



DETERMINATION OF MERGER NOTIFICATION M/10/029 -

Kerry/Newmarket

Section 21 of the Competition Act 2002

Proposed acquisition by Kerry Creameries Limited of Newmarket Cooperative Creameries Limited

Dated 05 October 2010

Introduction

1. On 6 September 2010, in accordance with section 18 of the Competition Act 2002, the Competition Authority (the "Authority") received a notification of a proposed transaction whereby Kerry Group plc ("Kerry Group"), through its wholly owned subsidiary Kerry Creameries Limited ("Kerry Creameries"), would acquire Newmarket Cooperative Creameries Limited ("Newmarket").

The Undertakings Involved

The Acquirer

2. Kerry Group is a public limited company whose business activities can be divided into three divisions: Foods, Ingredients/Flavours, and Agribusiness.
 - The Foods Division produces and sells consumer foods including cheese. Kerry Group operates a processed cheese producing plant in the State. Kerry Group is not involved in the production of natural cheese. Kerry Group purchases natural cheese from suppliers including Newmarket. Kerry Group has two uses for the natural cheese which it purchases: (a) it is used as an input into the production of processed cheese; and, (b) it is sliced into consumer pack sizes and sold to the retail sector in the State. Kerry Group also produces whey which is a by-product of cheese production;
 - The Ingredients/Flavours Division produces and sells ingredients/flavours to the food, snack food, baby food and beverage industries¹; and
 - The Agribusiness² Division carries out its activities through Kerry Creameries in counties Cork, Limerick, Clare and Kerry.
3. Kerry Creameries is engaged in the following activities:
 - the purchase and collection of raw milk from its 3,430 milk suppliers located in Munster³; and,

¹ Kerry Group also supplies some ingredients to the animal feed industry but this is a small part of its ingredients business.

² This is a short-hand term used by the parties which refers to agricultural related business.

- the sale of agricultural inputs to farmers including fertilizer and animal feed for use in farming activities.
4. For the year ending 31 December 2009, Kerry Group's worldwide turnover was €4.5 billion. Kerry Group's turnover in the State for the same period was €640 million.

The Target

5. Newmarket is a cooperative society with 677 shareholders, of which 147 are dairy farmers who supply raw milk to Newmarket.⁴ All 147 are located in the Newmarket hinterland in Co. Cork. Newmarket's core business is the production and sale of natural cheddar cheese in 20kg blocks. Raw milk is an input into the production of natural cheddar cheese.
6. Newmarket does not produce milk for human consumption. Like Kerry Group, Newmarket also produces whey which it sells to various dairy processors including Kerry Group. Newmarket also operates a local agribusiness which sells fertilizer, animal feeds and farm supplies to farmers in the Newmarket area. Finally, Newmarket runs a supermarket under the 'SuperValu' brand in the town of Newmarket.
7. For the year ending 31 December 2009, Newmarket's worldwide turnover was €56.6 million. Newmarket's turnover in the State for the same period was €55.4 million.

Rationale for the Proposed Transaction

8. Kerry Group submits that the proposed acquisition is an opportunity to acquire the facility, technology and know-how to produce natural cheese. Kerry Group purchases approximately 12,000 tonnes of natural cheese per annum. Kerry Group states that the proposed acquisition will increase its efficiencies and ability to rationalise milk collection since Newmarket's facility in north Co. Cork is conveniently located close to Kerry Group's milk supplier base.

Third Party Submissions

9. No submissions were received.

Analysis

Overlap in the Activities of the Parties

10. The proposed acquisition involves a number of different business activities some of which are interrelated.

³ Each milk supplier holds one ordinary share in Kerry Creameries. These shares are non-voting and carry no rights to earn any dividend.

⁴ When Newmarket was formed in 1944, there were over 700 milk suppliers who were also shareholders. Over the years, the majority of shareholders have stopped supplying milk to Newmarket but they still remain as shareholders. Some shareholders are no longer involved in farming.

