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Completed acquisition by Dr Oetker (UK) Limited of the business and assets of Schwan's Consumer Brands UK Limited

ME/4033/09

The OFT's decision on reference under section 22(1) given on 05 May 2009  
Full text of decision published 12 May 2009

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## **PARTIES**

1. **Dr Oetker Group** ('Dr Oetker Group') manufactures and distributes a diverse range of food products to over 40 countries around the world. Dr Oetker Group's subsidiary in the UK is Dr Oetker (UK) Limited ('Dr Oetker'). Dr Oetker Group's UK turnover during the financial year 2007 was £102 million, of which £20.9 million was generated from Dr Oetker's UK frozen food business – which is the business area most relevant to this decision.
2. **Schwan's Group** (Schwan's Group) is based in the USA and is a producer of branded frozen food worldwide. Its products are sold in almost 50 countries, and its primary market is the U.S.A. The UK turnover of Schwan's in the last financial year was £77 million.

## **TRANSACTION**

3. Dr. Oetker UK acquired Schwan's Groups European frozen pizza business by an asset purchase agreement on 2 December 2008, by which Dr Oetker acquired assets from Schwan's Consumer Brands UK Limited and The Schwan's Food Company which are subsidiaries of the Schwan's Group – together 'Schwan's'. The transaction covered the acquisition of Schwan's':
  - i. frozen pizza brands 'Chicago Town' (a strong brand in the UK) and 'The Great Texas Pizza Company'
  - ii. production facilities in Leyland, UK and part of the production facilities in Magdeburg, Germany.<sup>1</sup>

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<sup>1</sup> The remaining capacity in the Germany plant, which is not included in this transaction, is to be sold to the own-label producer, Freiburger (to its subsidiary Great Star Food Production GmbH & Co. KG).

4. Dr. Oetker told the OFT that one of the main motivations for the transaction was to increase its presence in the UK frozen food market. In two years time, it therefore intends to physically transfer its German production facility purchased through this transaction to the UK. Dr. Oetker intends to continue to supply the acquired brands as sub-brands.
5. The parties notified the transaction on 4 March 2009 and the extended administrative deadline for consideration of this case is 5 May 2009. The statutory deadline is 13 May 2009 and has been extended by 20 working days by agreement with the parties.

## **JURISDICTION**

6. As a result of this transaction Dr. Oetker and Schwan's have ceased to be distinct. The parties' share of supply of frozen pizzas in the UK exceeds 40 per cent and the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

## **MARKET DEFINITION**

7. The parties overlap in the supply of branded frozen pizzas.<sup>2</sup> Dr. Oetker supplies frozen pizzas in the UK from its continental European sites under the 'Ristorante' brand. Schwan's produces the Chicago Town pizza range and owns the 'Great Texas Pizza Company' trademark. It also manufactures own label products throughout Europe.

### **Segmentation by different retail channels**

8. Frozen pizzas are sold in a variety of retail outlets including the grocery multiple retailers (multiples), convenience stores and specialist frozen food retailers such as Iceland and Farm Foods.<sup>3</sup> The OFT therefore considered whether it was necessary to segment the market by retail channel. It can be argued in this case, that in convenience stores the competitive conditions may be materially different to the multiples due to the absence of own label and chilled pizzas.
9. In previous cases the OFT has, however, consistently concluded that grocery retail multiples act as an asymmetric constraint on convenience stores in its consideration of retail mergers<sup>4</sup> and there appears to be no

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<sup>2</sup> The parties do not overlap in the market for own label frozen pizzas, as Dr. Oetker does not supply these in the UK.

<sup>3</sup> In addition they are also sold in independent stores, wholesalers, cash and carry and discounters (Aldi, Lidl, Netto).

