Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí
Competition and Consumer Protection Commission

DETERMINATION OF MERGER NOTIFICATION M/18/077 – BWG / ROADFIELD

Section 21 of the Competition Act 2002

Proposed acquisition by BWG Foods Unlimited Company of the entire issued share capital of Roadfield Holdings Limited

Dated 24 October 2018

Introduction

1. On 14 September 2018, 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 BWG Foods Unlimited Company ("BWG"), a wholly owned subsidiary of TIL JV Limited, would acquire the entire issued share capital and thereby sole control of Roadfield Holdings Limited ("Roadfield") (the "Proposed Transaction").

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement dated 13 September 2018 (the "SPA") between Adrian Lawless, Colm Lawless, Fintan Lawless, John Lawless and Stanley Lawless (collectively, the "Vendors") and BWG. Pursuant to the SPA, BWG will acquire the entire issued share capital of Roadfield from the Vendors and thereby sole control of the business of Roadfield's wholly owned subsidiary Galway Turkeys Limited trading as *Corrib Food Products* ("Corrib Foods").

The Undertakings Involved

The Acquirer – BWG

3. BWG is a food retail and wholesale distribution company which operates in the Republic of Ireland and the United Kingdom. BWG is a wholly owned subsidiary of TIL JV Limited.

TIL JV Limited is 80% owned by the SPAR Group Limited, a quoted plc registered in South Africa, and 20% owned by members of the BWG management team (the "BWG Shareholders")[1]. The BWG Shareholders hold their shares in […].

4. At the retail level, BWG has the following interests:

   a. owner and operator of the Spar franchise in the State which includes the *Spar*, *Eurospar* and *Spar Express* brands;

   b. owner and operator of the Londis franchise in the State which includes the *Londis* brand;

   c. owner and operator of the *XL* and *Xpress Stop* brands, who are supplied by BWG's cash and carry outlets;

   d. the right to license the *Mace* brand throughout the State; and

   e. […] regarding forecourt retail operations.

5. BWG has 1,015 affiliated retail stores[2] operating under the following brands: *Spar*; *Spar Express*; *Eurospar*; *Mace*; *Londis*; *Gala* and *XL*. 1,007 of the affiliated retail stores are operated by independent franchisees and subject to a "Retail Franchise Agreement". The remaining 8 affiliated retail stores are owned and operated by BWG, via Triode Newhill Management Services Limited. In addition, BWG supplies 65 former *Mace* stores in the process of transitioning to *Maxol* branded stores under Maxol Limited's new brand image in respect of its associated convenience stores.

6. BWG, through its wholly owned subsidiary Triode Newhill Finance Limited ("Newhill"), owns the freehold or leasehold interests in 132 retail premises. These retail premises are operated as follows:

   a. of the 132 retail premises, 104 are currently trading; 9 of which are managed by Newhill, 94 are managed by franchisees, and 1 is managed by a franchisee under a

[1] The BWG Shareholders are as follows: […].

[2] The parties state the following in the merger notification form, "*The affiliated retailers source the vast majority of their grocery goods from BWG further to minimum purchasing requirements agreed between the parties*".

licence agreement. These retail premises operate under the *Spar*, *Eurospar*, *Mace*, *Londis* and *XL* brands; and,

b. of the remaining 28 retail premises, […] are closed and […] have been sublet to third parties.

7. BWG is involved in wholesale food and grocery distribution to its affiliated retail stores and to stores operated by independent retailers in the State. It is also involved in the wholesale distribution of food and beverages to foodservice customers and to the licensed trade. BWG operates one distribution centre located in the Kilcarbery Business Park, Nangor Road, Dublin 22. BWG also operates a chain of 20 wholesale cash and carry outlets under the *Value Centre* brand throughout the State, along with two wholesale cash and carry outlets under the *Better Deal* brand in the State.

8. For the financial year ending 30 September 2017, TIL JV Limited's worldwide turnover was approximately €[…], of which approximately €[…] was generated in the State.[3]

Corrib Foods

9. Corrib Foods is an Irish foodservice supplier which is ultimately controlled by the Vendors via Roadfield.[4] Corrib Foods is primarily active in the supply of fresh and frozen poultry[5] as well as vegetables, bread, dairy and desserts to the food retail sector and to foodservice operators. Corrib Foods' customers in the State primarily consist of hotels, restaurants, cafes, wholesalers, government institutions, retailers and contract caterers.

