

Anticipated (since completed) acquisition by Princes Limited of the canning business of Premier Foods Group Limited

ME /4960/11

The OFT's decision on reference under section 33 was given on 22 June 2011. The full text of that decision was published 19 August 2011.

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

PARTIES

1. **Princes Limited ('Princes')** is ultimately owned by the Mitsubishi Corporation. It is active in the production, marketing and wholesale distribution of food and drinks products, primarily to the retail grocery channel in the UK. Around £[]m ([] per cent of canned food sales) of Princes' sales is to the food service sector. Princes manufactures around [] per cent of its products at nine sites based in the UK,¹ one site in Poland, and one in Mauritius. Princes has one canned food manufacturing plant, which is based in Chichester, and this has one canned pie production line.
2. Princes' core ambient food² products include fish, meat, fruit and vegetables, sandwich fillings, pasta, sauces, cooking oils and microwaveable ready meals. Princes' core drinks products include bottled water, fruit juice, fruit concentrate-based squash soft drinks and carbonates. Canned food sales account for around [] per cent of Princes turnover.
3. Premier Foods Group Limited ('Premier') is active in the production, marketing and wholesale distribution of food products, primarily through the retail grocery channel in the UK. Around £[]m ([] per cent of total sales) of the sales of Premier's canned food products business are to the

¹ Belvedere, Bradford, Cardiff, Chichester, Church Stretton, Eden Valley, Erith, Glasgow and Manchester.

² 'Ambient' is food that would normally require refrigeration for preservation but has been processed so that it can be stored at room temperature.

food service sector. Premier's brands include: Branston, Batchelors, Hartley's, Crosse & Blackwell, Farrows, Fray Bentos, and Smedley's.³ In the last financial year, the target business had a turnover of £[]m, of which £[]m was earned outside of the UK. [] per cent of the target business' ambient food offering is the sale of own label products.

TRANSACTION

4. Under the Business Sale Agreement of 7 February 2011 Princes acquired the canned food products business of Premier on 23 July 2011. The consideration for the acquisition was £182m. The target business comprises the transfer of the following key assets and contracts:
 - two canning plants based in Long Sutton and Wisbech (both in England) that are currently owned and operated by Premier
 - []
 - certain related intellectual property, and
 - related customer and supply agreements.
5. As part of the transaction, Princes acquired specific brands, the license to manufacture under certain brands and enter into contract manufacture arrangements in relation to certain other products.

JURISDICTION

6. The transaction qualified for investigation under the EU Merger Regulation. The parties made a request under Article 4(4) of the EU Merger Regulation (EUMR) for the transaction to be referred in whole to the United Kingdom. The OFT informed the European Commission on 18 March 2011 that it agreed with the referral request. The Commission then referred the transaction for investigation to the OFT on 5 April 2011.⁴
7. The OFT believes that the transaction would result in two or more enterprises ceasing to be distinct under section 23(1) of the Enterprise Act 2002 (the Act). The UK turnover of Premier exceeds £70 million; therefore the turnover test in section 23(1)(b) of the Act is satisfied. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

³ The transaction involves the acquirer purchasing the intellectual property rights for some of these brands and leasing the intellectual property rights to others.

⁴ Case No Comp/M.6143 Princes/Premier Foods Canned Grocery Operations, 05/04/11

BACKGROUND

8. In its decision of 22 June 2011 on the anticipated acquisition, the OFT stated that it believes that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom, specifically in the supply of ambient pies.
9. In particular, the OFT found that the parties are the sole suppliers of branded ambient pies. While it was not clear the extent to which own label pies constrain the price of branded pies at the retail level, they account for a relatively small share of the market. Moreover, the parties were also the leading suppliers of own label pies, making it difficult for retailers to constrain the parties by threatening to switch to stocking own label instead of the parties' branded products.
10. Accordingly, the OFT found itself under a duty to refer the merger to the Competition Commission (CC).

DIVESTMENT UNDERTAKINGS OFFERED BY PRINCES

11. To address the OFT's competition concerns, Princes offered to divest the Fray Bentos brand, which covers a range of meat based canned goods (including canned pies) and some accompanying manufacturing assets, thereby remedying the competition concerns arising from the merger.
12. The OFT stated in its decision that the proposed undertaking is a structural remedy to remove the increment resulting from the merger. The sale of the entire Fray Bentos brand was appropriate in order to remedy the SLC in a clear-cut manner, since such a remedy package would provide a purchaser with a commercial incentive to manufacture and distribute ambient pies under the established Fray Bentos brand alongside a range of other canned food products, and rendered it appropriate for the OFT to suspend its duty to refer.
13. For the reasons given in the Decision, the OFT considered that, in the circumstances of this case, it was appropriate and proportionate to require that the Fray Bentos brand be sold to an upfront buyer.
14. On 22 June 2011, the OFT therefore announced that it was suspending its duty to refer the acquisition to the CC under section 33 of the Act

because the OFT was considering whether to accept appropriate undertakings from Princes in lieu of reference.

