EN

Case No IV/M.914 - TESCO / ABF

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 005/05/1997

Also available in the CELEX database
Document No 397M0914

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.5.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

Subject: Case No IV/M. 914 - Tesco / ABF

Notification of 1 April 1997 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 1 April 1997 Tesco plc ("Tesco") notified to the Commission an operation through which it will acquire certain food retailing and other businesses of Associated British Food plc ("ABF"). The businesses to be acquired are Comar Ltd, Crazy Prices, Daily Wrap Produce Ltd., Kingsway Fresh Foods Ltd., Lifestyle Sports & Leisure Ltd. and Stewarts Supermarkets Ltd.

I THE PARTIES

2. Tesco is the parent company of a food retailer having 571 stores in England, Scotland, and Wales. It has one store in Northern Ireland, but no presence in Ireland.

3. The businesses concerned by the acquisition ("the ABF businesses") consist principally of its grocery multiple businesses, both in Ireland, i.e. Powers Supermarkets Ltd held by Comar Ltd (trading under Quinnsworth) and Crazy Prices, and in Northern Ireland, Stewarts Supermarkets Ltd and Crazy Prices.

4. The acquisition also includes ABF's off-licence business (trading under "Winebarrel") and its retail sports and leisure business (trading under "Lifestyle

Sports & Leisure") both businesses present in both Ireland and Northern Ireland. In addition to the retailing businesses, the operation includes the acquisition of two ABF businesses in Northern Ireland which are upstream to the food retailing businesses, i.e. a meat processing plant (Kingsway Fresh Foods) and a fruit and vegetable packaging plant (Daily Wrap Produce) both of which are mainly concerned with supplying ABF's grocery multiples in Ireland and Northern Ireland.

II THE CONCENTRATION

5. Through the notified operation the ABF businesses named above will become wholly-owned subsidiaries of Tesco.

III COMMUNITY DIMENSION

6. Tesco and the ABF businesses concerned have a combined aggregate world-wide market turnover in excess of ECU 5,000 million. Both Tesco and the ABF business have a Community-wide turnover in excess of ECU 250 million, and they do not both achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation, therefore, has a Community dimension, but does not constitute a co-operation case under the EEA Agreement; pursuant to Article 57 of that Agreement.

IV COMPATIBILITY WITH THE COMMON MARKET

A. Relevant Product Market

7. The main sector concerned by the operation is that of grocery (including non-food) retailing. In their notification the parties acknowledge that Tesco and the ABF business trade in essentially similar product sectors: drink and tobacco, packaged food and non-food groceries, in addition to the sale of ancillary non-food consumer goods. Tesco argues that in relation to the sale of these products, competition takes place across the whole food product range, irrespective of the size or the format of the sales outlets concerned, and therefore that the market definition for the purposes of assessing the case should be the total food and drink market. Thus any product market definition in the sector which includes supermarkets should also include small grocers, discounters, food specialists (e.g. butchers, bakers, etc.) and non-food specialists (stationers, clothes and music shops, etc.).

8. It might be argued that a narrower definition would be appropriate. The narrowest definitions which have been proposed would be limited to 'the multiples', i.e. the various supermarket chains in Ireland or in Northern Ireland which possess multiple retail outlets (for example, Wellworths and Dunnes in Northern Ireland, and Dunnes, Superquinn and Roches in Ireland). This would exclude the "symbol" stores, i.e. retail franchised outlets which, while individually owned, have centralized purchasing policy for the particular symbols (examples include Supervalue, Centra, and Spar), and the largest of which are supermarkets in the same way as the multiples, and would also exclude other independent retail grocers. Such a definition would appear to be too narrow, because it excludes the larger symbol stores.

9. In previous cases the Commission has distinguished between various categories of retail outlet, e.g. hypermarket, supermarket etc., and also in terms of floor area. In the most recent Commission decision in this sector, Kesko/Tuko (Case No IV/M.784, OJ L110, 26 April 1997), the Commission defined, in relation to Finland, a market for "a basket of daily consumer goods sold in a supermarket environment". Such a definition would be intermediate between the widest and the narrowest examples quoted above. It would cover the multiples and perhaps some of the larger symbol stores, but not smaller stores or more specialist retail outlets. The most appropriate definition is likely to be along similar lines, but taking into account the particular circumstances of the Irish market.

