

***Case No COMP/M.6143 -  
PRINCES / PREMIER  
FOODS CANNED  
GROCERY OPERATIONS***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 4(4)

Date: 05/04/11



EUROPEAN COMMISSION

Brussels, 05.04.2011  
C(2011) 2512

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

**To the notifying party**

**To the UK Competition Authority**

Dear Sirs,

**Subject: Case No COMP/M.6143 –PRINCES / PREMIER FOODS CANNED GROCERY OPERATIONS**  
**Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004<sup>1</sup> for referral of the case to the United Kingdom.**

**Date of filing: 09/03/2011**

**Legal deadline for response of Member States: 04/04/2011**

**Legal deadline for the Commission decision under Article 4(4): 13/04/2011**

## **I. INTRODUCTION**

1. On 9 March 2011, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction by which Princes Limited ("Princes", United Kingdom), which is ultimately

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

controlled by the Mitsubishi Corporation ("MC", Japan)<sup>2</sup> will acquire sole control, within the meaning of Article 3(1)(b) of the Merger Regulation over the canning business of Premier Foods Group Limited ("Target", United Kingdom). The notifying party requests the operation to be examined in its entirety by the competent authorities of the United Kingdom.

2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 10 March 2011.
4. By letter of 18 March 2011, the Office of Fair Trading as the competent authority of the United Kingdom informed the Commission that the United Kingdom agrees with the proposed referral.

## II. THE PARTIES AND THE OPERATION

5. **Princes** is active in the production, marketing and distribution of canned food products and drinks mainly through the retail grocery channel in the United Kingdom and to a small extent through the foodservice channel.
6. The **Target** is active in the production, marketing and distribution of canned food products, principally through the retail grocery channel in the United Kingdom. A limited amount of these products is sold through the foodservice channel.
7. According to the Share and Purchase Agreement of 7 February 2011, Princes will acquire sole control over the Target, [...]. The three principal product streams handled by Target's factories comprise vegetables, soups and meats. Target's brands include Branston, Batchelors, Hartley's, Crosse&Blackwell, Farrows, Fray Bentos, and Smedley's.
8. According to Article 3(1)(b) of the Merger Regulation the acquisition of certain assets of an undertaking may constitute the object of control for the purposes of the Merger Regulation. Paragraph 24 of the Commission's Consolidated Jurisdictional Notice<sup>3</sup> further specifies that such assets need to be a business with a market presence to which a market turnover can be clearly attributed. In the case of the Target, which includes amongst others plants, brands and customer agreements, this is clearly the case. Hence, the acquisition of the Target by Princes constitutes a concentration in form of the acquisition of assets pursuant to Article 3 (1) (b) of the Merger Regulation.

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2 The Mitsubishi Corporation is active in various industries including energy, metals, machinery, chemicals, food and general merchandise. The Mitsubishi Corporation does not own any food production business active in the EEA other than Princes.

3 OJ C95 of 16.04.2008.

### III. EU DIMENSION

9. MC generated a world-wide turnover of EUR [...]. At Union level, each of MC and the Target achieved a turnover of more than EUR 250 million (EUR [...] for MC and EUR [...] for the Target). Only the Target generated more than two-thirds of its turnover in one Member State, namely the United Kingdom.<sup>4</sup> The notified operation therefore has an EU dimension within Article 1(2) of the Merger Regulation.

### IV. ASSESSMENT

#### A. Relevant product markets

10. The Target is active in the production and the distribution of vegetables, soups and meats. Princes produces and imports a variety of food products including fish, meat, fruit and vegetables, sandwich fillings, pasta, sauces, cooking oils and olive oils and microwavable ready meals. The parties' activities overlap in the production and distribution, at wholesale level in the United Kingdom as well as for some products in the foodservice sector in the United Kingdom, of a limited number of convenience products which are based on processed meat and vegetables. The parties' activities also overlap, to a minor extent, in a limited number of other product categories, namely in relation to soup, fruits and sauces. Both parties are active in the production of branded and so-called private label products.
11. In its practice, the Commission has identified the following as possible relevant product markets: markets segregated by sales channel (i.e., sales to retail or foodservice sectors); markets delineated by role in meal, e.g., starter, main course, ready meals; markets segregated by storage temperature range (i.e., fresh, ambient, frozen and/or chilled food)<sup>5</sup> and, by extension, packaging type<sup>6</sup>; overall markets for specific products e.g., meat pies, corned beef, ready meals, vegetables, fruit and sauces; sub-segments relating to individual product categories, e.g., type of fruit, "wet" soup, "hot" sauces; and further sub-segments distinguishing between private label and branded products. The Commission distinguished also between different types of meat (notably poultry, pork, and beef)<sup>7</sup> and, within a given type of meat, between different types of product (for example raw cured products, processed meat for cold consumption, canned meat, cooked sausages, pâtés and pies, and ready prepared dishes).<sup>8</sup>
12. The parties agree with the segmentation by sales channel and the corresponding differentiation between sales to the retail sector and sales to the foodservice sector. However, they argue that a sub-segmentation of the products by temperature range, packaging materials or product groups (e.g. meat pies) is not adequate. In their view the products in which the parties overlap fall in two possible relevant product markets,

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4 [...].

5 See, e.g.: Case No. COMP / M.4216 – *CVC / Bocchi / De Weide Blik* and Case No. COMP / M.1740 - *Heinz / United Biscuits Frozen and Chilled Foods*. At national level, the United Kingdom's OFT investigated delivery of separate temperature ranges in *Bidvest / Brake Bros*.

