



DETERMINATION OF MERGER NOTIFICATION M/22/012 – BWG/CERTAIN ASSETS OF THURLES

Section 21 of the Competition Act 2002

Proposed acquisition by BWG Foods Unlimited Company of certain assets of Thurles Wholesale Cash and Carry Limited

Dated 7 April 2022

1. On 24 February 2022, 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”) would acquire certain assets of Thurles Wholesale Cash and Carry, Limited (“Thurles”), a wholly owned subsidiary of Cox’s Cash and Carry Limited (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction will be implemented pursuant to a Customer Transfer Agreement dated 22 February 2022 between BWG and Thurles (the “Parties”) (the “CTA”). Under the terms of the CTA, BWG will acquire the customer list¹ relating to Thurles’ wholesale cash and carry business (“Customer List”).
3. Under the terms of the CTA, [...].
4. In addition to the Customer List, the Proposed Transaction includes the transfer of approximately [...] employees to BWG.
5. Pursuant to the CTA, there is an [...].²

¹ That is, the list of customers to which Thurles provides wholesale goods.

² [...].



The Undertakings Involved

The Acquirer – BWG

6. BWG is a wholly owned indirect subsidiary of TIL JV Limited, which in turn is wholly owned by The SPAR Group Limited. It is active in the State in the wholesale distribution of grocery goods to retailers. It is also active in the State in the wholesale distribution of food and beverages to foodservice customers and the licensed trade.

Wholesale

7. At the wholesale level BWG operates:
 - i. a single distribution centre located in Kilcarber Business Park, Nangor Road, Dublin 22;
 - ii. a chain of 19 wholesale cash and carry outlets under the “Value Centre” brand; and
 - iii. two wholesale cash and carry outlets under the “Better Deal” brand.³
8. BWG’s wholesale business currently supplies approximately [...] customers.
9. BWG also supplies fresh and frozen poultry in catering packs, along with vegetables, bakery, dairy and desserts to foodservice operators following its acquisition of Roadfield Holdings Limited (trading as *Corrib Foods*) in October 2018.⁴ *Corrib Foods* has over [...] customers consisting of restaurants, cafes, wholesalers, government institutions, retailers and contract caterers. *Corrib Foods* operates a warehouse in Athenry, Co. Galway and a smaller warehouse in Dublin.
10. BWG also supplies beef, lamb, pork, bacon, and cooked meats to food service operators following the acquisition of Heaney Meats Catering Co. Limited in 2020.⁵

³ The acquisition of these outlets by BWG was cleared by the Commission in its determination in *M/18/009 – BWG/4 Aces*, available at <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m18009-bwg-foods4-aces/>.

⁴ The acquisition of Roadfield Holdings Limited by BWG was cleared by the Commission in its determination in *M/18/077 – BWG/Roadfield (Corrib Foods)*, available at <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-18-077-bwg-roadfieldcorrib-foods/>.

⁵ The acquisition of Heaney Meats Catering Co. Limited by BWG was cleared by the Commission in its determination in *M/19/039 – BWG/Heaney Meats*, available at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-19-039-bwg-heaney-meats/>.



Retail

11. At the retail level, BWG has [...] affiliated retail stores operating in the State. All but [...] of the affiliated stores are operated by independent franchisees. The remaining [...] affiliated stores are owned and operated by a BWG Group company, Triode Newhill Management Services Limited (“Triode”). Triode is a wholly owned subsidiary of BWG.
12. The affiliated retail stores in the State operate under the following brands:
 - i. *Spar, Spar Express, and Eurospar* (together “*Spar*”);
 - ii. *Mace*;
 - iii. *XL and Xpress Stop*;
 - iv. *Londis*;
 - v. *Gala*; and
 - vi. eight *Fresh* retail stores operated by Fresh Opportunities Limited.⁶
13. For the financial year ending 30 September 2021, the total worldwide turnover of the BWG Group was €1.691 billion, of which €[...] was generated in the State.