10. In this case it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Relevant Geographic Market

11. The operation affects directly Ireland and Northern Ireland where the companies being acquired by Tesco are located. The notifying party contends that these constitute two clearly defined separate geographic markets which, in turn, they consider to be separate to that of Great Britain.

12. It has been argued that the relevant geographic market for a retail outlet is confined to a certain radius around it. However, the Commission's decision in the Kesko/Tuko case took the view that there was a degree of overlap between the catchment areas of retail outlets, which not only determined the competitive interaction between geographically proximate retail outlets, but which would also have a knock-on effect on more distant outlets. In a situation where several retail chains operate networks of stores on a national scale, the important parameters of competition are generally determined on a national scale, and therefore what from the viewpoint of the catchment area may be a local or a regional market may be aggregated into a national market. In such circumstances, it is more appropriate to treat the retail markets at national or regional level.

13. As to markets at national or supra-national level, responses from competitors and suppliers appear to suggest that there are particular features of both Ireland and Northern Ireland which set them both apart from Great Britain. There is an obvious physical separation imposed by the sea crossing. There are significant differences in consumer habits and tastes. The supplier base in Ireland is much more fragmented than in Great Britain, with smaller suppliers and a different distribution structure. Price levels are different, with Irish prices (both in Northern Ireland and in Ireland) generally being higher. The companies currently active in the retail market on the island of Ireland are different than those to be found in Great Britain.

14. On the question of whether there is a geographical distinction between the retail grocery markets in Ireland and Northern Ireland, the parties have advanced arguments based largely on the fact that these are two separate countries with different systems. However, the existence of different currency and taxation systems, or company management structures, may not be sufficient to limit the

market to a national one. As regards cross border trading, consumer surveys have tended to show that this is largely confined to the relatively small population centres within reasonable driving distance of the border, and that the level of such trade is not such as to disturb any conclusion based upon examination of other available evidence.

15. It is not necessary to further delineate the relevant geographic market because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

C. Assessment

16. Although it has not been necessary to delineate separate geographic markets, the following assessment takes as its basis the position in Ireland. Since the situation in Northern Ireland is largely similar, the same general considerations apply, subject to specific exceptions mentioned below.

17. Whatever the most appropriate product or geographic market definitions, the acquisition of the ABF businesses by Tesco will not lead to any immediate enhancement of market shares, as Tesco has no significant presence in Ireland or in Northern Ireland (except for one Tesco shop in Belfast), and all the businesses being acquired are already under the control of one parent company, ABF. There is thus no significant horizontal overlap if the market or markets are defined by reference to the island of Ireland, nor if separate markets are defined for Ireland and Northern Ireland. As a result, the precise definition of the market can be left open.

18. The issue which the case has raised is whether a dominant position will be created as a result of the combination of a leading retail grocery chain in Ireland and Northern Ireland with a significantly larger retail chain operating in Great Britain. Tesco's turnover is almost twice the size of the entire retail grocery sector for the whole of the island of Ireland.

Market shares

19. The different market definitions suggested in the case would provide a range of percentage figures for market shares of the different competitors. However, if the broad definition used in the Kesko/Tuko case is followed as being the narrowest which is reasonable - but making due allowances for the circumstances on the island of Ireland - this would suggest a market definition covering not only the multiples but also the larger symbol stores capable of providing the consumer with a basket of goods in a supermarket environment. Estimates made on this basis would suggest a total market in Ireland of around IR£2 billion, with Quinnsworth/Crazy Prices having a market share in the region of [30-40%]*, Dunnes, the nearest competitor, having around [20-30%]*, those

* Precise figures deleted for publication.

Musgraves' stores falling within the market definition having a market share in the region of [15-25%]* and Superquinn-about [5-15%]*. In Northern Ireland the total market would be about £1 billion, with Stewarts/Crazy Prices having around [30-40%]*, Wellworths, the nearest competitors, having around [20-30%]* and Dunnes having around [10-20%]*, the other competitors remaining under 10% of the market.

Buying power and other competitive advantages

20. It has been argued that Tesco/ABF will have very significant buying power, and because of this, it will be able to strike deals with suppliers which only competitors of a comparable size can match. There are no competitors currently on the island of Ireland who can replicate the same circumstances (for example, Sainsburys has some shops in Belfast, but while it may have similar buying power to Tesco, its current market share in Northern Ireland is not such as to allow it to exercise that power to any significant extent).

