



## DETERMINATION OF MERGER NOTIFICATION M/15/009 - BWG FOODS/LONDIS

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### Section 21 of the Competition Act 2002

### Proposed acquisition by BWG Foods limited of sole control of the business of ADM Londis plc

Dated 15 June 2015

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#### Introduction

1. On 27 February 2015, in accordance with section 18(1) of the Competition Act 2002, as amended<sup>1</sup> (“the Act”), the Competition and Consumer Protection Commission (“Commission”) received a notification of a proposed transaction whereby BWG Foods Limited (“BWG”) would acquire sole control of the business of ADM Londis plc (“Londis”).

#### The Undertakings Involved

##### *BWG*

2. BWG, a private company located in Tallaght, Co. Dublin, is involved in the wholesale supply and retail sale of groceries and food products in the State and the UK. BWG is a wholly owned subsidiary of TIL JV Limited of which 80% is owned by SPAR Group Limited (“SPAR”) a quoted plc registered in South Africa and 20% is owned by members of the BWG management team.<sup>2</sup>
3. Within the State, BWG is involved in the wholesale supply of groceries and food products to (i) its affiliated retailers through its distribution centre located in Kilcarbery, County Dublin and (ii) other firms (involved for example, in the grocery retail sector and/or the food service sector) through its chain of 22 Value Centre cash and carry stores in various locations throughout the State.<sup>3</sup>
4. At the retail level, in the State, BWG owns and operates the SPAR, Eurospar and Spar Express brands and also the XL and Xpress brands. BWG also holds the licence to operate the MACE brands in the State<sup>4</sup> and has an exclusive partnership with Maxol in

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<sup>1</sup> It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.

<sup>2</sup> For more information on BWG see <<http://www.bwg.ie>>. For more information about SPAR see <<http://www.spar.co.za/About-SPAR/Company>>.

<sup>3</sup> Value Centre cash and carry stores are located in Counties Carlow, Cavan, Clare, Cork, Donegal, Dublin, Galway, Kerry, Kilkenny, Limerick, Louth, Mayo, Meath, Monaghan, Sligo, Tipperary, Westmeath, Wexford and Wicklow.

<sup>4</sup> In 2008 BWG Foods acquired the Mangan’s business which operated the MACE franchise in the west of Ireland along with a cash and carry business. See



relation to operating forecourts at Maxol service stations. In total, there are 906 stores operating under these brands within the State.<sup>5</sup>

5. For the financial year ending 31 December 2013, BWG's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated within the State.

### *Londis*

6. Londis, a private company located in Johnstown, County Kildare, is involved in the wholesale and retail sale of groceries and food products in the State. Londis was originally established in 1954, by a co-operative society of approximately 100 grocery retailers, as Allied Dublin Merchants Ltd. In 2004 Londis changed its corporate structure from a co-operative to an unlisted private limited company. Many current Londis shareholders<sup>6</sup> are Londis franchisees. Londis states that

*"Londis is effectively owned by a sub-group of approximately 100 of its Londis franchisees."*<sup>7</sup>

7. As a wholesaler, Londis purchases products from suppliers for the sale and supply to its franchisees who operate under the Londis and Londis TopShop brands and also to other affiliated retailers who do not operate under a Londis brand.
8. Londis has one distribution centre which is located in Johnstown, Naas, Co. Kildare. In 2014 Londis-affiliated stores in the State numbered 208, of which 145 were franchisees and the remaining 63 were unbranded stores. In 2014, Londis joined the Stonehouse Group ("Stonehouse"),<sup>8</sup> a buying group comprising independent wholesalers. Londis states that the proposed transaction will likely result in Londis leaving Stonehouse.
9. For the financial year ending 31 December 2013, Londis's worldwide turnover was approximately €[...] million, all of which was generated within the State.

### **The Proposed Transaction**

10. The proposed transaction is to be implemented pursuant to an Acquisition Agreement (the "Acquisition Agreement") between BWG, Londis and Londis Topshop Limited dated 23 January 2015 and would result in the acquisition by BWG of the whole of the Londis's grocery retailing and grocery and food wholesaling business. The parties state that the vendors in the proposed transaction, (i.e., the Londis shareholders) will retain ownership of (i) Londis Topshop Limited (currently non-trading), (ii) one retail store in Ferbane Retail Developments Limited, (iii) one retail store in John Hanley Newsagent (Castlebar) Limited, (vi) a warehouse and distribution centre located in Johnstown Co.

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<<http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications/M08014--BWGMangans.aspx>>.

<sup>5</sup> BWG, through Newhill Limited, a wholly owned subsidiary, owns the freehold or leasehold interest in 136 retail premises.

<sup>6</sup> Notification Annex 6 (Schedule of Shareholders) indicates a wide distribution of Londis shares across 131 small shareholders. For more information on Londis see <<http://www.londis.ie>>.

<sup>7</sup> Notification page 4.

<sup>8</sup> Londis Requirement for Information ("RFI") response dated 5 May 2015. See also <<http://www.londis.ie/adm-londis-and-stonehouse-sign-strategic-membership-agreement>>.

For more information on Stonehouse see <<http://www.stonehouse.ie>>.



Kildare, (v) a vacated office located in Crumlin, Dublin and (iv) certain legacy debts (being amounts owed by former customers who no longer trade with the business).<sup>9</sup>

## Rationale for the Proposed Transaction

11. The parties state that

*“The Proposed Transaction represents a combination of two complementary businesses. The Londis management team have acknowledged that their business has suffered due to the combined effects of the recession, their limited buying power and limited capital base to finance growth and reinvestment. By bringing the Londis brand into BWG Foods it benefits from a [...] fold increase in purchasing power (i.e., [...]). The capital base is extended as the ultimate parent is an international plc with market [capitalisation] in excess of €1.5bn. BWG Foods has publicly announced that under new ownership, it has an investment fund of up to €100m to invest in its businesses and customer relationships over the next 5 years. The Proposed Transaction will also achieve cost savings and synergies for BWG Foods through rationalisation of the distribution, procurement and administrative functions.”<sup>10</sup>*

## Third Party Submissions

12. One submission was received which argued that the proposed transaction would be harmful to competition because:

- BWG and Musgrave would have an effective duopoly in the convenience sector in most towns in the State and particularly in Dublin City Centre.
- Existing Londis stores will be at a competitive disadvantage where larger BWG (Eurospar) outlets exist in their catchment area.<sup>11</sup>

13. The Commission, as part of its review of the proposed transaction, has taken account of the points raised in the third party submission, in particular with respect to market definition and local market effects.