10. Corrib Foods also owns the following assets in the State:

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3 This includes 4 Aces Wholesale Limited's worldwide turnover for the financial year ending 31 December 2017, i.e., €[…], all of which was generated in the State. 4 Aces Wholesale Limited was recently acquired by BWG. Please see merger determination M/18/009 – BWG Foods/4 Aces which is accessible at https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m18009-bwg-foods4-aces/.

4 Roadfield is a holding company with no business or assets other than Galway Turkeys Limited. As previously mentioned, Galway Turkeys Limited trades as *Corrib Foods*.

5 Information provided by the parties in the notification form stated that "approximately 60%" of Corrib Foods' turnover is generated from the "*supply of boxes of fresh and frozen chicken*".

a. a warehouse in Athenry[6];

b. a small warehouse in Dublin;

c. a cross-dock in Cork[7]; and,

d. a fleet of 51 delivery vehicles based at the Athenry warehouse.

11. Galway Turkeys Limited's worldwide turnover for the financial year ending 31 December 2017 was approximately €[…], all of which was generated in the State.

Rationale for the Proposed Transaction

12. The parties state the following in the merger notification form:

> *"The Proposed Transaction provides BWG Foods with an opportunity to expand its foodservice business and to offer its foodservice customers a greater variety of products."*

Third Party Submissions

13. No submissions were received.

Competitive Analysis

Horizontal Overlap

14. There is a horizontal overlap between the activities of BWG and Corrib Foods in the State with respect to: (i) the supply of food and drink products to the food retail sector; and (ii) the supply of food and drink products to the foodservice sector, in the State.

Potential Relevant Product and Geographic Markets

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[6] The parties provided the following information in the merger notification form in relation to the warehouse in Athenry, ["…"].

[7] Following an informal information request from the Commission, Corrib Foods provided the following information to the Commission in respect of the warehouse in Dublin and the cross dock in Cork, "*The Dublin warehouse is […].*"

15. The Commission previously assessed the competitive impact of transactions involving the food retail sector in the State.[8] In its determination in *M/17/067 – Musgrave/La Rousse*, the Commission assessed the competitive impact of the relevant transaction in the potential market for the "*supply of food and drink products to the food retail sector*".[9]

16. Separately, the Commission previously assessed the competitive impact of transactions involving foodservice distribution in the State.[10] In such aforementioned merger determinations[11] the Commission noted that the competitive effects of the relevant proposed acquisitions would not differ depending on whether the relevant potential market was defined broadly (e.g., the supply of food products either directly or indirectly (i.e., via wholesalers) to customers, or, the distribution of all types of products to all types of foodservice customers) or narrowly (e.g., in terms of product category, customer category or mode of distribution).[12]

17. In the Commission's determination in *M/17/067 – Musgrave/La Rousse*, the Commission considered the European Commission's decision in Case M.7986 *Sysco/Brakes*[13] where the European Commission ultimately left open the question of whether the distribution of food products to foodservice customers should be segmented in accordance with (i) mode of supply; (ii) national and independent customers; or (iii) product category. Ultimately, in the Commission's determination in *M/17/067 – Musgrave/La Rousse*, the Commission assessed the competitive impact of

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[8] Please see, for example, merger determination *M/17/067 – Musgrave/La Rousse* which can be accessed at: https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m17067-musgravela-rousse-foods/.

[9] Please see paragraphs 13 - 15 in merger determination *M/17/067 – Musgrave/La Rousse* which can be accessed at: https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m17067-musgravela-rousse-foods/

[10] Please see, for example, merger determination M/16/003 *Musgrave/CJ O'Loughlin & Sons which can be accessed at* https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m16003-musgrave-c-j-oloughlin-sons/; merger determination *M/15/040 Aryzta/La Rousse* which can be accessed at https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m15040-aryzta-la-rousse/; merger determination *M/12/010 Pallas/Crossgar* which can be accessed at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-12-010-Pallas-Crossgar.pdf.

[11] That is, the Commission's merger determinations referred to in footnote 10.

[12] Please see, paragraph 14 in CCPC merger determination M/16/003 *Musgrave/CJ O'Loughlin & Sons which can be accessed at* https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m16003-musgrave-c-j-oloughlin-sons/; paragraph 19 in merger determination M/15/040 Aryzta/La Rousse which can be accessed at https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m15040-aryzta-la-rousse/; paragraph 40 in *M/12/010 Pallas/Crossgar* which can be accessed at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-12-010-Pallas-Crossgar.pdf.

