



DETERMINATION OF MERGER NOTIFICATION M/17/050 – JOYCES/NESTORS

Section 21 of the Competition Act 2002

Proposed acquisition by Patrick C. Joyce Supermarket (Headford) Unlimited Company of certain assets constituting four supermarkets from Nestor Property Limited (in Receivership) and its subsidiaries.

Dated 5 October 2017

Introduction

1. On 30 August 2017, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed acquisition (“the Proposed Transaction”) whereby Patrick C. Joyce Supermarket (Headford) Unlimited Company (“Joyces”), a wholly-owned subsidiary of Solus Junction Unlimited Company, would acquire certain assets of Nestor Property Limited (in Receivership) and its subsidiaries, TJN Limited and C-Town Limited (both in Receivership) (collectively “the Vendors”). The assets to be acquired constitute four supermarkets located in Galway City and its surrounding area (the “Target Assets”).
2. Prior to the notification of the Proposed Transaction to the Commission, Paul McCann and Aengus Burns of Grant Thornton had been appointed as joint receivers to the Vendors (collectively “the Joint Receivers”).

The Proposed Transaction

3. The Target Assets constitute the assets of four supermarkets located in Galway City and its surrounding area which are currently owned by the Vendors. As of the date of the notification, three of these supermarkets are trading under the *SuperValu* brand and the remaining supermarket operates under the *Centra* brand¹. The four supermarkets

¹ [...]



constituting the Target Assets are located in and around Galway City, at Father Griffin Road (*SuperValu*), Ballybane (*SuperValu*), Oranmore (*SuperValu*) and Doughiska (*Centra*).

4. Following a competitive bidding process, Joyces was selected by the Joint Receivers as the successful bidder for the Target Assets.
5. Under the terms of two Business Transfer Agreements (“BTA”)², each of which was entered into by the parties on 24 August 2017, Joyces agreed to purchase the right, title and interest of the Vendors in the Target Assets, including the Vendors’ interests in the commercial properties occupied by the four supermarkets constituting the Target Assets.
6. Following implementation of the Proposed Transaction, it is planned that Joyces will carry on the business of the Vendors under Joyces’ brand name, which is *Joyce’s Supermarkets*. The Target Assets will be acquired by four newly-incorporated unlimited companies, each of which will be wholly-owned by Joyces.

The Undertakings Involved

The Acquirer

7. Solus Junction Unlimited Company is the ultimate parent company of Joyces. Joyces is part of the Joyce group of companies which consists of *Joyce’s*-branded supermarkets, *Joyces* service stations and a retail pharmacy, all of which are located in Co. Galway, (collectively “the Joyce Group”).
8. The Joyce Group’s main business is the retail sale of grocery goods in Co. Galway through five *Joyce’s*-branded supermarkets located in Knocknacarra, Tuam, Athenry, Inverin and Headford. The Joyce Group has a central distribution warehouse in Claregalway which supplies goods to the five supermarkets. The Joyce Group is also

² The first BTA relates to the supermarkets in Ballybane, Doughiska and Father Griffin Road and is between C-Town Limited (in Receivership), Nestor Property Limited (in Receivership), the Joint Receivers and Joyces. The second BTA relates to the supermarket in Oranmore and is between TJN Limited (in Receivership), Nestor Property Limited (in Receivership), the Joint Receivers and Joyces.



active in the operation of retail motor fuel service stations, with two retail motor fuel service stations in Athenry, and operates a retail pharmacy in Headford, Co. Galway.

9. For the financial year ended 31 January 2017, the Joyce Group's worldwide turnover was approximately €[...], all of which was generated in the State.

The Target Assets

10. The Target Assets consist of the Vendors' right, title and interest in the assets of four supermarkets, including the plant and equipment, the properties, the businesses, the goodwill, the customer contracts, the stock, the intellectual property relating to the businesses, the sales information, the marketing information, the cash float, the books and records, and the liquor licenses of the four supermarkets located in and around Galway City at Father Griffin Road (*SuperValu*), Ballybane (*SuperValu*), Oranmore (*SuperValu*) and Doughiska (*Centra*).
11. Joyces will acquire the interest of the Vendor in each of the four properties occupied by the four supermarkets, which comprises a mixture of[...].
12. For the financial year ended January 2017, the Target Assets' turnover was approximately €[...]³, all of which was generated in the State.

