
Completed acquisition by ABF Holdings Limited of Primary Diets Limited

The OFT's decision on reference under section 22(1) given on 30 August 2006. Full text of decision published 5 September 2006.

Please note that the square brackets indicate figures or text which have been deleted or replaced with a range at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. ABF Holdings Limited is a wholly-owned subsidiary of Associated British Foods plc, which is an international food, ingredients and retail group. ABF Holdings Limited is active in the animal feed sector via its wholly-owned subsidiary, ABNA Limited (ABNA). ABNA is a UK animal feed supplier.
2. Primary Diets Limited (PDL) is a small, privately run animal feed business that specialises in the manufacture of a type of pig feed specifically designed for young pigs. PDL's UK turnover was £[] for the year ended 31 October 2005.

TRANSACTION

3. ABF Holdings Limited acquired the entire issued share capital of PDL on 4 July 2006. The transaction was notified to the OFT on 4 July 2006. The administrative deadline is 1 September 2006. The statutory deadline is 5 November 2006.

JURISDICTION

4. As a result of this transaction ABF Holdings Limited and PDL have ceased to be distinct. ABF Holdings Limited (via ABNA) and PDL overlap in (a) the supply of compound pig feed, in which the parties estimate that they have a combined share of supply of [35 per cent to 45 per cent] (with an increment of [less than 5 per cent]); (b) the supply of compound 'other poultry' feed, in which the parties estimate that they have a combined share of supply of [50 per cent to 60 per

cent] (with an increment of [less than 5 per cent]); and (c) the supply of compound game feed, in which the parties estimate that they have a combined share of supply of [35 per cent to 45 per cent] (with an increment of [less than 5 per cent]). Therefore the share of supply test in section 23(2) of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

RELEVANT MARKET

Background

5. Livestock may be fed using either 'compound' feed or 'straights'. Compound feed is a combination of various ingredients (including cereal grains, oilseed products and pulses) which are blended together in different proportions to suit the feed's intended purpose. Compound feed can be either 'complete'¹ or 'complementary'.² Straights are raw materials such as wheat, soya and barley which are traded as commodities. These ingredients are sold directly to farmers and can be mixed with home-grown products to create 'home mix feed'. The parties estimate that straights and compounds account for 52 per cent and 48 per cent of the total UK animal feed market respectively.
6. Compound feed manufacturers may focus their business on producing feed for different types of livestock, for example ruminants (including cattle and sheep) or monogastric animals (including pigs and poultry). The parties overlap in the production of compound feed for monogastric animals. ABNA supplies numerous types of pig feed, some of which are made to its own formulations as well as formulations for bespoke diets. PDL focuses on feed designed for very young pigs. In addition, both parties produce game feed and a range of 'other poultry' feed.

Product scope

7. The European Commission (the Commission) has considered the animal feed industry in previous decisions. In CVC/PAI Europe/Provimi³ the Commission noted that animal feed is generally made up of agricultural raw materials (mainly grains) comprising up to 98 per cent of feed volume, and premix (a feed additive), making up 0.5 per cent and 2 per cent of total feed volume. The Commission considered that premix and complete feed constituted separate product markets; however for

¹ Complete compound feed is a compound mixture of feed materials which supplies the total dietary needs of an animal, i.e. the daily ration.

² Complementary compound feed is a compound mixture of feed materials with a high concentration of certain nutrients which is sufficient to provide a daily ration to the animal only if fed in combination with other feedstuffs.

³ Case No COMP/M.2956, 28 October 2002.

the purposes of that decision it did not consider it necessary to further define the product market.