## Market Enquiries

14. The Commission conducted market enquiries which involved contacting a number of competitors of and suppliers to both of the merging parties.

15. None of the third parties contacted by the Commission as part of its market enquiries indicated that the proposed transaction would be likely to lead to a substantial lessening of competition nationally at either wholesale or retail level. Some respondents indicated, however, possible competition concerns at a local retail level depending on the relevant circumstances (e.g., the presence or otherwise of sufficient competitors to

<sup>9</sup> Two Londis subsidiaries: ADM Londis Investments Limited, which is dormant, and Genesis Innovative Software Limited, which provides certain IT information to the business, will also be included in the proposed transaction.

<sup>10</sup> Notification page 9. See also <<http://www.londis.ie/bwg-makes-offer-for-adm-londis>>.

<sup>11</sup> The submission also included comments about the transaction which are outside of the Commission’s remit.



a merged BWG-Londis entity). Local effects are discussed in detail in paragraphs 71-109 below.

### Requirement for Further Information

16. The Commission required further information from the parties to assist with its investigation into the likely effects of the proposed transaction. Therefore, on 10 April 2015, the Commission served Requirements to provide Further Information pursuant to section 20(2) of the Act on both BWG and Londis.
17. BWG and Londis duly complied with the Requirements for Further Information on 1 and 5 May respectively. Issuing of the Requirements for Further Information adjusted the deadline within which the Commission had to conclude its assessment in Phase I. The “appropriate date” was amended, as per section 19 (6)(b)(i) of the Act, to 5 May 2015.

### Description of the Groceries Sector

18. Prior to the establishment of the Commission, the Competition Authority conducted extensive analysis of the grocery sector in the State through its Grocery Monitoring Project<sup>12</sup> and in various merger decisions, involving grocery products or grocery firms, such as *M/08/014 – BWG/Mangan’s* and *M/11/022 – Musgrave/Superquinn*.<sup>13</sup> The Competition Authority’s analysis of the sector provides a useful background for the Commission’s assessment of the proposed transaction. The Groceries sector is summarised in Figure 1 below.

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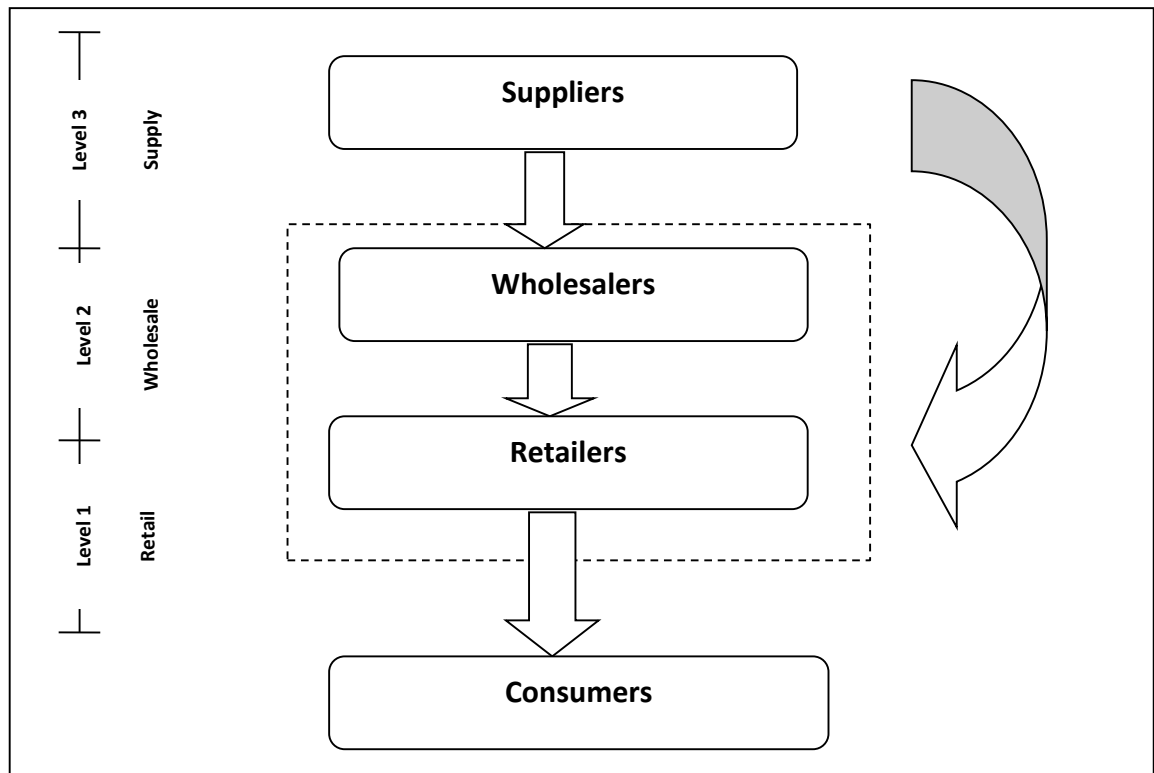
<sup>12</sup> See <<http://www.tca.ie/EN/Promoting-Competitio/Market-Studies/Grocery-Monitor-Project.aspx>>.

<sup>13</sup> See

<<http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications/Musgrave--Superquinn.aspx>>.  
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**Figure 1: Structure of the Grocery Sector Within the State**



Source: Competition Authority Grocery Monitor: Report No. 1<sup>14</sup> and M/11/022 - Musgrave / Superquinn.<sup>15</sup>

### *Supply of Grocery Products*

19. As indicated by Figure 1 above, suppliers provide grocery goods either directly to retailers or to wholesalers who in turn sell to retailers. The choice of direct supply versus supply via wholesalers depends on various considerations including how best to manage:

- The physical delivery of grocery products from suppliers to wholesale or retail buyers, and
- The financial risks associated with supplying grocery products from suppliers to wholesale or retail buyers.

### *Wholesaling of Grocery Goods*

20. Wholesaling essentially consists of five key activities:

- Purchase of products from suppliers,

<sup>14</sup> See <[http://www.tca.ie/images/uploaded/documents/grocery\\_monitor\\_report\\_1.pdf](http://www.tca.ie/images/uploaded/documents/grocery_monitor_report_1.pdf)>

<sup>15</sup> *Op cit.* footnote 13.



