Stores* group of companies. The *Dunnes Stores* group is active in

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<sup>1</sup> The sellers are defined in the SPA as being the following individuals: Alan Condrón and Brenda Condrón (together, the “**Sellers**”).

the sale of groceries, men's, women's and children's clothes and home and garden wares through its retail outlets which are located primarily in the State and Northern Ireland, with a small number of stores in Spain.

- BidCo is owned and controlled by the directors of Dunnes. BidCo is under the sole control of Dunnes.

*Target: BA Trading*

- BA Trading is a private company limited by shares, incorporated in the State, having its registered address at Unit 2, Abbeylands Centre, Clane, Co. Kildare, W91 ET78.
- BA Trading, through its wholly owned subsidiary BA (Finglas) Limited, owns and operates the supermarket known as Condron's located at Abbeyland, Clane, Co. Kildare, W91 ET78. The shares in BA Trading Limited are currently held by Alan and Brenda Condron and BA Trading is currently under their sole control. BA Trading has no subsidiaries other than BA (Finglas) Limited and does not have any other business interests other than the ownership and control of Condron's.

3. After examination of the notification, the Commission has concluded that the Proposed Transaction falls within the scope of paragraph 2.1 of the Simplified Merger Notification Procedure Guidelines for assessing certain notifiable mergers or acquisitions under section 18(1)(a) of the Act since:

- two or more of the undertakings involved in the merger or acquisition are active in the same product and geographic market, but their combined market share is less than 15%. Or, where one or more undertakings involved in the merger or acquisition are active in any market(s) which is upstream or downstream to a market(s) in which another undertaking involved is active, but the market share of each of the undertakings involved in each market is less than 25%;

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

### **Ancillary Restraints**

5. The parties state in the notification that Clause 11.1 of the SPA contains restrictive covenants including non-complete and non-solicit provisions on the Sellers, which the parties consider to be directly related and necessary to the implementation of the Proposed Transaction.
6. The Commission notes that Clause 11.1(a) of the SPA contains a [...] non-compete obligation on the Sellers. The duration of this restrictive covenant does not exceed the maximum duration acceptable to the Commission. The Commission considers the restrictive obligations contained in Clause 11.1(a) of the SPA to be directly related to and necessary for the implementation of the Proposed Transaction, insofar as they relate to the State.
7. The Commission notes that Clause 11.1(d) extends the non-solicitation clause to “employees holding executive or managerial posts of the Company<sup>2</sup> or Subsidiary<sup>3</sup>” who were employed at the completion of the sale and purchase of the “Sale Shares”<sup>4</sup>. The Commission considers the restrictive obligations contained in Clause 11.1(d) of the SPA to be directly related to and necessary for the implementation of the Proposed Transaction, insofar as they relate to the State.

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<sup>2</sup> Defined in the SPA as BA Trading Limited.

<sup>3</sup> Defined in the SPA as BA (Finglas) Limited.

<sup>4</sup> “Sales Shares” are described in the SPA as representing the entire issued share capital of BA Trading Limited.

## 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 Dunnes Stores Unlimited Company, a wholly-owned subsidiary of Dunnes Holding Company Unlimited Company would acquire, through BM BidCo Limited, the entire issued share capital and thus sole control of BA Trading Limited and its subsidiary BA (Finglas) 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

**Ibrahim Bah**  
**Director**  
**Competition Enforcement and Mergers**