The Target – Thurles’ Customer List

14. Thurles is a wholly owned subsidiary of Cox’s Cash and Carry Limited, which is jointly owned by [...] and [...].
15. The assets proposed to be acquired by BWG consist of the Customer List relating to the wholesale cash and carry business of Thurles, as operated from a depot located in Newbridge, Co. Kildare, and previously from a depot in Thurles, Co. Tipperary.⁷ The Customer List consists of [...] customer accounts,⁸ of which Thurles considers [...] to be inactive accounts where the customer is not actively trading with Thurles and a balance is owed by the customer. The parties state in the notification that BWG’s internal

⁶ [...].

⁷ The two depots owned by Thurles are not included in the Proposed Transaction.

⁸ [...].



analysis projects that on the most optimistic estimate BWG will retain [...]% of the customers on the Customer List following implementation of the Proposed Transaction.

16. Until October 2018 Thurles also operated from a depot in Thurles, Co. Tipperary; however, this depot has ceased trading.⁹
17. For the financial year ending 31 December 2021, the total worldwide turnover attributed to the Target Assets was approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

18. The Parties state the following in the notification:

“The Seller [Thurles] is exiting the business of the wholesale supply of grocery goods, and the Proposed Transaction represents a combination of two complementary businesses.”

Third Party Submissions

19. No third party submissions were received.

Competitive Assessment

Relevant Product Market

20. Both BWG and Thurles are involved in the wholesale supply of grocery goods. BWG supplies grocery goods to its retail franchises, non-affiliated retailers, and other customers. [...] of Thurles customers are branded retailers (including BWG retailers), [...] are independent retailers, and the remaining [...] are foodservice and licensed trade customers.

⁹ The Co. Tipperary depot is now being leased to an unconnected party [...].



21. The Commission's predecessor, the Competition Authority (the "Authority"), identified in its 2008 report on the grocery market¹⁰ three categories of grocery wholesaler; wholesaler/franchisors, cash and carry wholesalers, and buying groups.¹¹ These wholesale grocery distributors supply the various sectors of the wholesale market, namely retail, foodservice, and licensed trade.
22. The Commission does not need to come to a definitive view on the precise relevant product market in this instance since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant product market is defined narrowly, (i.e., by sector, retail, foodservice and licensed trade) or more broadly (i.e., grocery wholesale). In previous determinations, the Commission and the Authority have focused their analysis on the impact on the wholesale supply of grocery goods in the State.¹² The Commission has not, in the course of its analysis of the Proposed Transaction, found reasons to depart from this approach previously adopted by the Commission or the Authority.

Relevant Geographic Market

23. The Commission does not need to come to a definitive view with respect to the relevant geographic market in this instance, as its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant market is defined narrowly (i.e., the State) or more broadly (i.e., the island of Ireland). For the purpose of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest possible geographic market, i.e., the State.

Horizontal Overlap

24. There is a horizontal overlap between BWG and Thurles with respect to the wholesale supply of grocery goods in the State. The Customer List is for Thurles' wholesale cash and carry business, a sector in which BWG is also active as noted above.

¹⁰ The Competition Authority's report "Grocery: A Description of the Structure and Operation of Grocery Retailing and Wholesaling in Ireland: 2001 to 2006." https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/02/Grocery-Monitor_Report-1_Executive-Summary.pdf

¹¹ This list includes vertically integrated retailers.

¹² See the Commission's determination in *M/15/009 – BWG Foods – Londis* and the Authority's determination in *M/08/014 – BWG/Mangan's*.