- Storage of goods,
- Delivery/distribution of goods to retailers and other customers,
- Provision of credit to retailers and other customers such as caterers and restaurants, and
- Sale of goods to retailers and other customers.

### *Retailing of Grocery Goods*

21. Retailers are the final link in the distribution chain of grocery goods from the supplier to the end consumer. It is at the retail level that competition is most apparent as this is where the end customer chooses between grocery goods and/or which retailer to buy from.
22. Retail grocery stores are sometimes categorised into various types of store and/or shopping experience such as 'one stop', 'top-up' or 'convenience'. The larger chains of retail stores, such as Dunnes Stores, Supervalu and Tesco, are sometimes categorised as 'multipliers', whereas other, typically smaller, retail chain stores, such as Centra, Londis and Spar are sometimes categorised as 'symbols'. Aldi and Lidl are frequently referred to as 'discounters' and smaller stores such as Daybreak, and smaller Londis and Spar stores, are categorised as 'convenience' stores.

### **Business Models and Relationships**

23. There are a variety of different business models and relationships between wholesalers and retailers. Table 1 identifies the various firms involved in the wholesale and/or retail sale of grocery goods in the State.<sup>16</sup> The different business models are described briefly below.

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<sup>16</sup> See *op cit.* footnote 14, Table 2 page 31 and Section 2 for a more detailed discussion of the operator categories.  
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**Table 1: Classification of Grocery Market Operators in the State**

Market Operator Type	Market Operators
Vertically-Integrated Retailers	<ul style="list-style-type: none"> <li>• Aldi</li> <li>• Dunnes Stores</li> <li>• Lidl</li> <li>• Marks &amp; Spencer</li> <li>• Tesco</li> </ul>
<b>Wholesaler-Franchisors</b> ADM Londis Barry Group BWG Gala Musgrave	<b>Associated / Affiliated Retailers</b> <ul style="list-style-type: none"> <li>• Londis, Londis Topshop</li> <li>• Costcutter, Quikpick</li> <li>• Eurospar, Mace, Spar, Spar Express, XL Stop &amp; Shop</li> <li>• Gala Superstore, Gala Xpress and Checkout</li> <li>• Centra, Daybreak, Day Today, Supervalu</li> </ul>
Independent Wholesalers	<ul style="list-style-type: none"> <li>• Stonehouse Members (excluding Barry Group, Gala Wholesalers, independent wholesalers )</li> </ul>
Buying Groups	<ul style="list-style-type: none"> <li>• Stonehouse Members (Barry Group, Gala Wholesalers, independent wholesalers)</li> </ul>

*Wholesaler Franchisor/Retailer Franchisee*

24. The Wholesale Franchisor/Retail Franchisee model is the most relevant business model to the proposed transaction.
25. Typically in a franchise model, a network of franchisee retailers operate, pursuant to licence agreements, under a brand (also known as a fascia) owned by the franchisor wholesaler. Franchisee retailers are commonly referred to as affiliated retailers. They are affiliated to the specific wholesaler franchisor.
26. In the franchise model, franchisee retailers source the vast majority of their grocery goods from the wholesaler franchisor. For example, the Spar Trading Agreement and the Mace Trading Agreement, include a requirement that “*minimum of [...] % of all products offered for sale*” by the franchisee to retail customers will be supplied by BWG.<sup>17</sup> The Londis Product Purchase Agreement requires franchisees to purchase a product from Londis if and when it is supplied by Londis. Generally its franchisees are required to purchase approximately [...] % of their stock from Londis.<sup>18</sup>
27. In this model, goods may be physically delivered to the retail store by the wholesaler/franchisor. Alternatively, products may be physically delivered directly from

<sup>17</sup> Spar Trading Agreement and Mace Trading Agreement (Notification Annex 14).

<sup>18</sup> Londis RFI Response dated 5 May 2015.



the supplier to the retailer. In the latter case, payment to the supplier is made via a central billing process whereby the supplier is paid by the wholesaler franchisor.

28. The wholesaler franchisor also provides services to the franchisee retailers such as negotiating with suppliers on their behalf, managing supplier credit risk and other support services consistent with the maintenance of the brand.
29. Within the State, the other main wholesaler franchisors (apart from BWG and Londis) are Musgrave, the Barry Group and Gala.

#### *Vertically Integrated Retailers*

30. Vertically integrated retailers operate at both the wholesale and retail level, with the retail and wholesale functions integrated into the same organisation. For example, in a vertically integrated retailer the same organisation is involved in (i) procuring products from suppliers, (ii) selecting products for sale in retail stores, (iii) distributing products to retail stores, and (iv) selling to the end customer.<sup>19</sup> In the State, vertically integrated retailers include Tesco, Dunnes Stores, Supervalu, Marks & Spencer, Aldi and Lidl.

#### *Independent Retailers*

31. In contrast to the two models described above, an independent retailer has no relationship with a wholesaler (or a supplier) beyond that of an arms-length customer.

#### *Buying Groups*

32. A buying group is a looser form of association in comparison to the Wholesale Franchisor/Retail Franchisee model. For example, buying groups are only partially involved in the purchasing of grocery goods. The principal function of a buying group is to centrally negotiate terms with suppliers on behalf of group members, who can then purchase directly from the supplier on the agreed terms.

### **Competitive Effects Analysis**

33. There is a horizontal overlap within the State in the activities of the parties in the supply of groceries within the State at both the wholesale and retail levels. As grocery wholesalers, both BWG and Londis are involved in the wholesale supply of groceries to their retail franchisees and to other non-affiliated retailers or other customers. BWG franchisees and Londis franchisees and affiliates are also involved in the retail sale of grocery goods within the State.
34. The Commission's analysis of the proposed transaction focuses on the competitive effects that may arise as a result of the overlap in the activities of BWG and Londis. This includes an analysis of:

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<sup>19</sup> A vertically integrated retailer may, however, contract out some functions, e.g., storage of goods and transportation, to third parties. Also, by way of clarification, vertical integration of retailing and wholesaling, for example, as indicated in Figure 1 by the dashed line box, does not imply integration further to include suppliers.





