



DETERMINATION OF MERGER NOTIFICATION M/17/052 – CEDARGLADE (MUSGRAVE) / BALLYBRIT SERVICE STATION

Section 21 of the Competition Act 2002

Proposed acquisition by Musgrave Limited, through Cedarglade Limited, of certain assets constituting Ballybrit Service Station

Dated 11 October 2017

Introduction

1. On 12 September 2017, 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 (“the Proposed Transaction”) whereby Musgrave Limited (“Musgrave”), through its wholly-owned subsidiary Cedarglade Limited (“Cedarglade”), would acquire certain assets of David Hogan and Paul Hogan who are acting through their receivers Anne O’Dwyer and Declan Taite of Duff & Phelps (collectively “the Vendors”). The assets to be acquired by Musgrave, through Cedarglade, constitute Ballybrit Service Station, a retail motor fuel service station and associated forecourt convenience store, which is located at *Bothar na dTreabh* (N6), Ballybrit, Co. Galway (collectively “Ballybrit Service Station”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to an agreement of sale by private treaty (“the Agreement”), dated 13 June 2017, between the Vendors and Cedarglade. Pursuant to the Agreement, it is intended that Musgrave, through Cedarglade, will acquire the freehold interest in the premises from which Ballybrit Service Station currently trades (“the Premises”)¹.

¹ Being the entirety of the property comprised in Property Registration Authority Folio 59308F County Galway, held in fee simple.



3. The Premises is currently subject to a lease² and is occupied by Ballybrit Forecourt Limited (“the Tenant”). The Tenant currently operates Ballybrit Service Station as a *Topaz*-branded retail motor fuel service station and an associated forecourt convenience store operating under the *Centra*-brand.
4. The completion of the Proposed Transaction is conditional upon certain registrations in the Land Registry and to allow for these, the parties have agreed upon ancillary heads of agreements providing for: (a) a surrender of the abovementioned lease by the Tenant and (b) a short term letting agreement between the Vendors and Cedarglade.³
5. Pursuant to the arrangement described in paragraph 4 above, Cedarglade would occupy the Premises for a period of 12 months or such lesser period as may be required to complete the required registrations in the Land Registry. The parties submit that this arrangement will permit the completion of the Proposed Transaction by Cedarglade.
6. Following implementation of the Proposed Transaction, Ballybrit Service Station will be operated by Cedarglade as a Musgrave company-owned and company-operated retail motor fuel service station and *Centra*-branded forecourt convenience store until such time as an independent third party operator/new franchisee can be identified. It is intended that such new franchisee would then lease the Premises from Cedarglade and carry on trading as a *Centra*-branded forecourt convenience store, as well as operating the motor fuel retail service station (which would be supplied with fuel under a separate agreement with a fuel supplier).

The Undertakings Involved

Musgrave

7. Musgrave, a private limited company incorporated in the State, is a wholly-owned subsidiary of Musgrave Group plc (“Musgrave Group”). Musgrave Group is active in grocery and food wholesale distribution in the State and in Spain. Musgrave is principally a wholesaler-franchisor in the State and operates through franchise

² In accordance with a lease agreement, dated 7 April 2006, between David Hogan and Paul Hogan (as the landlord), Ballybrit Forecourt Limited and John Grealish (as the guarantor).

³ The Commission has been provided with copies of the agreed form of the deed of surrender of the lease and of the short-term letting agreement as part of the merger notification.



agreements with independently-owned retail stores which are operated under the following Musgrave-owned fascia (brands): *Supervalu*, *Centra*, [*Day-Today*] and *Daybreak*.⁴ Musgrave also has a network of cash & carry depots from which it supplies business customers in the State with grocery products.

8. Musgrave, through Cedarglade and another subsidiary⁵, also owns and operates a number of retail grocery stores in the State under either the *SuperValu*⁶ or *Centra*⁷ brand.
9. For the financial year ended 31 December 2016, Musgrave Group's worldwide turnover was approximately €3.7 billion, of which approximately €3.1 billion was generated in the State.

Ballybrit Service Station

10. Ballybrit Service Station consists of a retail motor fuel service station, comprising a motor fuel (road diesel (DERV) and petrol) forecourt (which also operates a car wash) operating under the *Topaz* brand and an associated forecourt convenience store operating under the *Centra* brand, which is located at *Bothar na dTreabh* (N6), Ballybrit, Co. Galway.
11. For the financial year ended 31 December 2015, Ballybrit Service Station's worldwide turnover was approximately €8 million, all of which was generated in the State.

Rationale for the Proposed Transaction

12. The parties state in the notification:

"The Purchaser's commercial objective is to acquire the Freehold Undertaking and the Convenience Store Undertaking and will initially carry on trade itself from the Premises with a view to ultimately introducing an independent retailer

⁴ The wholesaler-franchisor model which Musgrave operates in the State with its franchisees was described by the Commission's predecessor, the Competition Authority, in *M/11/022 - Musgrave/Superquinn*.

⁵ Musgrave Operating Partners Ireland Limited.

⁶ Musgrave owns and operates three *SuperValu*-branded stores (two in Dublin and one in Kilkenny) and twenty-two former *Superquinn*-branded stores which are now operated under the *SuperValu* brand, the majority of which are located in the Greater Dublin Area (a further two are located in Co. Wicklow and one is located in each of Kilkenny, Waterford, Co. Limerick and Co. Laois).

