



## DETERMINATION OF MERGER NOTIFICATION M/15/058 - FANE VALLEY / LAKELAND DAIRIES

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### Section 21 of the Competition Act 2002

### Proposed acquisition by Fane Valley Cooperative Society Limited of the agri business assets of Lakeland Dairies Cooperative Society Limited

Dated 27 November 2015

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#### Introduction

1. On 16 October 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 (the “Commission”) received a notification of a proposed transaction whereby Fane Valley Cooperative Society Limited (“Fane Valley”) would acquire sole control of the agri business assets of Lakeland Dairies Cooperative Society Limited (“Lakeland”).

#### *The Proposed Transaction*

2. In the notification to the Commission, the parties provided a copy of a non-binding Heads of Agreement signed by both parties on 3 July 2015. Section 18(1A)(b)(ii) of the Act allows for parties to make a notification to the Commission where the parties have demonstrated to the Commission a good faith intention to conclude an agreement. In this case, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii) of the Act.
3. The proposed transaction envisages that Lakeland will transfer all of its agri business assets and interests<sup>2</sup> (i.e. the target assets) into a newly incorporated subsidiary of Lakeland (“LD Agri”) which will subsequently be transferred by Lakeland to a newly incorporated company (“FV Agri”). Around the same time, Fane Valley will transfer to

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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> The parties have indicated that one agri business asset of Lakeland will not be transferred. This is an old mill site in Killeshandra, Co. Cavan which is decommissioned, as well as related assets and employees.



FV Agri the entire issued share capital of each of Fane Valley Feeds Limited and Fane Valley Stores Limited.

4. Following completion of the proposed transaction, it is anticipated that Fane Valley will hold [...] of FV Agri and Lakeland will hold the remaining [...] of FV Agri.<sup>3</sup> The parties have stated that Fane Valley will have sole control of FV Agri following completion of the proposed transaction<sup>4</sup>.

### **The Undertakings Involved**

#### ***Fane Valley***

5. Fane Valley is a farmer-owned co-operative established in 1903 with its headquarters in Armagh, Northern Ireland. Fane Valley operates five business divisions:
  - Fane Valley Dairies which supplies whole and skimmed milk powders and butter to customers across the UK, Europe, Africa, South America and Asia. The activities of Fane Valley Dairies are conducted exclusively through Fane Valley's wholly-owned subsidiary, Armaghdown Creameries Limited;
  - Fane Valley Feeds which supplies animal feed to the cattle and sheep, pig and poultry sectors. It has two animal feed mills in Northern Ireland, situated in Omagh, Co. Tyrone and in Newry, Co. Down;
  - Fane Valley Stores which distributes general agricultural and domestic goods, animal health and farm supplies through 13 retail stores in Northern Ireland;
  - Fane Valley Red Meat Division which is involved in processing beef and lamb; and,
  - Fane Valley Food Division which comprises several subsidiaries of Fane Valley involved in food manufacturing.

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<sup>3</sup> In a related transaction the dairy processing activities and operations of Fane Valley (all of which are in Northern Ireland) and those of Lakeland will be brought under Lakeland's sole control, with Fane Valley taking a [...] stake in Lakeland. The parties have indicated that this related but separate transaction is not notifiable to the Commission.

<sup>4</sup> The parties have stated that the precise level of shareholding in FV Agri that will be held by Fane Valley and Lakeland may change subject to due diligence being completed in respect of the proposed transaction but that, irrespective of the final shareholdings, Fane Valley will acquire sole control of FV Agri following completion of the proposed transaction.



6. For the financial year ending 30 September 2014, Fane Valley's worldwide turnover amounted to €687 million, of which €[...] was generated within the State.

***The Vendor - Lakeland***

7. Lakeland is a farmer-owned dairy processing co-operative established in 1990 through the merger of the then Killeshandra and Lough Egish Co-operatives, which were established in 1896 and 1902 respectively. Lakeland has its headquarters in Killeshandra, Co. Cavan and operates three business divisions:

- Food Service Division which produces value-added dairy products that are supplied to 70 countries across the world for use in food preparation and for direct use by customers;
- Food Ingredients Division which processes milk into a range of dairy products, including skimmed, fat-filled and full cream milk powders, milk proteins and butter; and,
- Agribusiness Division which comprises the agri business<sup>5</sup> assets that are the target of the proposed transaction (see below).

***The Target – Agri business assets of Lakeland***

8. Lakeland's agri business assets are contained within its Agribusiness Division which is headquartered in Bailieborough, Co. Cavan and is involved in: (i) feed manufacturing; and (ii) supplying agricultural inputs to dairy, beef and sheep farmers. Lakeland's Agribusiness Division consists of two retail outlets in the State (at Lough Egish, Co. Monaghan and in Longford Town, Co. Longford) from which it supplies animal feed and a range of other farm products as well as a single animal feed mill (at Lough Egish) from which it supplies animal feed products.
9. For the financial year ending 27 December 2014, Lakeland's agri business assets generated worldwide turnover of approximately €57.5 million, of which approximately €[...] was attributable to customers located within the State.

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<sup>5</sup> The parties stated that the term 'agri business' is a short-hand term used in the sector to refer to agricultural related business.