<sup>4</sup> Competition Commissions Report on Tesco/Co-op Slough, 2007.

reason to depart from this analysis here. Given that this constraint exists at the store level, it is also likely that a degree of constraint exists at the product specific level. This is particularly the case for frozen pizzas where the consumer can easily make a temporal choice to 'stock up' on frozen pizza at the supermarket rather than purchase from a more convenient outlet. In line with past decisional practice, the OFT has not therefore considered it necessary to segment the market by retail channel and has assessed the scope of the market across all retail outlets.

## **Product Scope**

10. The main issues in relation to market scope in this case relate to (a) whether chilled pizzas can be considered to be within the same market as frozen pizzas and (b) whether own label pizzas place a competitive constraint upon branded ones. The OFT has considered each of these issues in turn below.

## **Chilled and frozen pizzas**

11. The parties submitted that chilled pizzas (both branded and unbranded) belong to the same relevant market as frozen pizzas and that in the last few years the growth of the chilled pizza segment has led to declining sales within the frozen segment.
12. The main difference between chilled pizzas and frozen pizzas is that the former have a higher retail price. The parties submit that this price difference is in part a result of shorter shelf lives of the former product, however other evidence presented to the OFT also pointed towards both perceived and actual differences in quality between the two products which could also account for such differences. On the demand side, the parties argued that this difference does not mean that they are not substitutable in the eyes of consumers. Although, the average price of a chilled pizza is significantly higher (around 50-60 per cent) than that of a frozen pizza, the parties suggest that there is some price crossover between the chilled and frozen pizza categories and that consumers are willing to switch between the two. Overall, whilst the OFT does not discount there being substitutability between the chilled and frozen pizzas, however, such significant price variation may be indicative of a large degree of differentiation between the products from a consumer perspective.
13. The parties' internal documents indicate that Dr Oetker has undertaken a level of marketing which directly aims to capture customers from the chilled pizza sector. They cite the marketing of the Dr Oetker's 'Ristorante' range as being just as fresh as any chilled pizza. Internal documents suggest there is an overlap between chilled and frozen pizza customers, with 54 per cent of 'all pizza' customers buying from both segments. The

parties also provide limited examples where they have used marketing and advertising to challenge the gap in perception that chilled pizzas are of better quality and fresher than frozen, specifically with their Ristorante brand (which targets the same customer segment as chilled, for example, more affluent, young and older couples).<sup>5</sup> The marketing campaign used emphasized that 'Ristorante' is 'Fresher than Fresh' and Dr. Oetker considered [ ] of chilled pizzas (however they did not take this forward). The Green Isles<sup>6</sup> brand did, however, decide to launch 'see through the hole' packaging for their Goodfella's - La Bottega range.

14. The OFT observed that the price of frozen and chilled pizza seem to follow each other which, it could be argued, suggests that there is some competitive interaction, and that they are potentially substitutes. However, the OFT was unable to conclude on whether this evidence indicates strong competition between the two or simply that they are subject to the same factors which cause price fluctuations, for example costs or seasonal changes in demand. In addition to this, the most recent market data<sup>7</sup> indicated that the chilled pizza segment is experiencing growth and is forecast to continue to grow and overtake the frozen segment in terms of market size, although it is almost impossible to ascertain whether this implies any degree of competitive constraint or is part of a wider consumer shift to, so called, 'fresher' products.
15. Direct price comparison by consumers may often be difficult given the different location of the products in-store. In terms of in-store placement, frozen pizzas are generally situated with other frozen food in freezer cabinets at one end of a store, whilst chilled pizzas are situated among the fresh products nearer the entrance of the store. This would tend to suggest that the two products do not compete for the same shelf space in the short term. The parties also point out that they are purchased by different category managers. In fact, the majority of multiples suggest that they decide whether to run promotions for the two segments independently and that the pricing strategy is somewhat different between the two segments with most frozen pizzas sold on 'deep discount'.
16. Supply side substitution is considered, in theory possible. A third party competitor suggested that a supplier with similar process lines (such as a supplier of chilled pizza) could in theory switch to supplying frozen pizza with relative ease, for example by adding a freezing unit to its manufacturing line. However, this competitor indicated that this would be relatively costly and did not consider that such investment would be likely in the short to medium term.

