



DETERMINATION OF MERGER NOTIFICATION M/16/066 – KEPCAR (JV KEPAK & OLIVER CARTY)/GREEN FARM FOODS

Section 21 of the Competition Act 2002

Proposed acquisition by Kepcar Investments Limited, a JV company incorporated by Kepak Group Unlimited Company and Oliver Carty Unlimited Company, of sole control of Green Farm Foods Limited

Dated 2 February 2017

Introduction

1. On 21 December 2016, 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 (the “Proposed Transaction”) whereby Kepcar Investments Limited (“Kepcar”), which is a joint venture company incorporated by Kepak Group Unlimited Company (“Kepak Group”) and Oliver Carty Unlimited Company (“Oliver Carty”) (collectively, the “JV Partners”), would either acquire 90% of the ordinary share capital of Green Farm Foods Limited (the “Target”) (the “Share Acquisition”) from Green Farm (Holdings) Limited¹ or would acquire the assets and business of the Target from a Receiver to be appointed by Ulster Bank (the “Asset Acquisition”).²

The Proposed Transaction

2. Kepcar has been incorporated by Kepak Group and Oliver Carty solely for the purpose of the Proposed Transaction. The issued share capital of Kepcar is owned [...] % by Kepak Group and [...] % by Oliver Carty.
3. The Proposed Transaction is to be implemented pursuant to one of two ways:

¹ On 19 January 2017, the parties submitted a revised notification to the Commission to reflect the possibility of an asset acquisition if the Target goes into a receivership, due to the trading and financial situation of the Target.

² Ulster Bank and the Receiver to be appointed have both confirmed that it is their intention to sell the assets and business of the Target to Kepcar/Greene Farm Fine Food Limited (a wholly owned subsidiary of Kepcar).



- A Share Acquisition - to be implemented pursuant to an agreement between the JV Partners whereby Kepcar would acquire 90% of the entire issued share capital of the Target.³ Following the acquisition of the Target by Kepcar, the remaining 10% of the issued share capital in the Target [...] ⁴ would be held [...] ⁵. [...] ⁶.
 - An Asset Acquisition - to be implemented pursuant to an agreement between Kepcar/Greene Farm Fine Food Limited and the Receiver to be appointed by Ulster Bank whereby, Kepcar would acquire the entire business and assets of the Target, including all of the assets necessary for the continuation of the manufacture, distribution and supply of products to the Target's current customers.
4. Post Proposed Transaction, Kepcar/Greene Farm Fine Foods Limited will operate the business of the Target, regardless of whether the Proposed Transaction is effected through a "Share Acquisition" or an "Asset Acquisition".

The Undertakings Involved

Kepcar

5. Kepcar has been incorporated by Kepak Group and Oliver Carty for the sole purpose of acquiring either the ordinary share capital or, alternatively, the assets and business of the Target. There are four directors on the board of Kepcar, two of whom have been appointed by each JV Partner.⁷
6. Following implementation of the Proposed Transaction, Greene Farm Fine Foods Limited will operate the business of the Target. Greene Farm Fine Foods Limited will have a stand-alone management team and will operate at arm's length from the JV Partners.

Kepak Group

³The parties signed a Heads of Agreement on 18 November 2016.

⁴ [...].

⁵ [...].

⁶ Revised notification page 2.

⁷ The parties have indicated that the four directors are the Managing Director of Kepak Group Mr. John Horgan, Financial Director of Kepak Group Mr. Robert Grogan, Managing Director of Oliver Carty Mr. Edward Carty and Financial Director of Oliver Carty Nicole Verdon.



7. Kepak Group is a private unlimited company which is incorporated and registered in the State, with its head office located in Clonee, Co. Meath. Kepak Group's main business involves the primary processing and marketing of a full range of meat products in varied formats and presentations. Kepak Group operates three business units, namely: Kepak Meat Division; Kepak Convenience Foods; and Kepak Frozen Division.⁸ The Proposed Transaction is relevant to the Kepak Meat Division.
8. The Kepak Meat Division processes beef and lamb, and has four beef slaughter lines, three beef boning halls, a lamb slaughter line and a lamb boning hall, and a pig slaughter and boning plant in Cavan town. According to the information provided by the parties in the notification, the Kepak Meat Division slaughtered approximately [...] cattle, [...] lamb and [...] pigs in the last complete financial year to December 2015. The Kepak Meat Division also has a valued added business, Sous Vide, which is a cooking operation in Cork and a burger processing plant at Ballybay, Co Monaghan.
9. For the financial year ended 31 December 2015, Kepak Group's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

Oliver Carty

10. Oliver Carty is a private unlimited company which is incorporated and registered in the State, with its head office located in Monksland, Athlone, Co. Roscommon. It is indirectly wholly owned by Edward Carty and Susan Carty. Oliver Carty is a secondary processor of pork and bacon and is active predominantly in the State.
11. Oliver Carty operates from two plants in Athlone and processes in excess of [...] tonnes of processed pork related products per annum. It primarily produces own label pork, bacon and rasher products for Irish multiples, i.e., it does secondary processing of pork products that it mainly supplies to [...].