The Supply of Raw Milk

11. As stated above, Newmarket has 147 shareholders who supply it with raw milk which is used as an input in the production of natural cheese. Under the Milk Quota System, Newmarket's raw milk quota for the 2008/2009 milk quota year was 37 million litres.⁵ 33 million litres of raw milk was supplied by these 147 dairy farmers in 2009. The parties estimate that this represents approximately 0.6% of the total volume of raw milk produced by dairy farmers in the State and 1.3% in Munster in 2009.⁶
12. Kerry Group's raw milk quota for the 2008/2009 milk quota year was 956 million litres. In the 2008/2009 milk quota year, Kerry Group purchased 856 million litres of raw milk from its 3,430 milk suppliers. The parties estimate that this represents approximately 16% of the total volume of raw milk produced in the State and 30% in Munster in 2009.
13. The parties do not overlap horizontally in the supply of raw milk since Newmarket does not sell any raw milk to third parties. Newmarket uses all of its raw milk supplies to produce natural cheese. Newmarket also buys raw milk from third parties. In 2009, Newmarket purchased 115 million litres of raw milk from third parties (including 81 million litres from Kerry Group). Thus, there is a vertical overlap between the parties in the supply of raw milk.

The Production and Sale of Natural Cheese

14. Newmarket produces annually between 15,000 and 20,000 tonnes of natural cheddar cheese in 20kg blocks. Newmarket estimates that it produced 10% of the total volume of natural cheese produced in the State in 2009. Newmarket has a very small presence in the retail supply of natural cheese in the State. Newmarket sold approximately 50 tonnes of natural cheese under the 'Killowen' brand name to the retail sector in the State in 2009. The parties estimate that this represents around 0.1% of the retail market for natural cheese in the State.
15. As stated earlier, Kerry Group does not manufacture natural cheese. However, Kerry Group purchases natural cheese blocks from suppliers (including Newmarket) which it slices into consumer pack sizes and sells to the retail sector in the State. The parties state that Kerry Group's sales of natural cheese in 2009 accounted for 28% of the Irish retail natural cheese market.
16. There is no horizontal overlap between the parties in the production and sale of processed cheese since Newmarket does not produce or sell processed cheese. With respect to natural cheese, although Kerry Group does not produce this product, it purchases natural cheese from producers (including Newmarket) which it packages and sells to the

⁵ The Milk Quota System, introduced into Irish law in 1985 under the European Communities (Milk Levy) Regulations Act, was created to control raw milk production and consequently the production of dairy products such as butter and skim milk powder. Each raw milk purchaser in the State (e.g., Newmarket) is given a milk quota for the year running from 1 April to 31 March. A financial penalty (levy) is imposed on those raw milk purchasers who exceed their raw milk quota for the year.

⁶ The milk quota in the State for the 2009/2010 milk quota year was 5,398 million litres. The parties estimate that the milk quota in Munster for the same year was approximately 2,800 million litres.

retail sector in the State. Thus, there is horizontal overlap between the parties in the sale of natural cheese to the retail sector in the State. Furthermore, the parties overlap vertically since Newmarket sells natural cheese to Kerry Group.

The Production and Sale of Whey

17. Whey is a by-product of natural cheese production. Whey contains 93% water and the remainder is made up of lactose, vitamins, proteins, minerals and traces of fat. There are various types of whey - cream whey, sweet whey, acid whey, and demineralised whey.⁷ The type of whey produced is dependent on the initial process to which the raw milk is subjected. For example, natural cheddar cheese generates sweet whey; cottage cheese production generates acid whey. Whey is put through a drying process to extract most of the water from it and to isolate its other constituents.
18. Kerry Group produces demineralised whey which is sold to baby food producers. Between 120,000 and 140,000 tonnes of whey is produced in the State annually. Kerry Group produces between 20,000 and 25,000 tonnes of whey per annum.
19. Newmarket sells whey to various dairy processors in the State including Kerry Group and Carbery Milk Producers Limited. Newmarket produced 8,500 tonnes of whey in 2009.
20. Thus, there is both horizontal and vertical overlap between the parties. There is horizontal overlap since both parties produce and sell whey in the State. Furthermore, vertical overlap exists since Newmarket sells whey to Kerry Group.

The Retail Supply of Agricultural Inputs to Farmers

21. As described in the Authority's determination in M/09/010 - LL/TPDL/FIL/Freshmills/Drummonds, in order to grow grains (spring barley, winter barley, wheat, and oats) and other crops, farmers require various agricultural inputs such as seeds, fertiliser and agri-chemicals. Farmers who also raise animal livestock (i.e., cattle and sheep) require animal feed to supplement the grazing of the land, particularly in the winter months when grass is scarce.
22. Newmarket sells agricultural inputs (mainly fertiliser and animal feed) to farmers in the Newmarket area in Co. Cork. Kerry Group also supplies agricultural products but across a wider geographical area in Munster. Thus, there is horizontal overlap between the parties since they both sell agricultural inputs to farmers in Munster.

