

DETERMINATION OF MERGER NOTIFICATION M/24/006 – MUSGRAVE / FEBVRE

Section 21 of the Competition Act 2002

Proposed acquisition by Musgrave Limited of sole control of Febvre & Company Limited

Dated: 7 March 2024

Introduction

1. On 26 January 2024, 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 Musgrave Limited (“Musgrave”), a wholly owned subsidiary of Musgrave Group Public Limited Company (“Musgrave Group”), would acquire sole control of Febvre & Company Limited (“Febvre”) (“the Proposed Transaction”).¹

The Proposed Transaction

2. The Proposed Transaction will be implemented pursuant to a share purchase agreement dated (...), whereby Musgrave will acquire 100% of the issued share capital and thus sole control of Febvre (the “SPA”).

The Undertakings Involved

The Acquirer – Musgrave

3. Musgrave is the main operating entity within Musgrave Group, a food retail, wholesale, and food-service group active on the island of Ireland and in Spain. Musgrave is principally a wholesaler-franchisor and operates through franchise agreements with independently-owned retail stores.

¹ Musgrave/Musgrave Group and Febvre are referred to collectively in this determination as the “Parties”.

4. Musgrave Group, through its subsidiaries, owns a number of brands across the food retail, wholesale, and foodservice² sectors in the State, including *SuperValu*, *Centra*, *Donnybrook Fair*, *La Rousse Foods*, *Musgrave Marketplace* and *Daybreak*. Musgrave Group also operates cash and carry and retail outlets on the island of Ireland and in Spain.
5. For the financial year ending 31 December 2022, Musgrave Group's worldwide turnover was €4.7 billion, of which €3.9 billion was generated in the State.³

The Target – Febvre

6. Febvre is active in the wholesale of wine to the foodservice and retail sectors on the island of Ireland. Febvre also supplies certain products which are commonly associated with the distribution of wine (and that are ancillary to its primary business of wine wholesaling) such as: wine equipment and training; cooking wines, spirits, vinegars and condiments; olive oil; and confectionery products for chefs/caterers. This aspect of the business makes up approximately 6% of Febvre's turnover and is provided as an ancillary service to its primary activity as a wholesaler of wine. Febvre leases a (...) square foot customs bond warehouse in Sandyford, Dublin, used for the purposes of its business.
7. For the financial year ending 31 December 2022, Febvre's turnover was €22.65 million, of which (...) was generated in the State. The remaining (...) was generated in Northern Ireland.⁴

Rationale for the Proposed Transaction

8. The Parties state the following in the notification:

"It is the Purchaser's⁵ intention to retain and expand the 'Febvre' brand while continuing to operate the business on a standalone basis. The Purchaser aims to improve its wine offering to

² 'Foodservice' refers to all food and beverages consumed away from home. For further elaboration on the term, see paras 19-29 of *M/12/010 – Pallas / Crossgar*

³ Annex 6 of notification form.

⁴ Annex 7 of notification form.

⁵ Musgrave.

its foodservice customers and increase its penetration within the On Trade⁶ and Off Trade⁷ channels across the island of Ireland which it believes can be accelerated through its existing customers and Marketplace location.”⁸

Third Party Submissions

9. No third-party submission was received.

Market Enquiries

10. During its assessment of the Proposed Transaction, the Commission conducted market enquiries which included calls with customers of the Parties. The Commission engaged with 5 customers of the Parties.

Competitive Analysis

Horizontal Overlap

11. There is a horizontal overlap between the Parties in respect of the supply of wine to the foodservice and retail sectors on the island of Ireland, as both Parties are active in the supply of wine to the foodservice and retail sectors.

⁶ In the Parties' notification form, the terms 'foodservice' and 'On Trade' are used interchangeably. On page 7 of the Parties' notification form, the Parties explain that "*Within the context of the Target's primary business (being the wine wholesale business), the foodservice channel incorporates the Target's 'On Trade' business, referring to places that sell beverages for immediate consumption on the premises, including bars, restaurants, hotels, and nightclubs*". For the purposes of assessing the Proposed Transaction, the term of 'foodservice' will be used.

⁷ In the Parties' notification form, the terms 'retail' and 'Off Trade' are used interchangeably. On page 7 of the notification form, the Parties explain that "*Within the context of the Target's primary business (being the wine wholesale business), the retail channel incorporates the Target's 'Off Trade' business, referring to places that sell beverages for off-premises consumption, including liquor stores, supermarkets, and shops.*" For the purposes of assessing the Proposed Transaction, the term of 'retail' will be used.

⁸ Page 15 of the notification form.

