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***Case No COMP/M.6249 -  
PRINCES / ARIA***

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 04/04/2012

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# EUROPEAN COMMISSION

Brussels, 4.4.2012

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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:

Dear Sir/Madam,

**Subject: Case No COMP/M.6249 – PRINCES/ARIA  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 29 February 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004<sup>2</sup> by which the undertaking, Princes Limited ("Princes", United Kingdom), controlled by Mitsubishi Corporation ("Mitsubishi", Japan) acquires within the meaning of Article 3(1)(b) of the Merger Regulation, control of certain assets and trade (the "Target") currently controlled by AR Industrie Alimentari S.p.A ("ARIA", Italy) by way of purchase of shares in a newly created company, Princes Industrie Alimentari S.r.L. ("PIA", Italy). In the following, Princes and ARIA are referred to jointly as "the Parties".

### **I. THE PARTIES**

2. Mitsubishi is Japan's largest general trading company active in various industries including energy, metals, machinery, chemicals, food and general merchandise. It is active in approximately 80 countries worldwide.

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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.

<sup>2</sup> OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

3. Princes is active in the production, marketing and distribution of food and drink products principally through the retail grocery channel and mainly in the UK. It is ultimately owned by Mitsubishi.
4. The Target will be made up of certain assets, agreements, employees, equipment, inventory and liabilities which will be contributed to the newly created company, PIA, by ARIA. These assets include the Foggia Factory, currently operated by ARIA, and virtually all of ARIA's contracts with customers and suppliers. The Conserviera Factory and the Elvea Factory will effectively maintain the same manufacturing operations with the Target post-transaction as they did with ARIA pre-transaction. PIA will be an Italian limited liability company and will exercise control over the Target. It will therefore be active (as ARIA is currently) in the production, marketing and distribution of food products, principally, tomatoes.

## **II. THE OPERATION**

5. On 20 January 2012, Princes and ARIA signed a sale and purchase agreement by which Princes will indirectly acquire sole control over the Target through a 51% shareholding in PIA which will wholly own and directly control the Target. ARIA will transfer the Target to PIA which will be created solely for the purposes of the transaction. ARIA will hold the remaining 49% of shares in PIA but will not have any veto rights which would give it decisive influence over PIA.

## **III. CONCENTRATION**

6. The proposed transaction will result in Mitsubishi ultimately acquiring sole control over the Target. The notified transaction therefore constitutes a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.

## **IV. EU DIMENSION**

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million<sup>3</sup> (Mitsubishi: EUR [...], Target: EUR [...]) and each has an aggregate EU-wide turnover in excess of EUR 100 million (Mitsubishi: EUR [...], Target: EUR [...]).
8. In nine Member States ([...]) the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million. In [...] the aggregate turnover of each of the undertakings concerned is more than EUR 25 million. Neither of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.
9. The notified operation therefore has an EU dimension pursuant to Article 1(3) of the Merger Regulation.

## **V. MARKET DEFINITION**

10. The Parties overlap in the supply of certain food products to customers in the retail and/or foodservice sectors. In particular, ARIA supplies certain private label (PL)

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<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

products to [one retail customer] in the UK for pre-packaged tomato-based cooking ingredients, pulses, baked beans and spaghetti hoops (a type of canned pasta).

11. ARIA currently supplies (and the Target will supply post-transaction) pre-packaged tomato-based cooking ingredients to Princes. Princes submitted that a key rationale for the proposed transaction is to secure this vertical supply relationship. In addition, the Target is active upstream of Princes in the processing of tomatoes. There is therefore an existing vertical link in this regard.