[13] Please see European Commission decision in Case M.7986 *Sysco/Brakes* which is accessible at: http://ec.europa.eu/competition/mergers/cases/decisions/m7986_918_4.pdf.

the relevant transaction in the potential market for the supply of food and drink products to the foodservice sector in the State.

18. In this instance, it is not necessary for the Commission to define precise relevant markets. The Commission's conclusion concerning the competitive effects of the Proposed Transaction would be unaffected whether the relevant product markets in respect of the food retail sector and the foodservice sector are defined broadly or narrowly.

19. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant geographic market is defined as regional, national or broader, such as on an island of Ireland basis.

Conclusion

20. For the purpose of its analysis, the Commission has assessed the competitive impact of the Proposed Transaction in the potential market for: (i) the supply of food and drink products to the food retail sector in the State; (ii) the supply of food and drink products collectively to the foodservice sector in the State; and, (iii) the supply of poultry products, dairy products, fruit and vegetable products, bread and bakery products and ambient products, respectively, to the foodservice sector in the State.

Competitive Assessment

(i) Supply of Food and Drink Products to the Food Retail Sector in the State

21. There is a horizontal overlap between the parties in relation to the supply of food and drink products to the food retail sector in the State.

22. The Commission notes that the horizontal overlap between the parties in respect of the supply of food and drink products to the food retail sector is not significant considering the relatively small value of Corrib Foods' sales to the food retail sector in the State. Corrib Foods generated annual sales of approximately €[…] in respect of the supply of food and drink products to the food retail sector in the State in 2017, all of which was

destined for sale at deli counters in retail outlets offering "Food on the Go"[14]. BWG generated annual sales of approximately €[…], in respect of the supply of food and drink products to the food retail sector in the State in 2017.

23. According to AC Nielson[15], the Irish grocery market is estimated to be worth approximately €16.7 billion.[16] On the basis of AC Nielson's estimation, Corrib Foods held an estimated 0.01% market share in the supply of food and drink products to the food retail sector in 2017 in the State. This estimate suggests that Corrib Foods is not a significant competitor in the supply of food and drink products to the food retail sector in the State.

24. On the basis of AC Nielson's total market estimation, BWG management provided market share estimates in respect of the largest operators in the supply of food and drink products to the food retail sector in the State.

Table 1: Market Share Estimates of the largest operators in the supply of food and drink products to the food retail sector in the State

Operator	**Sales Estimates**	**Market Share Estimates**
Musgrave Group plc	€[…]	[25-30]%
Dunnes Stores	€[…]	[15-20]%
Tesco	€[…]	[15-20]%
BWG	€[…]	[10-15]%

[14] "Food on the Go" "encompasses convenience-driven items for takeaway in forecourt/ convenience operators and other grab-n-go found in retail operations". For more information, please see page 43 of the Bord Bia's Irish Foodservice Channel Insights Report November 2017 accessible at https://www.bordbia.ie/industry/events/SpeakerPresentations/2017/IrishFoodserviceDirectory/2017%20Irish%20Foodservice%20Channel%20Insights.pdf.

[15] AC Nielson is a global measurement and data analytics company. For more information, please see: https://www.nielsen.com/ie/en/about-us.html

[16] Source: Provided by the parties and based on 2017 information calculated by AC Nielson. Following an informal information request from the Commission, BWG provided the following description, "*The basis for this figure is annual AC Nielson Scantrack data […])*." However, BWG provided the Commission with the market size figures from 2007-2017 on the basis of the AC Nielson information.

Discounters[17]	€[…]	[15-20]%
Others	€[…]	[10-15]%
Total	€16.7 billion	100%[18]

Source: Provided by the parties and based on BWG management estimates and AC Nielsen's estimation of the total market size.

25. Following implementation of the Proposed Transaction, BWG's market share in the supply of food and drink products to the food retail sector in the State will increase by a minimal 0.01% to approximately [10-15]%. As set out in Table 1 above, there will remain significant suppliers in the supply of food and drink products to the food retail sector in the State, e.g., Musgrave Group plc, *Dunnes Stores*, *Tesco* and the Discounters and James A. Barry & Company Unlimited Company[19]. Following implementation of the Proposed Transaction, these competitors will continue to exert a competitive constraint on BWG.

