



# DETERMINATION OF MERGER NOTIFICATION M/16/018 - AMBER REAL ESTATE INVESTMENTS / CERTAIN ASSETS OF GROVE TURKEYS

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## Section 21 of the Competition Act 2002

### Proposed acquisition by Amber Real Estate Investments (Ireland) Limited of Certain Assets of Grove Turkeys

Dated 23 May 2016

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#### Introduction

1. On 12 April 2016, in accordance with section 18(1) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Amber Real Estate Investments (Ireland) Limited, a wholly-owned subsidiary of Amber REI Holdings Limited<sup>1</sup> (collectively “Amber REI”), would acquire from Grove Turkeys sole control of certain assets constituting a turkey production and supply facility called Grove Farm (“the Target Business”).

#### *The Transaction*

2. On 12 April 2016, Amber REI entered into a business purchase agreement (“BPA”) with Grove Turkeys<sup>2</sup> pursuant to which it is proposed that the Target Business will be acquired by Amber REI. As part of the proposed transaction, the Target Business will be acquired as a going concern, which will involve the acquisition by Amber REI from Grove Turkeys of its business assets, existing contracts, current staff, employment records, goodwill and intellectual property rights (which include exclusive rights to the business names ‘Grove Turkeys’ and ‘Grove Farm’).

#### The Undertakings Involved

##### *The Acquirer – Amber REI*

3. Amber REI is a group of companies of which the ultimate owners are two individuals, Ranjit Boparan and his wife Baljinder Boparan. These individuals own a portfolio of businesses including food businesses (collectively “the Purchaser Group”) which primarily operate in the United Kingdom (“UK”).

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<sup>1</sup> Amber REI Holdings Limited is ultimately owned by Ranjit Boparan and Baljinder Boparan.

<sup>2</sup> Each of Grove Turkeys’ individual directors, Tom O’Driscoll, Stephen O’Halloran and Brendan Maguire, are also parties to the BPA.



4. Amber Real Estate Investments (Ireland) Limited was incorporated solely for purposes of the proposed transaction and has its registered office at Suite 3, Earlsfort Centre, Earlsfort Terrace, Dublin 2.
5. In the State, the Purchaser Group is currently active through Boparan Holdings Limited and its subsidiaries<sup>3</sup> and Food Utopia Limited. Post-transaction, the Purchaser Group will also be active in the State through Amber REI.
6. The Purchaser Group's turnover in 2014 comprised turnover generated by:
  - i. Amber REI, for the financial year ended 28 December 2014, of approximately €[...], none of which was generated in the State;<sup>4</sup>
  - ii. Boparan Holdings Limited, for the financial year ended 02 August 2014, of approximately €4.2 billion, of which approximately €[...] was generated in the State;<sup>5</sup> and
  - iii. Food Utopia Limited, for the financial year ended 31 December 2015, of approximately €[...], of which approximately €[...] was generated in the State.<sup>6</sup>

### ***The Target Business***

7. The Target Business is situated in Smithborough, Monaghan, Co. Monaghan and is a fully-integrated turkey livestock rearing and processing facility.<sup>7</sup> The Target Business produces turkeys (i.e. breeding, hatching and commercial livestock growing) and supplies turkeys to the retail and foodservice sectors in the State and the UK<sup>8</sup>. Approximately [...] % of the Target Business relates to turkeys and turkey products, which include:
  - i. Fresh Whole Birds: fresh oven-ready standard white and bronze turkey, fresh oven-ready basted white and bronze turkey, fresh oven-ready free range white and bronze turkey, fresh oven ready organic bronze turkey.
  - ii. Fresh Crowns: fresh standard white and bronze crown, fresh basted white and bronze crown, fresh free range white and bronze crown, fresh organic bronze crown.
  - iii. Fresh Added Value: fresh butter-basted joint, fresh stock-basted joint, fresh easy-carve turkey, fresh boned and rolled turkey, fresh turkey breast meat.

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<sup>3</sup> Boparan Holdings Limited has the following subsidiaries which are active in the State: 2 Sisters Food Group Ltd, 2 Sisters Poultry Ltd, 2 Sisters Red Meat Ltd, Five Star Fish Ltd, Amber Foods Group Ltd and BH Acquisitions Ltd (and its subsidiaries Northern Foods Ltd, Convenience Foods Ltd and Green Isle Foods Ltd).