21. For the assessment of the effect of the operation on the demand side, i.e. the impact of the increased buying power, it is necessary to look across the board at the whole range of grocery goods sold by the ABF grocery retail businesses.

22. On the geographic dimension of procurement, a distinction should be drawn between products imported into Ireland, and domestically produced products. A large proportion of imported products consists of goods manufactured by multinational suppliers, which are generally internationally-known household name brands ("international brands"). In principle Tesco might be able to obtain international brands at better prices than retailers on the Irish market, subject to any additional transport costs which Tesco might incur as a result of having to bring the products over a longer supply route. Notwithstanding this, the producers of such goods usually have significant countervailing market power in their own right.

23. As regards products produced on the island of Ireland, either they are sold only within that territory, (because they respond to consumer habits and preferences for brands already established in Ireland) or they are or are capable of being exported.. In the first case Tesco is likely to have a genuine interest in having such products stocked, thus it is unlikely that Tesco would be able to replace them with substitutes manufactured abroad. The buying power with respect to these goods is already in the hands of the ABF retail grocery business, and is not further enhanced by the acquisition by Tesco. In the second case, if the goods are already exported, or potentially capable of being sold on an international market, any buying power of Tesco must be assessed in the context of this broader demand.

24. In summary it seems that the possibility for the Tesco/ABF chain to acquire improved purchasing conditions as against its competitors through the exercise of its buying power will be limited to those products where either their market is not typically confined within Ireland, or where the goods are not international brands.

25. It has been argued that Tesco will have the capability, should it wish, to source its Irish supermarkets directly from distribution centres located in Great Britain,

enabling it to capitalise on the efficiencies of its distribution system. Irish multiples and symbol stores, who currently do not have such centralised distribution systems, and who in any event might not have the volume to justify such an arrangement, would be unable to match the costs.

26. Tesco could also increase the proportion of own label products in the Irish stores. These generally cost less to produce and there is relatively low penetration of own-label products in competing retail chains as compared with Great Britain. In Great Britain about 45% of Tesco's turnover is accounted for by own label products. Tesco may want to do the same in Ireland. However, Irish consumers are said to have specific tastes and preference different from those of Great Britain, and the scope for substitution of own label products may not be as great as might appear. The Irish market does not appear to be large enough to make the economics of producing quality private label brands viable for anything but fast-moving goods.

27. Tesco may have other types of advantage relating to its size or technological development, for example, a Loyalty card system.

Wider impacts on Irish supplier and grocery retail structures

28. A number of views have been expressed about the impact of the acquisition on those suppliers who currently supply the ABF group or other retail grocery outlets in the Irish and Northern Irish retail grocery sectors. In the short to medium term the prospects for such suppliers will depend on the extent to which they are able to continue supplying the former ABF stores after acquisition by Tesco. Those Irish suppliers who are successful in developing a relationship with Tesco may well benefit from the enhanced business opportunities such an association could bring, for example, because it could result in their products being sold on a wider market than one confined to the island of Ireland.

29. Others, for example those who distribute imported goods or goods which are easily substitutable from Tesco's existing product range, may find themselves exposed to fiercer competition in supplying to the ex-ABF stores. Their business volume could well diminish to the extent that they lose ABF business.

30. This general impact on the supplier structure could in turn have an impact on the cost structures of competitors at the retail level..

31. The impact of Tesco's arrival on the island of Ireland, and the changes brought about on the overall competitive structure, could be softened by a series of undertakings given by Tesco to the Irish Government. The Commission takes note of the undertakings given by Tesco to the Irish Government, which include, inter alia:

> "The level of beneficial resources on purchasing and technology in Ireland available to Irish suppliers will be enhanced with a view to ensuring that the amount purchased will be maintained and increased."
>
> "It is intended that a buying facility will remain in Ireland as a base or purchasing goods for the Irish and other European markets of Tesco. Tesco's experience in doing business with the Irish food industry over many

years has been entirely positive and they look forward to enhancing that relationship over the coming years."

"Tesco will adopt a developmental approach to foster new and emerging Irish suppliers in accessing the Irish and wider European market for own brand and branded products purchased by Tesco. Initiatives will include mentoring, quality enhancement and other support for SMEs. Tesco will, in consultation with Forbairt and Bord Bia, develop other initiatives including supplier assistance and supplier recruitment programmes, the details of which will be developed jointly with those agencies. Tesco would also propose to invite relevant business representative groups to participate in this process."

