



# DETERMINATION OF MERGER NOTIFICATION M/18/079— MUSGRAVE/ DONNYBROOK FAIR AND MOREHAMPTON FOODS

---

## Section 21 of the Competition Act 2002

**Proposed acquisition by Musgrave Group public limited company, through its wholly owned subsidiary, Superquinn Limited, of sole control of Donnybrook Fair Limited.**

**Dated 01 November 2018**

---

### Introduction

1. On 25 September 2018, 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 whereby Musgrave Group public limited company (“Musgrave”), through its wholly owned subsidiary Superquinn Limited (“Superquinn”), would acquire [...] % of the issued share capital of Donnybrook Fair Limited (“DFL”)<sup>1</sup> and thereby acquire sole control of DFL and DFL’s subsidiaries<sup>2</sup> (collectively the “Target Group”) (the “Proposed Transaction”).

### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement dated 20 September 2018 (the “SPA”) between Joe Doyle, Mary Doyle (the “Additional Warrantors”), Fountain Hill Investments Limited (“Fountain Hill”), and

---

<sup>1</sup> The parties state in the notification that, through its acquisition of DFL, Superquinn would acquire DFL’s shares in Morehampton Foods Limited (“MFL”) with certain option rights to acquire the remaining shares in MFL in 2020. The parties further state [...]. In light of the information provide in the notification, the Commission considers that Superquinn will not acquire any control of MFL as a result of the Proposed Transaction. Therefore, it is not necessary for the Commission to assess the Proposed Transaction in relation to MFL in this determination. However, the Commission notes that it will be the parties’ responsibility to assess whether any acquisition by Superquinn of the remaining shares in MFL in the future would be notifiable to the Commission.

<sup>2</sup> Donnybrook Fair Baggot Street Limited, Donnybrook GQ Limited, Donnybrook Fair Greystones Limited, Donnybrook Fair Malahide Limited, Donnybrook Fair Stillorgan Limited, Donnybrook Fair 7 Limited.



Superquinn. Pursuant to the SPA, Superquinn will acquire [...] % of the issued share capital of DFL and thereby sole control of the Target Group.

### The Undertakings Involved

#### *The Acquirer – Musgrave*

3. Superquinn, a private limited company, is a wholly owned subsidiary of Musgrave. Musgrave is active in the supply of wholesale and retail grocery goods on the island of Ireland and in Spain.
4. In the State, Musgrave:
  - is a wholesaler-franchisor and operates through franchise agreements with independently-owned retail grocery stores which are operated under the following Musgrave-owned fascia (brands): *SuperValu*, *Centra*, *Day-Today* and *Daybreak*;<sup>3</sup>
  - owns and operates a number of retail grocery stores in the State. Musgrave owns and operates 25 *SuperValu*-branded stores (including 22 former *Superquinn*-branded stores which are now operated under the *SuperValu* brand) and 11 *Centra*-branded stores; and,
  - has a network of cash & carry depots from which it supplies business customers with foodservice products and services.
5. For the financial year ended 31 December 2017, Musgrave's worldwide turnover was approximately €[...] billion, of which approximately €[...] billion was generated in the State.

#### *The Target - DFL*

6. DFL is a private limited company incorporated in the State. DFL, which is ultimately owned by the Additional Warrantors through Fountain Hill, is primarily active in the supply of retail grocery goods under the brand name *Donnybrook Fair* in the State.

---

<sup>3</sup> The wholesaler-franchisor model which Musgrave operates in the State with its franchisees was described by the Commission's predecessor, the Competition Authority, in *M/11/022 - Musgrave/Superquinn*.