<sup>4</sup> Euro figure converted from £[...], using the European Central Bank (ECB) average conversion rate for 1 January 2014 – 31 December 2014.

<sup>5</sup> Euro figures converted from £3.4 billion and £[...] respectively, using the European Central Bank (ECB) average conversion rate for 1 January 2014 – 31 December 2014.

<sup>6</sup> Euro figures converted from £[...] and £[...] respectively, using the European Central Bank (ECB) average conversion rate for 1 January 2015 – 31 December 2015.

<sup>7</sup> <http://www.grove.ie/index.php>

<sup>8</sup> According to the Financial Statements of Grove Turkeys for the year ended 31 December 2014, 'the principal activity of the company is the rearing and processing of turkeys and their distribution in Ireland and the UK'.



- iv. Frozen Whole Birds: frozen oven-ready air-chilled standard white turkey, frozen oven-ready air-chilled basted white turkey, frozen oven-ready air-chilled standard bronze turkey.
  - v. Frozen Crowns and Saddles: frozen standard white and bronze turkey crown, frozen basted white turkey crown, frozen white turkey saddle.
8. The balance of the Target Business relates to frozen breaded chicken-based products and battered onion rings, which are sold to the retail and foodservice sectors in the State. The frozen chicken based products include chicken nuggets, chicken slices, chicken goujons, cooked breaded chicken fillets, cooked southern fried chicken fillets, and chicken burgers.
  9. The Target Business's turnover for the financial year ended 31 December 2014 was approximately €[...], of which approximately €[...] was generated in the State.

#### ***The Vendor – Grove Turkeys***

10. The vendor is Grove Turkeys, a private unlimited company incorporated in the State. Its ultimate parent company is Redspan, also a private unlimited company incorporated in the State, which has three individual shareholders who are identified in footnote 2 above.

#### **Rationale for the Proposed Acquisition**

11. The notification states:

*“The underlying commercial objective of the Purchaser [Group] is to grow the Target Business by attracting new customers in Ireland and/or the United Kingdom through exposure to a broader customer base and customer relationships.*

*The Proposed Transaction represents an opportunity to expand the business and grow employment as a subsidiary of a much larger, more diverse and very successful food group.”*

#### **Third Party Submissions**

12. No submission was received.

#### **Competitive Analysis**

13. The Purchaser Group is active in the State, primarily in the supply of food products, through a number of corporate entities, as set out in footnote 3 above. The Purchaser Group is active in the State in the supply of the products set out in Table 1 below. The Purchaser Group does not produce or supply any turkey products in the State.

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**Table 1 – Products supplied by the Purchaser Group in the State**

primary and processed chicken <sup>9</sup>	food waste products
pizza	Christmas puddings
fish	red meat
biscuits	cakes – pastries, hot cross buns
sandwiches	sushi
ready meals	soups
sauces	duck
marinades	vegetables
potato range	stir fry range
onion rings	garlic mushrooms
garlic baguettes	pies

14. The Target Business is active in the State in the production and supply of primary poultry meat, in particular fresh turkeys. It is involved throughout the entire chain of production of turkeys, from breeding, hatching and commercial livestock growing, through to processing and supply to the retail and foodservice sectors and the export sector. The Target Business processes approximately [...] turkeys per annum of which it sells approximately [...] units of fresh turkey domestically and to the UK.<sup>10</sup> The majority of fresh turkeys sold for consumption in the State are sold during the Christmas period and the Target Business accounts for approximately [...] fresh turkeys sold during this period, or approximately [...]% of locally produced turkeys. Approximately [...]% of the Target Business relates to frozen breaded chicken-based products and battered onion rings, which are sold to retail and foodservice sectors in the State. The frozen breaded chicken-based products include chicken nuggets, chicken slices, chicken goujons, cooked breaded chicken fillets, cooked southern fried chicken fillets and chicken burgers. The Target Business does not produce or supply any primary chicken meat products in the State.
15. Consequently, there is one area of horizontal overlap in the activities of the parties within the State, which is the supply of processed chicken products, primarily frozen breaded chicken products and battered onion rings.
16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission does not need to come to a definitive view on the precise relevant product market in this instance since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant product market is defined narrowly (e.g., the supply of frozen breaded chicken products) or more broadly to encompass processed chicken products in general. The

<sup>9</sup> In M/11/009 – BH Acquisitions/Northern Foods, the Commission's predecessor, the Competition Authority, noted that: "Primary chicken products are fresh or unprocessed products while processed products include coated, cooked and roast chicken products."