⁸ The Commission outlined the activities of Kepak Group's business units in its previous determination -M/16/060-Kepak Group/John Kelly Meats, please see: <http://www.ccpic.ie/enforcement/mergers/merger-notices/m16060-kepak-john-kelly-meats>



12. For the financial year ended 31 July 2016, Oliver Carty's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

The Target

13. The Target's voting share capital is held by Green Farm (Holdings) Ltd, which is wholly owned by Mr Kenneth Greene and Mrs Kathleen Greene. The Target is a meat processor based in Rathowen, Co. Westmeath. The Target produces a range of cooked sliced and pulled chicken, cooked sliced turkey, cooked sliced beef and cooked chicken wings. The Target is not involved in the processing of pork related products.

14. The assets and business of the Target to be sold include physical assets, business know-how, and contracts with customers relating to the production and supply of a range of cooked sliced and pulled chicken, cooked sliced turkey, cooked sliced beef and cooked chicken wings.

15. For the financial year ended 30 June 2016, the Target's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

Rationale for the Proposed Transaction

16. The parties state in the notification⁹:

"Traditional pork and bacon sales in the Republic of Ireland home market are declining with little room for growth, due to: 1) The age profile buying into the category; and 2) consumers switching to healthier alternatives such as chicken and turkey in particular."

"Kepak has a strategic interest in diversifying its product range and in expanding the range of branded products produced by the Kepak Group."

"Oliver Carty have been looking to diversify the product range and expand into cooked sliced meats."

"Kepak has no tradition of cooked sliced meats and the Kepak Group believes that a joint venture with Oliver Carty will combine the technical expertise of

⁹ Page 8, section 2.7 of the notification.



Oliver Carty with the commercial reach and brand marketing capability of Kepak Group.”¹⁰

“Oliver Carty believe that a joint venture with Kepak will combine the technical expertise of Oliver Carty with the commercial reach and brand marketing capability of Kepak Group.”¹¹

“In the event that a receiver is appointed by Ulster Bank, his commercial objectives will be to achieve the best price for the assets and business of the Target, whilst complying with his statutory obligations.”

Third Party Submissions

17. No submission was received.

Competitive Analysis

Overlap in the activities of the parties

JV Partners

18. There is horizontal overlap between the activities of Kepak Group and Oliver Carty. Both are involved in the production and supply of bacon, pork and rashers.

19. Furthermore, there is a vertical overlap between the activities of Kepak Group and Oliver Carty, in terms of:

- The supply of pork for further processing - Kepak Group, through its subsidiary, McCarren Meats Unlimited Company (“McCarren”), slaughters pigs and cuts up carcasses into large pieces of pork. Oliver Carty buys large pieces of pork and processes them further.
- The supply of bacon for further processing - Kepak Group supplies bacon to Oliver Carty and Oliver Carty processes it further.

¹⁰ The parties further confirmed that this statement refers to the benefit to the Target’s businesses.

¹¹ The parties further confirmed that this statement refers to the benefit to the Target’s businesses.



- The supply of meat processing services - Kepak Group currently delivers pork to Oliver Carty and Oliver Carty processes (“pull”) the pork and returns it to Kepak. In this case, Oliver Carty does not take ownership of the pork.

20. The parties state in the notification form that *“Following completion of the Proposed Transaction, Kepak Group and Oliver Carty will remain separate. They will continue to compete with one another.”*¹²

21. Due to the overlap in the activities of the JV Partners, the Commission has assessed any potential coordinated effects that could arise through Kepcar regarding the supply of bacon, pork and rashers. However, the Commission considers that the Proposed Transaction is unlikely to raise competition concerns for the reasons discussed below.

JV Partners and the Target

22. There is neither horizontal nor vertical overlap between the activities of Oliver Carty and the Target within the State.

23. There is minimal horizontal overlap between the activities of the Kepak Group and the Target within the State. Both the Kepak Group and the Target are involved in production of processed chicken and beef products.

24. There is potential vertical overlap between the Kepak Group and the Target, on the basis that the Target purchases prime beef and the Kepak Group supplies prime beef.

Market Definition

25. The parties argue that *“the market for chicken in the State may be divided into the market for the supply of primary chicken in the State, and the supply of processed chicken in the State”*.¹³ The parties further argue that the processed beef market *“should be considered as wider than the State and Kepak competes in the UK, French and Scandinavian markets for customers.”*¹⁴

¹² Revised Notification page 12.