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<sup>5</sup> Dr. Oetker report July 2008.

<sup>6</sup> Green Isle is a competitor of the parties and manufacturers branded and own label frozen pizzas.

<sup>7</sup> Mintel Report 2007, Pizza

17. The evidence on competition between the frozen and chilled pizza categories is therefore mixed. There is evidence to suggest that chilled pizza sales are increasing and this could be at the expense of the frozen category. It also appears that the prices of these two segments follow each other, although it is difficult to ascertain the extent to which this is due to competition, and not driven by other common factors.
18. Overall, on the basis of the evidence available the OFT cannot discount the potential for frozen pizzas to form a separate product market from chilled, but equally cannot rule out that the chilled pizza market does have, at the minimum, a weak competitive constraint on the frozen pizza category. In light of this, a cautious approach has been adopted and the transaction assessed against a frame of reference which excludes the chilled pizza sector.

### **Branded and own label frozen pizza**

19. The parties argued that own label frozen pizzas place a competitive constraint on branded pizzas. The OFT has generally been sceptical about the constraint own label products are able to place on branded products in past decisions.<sup>8</sup> However, in this case the OFT views this argument as plausible taking into account the competitive interaction between the two segments which it has found.

### **Pricing and evidence of switching**

20. On the demand side, the majority of the multiples contacted agreed that own label acted as a competitive constraint on branded frozen pizzas to some degree. They told the OFT that own label restricts the price at which brands can sell their products as there is a ceiling on how much more customers are willing to pay for a branded product. The majority of competitors also agreed that own label products have acted as a brake on brand pricing. Generally, third parties did not consider brands to be as strong in frozen pizzas as they are in other product categories and did not consider there to be a particular quality difference between the two.<sup>9</sup>
21. A customer told the OFT that own labels have increased their average price by less (around 4 per cent) than brands (around 8 per cent) over the past three years. This customer observed an increase in sales of own labels as a result and an increase in their share of trade over this time. It also provided recent data to show that over the last year where there has been a growth in own labels; brands have reacted by decreasing their prices or by increasing promotional activity. In the 12-week period up to November

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<sup>8</sup> For example, Anticipated Acquisition by Premier Foods plc of RHM plc, decision of 5 February 2007.

<sup>9</sup> A report produced for the parties by AC Nielsen supported this view, suggesting that brands are not that important to customers and do not inhibit switching.

2008 the parties observed the average price of brands dropping by 2.2 per cent, and speculate that this is attributed to the 3 per cent growth in own label sales volume over the last year.

22. Internal documents from the parties show that, overall, the own label frozen pizza market share is growing, especially in the premium category<sup>10</sup>. Own labels now account for around a [30 to 40] per cent share of supply<sup>11</sup> of frozen pizzas to the multiples retailers generally, with the main competitor brand, Goodfella's, accounting for [25 to 35] per cent share of supply.
23. The parties' internal documents also point towards specific instances where new product development in the own label segment has led to lost sales for branded pizzas. For example, when Tesco introduced its value range of frozen pizzas, they won disproportionately high shares of sales from the Goodfella's brands (deeply delicious and solos) and more generally from the Deep Pan sub-sector. Moreover, Tesco's Pizzeria Round gained its largest share of sales from Ristorante (Dr Oetker).
24. A retail customer provided the OFT with evidence showing the effect of sales promotions and switching between own label and branded pizza. The evidence suggested that promotions on branded goods drive their sales, at the expense of their own-label products, but that when sales promotions end customers tended to switch back to the own label product.