CONSULTATION

15. On 21 November 2011 the OFT published the proposed undertakings in lieu of reference, inviting interested parties to give their views on them by 12 December 2011 pursuant to paragraph 2(1) Schedule 10 of the Act. The consultation text published on the OFT's website alongside the proposed undertakings in lieu is set out in the Annex to this decision.
16. The OFT received no comments from interested parties during the consultation period.

DECISION

17. The Decision concluded that the merger would be referred to the CC if the parties failed to give suitable undertakings pursuant to section 73 of the Act to address the competition concerns identified in the Decision.
18. The OFT considers that the undertakings provided by Princes are clear cut and appropriate to remedy, mitigate or prevent the substantial lessening of competition and any adverse effects resulting from it. The OFT has therefore decided to accept the undertakings offered by Princes.
19. The merger will therefore not be referred to the Competition Commission and the undertakings, which have been signed by Princes, will come into effect from this date.

30 December 2011

Annex to Decision – Consultation Paper

Anticipated (since completed) acquisition by Princes Limited of the canning business of Premier Foods Group Limited

Notice under Paragraph 2(1) Schedule 10 of the Enterprise Act 2002 of proposed undertakings in lieu of reference pursuant to section 73 of the Enterprise Act 2002 OFT's duty to refer

On 22 June 2011, the OFT announced its decision to suspend its duty to refer the completed acquisition by Princes Limited (Princes) of the canning business of Premier Foods Group Limited to the Competition Commission (CC) under section 33 of the Enterprise Act 2002 because the OFT was considering whether to accept appropriate undertakings from Princes in lieu of reference. The acquisition completed on 23 July 2011.

The OFT believes that it is or may be the case that the merger may be expected to result in a substantial lessening of competition, arising as a result of the anticipated acquisition by Princes of the canned foods product business of Premier, and specifically in the supply of ambient pies. The text of the OFT's decision,⁵ published on 19 August 2011 (the decision), provides full details on the OFT's findings.

Accordingly, the OFT found itself under a duty to refer the merger to the CC.

Divestment undertakings offered by Princes

To address the OFT's competition concerns, Princes offered to divest the Fray Bentos brand, which covers a range of meat based canned goods (including canned pies) and some accompanying manufacturing assets, thereby remedying the competition concerns arising from the merger.

Up-front buyer for the Fray Bentos brand and associated manufacturing assets

The OFT considered that the requirement for an up-front buyer was both reasonable and proportionate in seeking to ensure that the competition concerns were remedied.

The proposed buyer for the Fray Bentos brand, Baxters Food Group Limited (Baxters), is identified in the undertakings in lieu, on which the OFT is consulting, and Princes has entered into a sale agreement to transfer the business to the

⁵ Anticipated acquisition by Princes Limited of the canning business of Premier Foods Group Limited – the OFT's decision on reference under section 33 given on 22 June 2011.

identified purchaser conditional only upon OFT acceptance of the undertakings in lieu and completion of the transaction.

Suitability of the proposed purchaser

In approving a purchaser, the OFT's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. As such, the proposed purchaser must not raise prima facie competition concerns.

The purchaser, Baxters, manufactures primarily branded food products. Its key expertise lies in thermally processed ambient products in a range of packaging formats of which cans are most prominent. The acquisition of the Fray Bentos brand is consistent with its overall business strategy. The management team has significant experience in the ambient food sector and has established supply relationships with UK retailers. Baxters current products include soups (canned and in other formats), beetroot, chutney, condiments, preserves and microwavable meal options. The transaction is therefore not expected to raise competition concerns in the supply of canned meat products and specifically in the supply of ambient pies in the UK. Baxters is independent of and unconnected to Princes and is expected to obtain all necessary approvals, licences and consents from any regulatory or other authority. Based on the financial data presented and its future plans for the brands, Baxters is considered to be a credible buyer of the divestments.

Process going forward

The acceptance by the OFT of these proposed undertakings in lieu is dependent on this public consultation.

The OFT considers that the proposed undertakings offered by Princes are clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the decision.

The OFT therefore gives notice that it is minded to accept undertakings in lieu in the form of the proposed undertakings.

- Download the proposed undertakings in lieu

Before reaching a decision as to whether to accept the proposed undertakings, interested parties are invited to make their views known.

Representations should be made in writing to:

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Deadline for comments: 17.00 on 12 December 2011