Rationale for the Proposed Transaction

13. The parties state in the notification:

“The acquisition of the Target Assets is in line with the Purchaser's commercial strategy for Joyce's supermarkets. This is a sale out of receivership. Joyce's supermarkets group hopes to use its sector experience and knowledge to further develop the business of the Target Assets and to sustain the jobs that they provide in the long term.”

Third Party Submissions

³ Source: supplied by the parties to the Commission, based on management accounts.



14. No submission was received.

Competitive Analysis

Horizontal Overlap

15. There is a horizontal overlap in the activities of the parties with respect to the supply of grocery goods at retail level within the State. Neither of the parties are involved in the wholesale supply of grocery goods.
16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission and its predecessor, the Competition Authority, has on a number of occasions⁴ considered that the retail sector encompasses a wide spectrum of large supermarkets known as "*multiples*" (such as *Dunnes Stores*, *SuperValu* and *Tesco*, as well as *Aldi* and *Lidl*, who are sometimes referred to as '*discounters*'), medium-sized shops which are usually part of a "*symbol*" group (such as *Centra*, *Londis* and *Spar*) and smaller stores, categorised as "*convenience*" stores (such as *Daybreak*, *MACE* and smaller *Londis* and *Spar* stores and independent retailers).
17. With respect to the retail sale of groceries, the Commission and the Competition Authority have taken the view that the appropriate product definition for groceries was the retail sale of grocery goods, i.e., the retail sale of "*food and drink for human consumption and household necessities*"⁵. Furthermore, the Competition Authority in *M/11/022 - Musgrave/Superquinn* and the Commission in *M/15/09 -BMG/Londis* 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).

⁴ M/11/22 Musgrave/Superquinn; see: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m11022-musgrave-superquinn/>
M/15/09 BMG/Londis; see: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m15009-bwg-londis/>
and M/16/02 Dunnes/Whelan/Tipperary; see: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m16002-dunnes-whelan-tipperary/>

⁵ Please see paragraph 84 of the Competition Authority's determination in *M/11/022 - Musgrave/Superquinn*.



18. The Commission has not, in the course of its analysis of the Proposed Transaction, found reasons to depart from the approach previously adopted by the Commission or the Competition Authority.
19. Accordingly, for the purposes of evaluating the competitive effects of the Proposed Transaction, the Commission considers that the relevant product market is the retail sale of grocery goods.
20. 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 local, regional or national. 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 markets, i.e., the local areas in which each of the four supermarkets comprising the Target Assets are located.
21. The Competition Authority in *M/11/022 – Musgrave/Superquinn* highlighted the significance of analysing local effects in relation to the retail supply of groceries:

“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 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.”