Relevant Product Market

Views of the Undertakings

23. The parties submit that the relevant product markets affected by the proposed acquisition are large block natural cheese, consumer cheese, whey, and raw milk. The parties provided no evidence in the notification to support this view.

⁷ Demineralised whey has the minerals filtered out of it using a filtration process.

Views of the Competition Authority

24. The proposed acquisition involves horizontal and vertical overlap in a number of different product markets. With respect to the horizontal overlap between the parties, there are three product markets affected by the proposed acquisition:
- The sale of natural cheese to the retail sector;
 - The production and sale of whey; and
 - The retail supply of agricultural inputs to farmers.
25. The Authority concluded in its determination in M/08/009 – Kerry/Breeo that natural cheese occupies a separate product market from processed cheese.⁸ The Authority sees no reason to depart from this view. Thus, the narrowest possible product market affected by the proposed acquisition is the sale of natural cheese to the retail sector.
26. With respect to the second product market, as noted above, there are various types of whey - cream whey, sweet whey, acid whey, and demineralised whey. The Authority has no evidence to indicate that each type of whey represents a distinct product market. The Authority considers that the narrowest possible product market affected by the proposed acquisition is the production and sale of whey.
27. In its determination in M/09/010 – LL/TPDL/FIL/Freshmills/Drummonds⁹, the Authority expressed the view that the supply of agricultural inputs by agri-merchants to farmers could represent a single relevant product market. However, the Authority did not express a definitive view on the precise relevant product market. The conclusions of the Authority concerning the competitive effects of the proposed acquisition in that notification were unaffected by the scope of the product market. Given the similarity of the facts, the Authority sees no reason to express a definitive view on the precise relevant product market in this notification.
28. With respect to the vertical overlap between the parties, there are three product markets affected by the proposed acquisition:
- The production and sale of raw milk;
 - The wholesale supply of natural cheese; and,
 - The production and sale of whey.
29. The market for the production and sale of raw milk is the narrowest possible product market affected by the proposed acquisition. As noted above, Newmarket does not produce milk for human consumption (i.e., pasteurised milk). The Authority considers that pasteurised milk is not a substitute for raw milk since the products are used for different purposes.
30. As noted above, the Authority concluded in its determination in M/08/009 – Kerry/Breeo that natural cheese occupies a separate

⁸ M/08/009 – Kerry/Breeo, paragraphs 8.16-8.28.

⁹ Paragraphs 25-26.

product market from processed cheese. Thus, the narrowest possible product market affected by the proposed acquisition is the wholesale supply of natural cheese.

31. As noted above, the market for the production and sale of whey is the narrowest possible product market affected by the proposed acquisition.

Relevant Geographic Market

Views of the Undertakings

32. The parties submit that the natural cheese market is highly competitive with supplies being readily available on the Irish and European markets as a commodity product. The parties submit that the markets that dictate price are the European and world markets for commodity dairy products.
33. With respect to the retail supply of agricultural inputs to farmers, the parties state that it is extremely unlikely that a customer is going to travel more than 20km to purchase agricultural inputs. The parties state that they consider Munster to be the most appropriate relevant geographic market for the retail supply of agricultural inputs to farmers.

Views of the Competition Authority

34. The Authority considers that the relevant geographic market for each of the following three product markets is at least as wide as the State:
 - The sale of natural cheese to the retail sector;
 - The production and sale of whey; and
 - The production and sale of natural cheese.
35. With respect to the whey and natural cheese product markets, it could be argued that the relevant geographic market is wider than the State since both whey and natural cheese are imported by Kerry Group from various European countries.¹⁰ For the purposes of examining the competitive effect of the proposed acquisition in both markets, the Authority will confine its analysis to the State. The Authority, however, does not need to come to a definitive view on the precise relevant geographic market in both product markets because its conclusions concerning the competitive effects of the proposed acquisition, outlined below, will be unaffected whether the relevant geographic market is the State or wider than the State.
36. With respect to the market for the production and sale of raw milk, the Authority considers that the relevant geographic market is the Munster region given the costs involved in transporting raw milk. Newmarket informed the Authority that given the current infrastructure in the Newmarket region, it would view anything beyond a distance of 100km as not feasible for sourcing supplies of raw milk.¹¹ Furthermore, one

¹⁰ Furthermore, one natural cheese producer informed the Authority that it imports whey from various European countries.