*(i) Processing of fresh tomatoes*

12. The Target is active in the processing of fresh tomatoes. This involves preparing the fresh fruit to be used as a component in the manufacturing of tomato products. In the case of chopped/preserved tomato products and pre-packaged tomato sauces, tomatoes are peeled and, if required, chopped. For tomato purées/concentrates and passata, tomatoes are broken to release the juice and are pasteurised. The skin, seeds and pulp are removed to form the basic juice used in the manufacturing process.
13. The Commission has not previously examined the relevant market in relation to the processing of fresh tomatoes. Princes submitted that, on the basis of supply-side considerations, the processing of fresh tomatoes constitutes a single product market since tomato processors are able to switch at relatively short notice from processing fresh tomatoes for preserved plum and chopped tomatoes (regardless of their format) to processing fresh tomatoes for tomato purees, passata or pre-packaged tomato sauces, without incurring significant additional costs from one to the other. There was no evidence from the Commission's market investigation to contradict these assertions.
14. With respect to the relevant geographic market, Princes considered that the market for the processing of fresh tomatoes is worldwide in scope. It submitted that industry data are often collected globally and that imports into the EEA particularly from China are important. However, Princes acknowledged that the country of origin of tomatoes is often taken into account by end-consumers when considering factors such as quality. Moreover, prices charged for Chinese tomato-based products remain cheaper than those supplied from Mediterranean countries. The majority of third parties, during the course of the Commission's market investigation, were of the view that country of origin is an important factor taken into account by customers when purchasing tomato-based products since end-consumers often prefer tomatoes sourced in Italy rather than countries such as China.<sup>4</sup>
15. However, for the purposes of this case, the Commission does not need to conclude on the precise product and geographic market definitions in relation to the processing of fresh tomatoes since the conclusions of its competitive assessment would not change howsoever defined.

*(ii) Pre-packaged tomato-based cooking ingredients*

16. The Target produces and supplies to wholesalers a number of pre-packaged tomato-based products downstream to customers in the retail and foodservice sectors. Princes

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<sup>4</sup> Replies to the Commission's Request for Information (RFI) to UK retailers regarding pre-packaged tomato-based cooking ingredients of 5 March 2012, question 12; and Replies to the Commission's RFI to competitors regarding pre-packaged tomato-based cooking ingredients of 5 March 2012, question 18.

negotiates contracts with retailers for canned/preserved tomatoes,<sup>5</sup> tomato purée/concentrates, passata and pre-packaged tomato sauces both collectively and by individual product, depending upon the specific requirements of the relevant retailer.

17. The Commission has previously considered diced tomato, tomato purée and tomato concentrates as "ingredients for pasta sauces" in a previous case but ultimately left the precise product market definition open.<sup>6</sup>
18. Princes submitted that pre-packaged tomato-based products as well as fresh tomatoes are relatively interchangeable insofar as they constitute cooking ingredients that can be used in a variety of combinations including as ingredients for sauces. It also noted that suppliers tend to offer a wide range of these different cooking ingredients and that there is a high degree of supply-side substitution. With regard to the UK market, the majority of third parties who responded to the Commission's market investigation considered that pre-packaged tomato-based products are interchangeable. However, a few retailers disagreed, noting that there is often a significant price difference between types of pre-packaged tomato-based products, particularly depending on the level of tomato concentration.<sup>7</sup>
19. Princes also submitted that no distinction should be made between types of packaging formats (such as jars, cans, Tetra Pak, Tetra Recart, plastic containers etc.) not least since manufacturers can easily switch between them. In a previous case, the Commission considered (but ultimately left open) whether non-perishable vegetables should be segmented based on packaging format.<sup>8</sup> The market investigation, on balance, confirmed the Parties' views that packaging is not a strong consideration for end-consumers in the UK when selecting pre-packaged tomato-based cooking ingredients.<sup>9</sup>
20. Within this market, Princes argued that branded and PL products compete directly with each other and therefore form part of the same relevant product market. It emphasised that in the UK, for example, PL products account for around 60-65% of all retail sales and that customers in the foodservice sector are less interested in the origin – or brand – of products, as compared with retail-channel customers. Third parties who responded to the Commission's market investigation all agreed that in the UK end-consumers do not differentiate between PL and branded products when making their purchasing decisions.<sup>10</sup>

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<sup>5</sup> Canned/preserved tomatoes include chopped tomatoes, cherry tomatoes, plum tomatoes and tomato based pizza toppings.