Conclusion

26. In light of the above, the Commission considers that the Proposed Transaction will not lead to a substantial lessening of competition in the supply of food and drink products to the food retail sector in the State.

(ii) Supply of Food and Drink Products to the Foodservice Sector in the State

27. There is a horizontal overlap between the parties in relation to the supply of food and drink products to the foodservice sector in the State.[20]

[17] BWG management estimates combined *Aldi* and *Lidl's* sales and collectively referred to them as the "Discounters".
[18] This percentage has been rounded to the nearest figure.
[19] James A. Barry & Company Unlimited Company is included in the "Others" category in Table 1.
[20] For a description of the foodservice sector, please see paragraphs 17-20 in merger determination M/17/067 – Musgrave/La Rousse Foods which can be accessed at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/12/M-17-067-Determination-Musgrave-La-Rousse-1.pdf.

28. According to Bord Bia's *Irish Foodservice Channel Insights Report November 2017* ("the Bord Bia Report")[21], food and drink purchases by foodservice operators amounted to approximately €2.6 billion on the island of Ireland in 2017. Approximately €1.9 billion of this was purchased by foodservice operators in the State.[22]

29. BWG and Corrib Foods generated annual sales of approximately €[…] and €[…], respectively, in the supply of food and drink products to the foodservice sector in the State in 2017. On the basis of the Bord Bia Report estimates, BWG and Corrib Foods held a [0-5]% and a [0-5]% market share, respectively, in the supply of food and drink products to the foodservice sector in the State in 2017.[23] As such, following implementation of the Proposed Transaction, BWG will have an estimated [5-10]% market share in the supply of food and drink products to the foodservice sector in the State.

30. BWG management provided the Commission with an estimate of the 5 largest foodservice distributors - on the basis of estimated turnover - in the State.[24] Table 2 below sets out this estimation.[25]

Table 2: BWG management estimate of the 5 largest Foodservice Distributors within the State

	Foodservice Distributor

[21] The Bord Bia Report was provided by the parties as an annex to the merger notification form. The Bord Bia Report was published by Bord Bia dated November 2017 and is accessible at: https://www.bordbia.ie/industry/events/SpeakerPresentations/2017/IrishFoodserviceDirectory/2017%20Irish%20Foodservice%20Channel%20Insights.pdf.

[22] For the same period, in terms of consumer expenditure, the foodservice sector on the island of Ireland was worth approximately €7.8 billion, of which approximately €5.7 billion was spent in the State.

[23] Market share estimates were provided by the parties and based on total market estimates from the Bord Bia Report and the parties' annual sales to the foodservice sector.

[24] BWG management estimates are consistent (with one exception – see footnote 26 below) with the "*Distributor Market Shares within the State and Island of Ireland based on Sales to Foodservice Operators in 2016*" in the Commission's Determination in M/17/067 – Musgrave/La Rousse Foods. Please see paragraph 30 in M/17/067 – Musgrave/La Rousse Foods which can be accessed at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/12/M-17-067-Determination-Musgrave-La-Rousse-1.pdf

[25] Table 2 lists BWG management estimate of the 5 largest Foodservice Distributors within the State in descending order, i.e., 1 being the largest estimated foodservice distributor - on the basis of turnover - and 5 being the fifth largest estimated foodservice distributor - on the basis of turnover – in the State.

1.	Pallas Foods Unlimited Company
2.	Musgrave Group plc
3.	Aryzta Food Solutions Ireland Unlimited Company
4.	Lynas Foodservice
5.	Henderson Foodservice Limited[26]

Source: The Commission and based on information provided by the parties.

31. In addition to the foodservice competitors listed in Table 2 above, there are also a number of smaller foodservice operators involved in the supply of food and drink products to the foodservice sector in the State, e.g., Total Produce plc, Fitzpatricks & Hanleys Limited t/a *Caterway* and Derrynaflan Foods Limited. These competitors will continue to exert a competitive constraint on the parties in the supply of food and drink products to the foodservice sector in the State, following implementation of the Proposed Transaction.

Conclusion

32. In light of the above, the Commission considers that the Proposed Transaction will not lead to a substantial lessening of competition in the supply of food and drink products to the foodservice sector in the State.

