

Anticipated acquisition by Associated British Foods plc of GB Plange Limited from the Werhahn Group

ME/6246/13

The OFT's decision on reference under section 33(1) given on 6 January 2014. Full text of decision published 21 January 2014.

PARTIES

1. **Associated British Foods plc** (ABF) is an international supplier of foods and food ingredients, and a retail group. Its businesses operate in five segments: grocery, primary foods, agriculture, ingredients and retail.
2. **Gb Plange Limited** ('Gb Plange') is a supplier of bakery ingredients as well as bakery products to a range of customers located in the UK and Ireland, including industrial bakers and major trade wholesalers who in turn supply artisan bakers. Gb Plange is a wholly-owned subsidiary of the Werhahn Group, a family owned conglomerate, operating across the building materials, consumer goods, financial services and bakery product sectors. Gb Plange does not have production facilities in the UK. The majority of its production takes place in the Netherlands. Its principal UK brands (all bread improvers) are 'Stayfresh', 'Extensine' and 'Energie'. Gb Plange's turnover in the UK was £10.2 million in the year ended 31 December 2012.
3. ABF's acquisition of the Gb Plange business will create an overlap in the production of bakery ingredients. The relevant ABF companies with activities related to these products are:

- i. **AB Mauri** ('AB Mauri') comprises a number of yeast and bakery ingredients companies. AB Mauri operates principally through two subdivisions in the UK namely Cereform and Mauri Products. Cereform is a supplier of bakery ingredients, including bread improvers, mixes, cooked grains, doughnut mixes, icing, soya, and plastic bread baskets. Mauri Products is a yeast producer based in Hull, which supplies yeast to bakeries and distillers. AB Mauri's sales of bakery ingredients were £[] million for the year ended August 2012. It supplies bread improvers primarily to industrial customers. AB Mauri's principal brand in the UK for bread improvers is 'Cereform'.
- ii. **Allied Bakeries** ('Allied Bakeries') manufactures bakery products such as bread. In the UK these products are principally sold under the 'Kingsmill', 'Burgen', 'Allinson' and 'Sunblest' brands. Allied Bakeries sources supplies of bakery ingredients from AB Mauri and a number of other providers but has not been supplied by Gb Plange.

TRANSACTION

4. ABF will acquire the entire issued share capital of Gb Plange including trademarks and know-how belonging to Gb Plange. The merger is conditional on clearance by the Office of Fair Trading.
5. The parties notified the merger on 1 November 2013 and following receipt of a satisfactory submission the administrative deadline for a decision is 6 January 2013.

JURISDICTION

6. As a result of this merger ABF and Gb Plange will cease to be distinct. The parties overlap in the supply of bread improvers in the UK with a combined share of supply in excess of 25 per cent¹. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore

¹ The parties estimated that they held a share of supply of [20 to 30] per cent by volume and [20 to 30] per cent by value in relation to bread improvers.

believes that it is or may be the case that a relevant merger situation has been created.

FRAME OF REFERENCE

7. The parties overlap in the production of bakery ingredients. These are mixtures of single ingredients (such as flour, enzymes, oils and emulsifiers) used by bakeries in order to produce breads and other baked goods. In particular the parties overlap in relation to bakery ingredients which can be classified into the following categories:
 - (a) Bread improvers;²
 - (b) Bread mixes;³
 - (c) Cake mixes;⁴ and
 - (d) Fillings and toppings⁵
8. Improvers and mixes are sometimes known as 'bakery intermediates' and are essentially convenient blends of some or all of the dry ingredients and part or all of the flour used in dough preparation. Bread improvers can also be made in a liquid format.
9. Bread improvers are a wide range of substances that can be added to flour and dough in order to improve the final product quality, for example the shelf life, or the texture and some aspects of dough behaviour, for example the ease of extraction from tins. Other terms that are sometimes used to refer to bread improvers include 'bread conditioners', 'dough conditioners', 'processing aids' and 'oxidising agents'.
10. The ingredients of bread improvers include a combination of the following: flour, water, yeast, brine, dough conditioner, shelf life enhancer, crumb softeners, shortening (a form of fat) and preservatives. The precise recipe will depend on the particular product being made by the baker.

² See paragraphs 10 and 11

³ Bread mixes contain ingredients such as seeds and grains which are used to make specific types of bread.

⁴ Cake mixes contain all the required ingredients to make particular types of cakes. Customers will typically add water to cake mixes. The parties informed the OFT that mixes containing cake ingredients had declined in recent years.