<sup>6</sup> See European Commission decision dated 28 September 2000 in Case IV/ M.1990 - *Unilever / Bestfoods* at paragraphs 28-32.

<sup>7</sup> Replies to the Commission's RFI to UK retailers regarding pre-packaged tomato-based cooking ingredients of 5 March 2012, questions 5-6.

<sup>8</sup> Case No. COMP / M.2302 - *Heinz / CSM* (paragraph 13).

<sup>9</sup> Replies to the Commission's RFI to UK retailers regarding pre-packaged tomato-based cooking ingredients of 5 March 2012, question 9; and Replies to the Commission's RFI to competitors regarding pre-packaged tomato-based cooking ingredients of 5 March 2012, question 13.

<sup>10</sup> Replies to the Commission's RFI to UK retailers regarding pre-packaged tomato-based cooking ingredients of 5 March 2012, question 10; and Replies to the Commission's RFI to competitors regarding pre-packaged tomato-based cooking ingredients of 5 March 2012, question 16.

21. Both Princes and the Target are principally focused on the retail grocery channel. Sales to foodservice customers account for very small proportions (i.e. below 10%) of the respective revenues of Princes and the Target. Accordingly, they submitted that the Commission need not distinguish between the various supply channels when analysing the relevant markets. There was some indication from the Commission's market investigation that suppliers are able to serve both channels. However, it was less clear whether customers in the foodservice and retail channels have different preferences, buyer power, and quality requirements. Some suppliers were of the view that prices of the same product differ depending on which channel they are sold to.<sup>11</sup>
22. Princes further argued that no distinction should be made on storage temperature of pre-packaged tomato-based cooking ingredients since such products can be stored at different temperatures, whether ambient, fresh or chilled. In any event, it noted that the majority of these products are sold at ambient temperature.
23. With respect to the relevant geographic market, Princes considered that the supply of pre-packaged tomato-based cooking ingredients is at least national in scope. In the previous decisional practice of the Commission and the Office of Fair Trading (OFT), relevant geographic markets in the food sector have typically been found to be national since consumer habits tend to vary between Member States. This is consistent with the outcome of the Commission's market investigation which unanimously supported the national nature of consumer preferences.<sup>12</sup>
24. However, the Commission does not need to conclude on the precise market definition in this case since its competitive assessment is not altered under any plausible alternative market definition.

*(iii) Side of plate*

25. A minority of the Target's revenues are generated through the supply of certain pre-packaged food products<sup>13</sup> which may be deemed to belong to a "side of plate" category. Princes and the Target supply pulses<sup>14</sup>, baked beans,<sup>15</sup> and spaghetti hoops<sup>16</sup> into several EU Member States.

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<sup>11</sup> Replies to the Commission's RFI to competitors regarding pre-packaged tomato-based cooking ingredients of 5 March 2012, question 22.

<sup>12</sup> Replies to the Commission's RFI to UK retailers regarding pre-packaged tomato-based cooking ingredients of 5 March 2012, question 15; and Replies to the Commission's RFI to competitors regarding pre-packaged tomato-based cooking ingredients of 5 March 2012, question 25.

<sup>13</sup> Sales of pre-packaged tomato-based cooking ingredients represent over [80-90%] of the total revenues of the Target.

<sup>14</sup> Pulses are the ripe edible seeds of a wide range of pod-bearing, leguminous plants. Examples include various types of beans, peas, lentils and chickpeas. Pulses have high amounts of fibre and protein, provide important vitamins and minerals, and contribute to a healthy diet.

<sup>15</sup> Baked beans are navy beans (small, oval beans with a white colour, refined texture and delicate taste also known as haricot beans and pea beans) served with a tomato sauce (which in addition to tomatoes typically includes other ingredients such as sugar).