8. In Cargill/Agribands⁴ the Commission considered the submission by the parties that the relevant market comprised all animal feed products. The Commission stated that '...the market should include all integrated self-supply by farmers of products such as corn, hay, grain or turnips, as this effectively constrains the price of commercial feeds'. However, ultimately the precise product market definition was left open.
9. The OFT has also previously considered the supply of animal feed in relation to the acquisition by W L Duffield & Sons Limited of the ruminant feed business of Bury Nutrition, part of ABNA Limited (the Duffield decision).⁵ In that case the OFT considered that animal feed could be segmented into that for ruminants (mainly for cattle and sheep) and that for monogastric animals. The OFT considered that demand side substitution between these two types of feed was unlikely, and the extent of supply-side substitution was unclear. The OFT also considered that compound feed for monogastric animals would be constrained by the supply of straights.
10. In this case, the parties have submitted that the relevant product market should comprise all animal feed (i.e. including compound feed and straights) for both monogastric and ruminant animals. However, third party responses suggested that, on the supply-side, UK legislation has made it difficult for mills to switch production between ruminant and monogastric feed. For example, recent legislation enacted to guard against diseases such as BSE has meant that fishmeal is currently only allowed in monogastric feed. Therefore feed production by a mill tends to be either ruminant only (i.e. because the mill is required to be fish free) or monogastric only. The OFT has therefore adopted a cautious approach and, consistent with the Duffield decision, has considered monogastric and ruminant feed separately.
11. Some third parties suggested that competitive conditions may differ between feeds designed for different animal types. In particular, specialised products such as PDL's young pig feed may be more difficult for other manufacturers to produce and may be more widely exported. The OFT therefore considered a narrower segmentation based on different types of animal. However, as no competition concerns arise even under this narrow product segmentation, it is not necessary to reach a definitive conclusion on the precise product scope.

⁴ Case No COMP/M.221, 19 February 2001.

⁵ Decision under the Fair Trading Act 1973, 20 December 2002.

12. In relation to whether both compounds and straights form part of the relevant product scope, the parties submitted that compound feeds and straights are demand-side substitutes. Moreover, some third parties confirmed that straights compete with compound feed, consistent with the Duffield decision. Other third parties submitted that straights compete with compound feed only in respect of certain ruminant animals and therefore they are not substitutable in relation to the young pig feed segment. However, it is not necessary to reach a definitive conclusion as no competition concerns arise even if compounds and straights are considered separately. Given that in this case the parties overlap only in the supply of compound feed and the fact that the parties' shares of supply within this segment are the same or higher than those in relation to both compounds and straights, the OFT has focussed its analysis on the compound segment.

Geographic scope

13. The parties submitted that the relevant geographic scope is the UK as there are at least six animal feed manufacturers with national coverage. ABNA and PDL both distribute young pig feed nationally and also export young pig feed to mainland Europe. There are also other national players, although some smaller animal feed producers only supply regionally. However, the parties submitted that there are more than one hundred compound feed manufacturers located throughout the UK, supplying into strongly overlapping regions. In this regard, none of the third parties who were contacted during the course of this investigation suggested that it was relevant to consider regional markets. Therefore the OFT has considered this transaction at the national level.

HORIZONTAL ISSUES

14. Both parties operate mainly in the monogastric segment and overlap in the supply of compound feed for pigs, 'other poultry' and game. Post-merger, the parties have a combined national share of supply of [10 per cent to 20 per cent] (with an increment of [less than 5 per cent]) in relation to all monogastric feed, including compound and straights. More specifically, the parties overlap in the supply of compound pig feed, compound 'other poultry' feed (which includes game and duck) and compound game feed. Post-merger the parties estimate they have a combined share of supply of [35 per cent to 45 per cent] (with an increment of [less than 5 per cent]) in relation to compound pig feed, a combined share of supply of [50 per cent to 60 per cent] (with an increment of [less than 5 per cent]) in relation to compound 'other poultry' feed and a combined share of supply of [35 per cent to 45 per cent] (with an increment of [less than 5 per cent]) in relation to compound game feed.

15. Although ABNA has relatively high shares of supply in the segments where the parties overlap, the increments to the shares of supply are very low – ranging from [less than 5 per cent] to [less than 5 per cent]. Moreover, there is at least one other national compound feed manufacturer, of a similar size to ABNA, which is active across all the segments in which the parties overlap. In addition, there are a range of suppliers larger than PDL. All third party customers who were contacted during the course of this investigation indicated that they would have sufficient choice of suppliers post-merger.
16. Moreover, since 1997, ABNA and PDL have had a distribution agreement in place under which ABNA has acted as PDL's distributor in the UK for the pig feed it manufactures, although PDL supplies some customers directly. [] Third party responses indicated that the distribution agreement limited the degree of competition between the parties pre-merger.
17. Irrespective of whether the relevant product scope is viewed either as all monogastric feed, or separately as compound pig feed, compound 'other poultry' feed and compound game feed, ABNA is a large player. However the increments to its shares of supply are small. Furthermore, there is at least one other national compound feed manufacturer of a similar size to ABNA and a number of players larger than PDL who are able to exert a degree of competitive constraint on the parties post-merger. In addition, none of the third parties who were contacted during the course of this investigation raised any significant competition concerns about this transaction and customers considered that they would still have a number of alternative suppliers post-merger. Therefore, the OFT does not consider that this merger raises any horizontal issues.