"As business requirements in Ireland evolve, there will be on-going consultation with distributors."

"Tesco is aware of the existing supportive approach of Quinnsworth/Crazy Prices to the Irish food supply chain and in the distribution sector. Tesco will remain cognisant of those relationships as its business in Ireland evolves."

32. Furthermore, Tesco has committed itself to a number of key initiatives in order to implement these undertakings in an action plan for Ireland, in accordance with Tesco's intention that "the vast majority of Irish sourced products produced by Irish companies for the Irish market will of course continue to be bought and marketed from the within the Republic of Ireland for the foreseeable future." These initiatives relate in particular to certain aspects of the relationship between Tesco and the Irish suppliers such as the level of sourcing of Irish products, certain technical assistance to the Irish suppliers and in particular to SMEs, the development of Tesco's own label and of Irish branded products, eventual centralized distribution plans. In addition, a transaction planning group with Forbairt and An Bord Bia will be established.

33. These commitments should have an impact on the pace of change, not only in Ireland, but also in Northern Ireland.

Barriers to entry and potential competition

34. While there are few barriers to entry on a very small scale, there are planning and environment policies in both Ireland and Northern Ireland which would appear to constrain de novo entry on a larger scale. These policies seek to restrict the growth of new large supermarkets on out of town sites. The Irish Local Government (Planning and Development) Policy Directive, 1982, imposed on local planning authorities an obligation, in relation to the establishment of retail shopping development which would represent a large scale addition to the existing retail shopping capacity in a locality, to consider inter alia, the adequacy, size and location and quality and convenience of existing retail shopping outlets, as well as the need to counter urban decline and to promote urban renewal. In Northern Ireland planning policy is guided by the terms of Planning Policy Statement 5, which states, inter alia, that proposals for major retail development in the country-side, outside the development limits of settlements, will not be acceptable, and that town centres will be the preferred

location for major comparison shopping and mixed retailing development proposals.

35. In the September 1995 report by Goodbody stockbrokers entitled “Food retailing in the Republic of Ireland”, it was said that the small size of the Irish market would probably make it uneconomical to follow the UK out-of-town superstore format, except perhaps in the Dublin region, even assuming that planning permission could be achieved.

36. Market entry de novo on a large scale may therefore be affected by the existence of such constraints. However, no other significant barriers to entry exist in this sector to prevent outside retail chains of a size and buying power comparable to Tesco from entering by acquisition/merger or joint venture, if such entry were commercially warranted.

Summary

37. The absence of any significant Tesco retail presence in either Ireland or Northern Ireland before the operation means there is no horizontal overlap.

38. It appears that Tesco/ABF could enjoy some particular advantages not immediately available to its Irish competitors, for example its buying power, or its centralised distribution system. Also it appears that Tesco’s entry, and consequent changes in the supply structure, will indeed have some implications for the retail sector more generally.

39. However, the distribution of market shares among the nearest competitors of the ABF chain in Ireland, is such as to make it unlikely that Tesco, even with its competitive advantages, could achieve dominance in the short and medium term. The nearest retail competitors in both Ireland and Northern Ireland, have market shares not far behind those enjoyed by the ABF businesses.

40. The undertakings given by Tesco to the Irish government, should soften the impact of Tesco’s arrival, both in Northern Ireland as well as in Ireland itself.

41. In relation to barriers to entry, while entry by construction of new outlets might be difficult, there are no significant barriers to an outside investor acquiring an existing position. Indeed, press reports suggest some recent interest on the part of big international retail chains. Potential competition is therefore always present as a constraint on Tesco’s exploiting its current advantages in order to build up a dominant position.

V ANCILLARY RESTRAINTS

42. The Agreement contains, under Clause 13, a provision that neither ABF nor any member of the ABF group of companies: for two years after the Agreement, will directly or indirectly solicit, interfere with or endeavour to entice away from the Business any of the Management or any key employees.

43. This obligation on ABF is designed to assure the transfer of the full value of the business being acquired. It appears directly relevant and necessary for the acquisition to take place. In addition its duration is limited to a period of two

years from the transfer. It is considered therefore as ancillary to the concentration pursuant to the Merger Regulation.

VI CONCLUSIONS

44. In view of the above the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,