<sup>16</sup> Spaghetti hoops consist of pre-packaged pasta in tomato sauces.

26. Princes submitted that consumers view as substitutable most foodstuffs to be placed on the "side of plate" which accompany the "centre of plate" protein element to comprise or add to a complete meal. That said, Princes noted that distinctions could be made between these various "side of plate" products due to their differing characteristics and that consumers may eat certain products as a snack or light meal on their own. Moreover, Princes noted that possible distinctions may exist between various types of pulses, notably red kidney beans,<sup>17</sup> butter beans<sup>18</sup> and mixed beans.<sup>19</sup> However, its view was that pulses are generally interchangeable since they belong to the same leguminous family, such that in the preparation of food, one type of pulse can often be substituted for another without significant change to the taste, texture and nutritional content of the dish.
27. For all "side of plate" products, Princes argued that, similar to pre-packaged tomato-based cooking ingredients, no distinction should be drawn between PL and branded products, storage temperature, packaging format or wholesale channel. With respect to the latter, the OFT (and Princes itself) in a recent case,<sup>20</sup> considered that for canned mixed beans, canned chick peas and canned butter beans, it is appropriate in the UK to distinguish between sales to the retail sector and the foodservice sector since these customers differentiate between products on the basis of pack sizes and brand importance.
28. A number of third parties who responded to the Commission's market investigation considered that in the UK consumers differentiate between "side of plate" products, such that baked beans, spaghetti hoops and the various types of pulses are not interchangeable with each other.<sup>21</sup> Views were mixed as to the level of differentiation between each type of pulses. They agreed in general with the Parties that customers do not typically distinguish between PL and branded products (despite prices for branded products being higher)<sup>22</sup> or packaging format.<sup>23</sup> Some suppliers did not consider that products sold under different storage temperatures were interchangeable.<sup>24</sup>

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<sup>17</sup> Red kidney beans are large, kidney-shaped beans with a deep glossy red colour and a solid flavour and texture. Also known as the Mexican Bean, red kidney beans are used as a cooking ingredient in the preparation of a variety of dishes (notably Chile con Carne) and in salads.

<sup>18</sup> Butter beans are medium-sized, flat beans with a greenish-white colour. Butter beans take their name from their starchy yet buttery texture, have a delicate flavour and are used as a cooking ingredient to complement a variety of dishes and salads.

<sup>19</sup> "Mixed beans", as sold by Princes, describes a mixture of red kidney beans, butter beans, navy beans and cannellini beans (small, long, thin beans with a shiny-ivory colour and a creamy, mellow flavour).

<sup>20</sup> Office of Fair Trading, Anticipated acquisition by Princes Limited of the canning business of Premier Foods Group Limited, decision of 22 June 2011, paragraphs 24-26.

<sup>21</sup> Replies to the Commission's RFI to UK retailers regarding pulses of 5 March 2012, questions 4-6; and Replies to the Commission's RFI to competitors regarding pulses of 5 March 2012, questions 8-10.

<sup>22</sup> Replies to the Commission's RFI to UK retailers regarding pulses of 5 March 2012, question 13; and Replies to the Commission's RFI to competitors regarding pulses of 5 March 2012, question 19.

<sup>23</sup> Replies to the Commission's RFI to UK retailers regarding pulses of 5 March 2012, question 8; and Replies to the Commission's RFI to competitors regarding pulses of 5 March 2012, question 12.

<sup>24</sup> Replies to the Commission's RFI to competitors regarding pulses of 5 March 2012, questions 15-16.

29. With respect to the relevant geographic market, Princes considered that the supply of "side of plate" products is at least national in scope. The OFT in a recent case, assessed each of the "side of plate" products on a national UK-wide basis, although it had regard to the strength of imports in its competitive assessment.<sup>25</sup> Third parties who responded to the Commission's market investigation were of the view that consumer preferences with respect to pulses are national.<sup>26</sup>
30. The Commission, however, does not need to conclude on the precise market definition in this case given that no competition concerns arise even on the narrowest plausible markets, as set out in the competitive assessment section below.