⁵ These are flavoured mixes added to the top or middle of a cake or bread. Like bread improvers these are available in liquid or dry formats.

PRODUCT SCOPE

11. The parties submitted that the appropriate relevant product market definition in this case is all bakery ingredients taken together. They referred to CSM/European Bakeries Supplies,⁶ a decision of the European Commission, in support of this view. The OFT notes that in that case the European Commission did not conclude on the relevant market, but noted that there may have been separate markets for semi-finished bakery products and bakery ingredients (which, in that case, included 'improvers, fillings, coatings, toppings and flavourings').
12. In general, the OFT's approach to product market definition is to consider if a plausible narrow candidate product market can be widened through substitution on the demand-side in the first instance, and then, if appropriate, if it can be widened through substitution on the supply-side. This may result in a product market which is wider than the narrowest plausible candidate product market.⁷
13. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as there can be constraints on merging parties from outside the relevant market or varying competitive constraints from within the market.⁸

Bakery ingredients

14. The parties submitted that all four bakery ingredients should be considered as part of a wider market for bakery ingredients due to supply-side substitution. They submitted that there are no special facilities or machinery required to manufacture bakery ingredients, but that it is simply a case of mixing a combination of ingredients. The parties submitted that most manufacturers are able to, and indeed do, switch between production lines in order to satisfy customer demand, and that all this would require would be a cleaning of the equipment.
15. On the demand-side, customers submitted that each type of bakery ingredient identified in paragraph 8 above serves a different purpose and

⁶ Case No. COMP/M.2084.

⁷ This is in line with Merger Assessment Guidelines, paragraphs 5.2.6 to 5.2.19.

⁸ Merger Assessment Guidelines, paragraph 5.2.2.

that there would not be a significant degree of switching in response to a small price rise. The OFT therefore considers that the market is unlikely to be wider than individual types of bakery ingredients on the basis of demand-side substitution.

16. The parties also submitted that several competitors produce all four types of bakery ingredients, with AB Mauri, Gb Plange, CSM, Puratos, British Bakels, Zeelandia and Sonneveld appearing as important suppliers across the four categories. The parties further submitted that this was supportive of possible supply-side substitution.
17. Competitors who responded to the OFT confirmed that they produce several types of bakery ingredients. However, competitors had mixed views on the extent to which capacity could be quickly and easily shifted between the four different categories of bakery ingredients.
18. The OFT notes that the evidence on supply side substitution is mixed. The OFT has not concluded on supply side substitution but, on cautious basis, has considered the four types of bakery ingredients both separately and together.

Bread Improvers – liquid and dry

19. The OFT has assessed whether liquid and dry bread improvers should be considered separately.
20. Third parties who replied to the OFT's market enquiries had mixed views on demand-side substitutability between liquid and dry bread improvers. Several noted that they have a preference for one or the other and would not switch following a small price rise. One customer told the OFT that it had switched from liquid to dry bread improvers and a competitor mentioned a different customer who had switched from dry to liquid bread improvers. Several third parties submitted that there were no substantial differences between the two and that preferences may be based on understanding and experience with the product rather than its properties. Competitors indicated that customers tended to have a preference either for liquid or dry bread improvers but that both these products had similar properties. One customer noted that dry bread improvers had not been tested as an alternative, but that a small price rise may trigger such considerations.

21. From a supply side perspective, the parties submitted that the manufacturing processes for liquid and dry bread improvers are broadly similar and that manufacturers of bread improvers can easily produce both. They submitted that CSM, Bakels, Puratos, Zeelandia and Sonneveld supply both liquid and dry bread improvers and that their other competitors could also supply both types of bread improvers. The parties also submitted that ABF tended to focus more on liquid bread improvers, while Gb Plange supplied a higher proportion of dry bread improvers.⁹
22. On the supply side, competitors who responded during the OFT's market investigation submitted that it is possible to produce both liquid and dry bread improvers, but that it would require some investment in machinery if they were not currently doing so. In any event, customers identified the same set of actual or potential suppliers for both liquid and dry bread improvers. Several competitors explained that most suppliers currently do, or have the ability to supply both types of improvers.
23. The OFT considers that the evidence on the likely extent of demand and supply substitution is mixed. However, the OFT notes that the same set of suppliers compete to supply both liquid and dry bread improvers under the same competitive conditions. Therefore, whether these are analysed separately or together would be unlikely to affect the OFT's competitive assessment.¹⁰ Furthermore, no third parties who responded to its market investigation, expressed concerns to the OFT relating specifically to either liquid or dry bread improvers.
24. Therefore, the OFT has not considered it necessary to assess the merger on the basis of the supply of liquid and dry bread improvers separately.