¹¹ In order to manufacture natural cheese, Newmarket requires raw milk which it purchases from its own milk suppliers and from third parties including Kerry Group.

natural cheese manufacturer indicated to the Authority that due to transport costs, it does not currently source supplies of raw milk from milk suppliers located more than 70 miles from its manufacturing plant.

37. With respect to the market for the retail supply of agricultural inputs to farmers, the Authority expressed the view in its determination in M/09/010 – LL/TPDL/FIL/Freshmills/Drummonds that it is likely that agri-merchants compete in regional geographic markets for the retail supply of agricultural inputs to farmers.¹² Thus, the Authority will examine the competitive effects of the proposed acquisition in the market for the retail supply of agricultural inputs to farmers in Munster. Due to the geographic scope of the activities of the parties, this is the narrowest geographic market in which the proposed acquisition is likely to raise a competition concern.

Conclusion on the Relevant Product and Geographic Market

38. In conclusion, for the purposes of examining the competitive effects of the proposed acquisition, the Authority will examine the following markets:
- The sale of natural cheese to the retail sector in the State;
 - The production and sale of whey in the State;
 - The retail supply of agricultural inputs to farmers in Munster;
 - The production and sale of raw milk in Munster; and,
 - The wholesale supply of natural cheese in the State.

Competitive Assessment

39. The proposed acquisition involves horizontal and vertical overlap in a number of different markets.

Horizontal Overlap

40. With respect to the horizontal overlap between the parties, there are three markets affected by the proposed acquisition:
- The sale of natural cheese to the retail sector in the State;
 - The production and sale of whey in the State; and
 - The retail supply of agricultural inputs to farmers in Munster.

The Sale of Natural Cheese to the Retail Sector in the State

Views of the Undertakings

41. In the notification, the parties state that Newmarket's annual retail natural cheese sales are insignificant and therefore the proposed acquisition will have no impact on the retail cheese sector in the State.

¹² Paragraph 29.

Views of the Competition Authority

42. The parties estimate that Kerry Group's sales of natural cheese in the State in 2009 accounted for 28% of the retail natural cheese market. Newmarket sold 50 tonnes of natural cheese in the State under the 'Killowen' brand name in 2009. This represents approximately 0.1% of the natural cheese retail market in the State. Given Newmarket's negligible market share, the Authority considers that the proposed acquisition raises no competition concerns in the market for the sale of natural cheese to the retail sector in the State.

The Production and Sale of Whey in the State

Views of the Undertakings

43. Table 1 below provides estimated shares in whey production in the State in 2009.

Table 1: Whey Production by Undertaking, Volume, 2009

Supplier	Tonnes of Dry Solids Equivalent	%
Kerry Group	21,000	15
Newmarket	8,000	6
Carbery Milk Producers Limited	17,000	12
Dairygold	35,000	25
Glanbia	39,000	27
Arrawbawn	6,000	4
Connaught	6,000	4
Wexford	6,000	4
Tipperary	4,000	3
Total	142,000	100

Source: The Parties

44. The parties state that the volume of whey produced by Newmarket is insignificant in the context of the overall market in the State. The parties state that the market for whey will be unaffected by the proposed acquisition.

Views of the Competition Authority

45. The Authority considers that the proposed acquisition raises no competition concerns in the market for the production and sale of whey in the State. As Table 1 above indicates, the merged entity will account for approximately 21% of the market post-acquisition. This share will still be smaller than the individual market shares held by Glanbia and Dairygold, respectively. Furthermore, the Authority's market inquiries have confirmed that whey can be imported.¹³ Since whey is a homogeneous product that is not sold under a brand name by suppliers, customers can credibly switch to imported whey. Thus, customers will continue to have a number of options for sourcing supplies of whey post-acquisition.

¹³ Kerry Group imported 234 tonnes of whey in 2009 and 1,100 tonnes in 2008 from the United Kingdom, Germany, Netherlands, and France.

The Retail Supply of Agricultural Inputs to Farmers in Munster

Views of the Undertakings

46. Table 2 below provides estimated shares in the retail supply of agricultural inputs in Munster in 2009.

Table 2: Retail Supply of Agricultural Inputs, Munster, 2009

Supplier	%
Kerry Group	21
Newmarket	1
Dairygold Coop	30
Southern Milling	11
Dan O'Connor	9
Roche's	7
McDonnell's	5
Drinagh Coop	2
Rhyno	2
John O'Connell	2
Bandon Coop	2
Lisavaird Coop	2
Others	6
Total	100

Source: The Parties

47. The parties state that Newmarket has a market share of only 1% in the Munster region. The parties state that the market has many competitors in the Munster region and, as a result, the proposed acquisition will have no impact on competition in the market.

