



DETERMINATION OF MERGER NOTIFICATION M/19/020 – FANE VALLEY / SMYTHS

Section 21 of the Competition Act 2002

Proposed acquisition by Fane Valley Co-operative Society Limited of sole control of Robert Smyth and Sons (Strabane and Donegal) Limited

Dated 14 August 2019

Introduction

1. On 11 July 2019, 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 Fane Valley Co-operative Society Limited (“Fane Valley”) would acquire sole control of Robert Smyth & Sons (Strabane and Donegal) Limited (“Smyths”) (together the “Parties”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share sale agreement (“SSA”) dated 3 July 2019 between Donegal Investment Group Public Limited Company (“DIG”), Agricolor Limited¹ (“Agricolor”) and Fane Valley. Pursuant to the terms of the SSA, Agricolor will purchase the entire issued share capital of Smyths from DIG.
3. Following completion of the Proposed Transaction, Fane Valley will have indirect sole control of Smyths.

The Undertakings Involved

The Acquirer - Fane Valley

4. Fane Valley is a farmer-owned co-operative established in 1903 with its headquarters in County Down, Northern Ireland. Fane Valley operates four business divisions:

¹ Agricolor Limited is a wholly owned subsidiary of Fane Valley Group Limited, a company registered in the Isle of Man, which in turn is a wholly owned subsidiary of Fane Valley.



- Fane Valley Feeds which manufactures and supplies animal feed to the cattle and sheep, pig and poultry sectors. It has two animal feed mills in Northern Ireland, situated in Omagh, County Tyrone and Newry, County Down;
 - Fane Valley Stores which distributes general agricultural and domestic goods, animal health and farm supplies through 16 retail stores in Northern Ireland;
 - Fane Valley Red Meats which is involved in processing beef and lamb; and
 - Fane Valley Foods which comprises several subsidiaries of Fane Valley involved in food manufacturing. This division manufactures breakfast cereals, edible offal and edible fat/protein respectively for sale within the United Kingdom and the State.
5. Fane Valley also owns Silver Hill Foods Unlimited Company, a duck production company which supplies duck and a range of duck products to 30 countries worldwide.
6. Fane Valley also has a non-controlling shareholding in Linergy Ltd. (a renderer and renewable energy company).
7. For the financial year ending 30 September 2018, Fane Valley had a worldwide turnover of €[...], of which €[...] was generated in the State.

Target - Smyths

8. Smyths, trading as Smyths Daleside Feeds, was founded in 1865 and is a producer of animal feed products and nutrition. It has one mill located in Ballindrait, County Donegal.
9. Burke Shipping Services Limited (“Burkes”), is an indirect subsidiary of Smyths. Burkes is located in the Port of Derry in Northern Ireland and provides the following shipping services: port agency, stevedoring, warehousing, haulage and customer clearance.
10. Burkes also has an agri-product storage facility at Campsie in the Port of Derry.
11. Smyths is currently solely controlled by DIG, a food-agri investment company listed on the Euronext Dublin Enterprise Securities Market².

² For further information on DIG please see <http://www.donegaligroup.com/>



12. For the financial year ending 31 August 2018, Smyths had a worldwide turnover of €[...] million, of which €[...] was generated in the State.

Rationale for the Proposed Transaction

13. The Parties state the following in the notification:

“The proposed acquisition of Smyths will enhance Fane Valley’s position in the animal feed market in the State as part of the strategic growth plan for the business.”

Third Party Submissions

14. No submission was received.

Competitive Analysis

Horizontal overlap

15. There is a horizontal overlap between the activities of Fane Valley and Smyths in the State with respect to the production and supply of animal feed.
16. The Parties overlap in the sale of animal feed for ruminant and monogastric animals, specifically beef (including calf) feed, dairy feed, sheep feed, lamb feed, pig feed and poultry feed. Smyths also produce and supply equine feed, however, Fane Valley does not produce or supply equine feed.
17. The Parties indicated that the majority of animal feed produced at animal feed mills is delivered in bulk or bags direct to farmers from the mill or sold in smaller bagged quantities through retail stores and agents.
18. Fane Valley has two feed mills, both located in Northern Ireland, one in Omagh, County Tyrone and the other in Newry, County Down. Through these two mills, all of Northern Ireland is served which accounts for approximately [...] % of Fane Valley’s animal feed sales. Fane Valley also supplies animal feed to customers in the following counties in the North and Northwest of the State: Monaghan, Donegal, Cavan, Meath, Louth, Sligo and Leitrim. Smyths has one feed mill located in Ballindrait, County Donegal. Through this mill, Smyths supplies animal feed to customers in the following counties