## **VI. COMPETITIVE ASSESSMENT**

### **Horizontal overlaps**

31. The Parties' activities overlap in the EU and in particular Member States with respect to each of the following products: (i) canned/preserved tomatoes; (ii) tomato purees; (iii) passata; (iv) baked beans; (v) red kidney beans; (vi) butter beans; (vii) mixed beans; and (viii) chickpeas. With the exception of the UK, the Parties have combined shares of less than 15% in every Member State for both the retail and foodservice channels.<sup>27</sup>
32. With respect to the UK retail market, Princes supplies products directly to numerous retailers whereas ARIA only indirectly supplies a limited amount of PL products to one customer in the UK [...]. All ARIA's turnover in the UK is therefore attributed to this single customer. Princes argued that there is no direct horizontal overlap in the UK between Princes and the Target since ARIA's products are supplied to [this customer] under agreements that ARIA centrally negotiates and concludes with [its non-UK] parent company [...] on an annual basis. These supply arrangements cover all of [this customer's] European operations ([...]). Deliveries to the UK are invoiced to [the parent company] only. Notwithstanding these assertions, Princes provided data for ARIA's indirect supply relationship with [this customer].
33. On this basis, the activities of Princes and the Target lead to affected markets in the UK retail sector for the supply of: (i) canned tomatoes; (ii) tomato purees; (iii) passata; (iv) spaghetti hoops (canned pasta); (v) kidney beans; (vi) butter beans; and (vii) mixed beans (all at ambient temperatures).
34. As stated above, the Commission notes that there may be some substitutability between canned tomatoes, tomato purees and passata products, which are all pre-packaged tomato-based cooking ingredients, as well as kidney beans, butter beans and mixed beans, all of which may be regarded as pulses. In the following, the Commission

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<sup>25</sup> Office of Fair Trading, Anticipated acquisition by Princes Limited of the canning business of Premier Foods Group Limited, decision of 22 June 2011, paragraph 29.

<sup>26</sup> Replies to the Commission's RFI to UK retailers regarding pulses of 5 March 2012, question 16.

<sup>27</sup> In the foodservice channel, Princes and the Target generate minimal sales and do not overlap in any Member State.



assesses the competitive impact of the proposed transaction in each of these narrower segments in turn.

***(i) Canned/preserved tomatoes***

35. The market shares of Princes and ARIA (through its sole supply relationship of PL products to [one customer]) for the supply of canned tomatoes in the UK retail sector are respectively [40-50%] and [0-10%] by value. However, there are a number of other suppliers serving the UK market, including LDH which supplies [50-60%] of PL canned tomatoes to retailers.

36. No substantiated concerns were raised by third parties in the course of the Commission's market investigation. Notably, [ARIA's only UK customer] did not raise any concerns. Retailers did not consider ARIA to be a strong player in this segment. They noted that a number of alternative suppliers were available to them besides Princes,<sup>28</sup> emphasising that it is, in any event, commonplace to multisource.<sup>29</sup>

***(ii) Tomato purees***

37. In the UK retail sector for the supply of tomato purees, the market shares of Princes and ARIA (through its sole supply relationship of PL products to [one customer]) are respectively [30-40%] and [0-10%] by value. However there are a number of other players which will continue to exert a significant competitive constraint on the merged entity post-transaction, including LDH, which supplies [40-50%] of PL products to retailers in the UK (or [20-30%] of the overall tomato puree segment), as well as Gia, which supplies [30-40%] of branded tomato puree products (or [10-20%] overall).