- i. Relevant product and geographic markets i.e. the markets where competitive effects are most likely to arise, and
  - ii. How BWG and Londis compete with each other and with other wholesalers and/or retailers (including an analysis of market shares and the closeness of competition between BWG and Londis).
35. The purpose of this analysis is to assess whether the proposed transaction will lead to a substantial lessening of competition.

### *Product Market Definition*

#### Wholesale Supply of Groceries

36. The groceries sector is characterised by a wide range of products and also a variety of business models including, for example, the models described above in paragraphs 24-32.
37. The parties argue that

*“...the wholesale distribution of grocery goods constitutes a single market in which wholesaler-franchisors; non-franchise wholesalers and cash and carry operators all compete.”<sup>20</sup>*
38. The Commission notes that in its Grocery Report No. 1 the Competition Authority identified three categories of grocery wholesaler: wholesaler/franchisors, cash and carry wholesalers and buying groups.<sup>21</sup>
39. The Competition Authority in *M/08/014 - BWG/Mangan’s* did not consider it necessary to conclude on the exact breadth of the relevant wholesale market but focused its analysis on the impact of the proposed transaction on the wholesale supply of grocery goods in the State<sup>22</sup>.
40. The Commission has not, in the course of its investigation of the proposed transaction, found reasons or evidence to depart from the approach adopted by the Competition Authority in *M/08/014 - BWG/Mangan’s* concerning the wholesale supply of grocery goods.
41. Accordingly, for purposes of evaluating the proposed transaction, the Commission has reviewed the operation of the wholesale supply of grocery goods (see paragraphs 54 to 62 below).

#### Retail Sale of Groceries

42. With respect to the retail sale of groceries, the Commission notes that in *M/11/022 – Musgrave/Superquinn*, the Competition Authority took the view that the appropriate

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<sup>20</sup> Compecon Economic Report "Economic Analysis of Proposed Acquisition by BWG Foods Limited of ADM Londis Limited" 27 February 2015, submitted with Notification documents, page 23.

<sup>21</sup> *Op cit.* Footnote 14 page 23. This list excludes vertically integrated retailers.

<sup>22</sup> *Op cit.* Footnote 4 page 13.



product definition for groceries for the purposes of reviewing that transaction was the retail sale of grocery goods i.e., the retail sale of “*food and drink for human consumption and household necessities.*”<sup>23</sup>

43. Furthermore in *M/11/022 – Musgrave/Superquinn*, the Competition Authority did not define product markets either in terms of types of shopping behaviour (e.g., ‘one stop’, ‘top-up’ or ‘convenience’) or in terms of business models (e.g., independent, franchise or vertically integrated).
44. The Commission has not, in the course of its investigation of the proposed transaction, including its market enquiries, found reasons or evidence to depart from the approach adopted by the Competition Authority in *M/11/022 - Musgrave Superquinn*. In this case therefore the Commission has continued to follow that approach and will not seek to distinguish between so-called multiples, discounters or convenience stores.
45. Accordingly, for the purposes of evaluating the proposed transaction, the Commission considers that at the retail level the relevant product market is the retail sale of grocery goods.

#### *Geographic Market Definition*

46. The parties argue that the relevant geographic market is national at both the wholesale and retail levels.<sup>24</sup>

#### Wholesale Supply of Groceries

47. In both the Grocery Monitor Report and in *M/08/014 – BWG/Mangan’s* the Competition Authority did not define a geographic market narrower than a national market for the wholesale supply of grocery goods. The Commission has not, in the course of its investigation of the proposed transaction, including its market enquiries, found reasons or evidence to depart from the approach adopted by the Competition Authority in *M/08/014 – BWG/Mangan’s* regarding the relevant geographic market for the wholesale supply of grocery goods.
48. Accordingly, for the purposes of reviewing the notified transaction, the Commission considers that the narrowest relevant geographic market for the wholesale supply of grocery goods is a national market.

#### Retail Sale of Groceries

49. In relation to the retail sector, the Competition Authority in *M/11/022 – Musgrave/Superquinn* highlighted the significance of analysing local effects.

*“Potential competitive effects at local level are addressed because ..., it is at the local level that consumers make choices between retailers and grocery goods on*

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<sup>23</sup> *Op cit.* Footnotes 12 and 13.

<sup>24</sup> (i) *Op cit.* Footnote 20 page 30 and (ii) Compecon Economic Report “Competition Analysis – Local Retail Markets” 1 May 2015 submitted with the BWG RFI response, page 4.



*offer and depending on local circumstances, it is possible for the competitive environment at a local level to differ from that at a national or regional level.”<sup>25</sup>*

50. Furthermore in *M/11/022 – Musgrave/Superquinn* the Competition Authority focused on competitive effects nationally, in the Dublin region and

*“local areas surrounding each Superquinn store by a 10 minute drive time and/or a ten kilometre distance.”<sup>26</sup>*

51. The Competition Authority also stated:

*“Following international best practice, the Authority adopted a conservative approach based on previous Irish cases and also UK cases, and identified potentially problematic catchment areas on the basis of (i) Superquinn and Musgrave affiliated stores being in close proximity prior to the proposed transaction; (ii) the number of competing fascia reducing from 5 to 4 or from 4 to 3 post acquisition; and, (iii) Musgrave significantly increasing its share of retail floor space post acquisition to have the largest area amongst all fascias in a particular catchment”<sup>27</sup>*

52. While the Competition Authority in *M/08/014 - BWG/Mangan’s* and *M/11/022 – Musgrave/Superquinn* left open the precise geographic market definition it nevertheless focused its analysis on national and local effects. In *M/08/014 - BWG/Mangan’s* the Competition Authority stated

*“As regards the delineation of these areas, the parties submitted that the catchment area measured by drive times is at least 15-20 minutes, particularly in rural areas. The approach the parties used was to set out in respect of each of the six retail overlap areas details of all the competing fascias: (i) within the relevant town/village, (ii) within a ten mile radius of the town/village, and (iii) within a twenty mile radius of the town/village.”<sup>28</sup>*

53. It is not necessary in this instance to precisely define a geographic market or markets for the retail sale of grocery goods. For the purposes of reviewing the notified transaction, the Commission considers that a relevant geographic market for the retail sale of grocery goods is a national market. However, the Commission has also considered the likely competitive effects of the proposed transaction in local markets as discussed in paragraphs 71-109.