Views of the Competition Authority

48. Given Newmarket's negligible market share, the Authority considers that the proposed acquisition raises no competition concerns in the market for the retail supply of agricultural inputs in Munster. Post-acquisition, Kerry Group will continue to face competition from a large number of suppliers in Munster including Dairygold Co-operative, Southern Milling and Dan O'Connor.¹⁴

Vertical Overlap

49. With respect to the vertical overlap between the parties, there are three markets affected by the proposed acquisition:
- The production and sale of raw milk in Munster;
 - The wholesale supply of natural cheese in the State; and,
 - The production and sale of whey in the State.

The Production and Sale of Raw Milk in Munster

Views of the Undertakings

¹⁴ The Irish Farmers Association informed the Authority that given the large number of retailers of agricultural inputs in Munster, it has no competition concerns about the impact of the proposed acquisition on the market for the retail supply of agricultural inputs.

50. The parties state that Newmarket's farmers supplied Newmarket with 33 million litres of raw milk in 2009 (approximately 0.6% of total raw milk production in the State). The parties state that the acquisition of Newmarket by Kerry Group will increase the latter's supply of raw milk to 889 million litres (approximately 16.5% of total raw milk production). The parties state that this will not have any impact on the raw milk market in the State.

Views of the Competition Authority

51. The parties overlap vertically since Kerry Creameries supplies raw milk to Newmarket for use in the production of natural cheese. Newmarket purchased 81 million litres of raw milk from Kerry Creameries in 2009. Two forms of foreclosure may arise as a result of the proposed acquisition: input foreclosure and customer foreclosure.

Input Foreclosure

52. Paragraph 31 of the European Commission's 2008 Guidelines on non-horizontal mergers defines input foreclosure as follows:¹⁵

"Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger".

53. The key question is whether the proposed acquisition is likely to provide Kerry Group with the incentive and ability to foreclose natural cheese manufacturers in the State by, for example, increasing the price of raw milk. Paragraph 35 of the European Commission's 2008 Guidelines on non-horizontal mergers states that for input foreclosure to be a concern, the merged entity "must have a significant degree of market power in the upstream market".
54. The Authority considers that the proposed acquisition will not lead to input foreclosure in Munster. Rivals of Newmarket in Munster (such as Dairygold Co-operative, Carbery Milk Producers Limited and Tipperary Co-operative) are all vertical integrated and have their own milk suppliers. Also, rivals of Newmarket in Munster contacted by the Authority raised no concerns about their ability to access supplies of raw milk post-acquisition.

Customer Foreclosure

55. Paragraph 58 of the European Commission's 2008 Guidelines on non-horizontal mergers defines customer foreclosure as follows:

"Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a

¹⁵ European Commission, Guidelines on the Assessment of Non-Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings, Official Journal C 265, 18/10/2008.

sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete”.

56. Paragraph 61 of the European Commission’s 2008 Guidelines on non-horizontal mergers states:

“For customer foreclosure to be a concern, it must be the case that the vertical merger involves an undertaking which is an important customer in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.”

57. The key question is whether Kerry Group may foreclose access to a sufficient customer base to its actual or potential rivals in the raw milk market and thereby reduce their ability or incentive to compete.
58. The Authority’s market enquiries have raised no concerns that Kerry Group will have the ability to foreclose access to customer to its actual or potential competitors in Munster. Post-acquisition, rivals of Kerry Group will continue to sell their raw milk to other customers involved in cheese processing. The proposed transaction will not affect the ability of rivals of Kerry Group to sell their raw milk to other customers such as butter manufacturers, skim milk manufacturers, etc).

The Wholesale Supply of Natural Cheese in the State

Views of the Undertakings

59. The parties state that the natural cheese market is highly competitive with large block natural cheese readily available on the Irish and European markets as a commodity product. The parties state that the European and world markets for commodity dairy products dictate the price of natural cheese. The parties state that the proposed acquisition will not impact on the natural cheese market.

Views of the Competition Authority

60. Newmarket sells natural cheese to Kerry Group. As noted above, Kerry Group has two uses for natural cheese: (a) it is used as an input into the production of processed cheese; and, (b) it is sliced into consumer pack sizes and sold to the retail sector in the State. Two forms of foreclosure may arise as a result of the proposed acquisition: input foreclosure and customer foreclosure.