GEOGRAPHIC SCOPE

25. The parties submitted that the relevant geographic market is wider than the UK in scope and includes the UK and mainland Europe. They cite a previous

⁹ For example [] per cent of ABF 2012 sales by volume ([] per cent by value) were derived from sales of wet bread improvers, while the equivalent figure for Gb Plange was [] per cent ([] per cent by value).

¹⁰ Merger Assessment Guidelines 5.2.17.

case CSM/European Bakery Supplies Business (Unilever) ¹¹ in support of this. The parties in that case submitted that the market was European in scope.

26. However, the European Commission did not reach a conclusion on this issue as no competition issues arose. The parties submitted that the large suppliers of bakery ingredients to UK customers are significant competitors on at least a European scale; for example, CSM, Bakels, Puratos, Zeelandia and Sonneveld. They submitted that suppliers do not need to have manufacturing capability in the UK and gave Gb Plange as an example of a company which had its production facilities in mainland Europe but distributed in the UK.
27. The majority of third parties indicated that they could source from outside the UK, with one third party suggesting that the main barrier to foreign imports would be transport costs. However, several of the parties' customers also noted that in response to a five per cent price rise they would look to alternative suppliers within the UK and not to imports.
28. Given the mixed evidence received, on a cautious basis, the OFT has assessed the merger on the basis of a UK geographic scope.

Summary of market scope

29. The OFT has assessed this merger in relation to each of the following on a UK basis:
 - (i) Bread improvers;
 - (ii) Bread mixes;
 - (iii) Cake mixes;
 - (iv) Fillings and toppings; and
 - (v) Bakery ingredients (including all of the above).

¹¹ Case No. COMP/M.2084 – CSM/European Bakery Supplies (Unilever).
<http://www.of.gov.uk/OFTwork/mergers/decisions/2005/rank-hovis>

HORIZONTAL ISSUES

Shares of supply - bakery ingredients

30. The parties submitted estimates of their combined share of supply in relation to bakery ingredients. On the basis of these and information received from competitors on their volumes, the OFT estimates that the parties have a combined share of supply of around [10 to 20] per cent by volume and [10 to 20] per cent by value with a [0 to 10] per cent and [0 to 10] per cent increment respectively. The parties submitted that there are a number of other competitors with similar or larger shares than the parties. These include CSM with [10 to 20] per cent, Bakels with [0 to 10] per cent, Puratos with [10 to 20] per cent, and Zeelandia with [0 to 10] per cent. The parties also submitted that there are a number of other smaller competitors.

Shares of supply – bread mixes, cake mixes, and fillings and toppings

31. In relation to bread mixes the parties have submitted that they have a combined share of supply of [0 to 10] per cent with a [0 to 10] per cent increment. CSM, Bakels, Puratos, Zeelandia and Sonneveld (as well as other companies) all compete and have similar or larger shares of supply to the parties. According to the parties, CSM has around [0 to 10] per cent, Bakels has around [10 to 20] per cent, Puratos has around [10 to 20] per cent, EDME has around [10 to 20] per cent and Munton has around [10 to 20] per cent.
32. In relation to cake mixes the parties submitted that they have a combined share of supply of [10 to 20] per cent with a [0 to 10] per cent increment. CSM, Bakels, Puratos, Zeelandia, Dawn and Macphie all compete. According to the parties, CSM has around [10 to 20] per cent, Bakels has around [5 to 15] per cent, Puratos has around [five to 15] per cent, Zeelandia has around [five to 15] per cent, Dawn has around [5 to 15] per cent and Macphie has around [5 to 15] per cent with a number of other smaller competitors also active.
33. In relation to fillings and toppings the parties submitted that they have a combined share of supply of [0 to 10] per cent with a [0 to 10] per cent increment. The parties submitted that there are 11 other suppliers with shares of supply either equal to or greater than AB Mauri (CSM with [five

to 15] per cent, Bakels with [0 to 10] per cent, Puratos with [10 to 20] per cent, Zeelandia with [0 to 10] per cent, Dawn with [10 to 20] per cent, Macphie with [0 to 10] per cent, James Flemming with [10 to 20] per cent, Ingram with [0 to 10] per cent, Real Good Food with [five to 15] per cent, Britannia with [0 to 10] per cent, and Kerry with [five to 15] per cent). No third parties raised concern in relation to the supply of cake mixes, bread mixes or fillings and toppings.