¹³ Revised Notification, page 27.

¹⁴ Revised Notification, page 27.



26. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. Furthermore, the Commission considers that there are no reasons to depart from the European Commission's¹⁵ and the Commission's previous market definition in relation to the areas of overlap in the activities of the parties for purpose of assessing the Proposed Transaction.¹⁶
27. In this instance, it is not necessary for the Commission to define the precise markets because the precise product and geographic market definition adopted will not materially alter the Commission's assessment of the competitive impact of the Proposed Transaction. Although the parties submit that the geographic market for the production and sale of processed beef should be wider than the State, the Commission will assess the Proposed Transaction within a narrow geographic market, i.e., the State. This approach is consistent with the European Commission's and the Commission's previous market definition. That is, national markets exist for:
- the production and sale of processed chicken,¹⁷ and
 - the production and sale of processed beef.¹⁸
28. Therefore, the Commission has reviewed the competitive effects of the Proposed Transaction in relation to the markets listed in paragraph 27.

Competitive Effects

Horizontal overlap

Production and supply of Processed Chicken Products in the State

29. The activities of both the Kepak Group and the Target overlap in relation to the produce and sale of processed chicken products. The parties estimated the value of the market for

¹⁵ IV/M.1313 Danish Crown/Vestjyske Slagterier, See Comp/M.2662 Danish Crown/Steff Houlberg; COMP/M.3401-Danish Crown/Flagship Foods; COMP/M.3337-Best Agrifund/Nordfleisch.

¹⁶ M/10/018 Moy Park/O'Kan Please see: <http://www.ccpc.ie/enforcement/mergers/merger-notices/m10018-moy-park-okane>
M/16/018 – Amber Real Estate Investment/Certain Assets of Grove Turkeys please see <http://www.ccpc.ie/enforcement/mergers/merger-notices/m16018-amber-real-estate-grove-turkeys-ta-grove-farm>.

¹⁷ M/10/018 Moy Park/O'Kan Please see: <http://www.ccpc.ie/enforcement/mergers/merger-notices/m10018-moy-park-okane>
M/16/018 – Amber Real Estate Investment/Certain Assets of Grove Turkeys please see <http://www.ccpc.ie/enforcement/mergers/merger-notices/m16018-amber-real-estate-grove-turkeys-ta-grove-farm>.

¹⁸ COM/M.3337-Best Agrifund/Nordfleisch and Comp/M.2662 Danish Crown/Steff Houlberg



processed chicken products in the State at approximately €[...] million per annum. For the financial year ended 31 December 2015, the Kepak Group generated turnover of approximately €[...] million in respect of the sale of processed chicken products in the State while the Target generated a turnover of approximately €[...] million. Based on these figures, the Target accounts for approximately [0-5]% of the overall sale of processed chicken products in the State and the Kepak Group accounts for approximately [0-5]% of the sale of processed chicken products in the State. This means that over 90% of the remaining sale of processed chicken products in the State is accounted for by a number of other competitors.

30. Post-merger, the Kepak Group and the Target will continue to face competition from other major processed chicken producers in the State, such as Moy Park Food Service Dublin Limited, Kerry Foods Limited, Carton Bros Unlimited Company¹⁹, Glenhaven Goods Limited, and Grove Turkeys Limited²⁰.

31. In light of the above, the Commission considers that the result of the Proposed Transaction will not be to substantially lessen competition in the production and sale of processed chicken products in the State.

Production and supply of processed beef products in the State

32. The Kepak Group produces and supplies frozen beef burgers, whereas the Target produces and supplies cooked sliced beef. If the Commission considers that cooked sliced beef and frozen beef burgers are in separate markets, there will be no competitive overlap between the parties in relation to the production and supply of processed beef products in the State.

33. However, if the Commission considers that frozen beef burgers and sliced beef are in the same market, the overlap between the Kepak Group and the Target is minimal. For the financial year ended 31 December 2015, the Kepak Group generated approximately €[...] million turnover in respect of sales of beef burgers and the Target generated approximated [...] turnover in respect of sale of cooked sliced beef. The parties further submitted that there is no publicly available data in relation to the value of the market for

¹⁹ Carton Bros Unlimited is the company that produce Manor Farm Chicken.

²⁰ The brand name Grove Farm is used by Grove Turkeys Ltd.



all processed beef products in the State.²¹ However, the parties estimated that the value of the beef burgers market in the State is approximately €[...] million. Based on these figures alone, the Target will account for at most approximately [0-5]% of the production and supply of processed beef production in the State.