Input Foreclosure

61. The key question is whether the proposed acquisition is likely to provide Kerry Group with the ability and incentive to foreclose competing processed cheese manufacturers by, for example, raising the price of natural cheese.
62. The Authority considers that the proposed acquisition will not lead to input foreclosure for two reasons.

63. First, as noted above, Newmarket only accounted for 10% of the total volume of natural cheese manufactured in the State in 2009. Processed cheese manufacturers who compete with Kerry Group will have alternative manufacturers from whom they can purchase natural cheese post-acquisition. These include Dairygold Co-operative (with an estimated share of natural cheese production in the State in 2009 of 27%), Glanbia (25%), Carbery Milk Producers Limited (21%), and Wexford Co-operative (9%).
64. Second, natural cheese can be imported. In 2009, Kerry Group imported approximately 6,500 tonnes of natural cheese in addition to purchasing supplies from Newmarket. Thus, competing processed cheese manufacturers can source supplies of natural cheese from abroad in addition to purchasing supplies from Newmarket's competitors in the State.

Customer Foreclosure

65. The key question is whether the proposed acquisition is likely to provide Kerry Group with the incentive and ability to foreclose competing natural cheese manufacturers to a sufficient customer base and thereby reduce their ability or incentive to compete.
66. The Authority considers that the proposed acquisition will not lead to customer foreclosure for two reasons.
67. First, Kerry Group is not an important buyer of natural cheese. Kerry Group purchased approximately 5,500 tonnes of natural cheese from manufacturers in the State (including Newmarket) in 2009.¹⁶ This accounted for approximately only 4% of the total volume of natural cheese produced in the State in 2009. Natural cheese manufacturers have a number of other customers in the State to whom they can sell their natural cheese post-acquisition including the Irish Dairy Board.¹⁷
68. Second, 90% of the total volume of natural cheese manufactured in the State is exported. The proposed acquisition will have no impact on the ability of natural cheese manufacturers in the State to sell their product to customers abroad.

The Production and Sale of Whey in the State

Views of the Undertakings

69. The parties state that the volume of whey produced by Newmarket is insignificant in the context of the overall market in the State. The parties state that the market for whey will be unaffected by the proposed acquisition.

Views of the Competition Authority

70. Newmarket sells whey to dairy processors in the State including Kerry Group. Two forms of foreclosure may arise as a result of the proposed acquisition: input foreclosure and customer foreclosure.

¹⁶ Kerry Group purchased 4,283 tonnes of natural cheese from Newmarket in 2009 which accounted for 28% of the total volume of natural cheese manufactured by Newmarket in 2009.

¹⁷ The IDB exports Irish dairy products under established brand names such as Kerrygold. IDB purchased 5,875 tonnes of natural cheese from Newmarket in 2009 which accounted for 38% of the total volume of natural cheese manufactured by Newmarket in 2009.

Input Foreclosure

71. The key question is whether the proposed acquisition is likely to provide Kerry Group with the ability and incentive to foreclose competing dairy processors by, for example, raising the price of whey.
72. The Authority considers that the proposed acquisition will not lead to input foreclosure for two reasons.
73. First, as illustrated in Table 1 above, the merged entity will only account for approximately 21% of the whey market post-acquisition. Dairy processors will be able to purchase whey from competing suppliers such as Dairygold Co-operative, Glanbia and Carbery Milk Producers Limited post-acquisition.
74. Second, the Authority's market inquiries have confirmed that customers also have the feasible option of importing whey. Thus, dairy processors will continue to have a number of options for sourcing supplies of whey post-acquisition.

Customer Foreclosure

75. The key question is whether the proposed acquisition is likely to provide Kerry Group with the incentive and ability to foreclose competing whey manufacturers to a sufficient customer base and thereby reduce their ability or incentive to compete.
76. The Authority considers that the proposed acquisition will not lead to customer foreclosure for two reasons.
77. First, Kerry Group is not an important buyer of whey. Kerry Group purchased 2,400 tonnes of whey from third parties (including Newmarket) in 2009. This accounted for approximately only 2% of the total volume of whey produced in the State in 2009.
78. Second, whey can be exported and the proposed acquisition has no impact on the ability of whey manufacturers to sell whey to customers abroad.¹⁸

¹⁸ One natural cheese manufacturer informed the Authority that it exported 60% of its whey in 2009.

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by Kerry Group plc, through its wholly owned subsidiary Kerry Creameries Limited, of Newmarket Cooperative Creameries Limited will not be to substantially lessen competition in markets for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition Authority

Dr. Stanley Wong

Member of the Competition Authority