7. DFL owns and operates five *Donnybrook Fair* retail grocery stores located at:
  - Stillorgan, Co. Dublin (“Donnybrook Fair Stillorgan”);
  - Malahide, Co. Dublin (“Donnybrook Fair Malahide”);
  - Donnybrook, Dublin 4 (“Donnybrook Fair Donnybrook”);
  - Baggot Street Upper, Dublin 4 (“Donnybrook Fair Baggot Street”); and
  - Greystones, Co. Wicklow (“Donnybrook Fair Greystones”).
8. DFL also owns a cookery school located above Donnybrook Fair Donnybrook<sup>4</sup> and a catering business run in conjunction with MFL.<sup>5</sup>
9. For the financial year ended 31 January 2017, the Target Group’s worldwide turnover was approximately €[...] million, [...] of which was generated in the State.

#### **Rationale for the Proposed Transaction**

10. The parties state in the notification:

*“The Proposed Transaction is consistent with Musgrave’s commercial strategy to increase its retail presence in Dublin and to strengthen its position in a very competitive market place.*

*The Target Group is a good fit for the Musgrave Group as: (i) the DF Retail Stores which are positioned as an up-market offering for customers, complements Musgrave’s existing offering within the Irish grocery market; (ii) the DF Retail Stores operate in the Dublin market where the Musgrave Group’s SuperValu business has proportionately less penetration than in the rest of the State; and (iii) Musgrave will be able to offer significant new distribution channels for ‘Donnybrook Fair’s’ fine food offerings.*

*The Musgrave Group proposes to invest in the Target Group’s business post completion and to provide the Target Group with the volume required to continue and to grow the Target Group’s business and its associated brand(s). [...] The Proposed Transaction will also provide the Target Group with the resources of one of the leading grocery groups in Ireland and will preserve the identity of its brands giving customers a continued real choice.”*

---

<sup>4</sup> [...].

<sup>5</sup>MFL is involved in (i) food production [...]; and, (ii) a catering business which MFL runs in conjunction with DFL.



### Third Party Submissions

11. No submissions were received.

### Competitive Analysis

#### *Horizontal Overlap*

12. There is a horizontal overlap between the activities of Musgrave and DFL in the State in respect to the following business activities:
  - the retail sale of grocery goods. Both Musgrave and DFL own and operate grocery goods retail stores; and,
  - the supply of food and drink products to the food retail sector. DFL has its own-brand products which it supplies to its own stores, and Musgrave is active in the wholesale supply of food and drink products to the food retail sector.
13. The Commission considers that the overlap between the parties in respect to the supply of food and drink products to the food retail sector is not significant for the following reasons: (i) all of the food products manufactured by DFL are sold by its own retail stores<sup>6</sup>; and, (ii) following completion of the Proposed Transaction, there will remain a number of significant suppliers, that supply food and drink products to the food retail sector in the State, such as BWG Foods Unlimited Company, Tesco Ireland Limited, Dunnes Stores Unlimited Company, and James. A. Barry & Company Unlimited Company.
14. Therefore, the Commission considers that the Proposed Transaction is unlikely to raise any competition concerns in respect of the supply of food and drink products to the food retail sector in the State.

#### *Retail Sale of Grocery Goods*

---

<sup>6</sup>The parties state in the notification that approximately €[...] worth of DFL's own-brand products are supplied to one third [party] by 31 January 2018.



15. The parties state in the notification that “*the relevant product market is the retail sale of grocery goods*”. The expert report<sup>7</sup> (the “Expert Report”) provided by the parties states that “*it appears that the basic product market is grocery goods sold by all retailers of grocery goods*”.
16. In its previous determinations, the Commission, or its predecessor, the Competition Authority, has considered that the relevant product market is the retail sale of grocery goods<sup>8</sup>. The Commission has not, in the course of its assessment of the competitive effects of the Proposed Transaction, found reasons to depart from the approach previously adopted by the Commission in relation to the retail grocery sector. 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.
17. 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 potential geographic market, i.e., the local area in which the five *Donnybrook Fair* stores are located. The Commission has previously<sup>9</sup> identified possible local markets based on a 10 kilometre or 10 minute drive time from any relevant target location
18. Table 1 below represents details in relation to the retail stores located within a 10 minute drive time from each *Donnybrook Fair* Store.