### *Competitive Effects – Wholesale Supply of Groceries*

54. The Commission acknowledges that independent market share data at the wholesale level is not readily available.<sup>29</sup> BWG notes that the Competition Authority’s Grocery Monitor Report No. 1 estimated that Musgrave and BWG had a combined market share

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<sup>25</sup> Op cit. Footnote 13, page 21.

<sup>26</sup> *Ibid.* page 17.

<sup>27</sup> *Ibid.* page 30.

<sup>28</sup> Op cit. Footnote 4, page 3.

<sup>29</sup> The RFI responses of both BWG and Londis indicated that neither of the merging parties had such information.



of approximately 80%.<sup>30</sup> The Grocery Monitor Report also indicated that Musgrave had a market share of approximately 55-60%, BWG 20-25% and Londis 5-10%.<sup>31</sup> It should be noted, however that these market share estimates exclude the volumes of wholesale goods supplied within vertically integrated retailers such as Aldi, Dunnes Stores, Lidl Tesco (and at that time Superquinn). The Grocery Monitor Report data is now almost ten years old, but nonetheless provides a reasonable historical indicator of the wholesale market and a useful point of comparison.<sup>32</sup>

55. Market enquiries indicate that Musgrave remains the largest wholesale supplier of affiliated and independent stores<sup>33</sup> in the State and that BWG appears to be the second largest, while Londis is significantly smaller in scale. Market enquiries also indicate that, with increased scale, the merged entity would likely be in a stronger position than BWG or Londis individually to negotiate terms with its suppliers.
56. BWG and Londis do not appear to be particularly close competitors in the wholesale sector in terms of how they compete and which customers they supply. For example, BWG operates a central distribution centre and 22 Value Centre cash and carry outlets in the State. While Londis also operates a single distribution centre, it does not operate any cash and carry outlets within the State. The parties state that

*“Londis and BWG operate different business models. Only [...]% of the grocery goods turnover of Londis is attributable to grocery goods physically passing through its distribution centres. Affiliated retailers instead rely mainly on deliveries made directly by supplier. This reflects the fact that Londis had a less extensive distribution network than other wholesale groups.”<sup>34</sup>*

57. Londis has focused on supplying its affiliated retail stores to a much larger extent than has BWG. Londis estimates that approximately [...]% of its wholesale revenue is from sales to its affiliated stores and approximately [...]% to other non-affiliated stores of sales. Londis further states that this [...]% largely includes stores that have, in recent years, moved from being Londis affiliates to being independent stores but that still purchase stock from Londis.<sup>35</sup>
58. BWG estimates that approximately [...]% of its wholesale revenue is from sales to its affiliated stores and approximately [...]% to other non-affiliated purchases including retail stores and also to catering customers operating in the food service sector.<sup>36</sup>
59. Franchisee switching data does not indicate that BWG and Londis are necessarily each other's closest competitors from the perspective of retail franchisees. In other words, there are various options available to franchisees wishing to switch from BWG or from

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<sup>30</sup> *Op cit*, Footnote 24 (ii), page 32.

<sup>31</sup> *Op cit*, Footnote 14, page 38.

<sup>32</sup> National retail market share figures, discussed below in paragraphs 63-70 also provide an indicator of market power, and potential competition concerns at the wholesale level.

<sup>33</sup> For example the Musgrave Annual Report for 2013 indicates total turnover for the Musgrave group of €4.833 billion. See <<http://www.musgravegroup.com/en/files/pdfs/Musgrave-AnnRpt-2013-FINAL.pdf>>.

<sup>34</sup> *Op cit*, Footnote 20, page 37.

<sup>35</sup> *Ibid.* page 37.

<sup>36</sup> The food service sector, in this context, refers to the preparation of food outside of residential premises for sale by food service operators. Consumption of food may take place inside the food service operator's premises, or inside of residential premises (or elsewhere) as might occur for "takeaway" food. The Competition Authority's determination in M/12/010 – Pallas/Crossgar includes a description of the food service sector (at paragraphs 19-29). See

<<http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications/Pallas--Crossgar.aspx>>.



Londis. For example, BWG states that for the period January 2012 to December 2014 there was a net increase in BWG franchisees of [...]. This was made up as follows:

- [...] stores switching from BWG to Londis compared to [...] stores switching from Londis to BWG (a net [...] stores).
- [...] stores switching from BWG to Musgrave compared to [...] stores switching from Musgrave to BWG [...].
- [...] stores switching from BWG to other franchises (i.e., other than Musgrave or Londis) compared to [...] other franchise stores switching to BWG (a net [...] stores).
- [...] stores switching from BWG to become independent stores and [...] independent stores switching to become BWG franchisees (a net [...] stores).

60. Corresponding figures for Londis show, for the period January 2012 to December 2014, a net [...] stores. This was the net result of losses to competing franchise brands which were largely offset by previously independent stores becoming Londis stores.<sup>37</sup>

61. The proposed transaction will not remove a particularly strong competitive force from the wholesale sector. For example, Londis states that

*“The recession in 2008 heralded 2 years of sharp decline in turnover to €[...] in 2009. Since then the rate of decline has reduced but turnover is still falling at [...] % per annum to €[...] estimated for 2014. This is [...] % of the 2006 turnover.”<sup>38</sup>*

62. In summary, the relative market shares of BWG and Londis, the presence of competitor franchisors such as Barry Group and Musgrave, franchisee switching data and the declining turnover of Londis all indicate that the proposed transaction will not result in a substantial lessening of competition in the wholesale supply of grocery goods.

### *Competitive Effects - Retail Sale of Groceries*

#### National Retail Effects

63. With regard to the national retail market, the parties have provided market share data as presented in Table 2 below.

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<sup>37</sup> *Op cit*, Footnote 24(ii), page 39 and Londis RFI response Annex 3. Note that these figures relate only to franchisee switching and not to the overall total number of Londis stores which is described in paragraphs 8

<sup>38</sup> *Op cit*, Footnote 24(ii), page 14.