predominantly located in the northern half of the State: Donegal, Monaghan, Sligo, Leitrim, Mayo, Roscommon, Longford and Westmeath. According to the Parties, Smyths sales in Northern Ireland accounted for [...] % of its sales (by volume). Smyths sales in the State accounted for [...] % of its sales (by volume).

19. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant product markets. The Commission's conclusion concerning the competitive effects of the Proposed Transaction would be unaffected whether the relevant product market in the present case is defined broadly (i.e., defined as the market for production and direct supply of animal feed) or narrowly (i.e., defined by individual categories of animal feed types). There is strong supply side substitutability between categories of animal feed producers as illustrated by the large number of animal feed producers supplying a variety of animal feed types. In its determination M/15/058 Fane Valley/Lakeland Dairies³ the Commission concluded that it was unnecessary to define the precise relevant product market but assessed the competitive effects of the transaction by reference to the market for production and direct supply of animal feed. The Commission sees no reason to deviate from this approach.
20. In this instance it is also not necessary to define a precise geographic market since the size of the geographic market will not materially alter the competitive impact of the Proposed Transaction whether the relevant market is defined broadly or narrowly (i.e., the overlapping region).
21. Fane Valley largely serves customers located in Northern Ireland, whereas Smyths largely serves customers located in the State. If the geographic scope of the market for the production and direct 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. Where there is an overlap there are a large number of competitors supplying the same animal feed types across the overlapping regions of the North and North-West of the State. Competing animal feed

³ Please see M/15/058 - Fane Valley / Lakeland Dairies, which can be accessed at <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m15058-fane-valley-lakeland/>



suppliers include Clonleigh Co-Op, Innisheigh Farm Foods, Mackin's Animal Feeds, Paul and Vincent Ltd, Buddy Kiernan Milling, A.W. Ennis Ltd.

22. If on the other hand, the geographic scope of the market is considered to be wider than regional, there are similarly a large number of competing animal feed suppliers operating within the State that will continue to exert competitive pressure on the merged entity. According to information provided by the Parties the combined total animal feed capacity of the merged entity will be [...] tonnes per annum, while the combined capacity within the State to produce animal feed is approximately 5 million tonnes. The combined market share of the Parties will therefore be approximately [0-10] %. Therefore, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

23. There are no vertical relationships between the Parties, however both Fane Valley and Smyths are vertically integrated at different levels in their operations. The vertical integration in the activities of the Parties is unlikely to raise vertical foreclosure concerns.
24. Smyths are active upstream in the provision of shipping services through its wholly owned subsidiary Burkes. Burkes provide shipping services at the Port of Derry for several international providers of raw materials. Fane Valley is not a customer of Burkes.
25. Fane Valley is active downstream through its operation of retail stores. Smyths does not operate retail stores. Fane Valley does not sell Smyths animal feed in its stores. The Parties have also indicated that animal feed producers supply the majority of their produce in bulk direct to farmers thus by-passing retail stores altogether. In 2018, sales of animal feed in Fane Valley's retail stores accounted for less than [...] % of its total sales of animal feed (by volume).
26. The Commission therefore considers that the Proposed Transaction does not raise any vertical competition concerns.

Conclusion



27. 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

28. Clause 14 of the SSA contains restrictive obligations on DIG and any other company which is or becomes a subsidiary or holding company of DIG including 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.⁴ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction, insofar as they relate to the State and insofar as they do not prevent DIG and any other company which is or becomes a subsidiary or holding company of DIG from purchasing or holding shares purely for financial investment purposes, without granting him/her, directly or indirectly, management functions or any material influence in the competing company.

⁴ In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its *Notice on restrictions directly related and necessary to concentrations* (2005). 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

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 Fane Valley Cooperative Limited would acquire sole control of Robert Smyth & Sons (Strabane and Donegal) 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