### Rationale for the Proposed Transaction

10. The parties state in the notification:

*“The agri business sector, both nationally and internationally, is experiencing a period of growth and expansion. The proposed combination of the agri business operations of Fane Valley and Lakeland will create a platform to deliver greater efficiencies, larger scale, the capability for future growth and an enhanced service delivery proposition.”*

### Third Party Submissions

11. No submission was received.

### Competitive Analysis

12. There is a horizontal overlap between the parties’ activities in the island of Ireland in relation to (i) the production of animal feed; (ii) the direct supply of fertiliser and (iii) the retail sale of agricultural inputs to farmers, including, among other things, animal feed and fertiliser.

13. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this case it is not necessary for the Commission to define precise relevant product markets since the Commission’s review of the competitive effects of the proposed transaction would be the same irrespective of the precise product market definition.

14. However, in order to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to a number of possible product markets in the State, namely:

- the market for production and direct bulk supply of animal feed;
- the market for direct bulk supply of fertiliser;



- the market for retail supply of agricultural inputs<sup>6</sup>.

***Production and direct bulk supply of animal feed***

15. Both parties are involved in the production and supply of animal feed. The parties indicated that animal feed produced at animal feed mills is either delivered in bulk direct to farmers from the mill or sold in smaller bagged quantities in retail stores. Fane Valley has two animal feed mills (both of which are located in Northern Ireland - in Omagh, Co. Tyrone and in Newry, Co. Down) from which it supplies customers predominantly located in Northern Ireland (accounting for approximately [...]% of its sales of animal feed) as well as customers located in the border counties of the Republic of Ireland (accounting for approximately [...]% of its sales of animal feed). Fane Valley sells the majority of its animal feed in bulk directly to farmers and sells a small proportion through its retail stores (see further below). Lakeland has an animal feed mill located at Lough Egish, Co. Monaghan supplying farmers in both the Republic of Ireland (which accounts for approximately [...]% of its sales of animal feed) and Northern Ireland (which accounts for approximately [...]% of its sales of animal feed). The majority of Lakeland's animal feed is also sold in bulk directly to farmers.
16. Fane Valley largely serves customers located in Northern Ireland, whilst Lakeland largely serves customers located in the Republic of Ireland. If the geographic scope of the market for the production and direct bulk supply of animal feed is narrower than the island of Ireland, the proposed transaction raises no competition concerns since the parties operate predominantly in different areas of the island of Ireland. There is thus a limited degree of overlap between the activities of the parties in relation to the production and direct bulk supply of animal feed in the Republic of Ireland.
17. If, on the other hand, the geographic scope of the market is considered to be wider than regional (i.e. the island of Ireland), there is a large number of competing animal feed suppliers operating both within the Republic of Ireland and Northern Ireland that will continue to exert competitive pressure on the merged entity following completion of

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<sup>6</sup> In M/09/010 - LL/TPDL/Freshmills/Drummonds, the Competition Authority concluded at paragraph 25 that "agri-merchants compete in the market for the retail supply of agricultural inputs (i.e., seeds, fertiliser, agri-chemicals, animal feed, and grain) to farmers. It could be argued that since agricultural inputs are not substitutes for one another, this product market definition is too wide and that each agricultural input represents a separate relevant product market. However, given the complementary nature of agricultural inputs from the perspective of the end customer (i.e., the farmer), the Authority considers that the supply of agricultural inputs by agri-merchants to farmers could represent a single relevant product market."



the proposed transaction. Thus while the combined total animal feed capacity of the merged entity will be 500,000 tonnes per annum the combined Northern Ireland and Republic of Ireland capacity to produce animal feed is approximately 8.6 million tonnes per annum. Competing animal feed suppliers include Glanbia, Paul & Vincent, Kiernan Milling, Corby Rock, AW Ennis, McCabes, Southern Milling, Smith Daleside, McAuleys, Aurivo, Dairygold, Dooleys, Marksville, John Grennan & Sons and Thompsons and United Feeds

#### ***Direct bulk supply of fertiliser***

18. The parties indicated that fertiliser products can be either delivered in bulk directly to farmers or bought in smaller quantities from retail stores. While both Fane Valley and Lakeland supply fertiliser products<sup>7</sup> either through direct bulk supply to farmers or through their retail outlets (see below) there is no overlap between the parties in the direct bulk supply of fertiliser segment in the State since Fane Valley's direct bulk supply to farmers is restricted to Northern Ireland only. For the financial year ending 30 September 2014, all Fane Valley's supply of fertiliser to farmers in the State (approximately €[...]) was supplied via its retail outlets only.
19. Furthermore there is a large number of competing fertiliser suppliers in the Border region and in the Republic of Ireland, which will continue to exert competitive pressure on the merged entity following completion of the proposed transaction. Such competing fertiliser suppliers include Glanbia, Drummonds, Dairygold, Aurivo, McCabes, Corchanen Co-Op, Loughrin Stores, Deeside Agri, Dooleys, F Brady, J Brady, Bunnoe Co-Op, Platin Grain, Marksville, Rilleys, Doopey Co-Op, Corcaghan & Ballybay Co-Op, Frazers, Goldcrop, Halpenny, Grennans, Four Mill Stores, Hollands, T Hylands, Irwins Agri Stores, J&L Stores, Kill Co-Op, S McEntee, R&L Waller and Weldons.