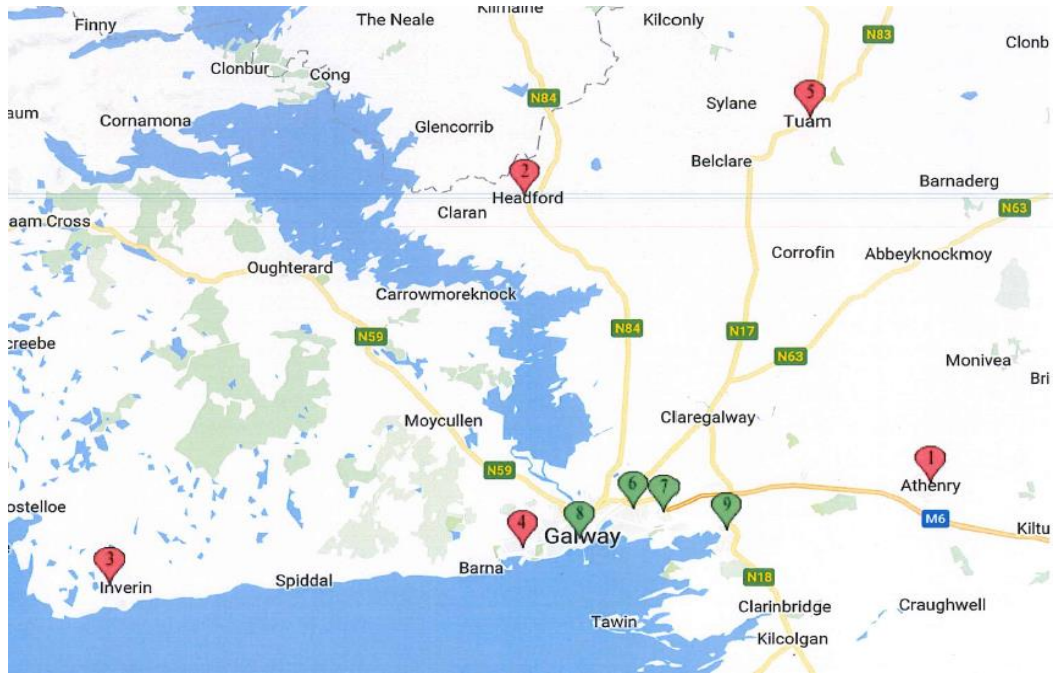
“.. the Authority has examined the competitive effects of the proposed transaction on the local areas surrounding each Superquinn store by a 10 minute drive time and/or a ten kilometre distance.”

22. The approach to assessing local effects in *M/11/022 – Musgrave/Superquinn* was more recently followed in *M/16/02 - Dunnes/Whelan/Tipperary*, where the Commission identified possible local markets within a 10 kilometre or 10 minute drive time from the relevant target location.



23. Figure 1 and Table 1 below illustrate the geographical distribution of and distances between all of the *Joyce's*-branded supermarkets and the four supermarkets constituting the Target Assets in the Galway area.

Figure 1: Geographic distribution of *Joyce's*-branded supermarkets and the four supermarkets constituting the Target Assets in Galway



Legend: Joyces-branded supermarkets no. 1-5 (red markers); Nestor's supermarkets no. 6-9 (green markers).

Source: provided by the parties to the Commission.

Table 1: Distance (in kilometres) between each of the four supermarkets constituting the Target Assets and *Joyce's*-branded supermarkets

	Supermarket at Father Griffin Road	Supermarket at Ballybane	Supermarket at Oranmore	Supermarket at Doughiska
Joyces Knocknacarra	3.3	8.2	10.5	15
Joyces Tuam	34.9	31.7	31.5	31.1
Joyces Athenry	23.8	19.5	13.7	18.8
Joyces Headford	26.9	23.9	30.6	26.6
Joyces Inverin	21.3	26.2	33	28.7

Source: The Commission based on information provided by the parties and Google Maps.



24. Applying a similar approach to assessing local effects to that previously applied by the Commission, as can be seen from Table 1 above, none of the four supermarkets constituting the Target Assets are within close proximity to the *Joyce's*-branded supermarkets in Inverin, Tuam, Headford and Athenry. The Target Assets are all located in or near Galway City ("Greater Galway City Area"⁶). The *Joyce's*-branded supermarket in Knocknacarra (no. 4 on Figure 1 above) is the only *Joyce's*-branded supermarket that is located within 10 km of any of the four supermarkets constituting the Target Assets.⁸
25. Table 2 shows the number of fascias of retail outlets in the Greater Galway City Area. There are a number of competing fascia in the supply of groceries at retail level in the Greater Galway City Area including *Tesco*, *Dunnes*, *Aldi*, *Lidl*, *SuperValu*, *Spar* and *Centra*.