**Table 2: Retail Grocery Market Shares within the State**

	<b>2011</b>	<b>2012</b>	<b>2013</b>
Musgrave <sup>39</sup>	[20-30]%	[20-30]%	[20-30]%
Tesco	[15-25]%	[15-25]%	[15-25]%
Dunnes Stores	[10-20]%	[10-20]%	[10-20]%
<b>BWG</b>	<b>[5-15]%</b>	<b>[5-15]%</b>	<b>[5-15]%</b>
Lidl	[0-10]%	[0-10]%	[0-10]%
Aldi	[0-10]%	[0-10]%	[0-10]%
<b>Londis</b>	<b>[0-10]%</b>	<b>[0-10]%</b>	<b>[0-10]%</b>
Others	[10-20]%	[10-20]%	[10-20]%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source – Information supplied by the Parties<sup>40</sup>

64. The data in Table 2 indicate a combined national retail market for the merged BWG/Londis entity of [10-20]% (and an increment of [0-10%]).
65. Alternative data available to the Commission differs from that presented in Table 2. In particular, Kantar World Panel<sup>41</sup> data for the twelve week period ended 29 March 2015 indicates market shares as follows:
- Tesco – 24.7%
  - Supervalu – 24.9%<sup>42</sup>
  - Dunnes Stores– 22.7%
  - Aldi – 8.7%

<sup>39</sup> Musgrave in Table 1 refers to all Musgrave fascia e.g., Supervalu, Centra, Daybreak etc.

<sup>40</sup> *Op cit.* Footnote 24(ii), Table 6.3 Page 48 based on "Grocery Retailers in Ireland" Euromonitor International March 2014.

<sup>41</sup> Kantar World Panel ROI Grocery Market Review Data to 29 March.

<sup>42</sup> Kantar estimates a 26.9% market share for all Musgrave fascia (i.e. including but not limited to Supervalu).



- Lidl – 8.2%
  - Total Symbols (including BWG and Londis and others) – 4.2%
  - Others - 6.8%.
66. The Kantar data listed above indicate that the market share of the merged entity would be less than 4.2 % of a national retail market.
67. The market shares presented in Table 2, and the Kantar World Panel market share estimates listed above, both indicate that the proposed transaction is not likely to result in significant competitive effects at a national retail level.
68. The proposed transaction will not remove a particularly strong competitive force from the retail sector at a national level. As shown in Table 2, Londis’s market share has been falling, in part due to a reduction in the number of affiliated stores. For example, Londis states that
- “In 2006 [Londis] supplied [...] affiliated retailers operating [...] stores .... By 2014 the number of Londis franchisee stores had fallen to [...].”<sup>43</sup>*
69. Market enquiries also indicate that the position of Londis in a national retail market has weakened. Market enquiries also indicate that the merged entity could be in a stronger position to compete with other retailers, in particular Centra, which at present, appears to be the closest and strongest competitor for both BWG and Londis.
70. In summary, the relative market shares of BWG and Londis at a national level, the presence of competitor retailers such as Aldi, Barry’s Group (e.g., Costcutter), Dunnes Stores, Gala, Musgrave (e.g., Centra, Daybreak and Supervalu) and Tesco, together with Londis not being a particularly strong competitive force (as evidenced by the declining number of Londis stores) all indicate that the proposed transaction will not result in a substantial lessening of competition in a national retail market for the sale of grocery goods.<sup>44</sup>

### *Local Retail Competitive Effects*

71. The Competition Authority examined local market effects in its analysis of previous mergers in the grocery sector (e.g. in *M/08/014 - BWG/Mangan’s* and *M/11/022 - Musgrave/Superquinn*). At the time the proposed transaction was notified to the Commission, the parties identified 18 local markets where the proposed transaction could possibly lead to competition concerns. The parties identified all Londis stores which had (i) at least one BWG store within a 10 kilometre radius and (ii) fewer than four other competing fascia also within a 10 kilometre radius. The parties state that

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<sup>43</sup> Notification page 3. Note that an affiliated retailer may operate more than one store. Londis states, in its RFI response that the 208 figure includes branded and unbranded stores, i.e., 145 branded and 63 unbranded stores.

<sup>44</sup> The parties state, *op cit* Footnote 20 Table 4.2, page 27, that over half of Londis’ affiliated stores are in Leinster and over one third in Dublin. The parties also state that approximately one third of BWG stores are located in Dublin and almost one quarter of all BWG –affiliated stores are located in Dublin. In the absence of evidence to the contrary the Commission has not considered it necessary to review the proposed transaction in the context of a Leinster geographic market or a Dublin geographic market. *Op cit* Footnote 20, Table 4.2, page 27.





*“An overly narrow catchment area was chosen so as to identify all possible cases where some competition issues might arise.”<sup>45</sup>*

72. The 18 individual locations as identified by the parties (listed by County) are:

- Cootehill, Co. Cavan.
- Mountbellew Bridge, Co. Galway.
- Oughterard, Co. Galway.
- Killorglin, Co. Kerry.
- Callan, Co. Kilkenny.
- Castlecomer, Co. Kilkenny.
- Clonaslee, Co. Laois.
- Crossmolina, Co. Mayo.
- Newbliss, Co. Monaghan.
- Ferbane, Co. Offaly.
- Boyle, Co. Roscommon.
- Tulsk, Co. Roscommon.
- Grange, Co. Sligo.
- Newcastle, Co. Tipperary.
- Thomastown, Co. Westmeath.
- Blackwater, Co. Wexford.
- Broadway, Co. Wexford.
- Oulart, Co. Wexford.

73. The Commission, in its Requirements for Information to the parties, sought further information on these local markets. The BWG response included an economic report by Compecon which analysed the 18 local markets in detail including with reference to criteria applied in previous Competition Authority merger investigations (in particular M/08/014 - BWG/Mangan's and M/11/022 – Musgrave/Superquinn).

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<sup>45</sup> *Op cit* Footnote 24(ii), page 4.  
M/15/009 – BWG/Londis





## Views of the Parties

74. The parties state, that

*“... on balance the evidence indicates that the relevant geographic market at both the wholesale and the retail level comprises the whole of the State, although clearly at the retail level there is some scope for localised competitive behaviour.”<sup>46</sup>*

75. The parties also argue that the merging parties are wholesaler franchisors whereas the retail outlets are operated by franchisees. The parties argue that the proposed transaction cannot give rise to any unilateral effect in any local market because franchisees operate independently, for example, in terms of pricing, range of products, store size, staff levels and hours. The parties argue further that

*“It may well be the case that if a Spar store raises its prices, some of the lost sales will be captured by a Londis store in the same local market. However, the Spar store's profits would be reduced and it would not benefit from the fact that some of its lost sales would accrue to the Londis store. There is no reason why the Spar owner would want to increase the profits of a rival. The stores will still be separately owned and so the merger will not lead to any internalisation of profits arising from a diversion of sales from one to the other.”<sup>47</sup>*

76. The parties argue that local catchment areas in all of the 18 identified locations should be established on the basis of relevant local factors. For example, they argue that a catchment area of up to a 20 minute drive time is appropriate in the rural areas, where each of the 18 stores are located, given that the level of car ownership is higher in rural areas in comparison to urban areas.<sup>48</sup>

77. The parties also argue that the following factors, which are applicable depending on the specific local circumstances, should also be taken into account when analysing local competitive effects:

- The presence of towns with grocery retailers within approximately 20 minutes' driving time from the target Londis store.
- Target Londis stores not exercising a significant competitive constraint on BWG stores (or *vice versa*) and/or not exercising a significant competitive constraint on other grocery retailers.
- The merged entity comprising only a minority of floor space within a 15-20 minute drive time catchment area.
- Commuting patterns to and from towns within an approximate 20 minute drive time) given that commuters would consider shopping for groceries to and/or from their place of work.