Relevant Markets

Product market

12. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product market or markets, as doing so will not alter the Commission's assessment of the impact of the Proposed Transaction.
13. The Commission has considered similar product markets in previous determinations. In *M/19/003 – Pallas Foods / GHS Classic*,⁹ while the Commission did not come to a definitive view on the precise relevant product market, it followed the approach taken by its predecessor, the Competition Authority (the "Authority")¹⁰, and assessed the potential competitive effects of that transaction in terms of different product categories and different customer categories, i.e. the supply of alcoholic beverages and non-alcoholic beverages to foodservice operators.
14. Musgrave is a wholesale distributor supplying food and drink products to the foodservice and retail sectors. Febvre is a specialist wine distributor, distributing wine to the foodservice and retail sectors. Therefore, considering that the horizontal overlap between the activities of the Parties is the supply of wine to the foodservice and retail sectors, the Commission considers it appropriate to assess the competitive effects of Proposed Transaction on the basis of a narrower potential market, being the supply of wine to the foodservice and retail sectors.
15. In addition, the Commission considered, for the purposes of assessing the Proposed Transaction, whether there were separate potential product markets for high value wines and low value wines within the potential product market for the supply of wine to the foodservice and retail sectors. The Commission considers that it is not necessary to reach a definitive view on this as doing so will not alter the Commission's assessment of the impact of the Proposed Transaction.
16. The Commission considered, for the purposes of assessing the Proposed Transaction, whether it would be appropriate to assess the competitive effects of the Proposed Transaction on the

⁹ *M/19/003 – Pallas Foods / GHS Classic*, which is available here <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-19-003-pallas-foods-ghs-classic-drinks/>.

¹⁰ *M/12/010 – Pallas / Crossgar*, which is available here <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m12010-pallas-crossgar/>.

basis of a wider potential market, being the sale of alcoholic beverages in the State. The Commission considers that should the relevant market be considered on a wider scope, such as the sale of alcoholic beverages in Ireland, the increment in market shares would not be significant for the purposes of the Proposed Transaction, while it would also include other alcoholic products in the market, such as beer and spirits.

17. On the basis of the above, and for the purposes of carrying out its horizontal competitive assessment of the Proposed Transaction, the Commission has analysed its impact by reference to the following potential markets:
- i) Supply of wine to the foodservice sector; and
 - ii) Supply of wine to the retail sector

Geographic Market

18. In this instance, it is not necessary for the Commission to define the precise relevant geographic market because doing so will not alter the Commission's assessment of the competitive impact of the Proposed Transaction.
19. In *M/12/010 – Pallas / Crossgar*¹¹, while ultimately leaving the precise geographic market definition open, the Commission's predecessor, the Authority, assessed the competitive impact of that transaction by reference to the supply of food and drink products to the foodservice sector on the island of Ireland. In *M/17/067 – Musgrave / La Rousse*,¹² *M/22/055 – Musgrave / Italicatessen*,¹³ and *M/23/036 – Musgrave / Doyles Veg Prep*,¹⁴ the Commission assessed the competitive impact of the relevant transactions by reference to the supply of food and drink products to the foodservice sector in the State.

¹¹ *M/12/010 – Pallas / Crossgar* which is available here <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-12-010-Pallas-Crossgar.pdf>.

¹² *M/17/067 – Musgrave / La Rousse* which is available here <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/12/M-17-067-Determination-Musgrave-La-Rousse-1.pdf>.

¹³ *M/22/055 – Musgrave / Italicatessen* which is available here <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2022/10/M-22-055-Musgrave-Italicatessen-Public-Determination-.pdf>.

¹⁴ *M/23/036 – Musgrave / Doyles Veg Prep* which is available here <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-23-036-musgrave-doyles-veg-prep/>.

20. In *M.7986 Sysco/Brakes*¹⁵ (which concerned the distribution of food products to foodservice customers), the European Commission, whilst ultimately leaving the relevant geographic market definition open, assessed that transaction by reference to a national geographic market.
21. The Commission has found no reason to depart from its previous approach and has, accordingly, assessed the competitive effects of the Proposed Transaction by reference to the State. While the Commission considered the possibility of extending the geographic market to the entire island of Ireland, it concluded that this would not affect the Commission's assessment of the competitive impact of the Proposed Transaction.

Conclusion on relevant markets

22. For the purposes of carrying out its competitive assessment of the Proposed Transaction, the Commission has assessed the impact of the Proposed Transaction by reference to the following potential markets:
 - i) Supply of wine to the foodservice sector in the State; and
 - ii) Supply of wine to the retail sector in the State

Competitive Assessment

Supply of wine to the foodservice sector in the State

23. In the notification, the Parties provided market share estimates for the supply of wine to the foodservice sector in the State, as shown in Table 1 below.

¹⁵ *M.7986 Sysco/Brakes* which is available here
https://ec.europa.eu/competition/mergers/cases/decisions/m7986_918_4.pdf.

Table 1: Estimated market shares of Musgrave and Febvre in respect of the potential market for the supply of wine to the foodservice sector in the State ¹⁶				
	Estimated total market size	Estimated market shares of Musgrave	Estimated market shares of Febvre	Estimated combined market shares
Wine in litres	14.6 million	[0-5]% (...)	[5-10]% (...)	[10-15]% (...)