34. Therefore, on the basis of the evidence before it, the OFT considers that the merger does not give rise to concerns as a result of unilateral effects in the supply of bread mixes, cake mixes, fillings and toppings in the UK.

Shares of supply – bread improvers

35. The parties submitted estimates of their shares of supply in relation to bread improvers. The parties estimated that their share of supply of bread improvers is around [30 to 40] per cent by volume with a [0 to 10] per cent increment and around [30 to 40] per cent by value with a [0 to 10] per cent increment. As part of its investigation the OFT received information from competitors on the volumes they sold which broadly supported the parties' estimates.
36. AB Mauri supplies bread improvers to another of the companies in the ABF group, Allied Bakeries. The parties estimated if captive sales to Allied Bakeries are excluded, then the parties combined share of supply falls to around [20 to 30] per cent by volume and [20 to 30] per cent by value with around a [0 to 10] per cent increment in each case.

Closeness of competition

37. The parties submitted that they are not close competitors in the UK. The parties provided evidence which showed that, for the most part, they do not have the same customers. Within the top ten customers for each of the parties there were only [] which they both supplied and these accounted for differing proportions of revenue for each of them. The OFT notes however, that given that this is a market which is generally characterised by bidding for contracts, this does not necessarily indicate that the parties are not close competitors as the competition between them happens at the bidding stage of the process. Therefore the closeness of competition

assessment must consider the extent to which they have been important alternatives for customers.

38. The parties submitted bidding data for the last three years. Of the [] bids AB Mauri entered, on only [below 10] occasions did Gb Plange bid for the same contracts. There was only one occasion where only the parties bid for a contract – on all the other occasions other competitors also entered bids. On most occasions where either of the parties had bid there were a number of other bidders such as CSM, British Bakels, Zeelandia or Sonneveld.
39. Third parties who responded to the OFT generally considered that the parties are close competitors, given that they offer a similar range of products. However they also noted that there were a number of other competitors present and the majority of customers typically mentioned CSM, British Bakels, Zeelandia and Sonneveld as actual or potential alternative suppliers to the parties. Several customers submitted that they had historically used one of the parties and would not have considered the other as a potential supplier. This was mainly on the basis of product range (for example one third party submitted Gb Plange supplies limited volumes of liquid bread improvers).
40. The OFT considers that the bidding data combined with third party views indicates that the parties compete with one another but that a number of other competitors will remain following the merger. The majority of third parties who replied during the OFT's market investigation were not concerned by the merger.
41. There are a number of competitors to the parties. Several of these produce and distribute bread improvers in the UK. In addition, a number of producers in continental Europe supply bread improvers into the UK, including competitors such as Zeelandia, Sonneveld and Ireks. Internal documents provided by the parties indicate that the parties perceive other providers of bread improvers as competitors.¹²
42. The parties also submitted that customers are able to, and indeed do, switch suppliers. Furthermore, large customers may multi-source their

¹² For example, an email dated 7 May 2012, [] refers to [] being AB Mauri's 'biggest competitor in the bakery business'. Gb Plange has also identified [] as a close competitor and has noted that it supplies [] of its principal customers [].

requirement, which reinforces their supply options. The majority of customers who responded to the OFT during its market investigation confirmed that they believe they are able to switch suppliers of bread improvers and that the market is characterised by a number of suppliers with good reputations.

43. The parties submitted that there is significant spare capacity in the supply of bread improvers. In support of this they provided estimates of their own spare capacity and estimates of the spare capacity of competitors. Third parties who replied during the OFT's investigation confirmed that several competitors have significant spare capacity and as such are able to begin supplying in the event of the merged entity raising prices.
44. In summary, the evidence the OFT has found therefore indicates that although the parties compete with one another, there are a number of competitors, a number of whom have spare capacity, and the parties are not each others' closest competitor. As a result the OFT considers that the merger does not raise concerns of unilateral effects in the supply of bread improvers in the UK.