#### ***Retail sale of agricultural inputs to farmers***

20. Both parties are active in the retail sale of agricultural inputs to farmers. They offer a wide range of animal and farm products and general agricultural and domestic products through their retail stores (e.g. animal feed, fertiliser, animal health products, clothing,

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<sup>7</sup> Neither party is involved in the production of fertiliser.



fencing, pest control products, companion animal products, equine products, livestock handling equipment, hardware and household items).

21. Fane Valley is Northern Ireland's largest agri-merchant chain, operating 13 stores in Northern Ireland, while Lakeland operates 2 retail outlets in the Republic of Ireland (in Longford Town and Lough Egish, Co. Monaghan). If the geographic scope of the market for the retail sale of agricultural inputs is regional (i.e., the border counties in the North-East and the North-West of the State) – which would be consistent with previous merger determinations of the Commission<sup>8</sup> - the degree of overlap between the parties in the retail sale of agricultural inputs to customers located in the Republic of Ireland is minimal since all of Fane Valley's retail stores are located in Northern Ireland. While the Lakeland store at Lough Egish is approximately 20 km from the Fane Valley store at Altnamachin, Co. Armagh, the Lakeland Store in Longford Town is over 100km from the nearest Fane Valley retail outlet in Northern Ireland and could not be considered to be competing with any Fane Valley retail outlet. In addition, there are approximately 200 agri-merchants active in the Republic of Ireland with over 40 operating in the border area in which the parties operate.
22. If, on the other hand, the geographic scope of the market is considered to be wider than regional, there is a large number of competing agri-merchants operating both within the Republic of Ireland and Northern Ireland which will continue to exert competitive pressure on the merged entity following completion of the proposed transaction.

### Vertical Issues

23. Since both parties manufacture animal feed which is, in part, sold on to their retail stores both can be considered to be vertically integrated in the supply of animal feed. Consequently the Commission examined the possibility that the merged entity might be able to exercise either input or output foreclosure.<sup>9</sup>

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<sup>8</sup> In M/09/010 - LL/TPDL/Freshmills/Drummonds, the Competition Authority noted at paragraph 29 that "[i]t is unlikely that farmers would be prepared to switch in response to a permanent price rise given their preference for dealing with agri-merchants in their locality. As stated by the IFA, if a farmer decides to source supplies of agricultural inputs from an agri-merchant located outside the farmer's locality, he will face additional transport costs for the supply of agricultural inputs as well as for the delivery of his grain to the agri-merchant. Thus, it is likely that agri-merchants compete in regional geographic markets for the retail supply of agricultural inputs to farmers."

<sup>9</sup> In this case input foreclosure refers to the situation where the merged entity has the ability post-transaction to raise the costs of downstream rival agri-merchants by restricting their access to supplies of animal feed while output foreclosure relates to whether the merged entity is an important customer in the downstream market and could foreclose upstream rival animal



24. With regard to input foreclosure, there is a large number of alternative animal feed mills located throughout the island of Ireland. In particular, there are approximately 35 independent mills located in counties in the northern half of the Republic of Ireland with at least 11 mills located in the border counties (three in each of Counties Louth, Cavan and Monaghan and two in County Donegal). In addition, the parties estimate that there is approximately 30% excess capacity in the manufacture of animal feed in the island of Ireland. It is therefore unlikely that merged entity will have the ability post-transaction to raise the costs of downstream rival agri-merchants by restricting their access to supplies of animal feed.
25. The Commission also examined the possibility of output foreclosure arising as a result of the merger. (This would arise if the merged entity was in a position to foreclose rival animal feed producers<sup>10</sup> by restricting their access to a significant customer base.) The Commission concluded that in addition to a large number of agri-merchants active in the border counties, in the North-East and North-West of the Republic of Ireland, animal feed producers supply the majority of their produce in bulk direct to farmers, thus bypassing retail stores altogether. Thus the merged entity cannot be considered a customer of sufficient size and importance in the downstream market such that it could foreclose upstream rival animal feed producers by restricting their access to a significant customer base.
26. In light of the discussion above with respect to the horizontal and vertical competitive effects the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

#### **Ancillary Restraints**

27. No ancillary restraints were notified.

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feed producers by restricting their access to a significant customer base. For more discussion on input and output foreclosure see Chapter 5 of the Commission's Guidelines for Merger Analysis - [http://www.cpc.ie/sites/default/files/CCPC%20Merger%20Guidelines\\_1.pdf](http://www.cpc.ie/sites/default/files/CCPC%20Merger%20Guidelines_1.pdf).

<sup>10</sup> Neither party manufactures fertiliser, therefore foreclosure issues are unlikely in this market segment.





### **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 transaction whereby Fane Valley Cooperative Society Limited would acquire sole control of the agri business assets of Lakeland Dairies Cooperative Society Limited as specified in the Heads of Agreement signed by both parties on 3 July 2015, 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**