---

<sup>7</sup> The parties submitted a report from professor Francis O’Toole dated 24 September 2018 with the notification at Annex 1.1.

<sup>8</sup> M/11/022 – *Musgrave / Superquinn*, M/17/050 - *Joyces/Nestors*, M/17/052 - *Cedarglade (Musgrave) / Ballybrit Centra & Service Station* and M/17/058 - *Musgrave / Whelan Centra*, Merger Notification M/18/054 – *Cedarglade (Musgrave) / Assets comprising Supermarket Premises at Fortunestown*.

<sup>9</sup> M/17/050 - *Joyces/Nestors* and M/17/052 - *Cedarglade (Musgrave) / Ballybrit Centra & Service Station*.



**Table 1: Retail stores within a 10 minute drive time from each *Donnybrook Fair Store***

<i>Donnybrook Fair Store</i>	Number of Outlets within a 10 minute drive time	Number of Fascia	Number of Musgrave related Outlets
Donnybrook Fair Baggot Street	297	19 <sup>10</sup>	[...]
Donnybrook Fair Donnybrook	259	18 <sup>11</sup>	[...]
Donnybrook Fair Greystones	19	7 <sup>12</sup>	[...]
Donnybrook Fair Malahide	27	13 <sup>13</sup>	[...]
Donnybrook Fair Stillorgan	136	19 <sup>14</sup>	[...]

Source: the Commission, based on information provided by the Parties.

19. Table 1 above indicates that following completion of the Proposed Transaction, there will remain a sufficient number of competitors to Musgrave in respect of the retail sale of grocery goods in each of the local areas (i.e., within a 10 minute drive time) of the five *Donnybrook Fair* Stores. In any case, at a national level, following completion of the Proposed Transaction, Musgrave would acquire 5 *Donnybrook Fair[e]* stores which account for approximately 0.1% of the total retail grocery goods market in the State,

<sup>10</sup> Those includes 4 *Aldi* stores, 24 *Centra* stores, 7 *Costcutter* stores, 1 *Day Today* store, 8 *Daybreak* stores, 6 *Dealz* stores, 5 *Dunnes Stores*, 5 *Eurospar* stores, 4 *Fresh* stores, 4 *Gala* stores, 1 *Iceland* store, 116 independent stores, 8 *Lidl* stores, 6 *Londis* stores, 7 *Mace* stores, 3 *Marks & Spencer* stores, 58 *Spar* stores, 6 *SuperValu* stores, 22 *Tesco* stores and 2 *XL* stores.

<sup>11</sup> Those includes 4 *Aldi* stores, 21 *Centra* stores, 4 *Costcutter* stores, 7 *Daybreak* stores, 6 *Dealz* store, 4 *Dunnes Stores*, 4 *Eurospar* stores, 3 *Fresh* stores, 2 *Gala* stores, 1 *Iceland* store, 93 independent stores, 9 *Lidl* stores, 5 *Londis* stores, 7 *Mace* stores, 5 *Marks & Spencer* stores, 1 *Mr. Price* store, 52 *Spar* stores, 7 *SuperValu* stores, and 24 *Tesco* stores.

<sup>12</sup> Those includes 2 *Aldi* stores, 3 *Centra* stores, 1 *Daybreak* store, 7 independent stores, 1 *Lidl* store, 1 *Mace* store, 2 *SuperValu* outlets and 2 *Tesco* stores.

<sup>13</sup> Those includes 1 *Aldi* store, 2 *Centra* stores, 1 *Daybreak* store, 1 *Dealz* store, 2 *Dunnes Stores*, 2 *Eurospar* stores, 6 independent stores, 2 *Lidl* stores, 1 *Londis* store, 2 *Mace* store, 3 *Spar* store, 2 *SuperValu* stores, 1 *Tesco* Store and 1 *XL* store.