#### **Own label caters for similar customer requirements as branded**

25. The majority of supermarket chains now offer own-label products across the range of sub-segments identified by the parties (thin and crispy, premium, value deep pan, etc), enabling them to sell a similar offering to that of branded pizzas. All the top four multiples segment their own label frozen pizza brands as between 'value', 'good', 'better', and 'best' products.
26. The parties explained that all retailers offer a 'Value' pizza option, normally in plain white packaging, with a price flashed on the pack as a low price base entry point. The second tier 'Good' is normally represented by retailer brand, in the frozen pizza sector this would either be at an everyday low price (but higher than the Value option, in better packaging and of higher quality) or on permanent multi-buy 'Buy three for £4' to drive regular sales. The next tier 'Better' within frozen pizza is normally represented by the basic branded products promoted on a regular basis (twice a year per brand) to build sales and loyalty, the promotional price would normally be

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<sup>10</sup> Dr. Oetker internal report, August 2008.

<sup>11</sup> The percentage value contribution of own-labels to each of the main retailers, are as follows (March 2009): Tesco (29.8per cent); Asda (55.6per cent); Sainsbury (33.2per cent); Morrisons (26.7per cent); and Iceland (58.6per cent).

in between the 'Value' and the 'Good' pricing. The final tier 'Best' is covered by both retailer brands - Tesco Finest, Sainsbury's 'Taste the difference', Morrison 'The Best', Asda 'Extra special' - and the premium positioned brands; these are normally identified by high quality packaging, unusual product concepts, high quality ingredients; this range is very rarely promoted and will have the highest selling price

27. The parties provide evidence of own label responding to branded product developments. The parties provide examples of own-labels copying successful brands. For example, Asda launched (in 2007) an own-label takeaway product, similar to the Chicago Town Takeaway proposition. On the evidence available the OFT believes that own-labels are increasingly able to cater to a range of end consumer tastes, even the more 'affluent' shopper. Their ability to do this will enable them to offer a significant constraint to branded products in the frozen segment.

### **Multiples actively encourage switching to own label alternatives**

28. Marketing activity by multiples encourages switching to their own label alternatives for a range of products, for example Sainsbury compares a range of branded products to its own label products with its 'switch and save' campaign. Also, on Tesco's internet shopping site ([www.tesco.com](http://www.tesco.com)), the consumer is directed to an own label alternative that would save them money when they click on a branded product. Such activity is supported by TV and press campaigns. The OFT believes that this strongly supports the proposition that multiples are increasingly encouraging and supporting the substitutability between own-label and brands.

### **Competitive response of Brands to Own label competition**

29. Although own labels already make up a third of the frozen pizza category, Mintel suggests that the fact that this figure is not higher could be due to the success of brand promotions and their continuous innovation, constraining the ability of own-labels to expand their market share.<sup>12</sup>
30. In addition, the proliferation of promotions in the branded category could provide evidence of the frozen pizza brands directly competing with own label brands (especially in terms of price). For example, a very high proportion of branded frozen pizza sales are made on promotion (up to 80 per cent according to one multiple retailer), and some third parties suggest this is a competitive reaction to the threat of own labels.
31. The parties' internal documents provided evidence of a strong positive relationship between number of price promotions and market share, for example the fall in premium pizza penetration was attributed solely, in a Dr

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<sup>12</sup> *Mintel Report 2007*

Oetker report, to a drop in the number of promotions.<sup>13</sup> The parties also provided evidence showing that increased pricing promotion has taken place recently, and argue that this is a response to the threat of own labels.

## **Conclusion**

32. Based on the evidence available on competitive interactions between own-label and branded frozen pizzas the OFT believes that own-label frozen pizzas provide a reasonably significant constraint on branded pizzas. There is also evidence that own-labels provide a constraint by offering similar alternatives to branded frozen pizza in terms of price, and quality, and that promotions on branded frozen pizzas drive their sales, at the expense of retailer brands. The OFT is therefore minded to include own label frozen pizzas within the relevant product frame, although the OFT notes that own labels may provide a differing level of constraint on a product by product basis.