38. No substantiated concerns were raised by third parties during the Commission's market investigation. Customers and competitors did not consider the Parties to be close competitors.<sup>30</sup> Retailers noted that there would still be a number of alternative suppliers available post-transaction, and that they would continue to benefit from a strong degree of buyer power to countervail any reduction in competition caused by the merger.<sup>31</sup>

***(iii) Passata***

39. The market shares of Princes and ARIA (through its sole supply relationship of PL products to [one customer]) for the supply of passata in the UK retail sector are respectively [20-30%] and [0-10%] by value. However there are a number of other suppliers serving the UK market including LDH, with a [40-50%] market share of PL

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<sup>28</sup> Replies to the Commission's RFI to UK retailers regarding pre-packaged tomato-based cooking ingredients of 5 March 2012, question 30.1

<sup>29</sup> Replies to the Commission's RFI to UK retailers regarding pre-packaged tomato-based cooking ingredients of 5 March 2012, questions 20-21.

<sup>30</sup> Replies to the Commission's RFI to UK retailers regarding pre-packaged tomato-based cooking ingredients of 5 March 2012, question 23.

<sup>31</sup> Replies to the Commission's RFI to UK retailers regarding pre-packaged tomato-based cooking ingredients of 5 March 2012, question 26.

passata supplies (or [30-40%] market share overall), as well as Cirio with a [20-30%] share of branded products.

40. No significant concerns were raised by third parties for the reasons already outlined in paragraphs 36 and 38 above.

**(iv) Spaghetti hoops (canned pasta)**

41. The market shares of Princes and ARIA (through its sole supply relationship of PL products to [one customer]) for the supply of spaghetti hoops in the UK retail sector are respectively [10-20%] and [0-10%] by value. Heinz is the leader in this segment with a share of [90-100%] of branded supplies. LDH accounts for the majority of PL supplies ([20-30%] share) of spaghetti hoops to retailers in the UK.

42. The increment in market share as a result of the transaction is thus limited. Furthermore, the combined market share is moderate and remains below the 25% safe harbour threshold set out in the Merger Regulation.<sup>32</sup> Finally, third parties who responded to the Commission's market investigation did not raise any concerns with respect to this product segment.

**(v) Red kidney beans**

43. The market shares of Princes and ARIA for the supply of red kidney beans in the UK retail sector are respectively [70-80%] and [0-10%] by value. Although Princes' existing market share is significant, the Commission notes that the increment created by the merger is derived from ARIA's single supply relationship in the UK with [one customer]. KTC accounts for [10-20%] of branded supplies of red kidney beans to retailers in the UK, while LDH supplies [0-10%] of PL products.

44. The Parties argued that despite having large market shares in certain narrowly-defined segments (namely, the different types of pulses), the Commission should not be concerned about the competitive effects of the proposed transaction since the Parties lack significant market power. Moreover, they argued that customers have a strong degree of buyer power and that the transparency and volatility of input costs constrain the post-merger ability to increase prices. They also stated that margins achieved are low ([...]) and therefore, it would not be profitable for the merged firm to raise prices beyond competitive levels due to the necessity to supply high volumes.

45. In response to the Commission's market investigation, third parties did not raise concerns about this product segment. [ARIA's only UK customer], in particular, was unconcerned. Retailers noted that they would continue to enjoy a strong degree of buyer power.<sup>33</sup> They also considered that there will remain a number of alternative suppliers they could source from and that multi-sourcing is commonplace.<sup>34</sup> Despite high market shares in this segment, the majority of third parties did not think that the merged entity would have the ability to raise price, decrease quality or reduce choice, promotions or

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<sup>32</sup> Paragraph 32.

<sup>33</sup> Replies to the Commission's RFI to UK retailers regarding pulses of 5 March 2012, question 26.