<sup>14</sup> Those includes 3 *Aldi* stores, 16 *Centra* stores, 2 *Costcutter* stores, 1 *Day-Today* store, 2 *Daybreak* stores, 4 *Dealz* stores, 3 *Dunnes Stores*, 1 *Eurospar* store, 1 *Fresh* store, 2 *Gala* stores, 49 independent stores, 7 *Lidl* stores, 4 *Londis* stores, 2 *Mace* stores, 2 *Marks & Spencer* stores, 1 *Mr Price* store, 18 *Spar* Stores, 7 *SuperValu* stores, 9 *Tesco* stores, and 2 *XL* stores.



based on the national grocery good expenditure in 2017 in the State.<sup>15</sup> Given the size of the *Donnybrook Fair* stores, the Commission considers that there is no need to further analyse the market share details of Musgrave related stores in respect of the retail sale of grocery goods in each of the local areas (i.e., within a 10 minute drive time) of the five *Donnybrook Fair* stores following implementation of the Proposed Transaction.

20. Furthermore, there are a number of brands, such as, *Marks & Spencer, Eurospar, Dunnes Stores, Tesco, Gala, Lidl, Aldi*, excluding Musgrave related *Centra, Daybreak, Day-Today* and *SuperValu*, competing with each *Donnybrook Fair* store which will continue to exert a competitive constraint on the *Donnybrook Fair* and Musgrave related brands.
21. Therefore, the Commission considers that the Proposed Transaction is unlikely to raise any competition concerns in respect to the retail sale of grocery goods in the State.

#### *Vertical Relationship*

22. There is currently a minimal vertical relationship between the parties. The parties submit in the notification that, following implementation of the Proposed Transaction, *“[i]t is anticipated that post completion and over time much of the supply to the Target Group will be supplied through the Musgrave Group, however the Target Group is likely to retain suppliers particular to the requirements of its customer base. It is anticipated that the Musgrave Group and the Target Group have a large number of suppliers in common.”*
23. For the reasons set out below, the Commission considers that the Proposed Transaction will not result in any vertical foreclosure:
  - In 2017, DFL purchased approximately €[...] worth of goods from Musgrave’s cash and carry outlets in Dublin. This represents a negligible existing vertical relationship between the parties.

---

<sup>15</sup> Table 1 of the Expert Report provided in Annex 1.1 of the notification.



- The scale of DFL's purchases from Musgrave would be negligible compared to Musgrave's overall wholesale sales in the State.<sup>16</sup> Therefore, following completion of the Proposed Transaction, Musgrave's incentive to sell to other grocery goods retailers would not be altered.<sup>17</sup>
- As mentioned in paragraph 13 above, there will remain a number of significant competitors to Musgrave in respect of the supply of food and drink products to the food retail sector, such as Dunnes Stores Unlimited Company, Tesco Ireland Limited, BWG Foods Unlimited Company (which owns the *Spar* brand), and James. A. Barry & Company Unlimited Company.

24. 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**

25. The SPA contains restrictive obligations on the Additional Warrantors. These include non-compete and non-solicitation obligations. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission<sup>18</sup>. The Commission considers that these non-compete and non-solicitation obligations are directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

---

<sup>16</sup> In 2017, Musgrave generated sales of €2.8 billion, in respect of the supply of food and drink products to the food retail sector in the State. Paragraph 17 of M/17/067-Musgrave La Rousse.

<sup>17</sup> Musgrave confirmed to the Commission that following completion of the Proposed Transaction, Musgrave [intends to] continue to supply food and drink products to grocery goods retail stores, in particular, to independent grocery goods retail stores located within the catchment areas of the five *Donnybrook Fair* stores [in the same manner as it has done so to date].

<sup>18</sup> In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2002). For more information see

[http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)





### **Determination**

26. 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 Musgrave Group public limited company, through its wholly owned subsidiary Superquinn Limited, would acquire [...]% of the issued share capital, and thereby sole control, of Donnybrook Fair Limited and its subsidiaries, 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**