<sup>10</sup> Domestic sales and exports to the UK are split approximately [...] i.e. approximately [...].



Commission's predecessor, the Competition Authority<sup>11</sup>, has previously considered the supply of primary chicken products and the supply of processed chicken food products to be separate and distinct markets.<sup>12</sup> For the purposes of its competitive analysis in the present case, the Commission considered the narrowest possible relevant product markets i.e., the supply of processed chicken food products.

17. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market in this instance since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant geographic market is defined as national or broader to provide for imports and exports, especially to and from the UK. The former Competition Authority has previously considered that the geographic market for the supply of processed chicken food products could be wider than the State, to include Northern Ireland or the entire European Union.<sup>13</sup> 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 the narrowest possible geographic market, i.e. the State.
18. Both the Purchaser Group and the Target Business are involved in the supply of processed chicken meat, specifically frozen breaded chicken products to the retail and foodservice sectors in the State. This activity accounted for approximately [...] % of the Target Business's income in the State in the 2014 financial year, i.e. approximately €[...]. The Purchaser Group operates primarily in the UK and, of the Purchaser Group's sales of chicken products into the State, the vast majority ([...] %) relates to primary chicken products. For the financial year March 2015 - February 2016, the Purchaser Group had sales of processed chicken products into the State to the value of approximately only €[...]. A Bord Bia Irish Foodservice Channel Insights study<sup>14</sup> reported that sales of poultry products to the foodservice industry in the State amounted to €254 million in 2014. On this basis, the increase in market concentration resulting from the proposed transaction in relation to the supply of processed chicken food products in the State will not be significant. In addition, a number of large competitors in the State, such as Moy Park, Birds Eye, Carton Brothers (Manor Farm) and Western Brand Group, and retailers' own-label products, which are mainly imported into the State, will act as a competitive constraint on the merged entity following implementation of the proposed transaction.
19. There is no vertical overlap between the parties' activities in the State.
20. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

### Ancillary Restraints

21. The BPA imposes a number of restrictive obligations on Grove Turkeys and its individual shareholders. These include non-compete and non-solicitation covenants restricting Grove Turkeys and its individual shareholders [...] from competing with the business of

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<sup>11</sup> On 31 October 2014, in accordance with sections 38 and 39 of the Competition and Consumer Protection Act 2014, the Competition Authority was dissolved and all of the functions vested in the Competition Authority immediately before that date became vested in the Commission.

<sup>12</sup> M/10/018 – Moy Park/O'Kane.

<sup>13</sup> *Supra* footnote 12.

<sup>14</sup> November 2014: <http://www.bordbia.ie/industry/events/SpeakerPresentations/2014/FoodServiceSeminar2014Reports/>.



the Target Business in the State and the UK and from soliciting existing customers and employees of the Target Business.

22. The parties state that the restrictive covenants are appropriately limited in both time and geographic scope and are necessary in light of the nature of the proposed transaction, i.e. transferring a business as a going concern with goodwill. The parties therefore view the restrictive covenants to be fair and reasonable.
23. The duration of the ancillary restraints does not exceed the maximum duration acceptable to the Commission<sup>15</sup> and the Commission considers the restrictions to be directly related to and necessary for the implementation of the proposed transaction.

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<sup>15</sup>In this respect the Commission follows the approach adopted by the EU Commission in paragraph 20 of its “Notice on restrictions directly related and necessary to concentrations” (2005).  
See [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=E](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=E).



## **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 Amber Real Estate Investments (Ireland) Limited, a wholly-owned subsidiary of Amber REI Holdings Limited, would acquire from Grove Turkeys sole control of certain assets constituting a turkey production and supply facility called Grove Farm 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**