(iii) The Supply of Poultry Products, Dairy Products, Fruit and Vegetable Products, Bread and Bakery Products and Ambient Products, respectively, to the Foodservice Sector in the State

33. For completeness, the Commission analysed the horizontal overlap between the parties in respect of each product category which both parties currently supply to the foodservice sector in the State. There is a horizontal overlap between the parties in the State in relation to the supply of poultry products, dairy products, fruit and vegetable

[26] The parties note the following, "*In M/17/067 Musgrave/La Rousse, the CCPC lists BWG ahead of Henderson, but BWG management estimates that Henderson may be larger than or at least the same size as BWG in terms of foodservice sales*."

products, bread and bakery products and ambient products[27], respectively, to the foodservice sector (the "Foodservice Product Category Overlap").

34. Table 3 below sets out the annual sales of BWG and Corrib Foods, respectively, in respect of each Foodservice Product Category Overlap in 2017. Although BWG and Corrib Foods both supply a range of food and drink products to the foodservice sector in the State, Table 3 below demonstrates that the primary focus of their respective businesses is different. While Corrib Foods is predominantly a poultry meat supplier to the foodservice sector, the majority of BWG's foodservice business in 2017, i.e., 83%, was generated from the ambient category.

Table 3: BWG's and Corrib Foods' respective sales in each Foodservice Product Category Overlap in 2017

Product Category	**BWG 2017 Sales**	**Corrib Foods 2017 Sales**
Poultry	€[…]	€[…]
Dairy	€[…]	€[…]
Fruit and Vegetable	€[…]	€[…]
Bread and Bakery	€[…]	€[…]
Ambient	€[…][28]	€[…]

Source: The Commission and based on information provided by the parties.

[27] The parties provided the following description of the "ambient" product category in the merger notification form, i.e., "*These categories include grocery, soft drinks, confectionary, alcohol, tobacco, crisps and snacks*". The parties estimated the total ambient product category size on the basis of information provided in the Bord Bia Report. The parties estimated the total ambient product category on all-island basis by subtracting the total poultry, bread and bakery, fruit and vegetable and dairy purchases by foodservice operators on the island of Ireland from all purchases by foodservice operators on the island of Ireland.

[28] This figure does not include BWG's alcohol sales to the foodservice sector, i.e., €[…] or its tobacco sales to the foodservice sector, i.e., €[…], in 2017 in the State. Following an informal information request from the Commission, Corrib Foods confirmed to the Commission that it does not currently supply alcohol or tobacco products to the foodservice sector in the State and did not generate any sales from these respective product categories in the State in 2017.

35. Table 4 below provides market share estimates[29], based on the Bord Bia Report, of BWG and Corrib Foods, respectively, in relation to each Foodservice Product Category Overlap in 2017. Following implementation of the Proposed Transaction, BWG's market share in the Foodservice Product Overlap Categories - with the exception of poultry - will not increase by more than 2%.

Table 4: BWG's and Corrib Foods' estimated market share in respect of each Foodservice Product Category Overlap in 2017

Foodservice Product Overlap Category	BWG's Share	Corrib Foods' Market Share	Combined Market Share
Poultry	[0-5]%	[5-10]%	[10-15]%
Dairy	[5-10]%	[0-5]%	[5-10]%
Fruit and Vegetable	[0-5]%	[0-5]%	[0-5]%
Bread and Bakery	[0-5]%	[0-5]%	[0-5]%
Ambient[30]	[5-10]%[31]	[0-5]%	[5-10]%

Source: The Commission based on information provided by the parties.

36. In respect of the poultry product category, BWG's market share in the supply of poultry products to the foodservice sector in the State will increase by approximately [5-10]% to [10-15]%, following implementation of the Proposed Transaction. However, the Commission notes that there are a number of significant competitors currently active in the supply of poultry products to the foodservice sector in the State, e.g., Pallas Foods

[29] The Bord Bia Report only provides foodservice operators' purchases for each product category on an all-island basis. According to the Bord Bia Report, approximately 73% of total purchases by foodservice operators on the island of Ireland took place in the State in 2017. As such, the Commission used 73% as a proxy for the percentage of foodservice operators' purchases in respect of each product category on the island of Ireland which occurred in the State. The Commission used this calculation and the parties' annual sales figures to estimate market shares.

[30] The Commission followed the approach adopted by the Parties when estimating the total size of the Ambient product category. For more information, please see footnote 27.