<sup>34</sup> Replies to the Commission's RFI to UK retailers regarding pulses of 5 March 2012, questions 20 and 30.

discounts.<sup>35</sup> Neither were they concerned that the proposed transaction would negatively affect their respective businesses, be it as a competitor or customer of the Parties in this segment.<sup>36</sup>

**(vi) Butter beans**

46. With respect to the supply of butter beans to the UK retail sector, the market shares of Princes and ARIA are respectively [70-80%] and [0-10%] by value. Although Princes' existing market share is significant, the Commission notes that the increment created by the merger is derived from ARIA's single supply relationship in the UK with [one customer]. There are several other smaller players serving retailers in this segment, including LDH with [0-10%] of PL supplies and HP Foods and Sea Isle with [0-10%] and [0-10%] respectively of branded goods in the UK.
47. Third parties who responded to the Commission's market investigation (notably [ARIA's only UK customer]) did not raise substantive concerns regarding this segment, citing the reasons expressed in paragraph 45 above.

**(vii) Mixed beans**

48. The market shares of Princes and ARIA for the supply of mixed beans in the UK retail sector are respectively [70-80%] and [0-10%] by value. Although Princes' existing market share is significant, the Commission notes that the increment created by the merger is derived from ARIA's single supply relationship in the UK with [one customer]. In addition, there are a number of other players in the market including Petty Wood and HP Foods, with shares of [20-30%] and [10-20%] respectively for branded mixed beans, and LDH with [0-5%] of PL supplies to retailers in the UK.
49. Third parties responding to the market investigation were not materially concerned about the competitive effects of the proposed transaction in this segment for the reasons set out in paragraph 45 above. In particular, [ARIA's only UK customer] raised no concerns.

**Vertical overlaps**

50. ARIA (and post-transaction, the Target) sells tomato products to Princes' Dutch and UK businesses. With respect to the UK market, the existing supply agreements between ARIA and Princes are on an exclusive basis, with the exception of ARIA's deliveries of PL products to [one customer in the UK]. In relation to pulses, ARIA is only selling its products to [this customer] under a contract negotiated with [its non-UK parent company].
51. The activities of Princes (downstream) and the Target (upstream) give rise to vertically affected markets with respect to the UK retail sector only, for each of the following segments: (i) canned/preserved tomatoes; (ii) tomato purees; (iii) passata; (iv) spaghetti hoops; (v) red kidney beans; (vi) butter beans; and (vii) mixed beans.

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<sup>35</sup> Replies to the Commission's RFI to UK retailers regarding pulses of 5 March 2012, question 31; and Replies to the Commission's RFI to competitors regarding pulses of 5 March 2012, question 38.

<sup>36</sup> Replies to the Commission's RFI to UK retailers regarding pulses of 5 March 2012, question 32; and Replies to the Commission's RFI to competitors regarding pulses of 5 March 2012, question 39.

52. Princes stated that the key rationale of the proposed transaction is to enable it to secure its vertical supply chain and broaden its customer base in the face of strong competition from its two biggest (already vertically integrated) competitors in tomato-based cooking ingredients and/or pulses namely, La Doria and Conserve Italia.
53. Princes submitted that there will continue to be a number of major alternative (non-integrated) suppliers to ARIA post-transaction, including Feger, Attianese, Giaguaro and De Clemente, which are all Italian processors of tomatoes and pulses that supply products to the UK. Notably, it referred to a previous decision of the Commission where the Commission recognised the highly competitive nature of the upstream tomato processing sector in Italy.<sup>37</sup>
54. The majority of third parties did not raise any concerns during the market investigation about potential foreclosure effects arising from the proposed transaction. Rather, the market investigation showed that a number of alternative suppliers exist and that UK retailers enjoy a strong degree of buyer power, so it is unlikely that any foreclosure strategy would be successful.
55. In view of the above, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market.

## VII. CONCLUSION

56. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission*

*(signed)*  
*Joaquín ALMUNIA*  
*Vice-President*

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<sup>37</sup> N6/2006 - AR Industrie Aliments S.p.A – Istituto Sviluppo Agroalimentare S.p.A. (Decision of 5 January 2006), at paragraph 13.