⁷ Musgrave owns and operates five *Centra*-branded stores (four are located in Dublin and one is located in Cork).



to the Premises. Musgrave believes the Premises and the Convenience Store Undertaking have significant potential given the Premises' location and the ability to generate footfall from the forecourt business."

Third Party Submissions

13. No submission was received.

Competitive Analysis

14. There is no overlap between the activities of the parties in respect of the retail sale of motor fuel (road diesel (DERV) and petrol), i.e., the operation of retail motor fuel service stations in the State. Therefore, the Commission considers that the Proposed Transaction is unlikely to raise any competition concerns in respect of the operation of retail motor fuel service stations in the State.

Horizontal Overlap

15. There is a horizontal overlap between the activities of the parties in respect of the retail sale of grocery goods in the State as both Ballybrit Service Station and Musgrave are involved in this activity.
16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission has recently, in *M/17/050 – Joyce's/Nestor's*, assessed the likely competitive effect of that transaction in respect of the potential relevant market for retail sale of grocery goods in the Greater Galway City Area⁸. Both Ballybrit Service Station's *Centra*-branded forecourt convenience store and some of Musgrave's branded (franchised) retail grocery stores are active in this area. The Commission has not, in the course of its review of the competitive effects of the Proposed Transaction, found any reason to depart from the approach to market definition taken by the Commission in *M/17/050 – Joyce's/Nestor's*. Accordingly, the Commission has assessed the likely competitive effects of the Proposed Transaction on

⁸ In *M/17/050 – Joyce's/Nestor's*, the Commission defined the "Greater Galway City Area" as an area with a radius of approximately 10 km from the centre of Galway City.



the potential relevant market for the retail sale of grocery goods within the Greater Galway City Area.

17. For the reasons set out below, the Commission considers that Proposed Transaction is unlikely to raise any horizontal competition concerns in the potential relevant market for the retail sale of grocery goods within the Greater Galway City Area:

- The Commission has confirmed there will be no change in the number of retail facia in the potential market for the retail sale of grocery goods within the Greater Galway City Area as a result of the Proposed Transaction. Ballybrit Service Station currently operates a forecourt convenience store under the *Centra* brand and this will continue to be the case after the implementation of the Proposed Transaction. Post-transaction, the only change that will occur is that the Ballybrit Service Station will be owned and, for a short-term period, operated by Musgrave. Musgrave has informed the Commission that it plans to seek a new franchisee to operate the *Centra*-branded forecourt convenience store (and the motor fuel service station under a separate agreement with a fuel supplier) after completion of the Proposed Transaction.
- Post-transaction there will remain a sufficient number of competitors to Musgrave within the Greater Galway City Area. These competitors, who operate multiple retail outlets within the Greater Galway City Area, include *Tesco, Dunnes Stores, Aldi, Lidl* and *Spar*.
- Having conducted an individual supermarket analysis, the Commission found that within a 3 km distance of Ballybrit Service Station's *Centra*-branded forecourt convenience store, there are the following competing retail outlets: *SuperValu* in Ballybane (0.75 km) and *Centra* in Doughiska (2.3 km)⁹; *Centra*, Tuam Road (1.1 km)¹⁰; *Dunnes Stores* in Doughiska (1.7 km); *Mace* in Ballybrit

⁹ Both the *SuperValu*-branded store in Ballybane and the *Centra*-branded store in Doughiska will be owned by Patrick C. Joyce Supermarket (Headford) Unlimited Company, a wholly-owned subsidiary of Solus Junction Unlimited Company, and will be operated under the *Joyce's Supermarket* brand subsequent to the Commission's decision in *M/17/50 – Joyce's / Nestor's*.

¹⁰ Independently owned and operated.



(1.2 km)¹¹; *Londis* in Mervue (1.3 km); *Spar* in Galway Technology Park (2.3 km); and *Lidl* in Doughiska (2.5 km).

18. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition for retail sale of grocery goods in the Greater Galway City Area.

Vertical Relationship

19. As mentioned in paragraph 7 above, while Musgrave has a number of company-owned and company-operated retail grocery stores in the State, Musgrave principally operates a wholesaler-franchisor model in the State, pursuant to which its franchisees source most of their grocery goods from Musgrave. Musgrave currently supplies Ballybrit Service Station's *Centra*-branded forecourt convenience store. As the store will continue to trade under the *Centra* brand and Musgrave will continue to supply it with grocery goods following implementation of the Proposed Transaction, there will be no change to the pre-transaction status quo. Also, there are a number of significant competitors to Musgrave, such as Dunnes Stores, Tesco and BWG Foods Unlimited Company (which owns the *Spar* brand), which are currently active in supplying grocery goods to other retailers in the Greater Galway City Area.
20. For the reasons set out above, the Commission considers that the Proposed Transaction will not result in any vertical foreclosure concerns in the Greater Galway City Area.

Conclusion

21. 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

22. No ancillary restraints were notified.

¹¹ Independently owned and operated.



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, through its wholly-owned subsidiary Cedarglade Limited, would acquire certain assets of David Hogan and Paul Hogan (acting through their receivers Anne O'Dwyer and Declan Taite of Duff & Phelps) which constitute Ballybrit Service Station, 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