6 See, e.g.: Case No. COMP / M.445 - *BSN / Euralim*.

7 Case No COMP/M.2662 - *Danish Crown / Steff-Houlberg*.

8 Case No COMP/M.3401 – *Danish Crown / Flagship Foods*.

which should be delineated by the products' role in a meal. They distinguish convenience food for (i) the main course or "centre of plate" of a consumer's meal; and (ii) the "side of plate" within a consumer's meal. As regards, fruit products, soups and cooking sauces, the parties submit that their fruit products, soups, cooking sauces compete with a variety of different fruits, soups and cooking sauces, respectively and that independent of storage temperature or used packaging material. Since the overlap created by the transaction is limited they suggest that a more thorough investigation of possible sub-segmentations of fruits, soups, or cooking sauces would not be necessary. Finally, they argue that branded and private label products in the relevant product categories compete directly against each other, and would both form part of the same relevant product markets.

13. For the purpose of this referral decision the precise product market definition can be left open.

### **B. Relevant geographic market**

14. In its practice, the Commission has generally considered markets dealing with food products to be national in scope but eventually left the market definition open. In this case, the overlapping activities of the parties take only place in the United Kingdom.<sup>9</sup>

### **C. Assessment**

15. On the basis of the information provided by the requesting party in the Reasoned Submission, the proposed transaction is an appropriate candidate for pre-filing referral from the Commission to the UK Office of Fair Trading in accordance with Article 4(4) of the Merger Regulation.
16. The transaction meets the legal requirements set out in Article 4(4) of the Merger Regulation. The transaction is a concentration within the meaning of Article 3 of the Merger Regulation, it has an EU dimension and it may significantly affect competition in distinct markets in the United Kingdom.

#### The United Kingdom is a distinct market

17. The relevant markets in which the parties compete present all the characteristics of a distinct market restricted to the United Kingdom.
18. There is no overlap between the Parties outside the United Kingdom, and there are no affected markets at the EEA, Union, or EFTA level. The effects of the Transaction are therefore confined to distinct markets within a single Member State, the United Kingdom. Thus, the requirement that any potential effects on competition occur in a market, which "*must be within a Member State and present all the characteristics of a distinct market*"<sup>10</sup> is met.

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9 Princes and Target each make a limited number of export sales outside of the United Kingdom – but the Parties focus on different export territories, and they do not overlap in any product categories outside of the United Kingdom.

10 Commission Notice on Case Referral in respect of concentrations, para 16 (ii), OJ C 56, 05/03/2005, p.2-23.

### Competition may be significantly affected

19. The parties submit that their activities overlap only in a small number of convenience food products within the United Kingdom. These products would compete with a number of different food products for the "centre of plate" or the "side of plate" of a consumer's meal, independent of the temperature range in which they are offered (i.e. frozen food products would compete with ambient food products<sup>11</sup>). It is important to note that depending on the applied product market definition, the combined market shares of the parties vary significantly.
20. Contrary to the parties' view and on the basis of a preliminary analysis, the Commission considers that in line with past cases a distinction between ambient food on the one hand and frozen and chilled food on the other hand cannot be excluded. Further distinctions could be made, for instance between meat, vegetables and fruit products. In particular, the combined market share of the Parties reach more than 50% in several possible sub-segments of the ambient canned food market such as: pies and puddings ([90-100]%), ready meals such as curries ([60-70]%), [...] and other ready meals ([50-60]%), mince ([50-60]%), corned beef ([60-70]%), chunky steak ([50-60]%), red kidney beans ([70-80]%), mixed beans ([70-80]%), garden peas ([80-90]%), mixed vegetables ([60-70]%), whole carrots ([60-70]%), [...], prunes ([70-80]%), etc. As a consequence, the concentration may significantly affect competition in the relevant possible markets in the United Kingdom.
21. Therefore, the criterion relating to the demonstration that the transaction "*is liable to have a potential impact on competition on a distinct market, ... which may prove to be significant*"<sup>12</sup> is also met. Indeed, in the United Kingdom, the transaction would lead to a combined market share of significantly more than 15% in several possible product markets.
22. Given that the likely focus of the competitive effects of the proposed transaction is confined to the United Kingdom, the competition authorities of the United Kingdom are best placed to examine the case.

#### *Additional factors*

23. Having regard to its recent experience in the sector, the United Kingdom's competition authorities seem to be best placed to examine the case. Furthermore, the United Kingdom's Competition Commission recently undertook an inquiry on the grocery market, where it studied in detail the buyer power of supermarkets in the United Kingdom<sup>13</sup>, which the Parties point out as a very important factor preventing any anticompetitive effect post-transaction.

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11 Ambient describes products which can be stored at room temperature. These products may be packaged and sold in metallic cans, plastic pots, plastic shrink-wrap or bags as well as other packaging formats.

12 Commission Notice on Case Referral in respect of concentrations, para 17, OJ C 56, 05/03/2005, p.2-23.

13 The supply of groceries in the UK, market investigation; Competition Commission, 30/04/2008.

24. Finally, "the benefit inherent in a "one stop shop", which is at the core of the Merger Regulation"<sup>14</sup> remains as the case would be entirely referred to the United Kingdom.

## V. REFERRAL

25. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations<sup>15</sup> (point 17) indicates that, in seeking a referral under Article 4(4), "*the merging parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*", and that "*such indications may be no more than preliminary in nature...*". The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in the United Kingdom, and that the requested referral would be consistent with point 20 of the Notice on referrals.

## VI. CONCLUSION

26. For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the United Kingdom. This decision is adopted in application of Article 4(4) of the Merger Regulation.

*For the Commission*

*(Signed)*  
*Alexander ITALIANER*  
*Director General*

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14 Commission Notice on Case Referral in respect of concentrations, para 11, OJ C 56, 05/03/2005, p.2-23.

15 OJ C 56, 05.03.2005, p.2.