VERTICAL ISSUES

45. One of the parties' customers and one competitor raised general concerns about the relationship between ABF (though Allied Bakeries) and Gb Plange. One customer raised a specific concern that the fact that ABF is vertically integrated and operates its own baking division through Allied Bakeries might mean that commercially sensitive customer information (such as that relating to the development of new bread improver products specifically for that customer) might be shared with Allied Bakeries (essentially that customer's competitor) thus giving it a competitive advantage and potentially enabling it to foreclose other bread manufacturers.
46. As noted above, the merger does not raise concerns as a result of unilateral effects in the supply of bakery ingredients as bread manufacturers have a number of alternative supply options should they not wish to be supplied by the parties. Therefore the OFT considers that the merged entity would not have the ability or incentive to foreclose other bread manufacturers.

47. The OFT therefore does not consider that the merger raises a realistic prospect of a substantial lessening of competition through vertical effects.

BARRIERS TO ENTRY AND EXPANSION

48. The parties submitted that there has been some new entry in the UK in recent years. For example, Milbo, an Italian supplier, has begun supplying bread improvers into the UK to in-store bakeries. They also submitted that existing suppliers are able to use their spare capacity to expand/switch between different bakery ingredients. The parties submitted that this would be easy to do and may simply entail deep cleaning production equipment. Competitor views on the extent to which production lines devoted to other bakery ingredients could be switched were mixed.

49. Since the OFT considers that this merger does not give rise to any prima facie competition concerns, it is not necessary to conclude on the issue of barriers to entry.

BUYER POWER

50. According to the parties there is significant countervailing buyer power in the market for bread improvers. The majority of sales are being made to industrial bakers who purchase large amounts of bread improvers and could as a result flex this bargaining power in negotiations. In addition, the parties submitted that the existence of numerous sources of supply gave customers the ability to credibly threaten to delist the parties' products. Third party views were mixed on the question of buyer power.

51. Since the OFT concludes that this merger does not give rise to any prima facie competition concerns in any of the markets identified, it is not necessary to conclude on the existence of buyer power.

THIRD PARTY VIEWS

52. Third-party comments have been discussed above where relevant. The majority of third parties were unconcerned about the merger.

ASSESSMENT

53. The parties overlap in the production of bakery ingredients. In particular the parties overlap in relation to the following categories of bakery ingredients:
- (i) Bread improvers
 - (ii) Bread mixes
 - (iii) Cake mixes
 - (iv) Fillings and toppings
54. The OFT has assessed this merger in relation to each of the above separately as well as all bakery ingredients taken together in the UK.
55. In relation to all bakery ingredients the parties have a combined share of supply of around [10 to 20] per cent by value and [10 to 20] per cent by volume with a [0 to 10] and a [0 to 10] per cent increment respectively.
56. In relation to bread mixes the parties submitted that they have a combined share of supply of [0 to 10] per cent with a [0 to 10] per cent increment. In relation to cake mixes the parties submitted that they have a combined share of supply of [10 to 20] per cent with a [0 to 10] per cent increment. In relation to fillings and toppings the parties submitted that they have a combined share of supply of [0 to 10] per cent with a [0 to 10] per cent increment. Given the parties low combined shares in the supply of each of these, the low increments which will result from the merger, the presence of other competitors, and lack of third party concerns, the OFT does not believe that the merger would give rise to concerns as a result of unilateral effects in relation to the supply of either bread mixes, cake mixes or fillings and toppings.
57. The parties estimated their share of supply of bread improvers to be around [30 to 40] per cent by volume and [30 to 40] per cent by value with a [0 to 10] and [0 to 10] per cent increment respectively. Information from competitors broadly supported the parties' estimates. The parties submitted that they do not compete closely with one another in the supply of bread improvers providing bidding data in support of this. Several customers who responded to the OFT indicated that they believed the parties to be close competitors but expressed the view that they had a number of alternative

suppliers. Customers were largely unconcerned by the merger. The OFT does not believe that the merger would give rise to concerns as a result of unilateral effects in relation to the supply of bread improvers.

58. Two customers and one competitor raised concerns in relation to the vertical relationship between ABF has and Allied Bakeries (a bread manufacturer and one of its group companies). Bread manufacturers have a number of supply options should they consider they do not wish to be supplied by the parties. The OFT therefore does not consider that the merged entity would have the ability or incentive to foreclose bread manufacturers.
59. Given that the merger raises no concerns that a substantial lessening of competition will arise, the OFT does not need to conclude on the assessment of barriers to entry and expansion, nor whether there is counterveiling buyer power.
60. 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

This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.