[31] The Bord Bia Report does not include foodservice operator purchases for alcohol or tobacco products. As such, the Commission has omitted BWG's tobacco and alcohol sales when calculating its share of the ambient category in the State.

Unlimited Company, Musgrave Group plc, Mertonbury Limited, Lynas Foodservice, Henderson Foodservice Limited and Aryzta Food Solutions Ireland Unlimited Company. Following implementation of the Proposed Transaction, these competitors will continue to exert a competitive constraint on BWG in the supply of poultry products to the foodservice sector in the State.

37. There are also a number of competitors active in the supply of dairy products, fruit and vegetable products, bread and bakery products and ambient products to the foodservice sector in the State, e.g., Pallas Foods Unlimited Company, Musgrave Group plc, Lynas Foodservice, Henderson Foodservice Limited and Aryzta Food Solutions Ireland Unlimited Company. In addition, there are a number of operators that specialise in the supply of certain product categories to the foodservice sector in the State, e.g., Lakeland Dairy Food Services Limited (dairy products), Keelings Unlimited Company (fruit and vegetable products) and Sean Stafford (Bakeries) Unlimited Company t/a *Stafford Bakeries* (bread and bakery products). Following implementation of the Proposed Transaction, these competitors will continue to exert a competitive constraint on BWG in the supply of poultry products, dairy products, fruit and vegetable products, bread and bakery products and ambient products, respectively, to the foodservice sector in the State.

Conclusion

38. In light of the above, the Commission considers that the Proposed Transaction will not lead to a substantial lessening of competition in the supply of poultry products, dairy products, fruit and vegetable products, bread and bakery products and ambient products, respectively, to the foodservice sector in the State.

Vertical Relationship

39. There is currently a supply arrangement between BWG and Corrib Foods in the State whereby Corrib Foods supplies food and drink products to BWG for onward sale to the foodservice sector.[32]

[32] For the avoidance of doubt, the parties state the following in the merger notification form, "*Corrib Foods does not purchase food products from BWG Foods.*"

40. Corrib Foods' business predominantly involves the supply of food and drink products to the foodservice sector via direct sales to foodservice operators, e.g., in 2017, 72.1%[33] of Corrib Foods' sales were delivered directly to foodservice operators. In addition, Corrib Foods also supplies food and drink products to the foodservice sector indirectly, i.e., via sales to wholesalers, e.g., in 2017, approximately 27.9%[34] of Corrib Foods' sales were supplied into the foodservice sector indirectly.

41. As set out in Table 5 below, Corrib Foods sold approximately €[…] of food and drink products to BWG in 2017, i.e., [0-5]% of Corrib Foods' total sales to the foodservice sector. As such, there is an existing vertical relationship between BWG and Corrib Foods in the State with respect to the supply of food and drink products to the foodservice sector via wholesalers.

Table 5: Overview of Corrib Foods' Foodservice Customers in the State in 2017

Corrib Foods – Customers		
	€'m	%
Foodservice Operators	[…]	72.1%
Wholesalers (excl. BWG)	[…]	[20-25]%
BWG	[…]	[0-5]%
Total Sales	[…]	100.0%

Source: Provided by the parties.

42. BWG sold €[…] of these food and drink products[35] to its retail customers for use at their deli counters.[36] BWG sold the remaining €[…][37] to its other foodservice customers.

[33] See Table 5 below.

[34] See Table 5 below

[35] These products and their respective sales are as follows: bread and bakery products (€[…]), poultry products (€[…]), ambient products (€[…]) and dairy products (€[…]).

[36] The parties followed Bord Bia's approach and have included BWG's sales to its "*retail customers for use at their deli counters*" in BWG's overall sales to the foodservice sector. The parties state the following in the merger notification form, "*Corrib Foods 2017 sales of €[…] include €[…] to BWG for onward sale to BWG's retail customers for use in their deli counters. The parties submit that this should properly be considered relevant for the segment relating to "the supply of food and drink products to the food retail sector." Nevertheless, the parties also include this within Corrib Foods foodservices sales in light of the approach taken in the Bord Bia Report (which includes such sales within the definition of foodservice sales*)".

[37] These products and their respective sales are as follows: bread and bakery products (€[…]), ambient products (€[…]), poultry products (€[…]) and fruit and vegetable products (€[…]).