Source: Parties' estimates on basis of Euromonitor report, 2023

24. According to the Parties' market share estimates, as set out in Table 1, following the implementation of the Proposed Transaction, Musgrave would have an estimated [10-15]% share in the supply of wine to the foodservice sector in the State, an increment of approximately [5-10]% on its current estimated share.
25. Following the implementation of the Proposed Transaction, there will remain a number of competitors to Musgrave in the supply of wine to the foodservice sector in the State, including full-service suppliers such as Sysco Foods Ireland Unlimited Company and BWG Foods Unlimited Company. In addition, and as confirmed by the Commission's market enquiries, there will also remain a number of specialist suppliers of high value wine to the "premium end" of the foodservice sector, such as Liberty Wines Ireland Limited, Findlater & Co, Barry & Fitzwilliam Unlimited Company, Cassidy Wines DAC, and J C Kenny.
26. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the potential market for the supply of wine to the foodservice sector in the State.

Supply of wine to the retail sector in the State

27. In the notification, the Parties provided market share estimates for the supply of wine to the retail sector in the State, as shown in Table 2 below.

¹⁶ The parties state the in the notification that the basis for the shares detailed in Table 1 is Euromonitor's Report 'Alcoholic Drinks in Ireland', June 2023, available here <https://www.euromonitor.com/alcoholic-drinks-in-ireland/report>.

Table 2: Estimated market shares of Musgrave and Febvre in respect of the potential market for the supply of wine to the retail sector in the State¹⁷

	Estimated total market size	Estimated market shares of Musgrave	Estimated market shares of Febvre	Estimated combined market shares
Wine in litres	58.4 million	[25-30]% (...)	[0-5]% (...)	[25-30]% (...)

Source: Parties estimates on basis of Euromonitor report, 2023

28. According to the Parties' market share estimates as set out in Table 2, following the implementation of the Proposed Transaction, Musgrave would have an estimated [25-30]% share in the supply of wine to the retail sector in the State, an increment of approximately [0-5]% on its current estimated share.
29. Following the implementation of the Proposed Transaction, there will remain a number of competitors to Musgrave in the supply of wine to the retail sector in the State, including full-service suppliers such as Sysco Foods Ireland Unlimited Company and BWG Foods Unlimited Company. In addition, as confirmed by the Commission's market enquiries, there will also remain a number of specialist suppliers of high value wine to the "premium end" of the retail sector, such as Liberty Wines Ireland Limited, Findlater & Co, Barry & Fitzwilliam Unlimited Company, Cassidy Wines DAC, and J C Kenny.
30. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the potential market for the supply of wine to the retail sector in the State.

Vertical Overlap

31. There is a vertical relationship between the Parties. The Parties state in the notification that there is a limited vertical relationship between Musgrave Group and Febvre, as around [10-15]% of Febvre's total sales by value annually is to Musgrave Group, which Musgrave Group then resells through its retail stores.

¹⁷ The parties state in the notification that the basis for the shares detailed in Table 2 is Euromonitor's Report 'Alcoholic Drinks in Ireland', June 2023, available here <https://www.euromonitor.com/alcoholic-drinks-in-ireland/report>.

32. The Commission considers that the Proposed Transaction is unlikely to give rise to vertical foreclosure concerns in relation to the foodservice and retail sectors in the State for the following reasons:

- Input foreclosure: Febvre has an [5-10]% market share in the supply of wine to the foodservice sector in the State and a [0-5]% market share the supply of wine to the retail sector in the State. There will remain a number of alternative suppliers of wine to the foodservice and retail sectors in the State following implementation of the Proposed Transaction, including large suppliers such as BWG Foods Unlimited Company and Sysco Foods Ireland Unlimited Company , as well as specialist providers to the high value wine sector, such as Liberty Wines Ireland Limited, Findlater & Co, Barry & Fitzwilliam Unlimited Company, Cassidy Wines DAC, and J C Kenny. Therefore, the Commission considers that Musgrave Group will be unlikely to have the ability or incentive to successfully engage in input foreclosure in the supply of wine to the foodservice and retail sectors in the State as a result of the Proposed Transaction.
- Customer foreclosure: Febvre represented [0-5]% of Musgrave Group’s total purchases of wines in 2022 and Musgrave Group’s purchases represented [10-15]% of Febvre’s total turnover for 2022. Considering this, the Commission considers it unlikely that Musgrave Group will have the ability or incentive to foreclose Febvre’s competitors with their purchases following implementation of the Proposed Transaction. Additionally, should Musgrave Group seek to purchase exclusively from Febvre, or offer unfavourable terms to their competitors, numerous large customers such as Sysco, BWG, O’Briens or other restaurants and hotels remain for Febvre’s competitors to engage. The Commission considers that Musgrave Group would be unlikely to have the ability or the incentive to successfully engage in customer foreclosure in the supply of wine to the foodservice and retail sectors as a result of the Proposed Transaction.

33. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion of Competitive Analysis

34. 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

35. Clauses 10.1.3 and 10.1.5 of the SPA impose non-compete obligations on the Sellers¹⁸. These obligations are limited in scope and do not exceed the maximum duration acceptable to the Commission¹⁹. Therefore, the Commission considers Clauses 10.1.3 and 10.1.5 of the SPA to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

¹⁸ (...)

¹⁹ In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” [2005] OJ C56/24, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XC0305%2802%29>.

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, a wholly-owned subsidiary of Musgrave Group Public Limited Company, would acquire sole control of Febvre & Company 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.

Úna Butler

Member

Competition and Consumer Protection Commission