Table 2: Providers of groceries at retail level which are located within the Greater Galway City Area

Providers	Locations in Greater Galway City Area
<i>Tesco</i>	Tesco Express, Ballinfoyle Tesco Express, University Rd Tesco Superstore, Galway Shopping Centre Tesco Superstore, Oranmore
<i>Dunnes Stores</i>	Edwards Sq. Terryland Shopping Centre Westside Shopping Centre Knocknacarra Doughiska
<i>Lidl</i>	Headford Rd. Doughiska Oranmore
<i>Aldi</i>	Galway Retail Park Knocknacarra Westside Oranmore
<i>SuperValu</i>	Clarke's, Barna

⁶ The Greater Galway City Area comprises an area with a radius of approximately 10 km from the centre of Galway City.

⁷ It should be noted that travel times between supermarkets may vary considerably depending on traffic and the time of day due to the area being a city or urban area.

⁸ The next closest *Joyce's*-branded supermarket to any of the Target Assets is the *Joyce's*-branded Athenry supermarket, which is 13.7 km from the *SuperValu* in Oranmore (no. 9 on Figure 1 above).



	Nestor's, Fr. Griffin Road* Nestor's, Ballybane* Nestor's, Oranmore*
<i>Spar</i>	Mainguard St. Galway Renmore Rd. Roscam House Bluebell Galway Technology Park
<i>Centra</i>	Ballybrit Castlegar Tuam Rd. Upper Newcastle Rd. Salthill Lough Atalia Oranmore service station Forster St. Carnmore service station Nestor's Doughiska*
<i>Joyce's</i>	Knocknacarra
Marks & Spencer	Eyre Sq
Iceland	Doughiska
Londis	Mervue Newcastle Rd
MACE	Salthill Ballybrit Forster St Top Oil Service Station, Tuam Rd.
Daybreak	Raven Terrace Eyre Sq.
Dealz	Galway Shopping Centre Eyre Sq.
Independents	Mortons Salthill McCambridge's Shop St.

Source: The Commission based on information provided by the parties.

* Nestor's supermarkets will become *Joyce's*-branded supermarkets following completion of the Proposed Transaction.

26. Having conducted an individual supermarket analysis from a closest competition perspective, the Commission considers that the four supermarkets constituting the Target Assets and the *Joyce's*-branded supermarket in Knocknacarra (the only *Joyce's*-branded supermarket in the Greater Galway City Area) are not each other's closest



competitors. The closest competitors of the four supermarkets constituting the Target Assets, within a 3km distance of the relevant supermarket, are considered to be as follows:

- The Vendors' *Supervalu* in Oranmore: *Tesco* Oranmore (0.5km), *Aldi* Oranmore (1km), *Lidl* Oranmore (1.3km);
- The Vendors' *Supervalu* in Ballybane: *Dunnes*, Doughiska (2.5km), *Mace*, Ballybrit (2.1km), *Londis*, Mervue (1.2km), *Centra*, Ballybrit (0.75km) & Tuam Road (1.1km);
- The Vendors' *Supervalu* on Father Griffin Road: *Dunnes*, Edward Sq (1.1km), *Aldi*, Westside (1.9), *Morton's*, Salthill (1.0km), *Daybreak*, Ravens Terrace (0.4km); and
- The Vendors' *Centra* in Doughiska: *Dunnes*, Doughiska (0.7km), *Lidl*, Doughiska (0.35km), *Spar*, Roscam (1.3km), *Mace*, Ballybrit (1.6km).

27. Therefore, following completion of the Proposed Transaction, there will remain a large number of competitors, which are varied in size, in the potential local market, whose presence will continue to provide a competitive constraint on Joyces.

28. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition for the supply of groceries at retail level in the Greater Galway City Area.

Vertical Relationship

29. There is no vertical relationship between the parties. On this basis, the Commission considers that the Proposed Transaction will not result in any vertical competition concerns.

Conclusion

30. 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

31. No ancillary restraints were notified.



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 Patrick C. Joyce Supermarket (Headford) Unlimited Company, a wholly-owned subsidiary of Solus Junction Unlimited Company, would acquire certain assets of Nestor Property Limited (in Receivership) and its subsidiaries, TJN Limited and C-Town Limited (both in Receivership), 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

Brian McHugh
Member
Competition and Consumer Protection Commission