43. The Commission considers that the Proposed Transaction does not give rise to any vertical foreclosure concerns in the State with respect to the supply of food and drink products via wholesalers to the foodservice sector for the following reasons:

a. Input foreclosure: In 2017 Corrib Foods sold €[…] worth of food and drink products to foodservice customers via wholesalers. According to the Bord Bia Report, approximately 67% of operators' purchases in the foodservice sector on the island of Ireland were obtained via wholesalers.[38] As such, Corrib Foods supplies just [0-5]% of food and drink products purchased by foodservice operators via the wholesale route in the State.[39] In addition, there are a number of competing suppliers of food and drink products to the foodservice sector via wholesalers and as such, following implementation of the Proposed Transaction, BWG's competitors will have a number of alternative suppliers, other than Corrib Foods, to choose from:

i. In respect of bread and bakery products: Aryzta Food Solutions Ireland Unlimited Company t/a *Delice de France* and *L'Art Du Pain*, J.E. O'Brien & Sons Limited t/a *O'Brien Ingredients*, and Puratos Crest Foods Limited;

ii. In respect of dairy products: Glanbia plc, Kerry Group plc, and Strathroy Dairy (ROI) Unlimited Company;

iii. In respect of ambient products: Aryzta Food Solutions Ireland Unlimited Company; Curran Foods Limited; Pallas Foods Unlimited Company;

iv. In respect of poultry products: Aryzta Food Solutions Ireland Unlimited Company; Curran Foods Limited; Pallas Foods Unlimited Company;

[38] Please see page 27 of the Bord Bia Report which states the following, i.e., "*The most prevalent route to market in Irish foodservice is wholesale delivery, which accounts for 67% of operator purchases*." This percentage relates to 2017 foodservice operator purchases on the island of Ireland.

[39] For the purposes of its merger assessment, the Commission has used 67% as a proxy for the percentage of total foodservice operator purchases in the State which are delivered via wholesalers. As mentioned in paragraph 28 above, the Bord Bia Report noted that food and drink purchases by foodservice operators in the State amounted to approximately €1.9 billion in 2017. Therefore, the Commission estimates that approximately €1.273 billion of foodservice operators' purchases were delivered via wholesalers, i.e., 67% of €1.9 billion.

Kildare Country Turkeys Limited t/a Kildare Farm Foods; Pan-Euro Foods Limited; and,

v. In respect of fruit and vegetable products: Ardo Foods Ireland Limited; Ready Chef Limited; and Willowbrook Farms.

b. Customer foreclosure: In 2017, as noted above, BWG had a minimal [0-5]% market share in the supply of food products to the foodservice sector in the State. In addition, there are a number of wholesalers in the State which currently supply to the foodservice sector, e.g., Musgrave Group plc, Pallas Foods Unlimited Company, Aryzta Food Solutions Ireland Unlimited Company, Lynas Foodservice, Henderson Foodservice Limited, Total Produce plc, Fitzpatricks & Hanleys Limited t/a *Caterway* and Derrynaflan Foods Limited. Therefore, following implementation of the Proposed Transaction, there will likely be a significant number of alternative wholesalers through whom suppliers of food and drink products can supply the foodservice sector; and,

c. The Commission considers that there will remain a sufficient number of competitors and customers following completion of the Proposed Transaction in all markets in which both BWG and Corrib Foods currently compete.

44. In light of the above, the Commission considers that, following implementation of the Proposed Transaction, the parties will neither have the ability nor the incentive to: (i) foreclose any wholesalers from obtaining food and drink products for onward sale to the foodservice sector; or, (ii) foreclose any food and drink suppliers from supplying the foodservice sector via wholesalers. Accordingly, the Commission considers that the Proposed Transaction is not likely to lead to any vertical foreclosure concerns in the State in relation to the supply of food and drink products to the foodservice sector via wholesalers.

Conclusion

45. 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

46. The SPA contains restrictive obligations on (each of) the Vendors. These include non-compete and non-solicitation obligations. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission[40]. The Commission considers that these non-compete and non-solicitation obligations are directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

[40] In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2002). For more information see http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN

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 BWG Foods Unlimited Company, a wholly owned subsidiary of TIL JV Limited, would acquire the entire issued share capital and thereby sole control of Roadfield Holdings 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

Brian McHugh
Member
Competition and Consumer Protection Commission