



DETERMINATION OF MERGER NOTIFICATION M/16/050 - FRESHGRASS/FRESHMILLS

Section 21 of the Competition Act 2002

Proposed acquisition by Freshgrass Holdings of sole control of Freshmills Holdings Limited

Dated 22 November 2016

Introduction

1. On 14 October 2016, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby Freshgrass Holdings (“Freshgrass”) would acquire sole control of Freshmills Holdings Limited (“Freshmills”).
2. Freshmills is currently jointly controlled by Freshgrass (50% shareholding), Labtop Limited (“Labtop”) (25% shareholding) and Tipperary Property Development Limited (“TPDL”) (25% shareholding).¹ Pursuant to the proposed transaction, Freshgrass will acquire the remaining 50% of Freshmills from Labtop and TPDL, thereby acquiring sole control of Freshmills.
3. The parties state in the notification that they “*will complete the transaction by way of a share redemption and an agreement to that effect will be entered into by the parties for shareholder approval.*” Notwithstanding the fact that an agreement had not been executed at the time of the notification, 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.

The Undertakings Involved

Freshgrass

4. Freshgrass, owned by Liam Woulfe and Tommy Browne, is a holding company incorporated in the State. In addition to exercising joint control over Freshmills, Freshgrass owns 100% of Freshgrass Properties Limited² and has a 50% shareholding in

¹ On 18 June 2009, the Commission’s predecessor, the Competition Authority, approved the acquisition by Freshgrass, Labtop and TPDL of joint control of Drummonds Limited through Freshmills. The Competition Authority’s merger Determination in M/09/010 – LL/TPDL/FIL/Freshmills/Drummonds can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m09010-ll-tpdl-fil-freshmills-drummonds>.

² Freshgrass Properties Limited owns two private properties and three commercial properties.



Grassland Agro (“Grassland”),³ which is a manufacturer and wholesale supplier of fertiliser⁴ to agri-merchants and agricultural co-operatives in the State through its distribution facilities in Slane, Limerick and Cork.⁵

5. For the financial year ending 31 December 2015, Freshgrass’s worldwide turnover was approximately €89 million, all of which was generated in the State.

Freshmills

6. Freshmills, a holding company incorporated in the State, owns 100% of Drummonds Limited (“Drummonds”), an agri-merchant principally active in the north-east of the State. Drummonds supplies agricultural inputs (such as fertiliser, agri-chemicals, seeds and animal feed) to farmers and grain (such as wheat, barley and oats) to feed mills through its distribution facilities in Ardee, Drogheda, Knockbridge, Clonee and Navan.
7. For the financial year ending 30 June 2015, Freshmills’s worldwide turnover was approximately €55 million, all of which was generated in the State.

Rationale for the Proposed Transaction

8. The parties state in the notification:

“Freshgrass sees the agri-business as a profitable stand-alone enterprise. Labtop Limited and Tipperary Property Development Limited wish to realise their investment in Freshmills for their own strategic reasons.”

Third Party Submissions

9. No submission was received.

Competitive Analysis

10. There is no horizontal overlap between the activities of the parties in the State since Grassland is a manufacturer and wholesale supplier of fertiliser to agri-merchants and agricultural co-operatives while Drummonds is an agri-merchant that supplies fertiliser to farmers.⁶
11. There is a vertical relationship between the parties since Grassland, which is 50% owned by Freshgrass, supplies fertiliser to agri-merchants in the State including Drummonds. For the reasons set out below, the Commission considers that the proposed transaction raises no vertical foreclosure concerns.

³ On 17 January 2013, the Competition Authority approved the acquisition by Timac Agro (Holdings) Ireland Limited of 50% of the issued share capital of Grassland Fertiliser from Grassland Holdings, a subsidiary of Freshgrass. The Competition Authority’s merger Determination in M/12/032 – Timac/Grassland Fertiliser can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m12032-timac-grassland-fertiliser>.

⁴ Fertilisers are chemical compounds applied to the soil by farmers to promote plant growth.

⁵ Grassland does not sell fertiliser directly to farmers.

⁶ Pre-proposed transaction, there is a horizontal overlap between Drummonds and Labtop’s wholly-owned subsidiary, Liffey Mills Limited, an agri-merchant principally active in the midlands and west of the State. Following the implementation of the proposed transaction, however, there will be no horizontal overlap since Labtop will no longer own a shareholding in Freshmills.



12. First, a vertical relationship already exists between the parties as a result of Freshgrass's current 50% shareholding in Freshmills, which owns Drummonds, and its 50% shareholding in Grassland. The implementation of the proposed transaction would not result in the creation of a new vertical relationship between Freshgrass and Freshmills.
13. Second, the Commission's predecessor, the Competition Authority (the "Authority"), considered the vertical relationship between Grassland and Drummonds during its review in 2009 of the acquisition by Freshgrass, Labtop and TPDL of joint control of Drummonds, through Freshmills, and concluded that it raised no vertical foreclosure concerns.⁷ Grassland (which was a wholly-owned subsidiary of Freshgrass at the time) supplied fertiliser to agri-merchants including Drummonds.⁸ The Authority stated the following in paragraph 49 of its Determination: "*The market in which Grassland competes (i.e., the market for the wholesale supply of fertiliser to agri-merchants in the State) is very competitive.*" Based on information provided by the parties in the notification, the Commission considers that this continues to be the case. In addition to Grassland (which has an estimated share of the wholesale supply of fertiliser in the State in 2015 of 25%), there are three large fertiliser wholesalers currently active in the State which will continue to constrain Grassland post-transaction, namely: Goulding Fertilisers (which has an estimated share of the wholesale supply of fertiliser in the State in 2015 of 30%), Grassland Fertilizers (Kilkenny) Limited⁹ (which has an estimated share of 18%) and Target Fertilisers Limited (which has an estimated share of 14%).¹⁰ The Commission considers that following implementation of the proposed transaction Grassland will not have sufficient market power in the wholesale supply of fertiliser in the State such that it would have the ability to foreclose rival wholesalers of fertiliser.¹¹
14. Furthermore, the Commission does not consider that there is a risk of customer foreclosure¹² following the proposed transaction since there is a large number of agri-merchants (other than Drummonds) who will require supplies of fertiliser post-transaction. The parties estimate in the notification that there are approximately sixty agri-merchants currently active in the State.
15. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

16. No ancillary restraints were notified.

⁷ Please see paragraphs 43-56 of the Authority's merger Determination in *M/09/010 – LL/TPDL/FIL/Freshmills/Drummonds* for a detailed assessment of the vertical effects of that transaction. This can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m09010-ll-tpdl-fil-freshmills-drummonds>.

⁸ It should be noted that the Authority also considered the vertical relationship between Grassland and Liffey Mills Limited as part of its vertical effects analysis in 2009.

⁹ This is a different entity to Grassland.

¹⁰ These estimated shares in the wholesale supply of fertiliser in the State in 2015 were provided by the parties in the notification.

¹¹ This is sometimes referred to as input foreclosure which occurs where the merged entity has market power in the upstream market and the proposed transaction is likely to raise the costs of downstream rivals by restricting their access to an important input.

¹² Customer foreclosure occurs where the merged entity is an important customer in a downstream market and the proposed transaction is likely to foreclose upstream rivals by restricting their access to a sufficient customer base.



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 Freshgrass Holdings would acquire sole control of Freshmills Holdings Limited will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Patrick Kenny
Member
Competition and Consumer Protection Commission