34. In addition, following the Proposed Transaction, the Kepak Group and the Target will continue to face competition from other major processed beef producers in the State, such as Dawn Meats Ireland Unlimited Company, Rangeland Food Products Limited, Birds Eye Ireland Limited, O'Brien Fine Foods Unlimited, Glen Aine Foods Limited and Faughan Foods Limited.

35. In light of the above, the Commission considers that the result of the Proposed Transaction will not be to substantially lessen competition in the production and sale of processed beef products in the State.

Vertical Overlap between Kepak Group and the Target

36. There is a potential vertical relationship between the Kepak Group and the Target in the State in respect of the supply of prime beef. The Target purchases approximately [...] tonnes of prime beef products annually. Kepak Group supplies approximately [...] tonnes of prime beef annually. The Commission considers this potential vertical overlap to be insignificant given that approximately [...] tonnes of prime beef products are produced and sold in the State annually.²²

37. In light of the above, the Proposed Transaction is unlikely to have any significant competitive effect on the potential vertical relationship between the JV Partners and the Target in terms of the supply of prime beef for further production.

Potential Coordinated Effects between the JV Partners

38. As mentioned above in paragraph 18 and 19, the JV Partners overlap horizontally in the production of pork, bacon and rashers and vertically in the supply of pork, the supply of

²¹ Revised Notification, footnote 6.

²² Revised Notification, page 13.



bacon for further processing (from the Kepak Group to Oliver Carty) and in the supply of meat processing services (by Oliver Carty to the Kepak Group).

39. The Commission's Guidelines for Merger Analysis suggest that cross-shareholdings and/or other linkages between parties may facilitate coordination - the exchange of information will be easier for connected firms than unconnected firms.²³ On the basis of the overlaps between Kepak Group and Oliver Carty, the Commission was concerned that the creation and operation of the Target may facilitate anti-competitive information sharing between Kepak Group and Oliver Carty to the detriment of consumers.

40. The parties argued that:

- The Target business will be run separately by the management of Greene Farm Fine Foods Limited. The Directors on the board of Keppcar will not be involved in the operations of the acquired business going forward.
- In respect of the supply of pork, the Kepak Group and Oliver Carty are not operating at the same level on the supply chain. The Kepak/McCarren does not consistently supply Oliver Carty with a regular volume of pork. The parties estimate that Oliver Carty currently purchases [...]% of its pork requirements from [...], [...]% from [...] and [...]% from [...]. The parties further confirmed that if the Kepak Group continues to produce high-quality pork at a competitive price, Oliver Carty will continue to purchase a similar volume of pork as is currently purchased from the Kepak Group.
- In respect of bacon and rashers, the parties argue that the customers of the Kepak Group and Oliver Carty are different. The Kepak Group supplies a very small amount of bacon and rashers, predominantly to [...] and its own factory shop.²⁴ Oliver Carty supplies bacon and rashers to [...].

41. The Commission has taken account of the following:

²³ Please see paragraph 4.26 (f): http://ccpc.ie/sites/default/files/CCPC%20Merger%20Guidelines_1.pdf

²⁴ Kepak Group turnovers associated with bacon and rashers are approximately €[...] million and €[...] million, respectively. Oliver Carty turnovers associated with bacon and rashers are approximately €[...] million and €[...] million, respectively.



- The JV Partners submitted that they will continue to compete separately in the overlapping areas, and the Target will not be used as a means for sharing anti-competitive information between them.
- The Kepak Group and Oliver Carty operate at different levels of the supply chain in the production and sale of pork. Therefore, it will be in the interest of each JV Partner to obtain or seek the best possible price from each other.
- The Kepak Group's market presence in the supply of both bacon and rashers is minimal.²⁵ The existence of other competitors in the supply of bacon and rashers, such as Callan Bacon Company Limited, Karro Food Limited, Oakpark Food Limited and Kerry Foods Limited is likely to make any potential information sharing between the Kepak Group and Oliver Carty less stable.

42. In light of the above, the Commission is satisfied that the Proposed Transaction is not likely to result in anti-competitive information sharing that is detrimental to consumers.

Conclusion

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

Ancillary Restraints

44. No ancillary restraints were notified.

²⁵ The parties have indicated that Kepak Group's estimated market shares in the State in terms of bacon and rashers are less than [0-5]% and [0-5]% respectively. Revised Notification Form, page 29, 30.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby Kepcar Investments Limited, which is a joint venture company incorporated by Kepak Group Unlimited Company and Oliver Carty Unlimited Company, would either acquire 90% of the ordinary share capital of Green Farm Foods Limited or would acquire the assets and business of Green Farm Foods Limited from a Receiver to be appointed by Ulster Bank, 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

Patrick Kenny
Member
Competition and Consumer Protection Commission