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<sup>46</sup> Op cit. Footnote 20, page 29.

<sup>47</sup> Op cit. Footnote 24 (ii), page 4.

<sup>48</sup> *Ibid.*, pp 8-9.



78. In summary, the parties argue that on closer inspection and after applying the above criteria, none of the 18 local markets listed in paragraph 72 will lead to a substantial lessening of competition as a result of the proposed transaction.

### Views of the Commission

79. The Commission acknowledges that franchisees have some discretion in the setting of prices and in other matters although to a lesser extent than would be the case for independent stores. Franchisee discretion is limited, for example, by the existence of recommended retail prices, national promotions (which involve a national prices), the purchasing obligations of BWG and Londis, as discussed in paragraphs 24-29, and also in other ways such as store layout and franchisor brand maintenance. Consequently, the Commission considers it prudent to examine the proposed transaction on the basis that the competition between retail stores of a different fascia is typically stronger than between stores of the same fascia.<sup>49</sup>
80. The Commission considers that applying an approximate 20 minute drive time catchment area for the purposes of reviewing the proposed transaction is appropriate and consistent with the approach adopted previously by the Competition Authority particularly in *M/08/014 - BWG Mangan's* (and also *M/11/022 - Musgrave Superquinn*). The Commission notes that the local markets identified by the parties are primarily locations outside of major urban centres as was the case in *M/08/014 BWG Mangan's*.
81. Information reviewed by the Commission, including information supplied by the parties, indicates that, subsequent to the completion of the proposed transaction, there would be no less than five competing fascia within a 20 minute drive time catchment area in 12 of the 18 local areas identified by the parties. These 12 local areas are: Cootehill Co. Cavan, Killorglin Co. Kerry, Callan Co. Kilkenny, Castlecomer Co. Kilkenny, Clonaslee Co. Laois, Crossmolina Co. Mayo, Ferbane Co. Offaly, Boyle Co. Roscommon, Grange Co. Sligo, Newcastle Co. Tipperary, Thomastown Co. Westmeath and Oulart Co. Wexford. The presence of these competing retail fascia indicates that, for each of these 12 local areas, the proposed transaction would not lead to a substantial lessening of competition in the retail sale of grocery goods.
82. The remaining six local areas are discussed in greater detail below. In its analysis, the Commission has investigated the number, size and location of competing retail fascias within an approximate 20 minute drive time of the target Londis store. The Commission also recognises that, depending on relevant local circumstances, stores located on the edge of a catchment area or even outside of a catchment area can exercise a credible competitive constraint on BWG and Londis at present and on the merged entity's stores after the completion of the proposed transaction.
- **Mountbellew Bridge Co. Galway**
83. Within Mountbellew Bridge there is one medium sized Londis store and three smaller BWG stores – a Spar, a Mace and a XL. There is competition within Mountbellew Bridge from a medium sized Centra and a medium sized Costcutter. There are also four more

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<sup>49</sup> In this context the various BWG retail brands comprise one fascia and, for example, the various Musgrave retail brands comprise another fascia.



Musgrave stores, two Centras and two Daybreaks, within approximately 15 minutes' drive time of Mountbellew Bridge.

84. The towns of Glenamaddy and Ballinsloe are approximately 20 minutes' drive time away which provide additional choices for consumers. In particular, Ballinasloe has Aldi, Lidl, Supervalu and Tesco stores. The Commission also notes the view of Londis that Ballinasloe has traditionally been the main shopping town for residents of Mountbellew Bridge.<sup>50</sup>
85. It is also reasonable to expect that consumers may opt to combine grocery shopping with the purchase of motor fuel or to purchase groceries when commuting to or from work given (i) in the absence of a filling station within Mountbellew Bridge, and (ii) current commuting patterns to places of work, including to Glenamaddy, Roscommon, Tuam and even Galway City.
86. The factors listed above indicate that the proposed transaction will not lead to a substantial lessening competition in a Mountbellew Bridge, County Galway market for the retail sale of grocery goods.

- **Oughterard Co. Galway**

87. Within Oughterard, there is one medium sized Londis store and one BWG store – a small Mace. Also in Oughterard there are two Musgrave stores: a medium-sized Centra and a small Day Today store. Moycullen, which is located approximately 10 minutes' drive time to the southwest, has one BWG store, a medium sized Spar. Also in Moycullen there are two Musgrave stores: a medium sized Centra and a large Supervalu.
88. The combined floor space of the BWG and Londis amounts to approximately 20% of the retail grocery floor space for a catchment area of approximately 10 minutes' drive time from Oughterard. Consequently, it would appear that the strongest competitive constraint on each of BWG and Londis at present is from the Musgrave fascia in Oughterard and Moycullen and that Musgrave stores would likely remain the strongest competitive constraint on the merged entity after the completion of the proposed transaction.
89. It is also the case that Galway City, approximately 25 minutes' drive time to the south has a wide range of grocery stores, including Tesco and Dunnes Stores on the northwest of the Galway City, which are easily accessible from the main road between Oughterard, and Galway City. It is also reasonable to expect that consumers may opt to combine grocery shopping commuting to or from work given current commuting patterns to places of work in Galway City.
90. The factors listed above indicate that the proposed transaction will not lead to a substantial lessening competition in an Oughterard, County Galway market for the retail sale of grocery goods.

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<sup>50</sup> *Ibid.* pp 15-16.