Barriers to entry and expansion

18. The evidence before the OFT indicates that de novo entry into this sector would entail substantial costs, in particular the cost of purchasing a mill (estimated to be between £2 million and £10 million). However, given the lack of horizontal concerns, no conclusion need be drawn on barriers to entry and expansion.

Buyer power

19. One third party customer indicated that it does possess a degree of buyer power. However, the majority of third party responses did not comment on this point. In any event, given the lack of horizontal concerns, no conclusion need be drawn on buyer power.

NON HORIZONTAL ISSUES

20. As mentioned above, ABNA is the distributor of PDL's pig feed production in the UK. Therefore, this merger replaces that distribution arrangement.
21. Third parties were unconcerned by this vertical relationship. Furthermore, none of the third parties who were contacted during the course of this investigation raised concerns about a lack of access to PDL's product or a lack of incentive on the part of ABNA to distribute their products.
22. One third party suggested that the use of integrated supply agreements might enable the merged entity to discount young pig feed in order to win orders for the supply of all compound feeds on a farm. It was alleged that this would distort competition and thus disadvantage companies with a narrower portfolio. However, the increase to the size of the portfolio in this case is small and the parties face competition from other producers who also have a broad portfolio. Furthermore, for some time prior to the merger ABNA had been PDL's distributor in the UK. In this capacity, ABNA already had the opportunity to promote its other products alongside its distribution of PDL's product. Therefore, the OFT does not consider that the merger gives rise to conglomerate concerns resulting from alleged 'portfolio' effects.
23. Therefore, in view of the fact that this merger appears simply to replace an existing distribution arrangement between the merged parties, the lack of significant third party competition concerns and the small increments to the shares of supply, the OFT does not consider that this transaction raises any vertical or conglomerate competition concerns.

THIRD PARTY VIEWS

24. None of the third parties who were contacted by the OFT raised any significant competition concerns about this merger. One third party raised a concern in relation to the widening of ABNA's portfolio. This concern has been addressed above.

ASSESSMENT

25. The parties overlap in the supply of monogastric compound animal feed, in particular pig feed, 'other poultry' feed and game feed. Post-merger the parties estimate they have combined shares of supply of [35 per cent to 45 per cent] (with an increment of [less than 5 per cent]) in relation to compound pig feed, [50 per cent to 60 per cent] (with an increment of [less than 5 per cent]) in relation to

compound 'other poultry' feed and [35 per cent to 45 per cent] (with an increment of [less than 5 per cent]) in relation to compound game feed.

26. Despite relatively high shares of supply in the segments in which the parties overlap, the increments to the shares of supply are very low – ranging from [less than 5 per cent] to [less than 5 per cent]. Moreover, there is at least one other national compound feed manufacturer, of a similar size to ABNA, which is active across all the segments in which the parties overlap. All third party customers who were contacted during the course of this investigation indicated that they would still have a number of alternative suppliers post-merger.
27. Since 1997, ABNA and PDL have had a distribution agreement in place under which ABNA has acted as PDL's distributor in the UK for the pig feed it manufactures, although PDL supplies some customers directly. [] Third party responses indicated that the distribution agreement limited the degree of competition between the parties pre-merger.
28. One third party raised an alleged concern in relation to the widening of ABNA's portfolio. However, the increase to the size of the portfolio in this case is small and the parties face competition from other producers who also have a broad portfolio. Furthermore, for some time prior to the merger ABNA had been PDL's distributor in the UK. In this capacity, ABNA already had the opportunity to promote its other products alongside its distribution of PDL's product. Therefore, the OFT does not consider that the merger gives rise to conglomerate concerns resulting from alleged 'portfolio' effects.
29. With the exception of the alleged concern relating to portfolio effects of the merger which has been dealt with above, none of the third parties who were contacted by the OFT raised any significant competition concerns about this merger. In addition, customers considered that they would still have plenty of alternative suppliers post-merger.
30. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

31. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.