25. As stated in paragraph 14 above, Thurles has [...] customers, [...] of which are considered to be inactive accounts. Again, as stated in paragraph 15 above, the parties state in the notification that BWG's internal analysis projects that on the most optimistic estimate BWG will retain [...] of the customers on the Customer List following implementation of the Proposed Transaction. The parties estimate that retaining this level of custom following implementation of the Proposed Transaction would amount to a [0-5]% increase in BWG Group sales.¹³
26. The Commission has previously noted that independent data on shares of sales in the wholesale grocery goods sector is not readily available,¹⁴ and this position remains unchanged. Information provided by the parties indicate that Musgrave Group Public Limited Company is the largest player in this sector with an estimated share of [60-65]% and is considered BWG's main competitor. The parties estimate that BWG's share of wholesale grocery sales in the State is approximately [20-25]%, and that Thurles' share is [0-5]%. The combined share of sales in the wholesale grocery goods sector following implementation of the Proposed Transaction would be approximately [20-25]%, representing a minimal increase in BWG's share of approximately [0-5] percentage points. Having regard to these current and prospective shares, therefore, the Commission considers that the Proposed Transaction is unlikely to result in BWG gaining market power in the wholesale grocery goods sector in the State.
27. In the light of the above, the Commission considers that the Proposed Transaction will not raise any horizontal competition concerns as regards the wholesale supply of grocery goods in the State.

Vertical Overlap

28. There is a vertical overlap between the Parties with respect to the wholesale and retail supply of groceries in the State. Whilst there is no direct supply arrangement between BWG and Thurles in the State, Thurles currently supplies [...] *Gala/Your Stop* franchise retailers which are owned and operated by [...].¹⁵ The Proposed Transaction will not

¹³ In order to calculate the estimated retention rate of customers, BWG reviewed the list of Thurles's customers, grouped them by similarities in their trade or brand, and applied an expected retention rate to each group based on past experience of closing its own cash and carry depots.

¹⁴ See the Commission's determination in *M/18/009 – BWG/4Aces*, paragraph 27.

¹⁵ Louise Cox has a [95-100]% shareholding in [...] and a [95–100]% shareholding in [...], and is a member of the GRSL board. She will leave the GRSL board following the completion of the Proposed Transaction.



result in a change of ownership of [...]. Also, there is currently no agreement in place for BWG to supply wholesale goods to the ten Gala/Your Stop retailers. BWG has informed the Commission that, following implementation of the Proposed Transaction, it will seek to enter into a wholesale supply agreement with these retailers.

29. Following implementation of the Proposed Transaction, BWG's internal analysis projects that on the most optimistic estimate it will retain [70-75]% of the customers on the Customer List, resulting in a vertical relationship between BWG and these customers.
30. Prior to its exit from the wholesale business, Thurles purchased its stock by way of membership of two buyers' groups, Stonehouse Marketing Limited ("Stonehouse"),¹⁶ and Gala Retail Services Limited ("GRSL"),¹⁷ a buying group effectively operating as a wholesaler-franchisor.¹⁸ In 2021 Thurles purchased €[...] in products on Stonehouse terms and €[...] on GRSL terms. As a result of its exit from the wholesale business, Thurles' membership of both groups will discontinue following implementation of the Proposed Transaction.
31. The Commission does not consider that this vertical relationship will lead to input foreclosure or customer foreclosure, for the following reasons:
 - i. The Proposed Transaction will not give BWG the ability to foreclose its competitors in the wholesale supply of grocery goods sector as the relative increase in its share, as discussed above, is minimal ([...] [0-5]%).
 - ii. Currently, the retail customers which are subject to the Proposed Transaction will not be transferred automatically to BWG. Following implementation of the Proposed Transaction, if these customers choose not to enter into a contract with BWG, they will continue to have access to a broad range of alternative wholesale suppliers in the State, including Musgrave Group Public Limited Company, Barry Group, GRSL, as well as other independent grocery wholesalers.

¹⁶ Stonehouse is an Irish owned group with [...] "members" or shareholders. It is a non-exclusive and voluntary group, and its members are free to take part in other wholesale buying groups.

¹⁷ GRSL is a wholesaler owned buyer group with [...] "members" or shareholders, that owns and supplies the Gala brand.

¹⁸ Merger Notification, paragraph 60.



32. In light of the above, the Commission considers that the Proposed Transaction will not raise any vertical competition concerns in the State.

Conclusion

33. 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

34. No ancillary restraint was notified.



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 would acquire certain assets of Thurles Wholesale Cash and Carry, Limited, a wholly owned subsidiary of Cox's Cash and Carry Limited, will not 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