- **Newbliss Co. Monaghan**

91. There is one small Londis store in Newbliss. There are no BWG stores and no other branded stores in Newbliss. There are four BWG stores within a 10-15 minute drive time of Newbliss: 2 medium sized Mace stores – at Rockcorry and Smithborough - and two small XL stores – at Lathnamard Co. Monaghan and Cootehill Co. Cavan.
92. There are Musgrave fascia stores in Clones to the northwest – one large Supervalu store and in Cootehill to the south – one medium-sized Supervalu and a small Daybreak store. Both Clones and Cootehill, County Cavan are within a 15–20 minute drive time from Newbliss.
93. The location and size of the four BWG stores does not indicate that they exercise the strongest competitive constraint on the target Londis store. Rather, it would appear that the strongest competitive constraint on the Londis store in Newbliss (and also the four BWG stores listed above) is from the Musgrave stores in Clones and Cootehill. It can be expected that those Musgrave stores would likely remain the strongest competitive constraint on the merged entity after completion of the proposed transaction.
94. It is also the case that Monaghan town, which has Dunnes, Lidl and Supervalu stores, is within an approximate 20 minute drive time to the northeast would provide consumers with a greater choice of grocery retailers.
95. The factors listed above indicate that the proposed transaction will not lead to a substantial lessening competition in a Newbliss, County Monaghan market for the retail sale of grocery goods.

- **Tulsk Co. Roscommon**

96. Within Tulsk there is a small Londis store attached to a filling station. There are no BWG stores and no other branded stores in Tulsk. The Londis store sells primarily food to go, confectionary, minerals and hot beverages.<sup>51</sup>
97. The nearest BWG store, a large EuroSpar shop, is located in Strokestown approximately 10 minutes' drive time away. Also in Strokestown there is one Musgrave store, a medium-sized Centra, and an independent store. There are also three more independent stores located within a similar drive time: two to the north at Elphin and one to the west at Bellangare.
98. The location of the Londis store and its limited product range does not indicate that it exercises a significant competitive constraint on other grocery retailers prior to the proposed transaction and nor would it do so after the completion of the proposed transaction.
99. It is also the case that Roscommon town, which has Dunnes, Supervalu and Tesco stores, is approximately 20 minutes' drive time to the south and would provide consumers with a greater choice of grocery retailers.

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<sup>51</sup> *Ibid.* page 15.



100. The factors listed above indicate that the proposed transaction will not lead to a substantial lessening competition in a Tusk, County Roscommon market for the retail sale of grocery goods.

- **Blackwater Co. Wexford**

101. Within Blackwater, there is one medium-sized Londis store. There are no BWG stores and no other branded stores in Blackwater. There is one medium sized independent store in Blackwater which includes a filling station, grocery store, butchers and Post Office.

102. Within approximately 10 minutes' drive time to the northwest of Blackwater there is one BWG store – a small XL. Within a similar drive time to the north in Killmuckridge there is one Musgrave store: a medium sized Centra. Within a similar drive time to the south in Curraclloe there is a medium sized independent store.

103. The location and size of the BWG store does not indicate that it exercises a strong competitive constraint on the target Londis store. Rather, the strongest competitive constraint on the Londis store in Blackwater appears to be exercised by the independent store in the town and this would likely remain the case after the completion of the proposed transaction

104. It is also the case that Wexford town, which has Aldi, Dunnes Stores, Lidl, Supervalu and Tesco stores, is approximately 20 minute drive time to the south and would provide consumers with a greater choice of grocery retailers.

105. The factors listed above indicate that the proposed transaction will not lead to a substantial lessening competition in a Blackwater, County Wexford market for the retail sale of grocery goods.

- **Broadway (Our Lady's Island) Co. Wexford**

106. Within Broadway, there is one medium-sized Londis store. There are no BWG stores and no other branded stores in Broadway. Within approximately 10 minutes' drive time to the north in Rosslare, there is one BWG store, a small XL. Also, within approximately 10 minutes' drive time, there are three Musgrave stores: a small Centra to the northwest at Killinick, a medium sized Centra to the north at Rosslare and a large supermarket to the northwest at Rosslare Harbour.

107. The location of the BWG store (north of all of the Musgrave fascia stores listed above) and its small size does not indicate that it exercises a strong competitive constraint on the target Londis store. Rather, the strongest competitive constraint on the Londis store in Broadway appears to be exercised by Musgrave stores listed above and this would likely remain the case after the completion of the proposed transaction.

108. It is also the case that Wexford town is approximately 20 minute drive time to the north and would provide consumers with a greater choice of grocery retailers.

109. The factors listed above indicate that the proposed transaction will not lead to a substantial lessening competition in a Broadway, County Wexford market for the retail sale of grocery goods.



### *Vertical issues*

110. There is a vertical relationship between the parties to the extent that it is possible that BWG affiliated retailers can purchase goods from Londis and Londis affiliated retailers can purchase goods from BWG. It also the case that both supply third parties (i.e., customers other than BWG or Londis affiliates). The proposed transaction does not, however, give rise to vertical competition concerns for the reasons set out below.
111. The Commission's analysis of vertical effects focuses of (i) input foreclosure (e.g., the merged entity reducing or eliminating wholesale supply of grocery goods to retail competitors or food service customers) and (ii) customer foreclosure (e.g., the merged entity reducing or eliminating purchases of grocery goods from wholesale competitors). The proposed transaction would not give rise to either input or customer foreclosure.
112. The merged entity would not, subsequent to the implementation of the proposed transaction, have an incentive to engage in input foreclosure (i.e., to reduce the wholesale supply of, or refuse the wholesale supply to, retail or food service competitors) not least because sales to Londis retailers are insignificant when compared to sales to BWG franchisees and sales to other retail and food service customers.
113. The merged entity would not, subsequent to the implementation of the proposed transaction, have an incentive to engage in customer foreclosure (i.e., to reduce or eliminate purchases of grocery goods from wholesale competitors). At present BWG and Londis franchisees do not purchase significant quantities of goods from competitor wholesalers, not least because the purchasing requirements described in paragraph 26. Consequently any merger-specific impact on purchases from competing wholesalers will be not be significant.

### **Conclusion**

114. In light of the above the Commission considers that the proposed acquisition will not result in a substantial lessening of competition in any market for goods or services in the State.



## 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 acquisition whereby BWG Foods Limited would acquire sole control of the business of ADM Londis plc 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

Gerald FitzGerald  
Member  
Competition and Consumer Protection Commission