## **Conclusion on product scope**

33. In conclusion, own label frozen pizzas are considered to be in the same relevant market as branded frozen pizza. Although, chilled pizza category are not considered in this market, the OFT considers them to exert, at the minimum, a weak constraint on branded frozen pizzas, specifically on the 'Ristorante' range.

## **Geographic scope**

34. The parties submitted that the appropriate geographic market was the UK. The feasibility of supply from outside the UK suggests it may be wider than this. Previous decisions on consumer food products<sup>14</sup> have found that the appropriate geographic market is the UK since the major customers of the parties operate on a national basis. There appears no reason to depart from this analysis here and as a result the appropriate geographic market is considered to be the UK.

## **HORIZONTAL ISSUES**

35. The parties argue that the transaction does not lead to a substantial lessening of competition since Dr. Oetker and Schwan's are not close competitors and that Green Isle is a stronger constraint on the parties than they are on each other. They also suggest that the existence of significant

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<sup>13</sup> Shop analysis notes, DH, Dr Oetker, Feb 2008

<sup>14</sup> For example the Competition Commission's report on the completed acquisition of HP Foods Group by HJ Heinz Company and HJ Heinz Company Ltd, 24 March 2006, and Anticipated acquisition by Premier Foods plc of RHM plc, decision of 5 February 2007.

buyer power, on the part of the multiples, provides a constraint on the ability of the merged entity to raise prices, reduce promotions, or worsen product quality or any other part of their sales proposition.

### **National market shares**

36. The parties provide shares of supply for the main suppliers in the frozen pizza market, with and without own-label products. They show that the merged entity will have a share of supply of around 30 per cent, which includes an increment of around 10 per cent of the frozen pizza market, including own brands. Excluding own brands, their combined share of supply is higher at around 45 per cent, which includes an increment of around 15 per cent. The OFT found that even taking a cautious approach, and assessing the transaction against the latter measure, there were a number of mitigating constraints on the parties which would indicate that the merger would not be expected to give rise to a substantial lessening of competition.

### **The parties are not close competitors**

37. The parties submitted that they largely operate in different segments of the frozen pizza market. They suggested that if, in accordance with market intelligence reports, the market were segmented into: thin and crispy, premium, deep pan, snacking/kids, and economy<sup>15</sup> – the increment in each sub-segment would be no greater than 2 per cent. Schwan's key sub-segments are snacking and premium, where they are the number one player, while Dr Oetker leads in the thin and crispy segment along with Green Isle's Goodfella's brand.
38. Dr. Oetker's brand 'Ristorante' is strongest in thin and crispy with a market share of around 25 per cent but the increment will be small (2 per cent). Green Isle is also strong in this segment. Both parties have a small share of supply of the Deep Pan segment (6 per cent) and the increment is only 1 per cent. Green Isle's brands are strong in this segment (in particular Goodfella's). Schwan's have a leading brand in premium - with around 50 per cent of this segment – but there is no overlap. Internal documents suggest that this segment has declined, by 13 per cent (2008). Decline was attributed to the fall in the number of promotions and Green Isles pizza was identified as being strong in this category (La Bottega).<sup>16</sup> The parties have the highest combined market share in the Snacking/Kids segment with 50 per cent however the increment is only 2 per cent. Green Isle has the number two brand in this segment and provides a sufficient competitive constraint. In economy, there is no overlap between Dr Oetker and Schwan's.

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<sup>15</sup> This segmentation is supported by third parties and market reports. (IRI scanner data AC Nielsen January 2008 - September 2008).

<sup>16</sup> [Shopping Analysis Report, DH, Feb 2008].

### **Green Isle is parties' closest branded competitor**

39. When considering the market shares of the three main branded suppliers of frozen pizza, it is apparent that in each of the segments, Green Isle is the closest competitor to the parties. Green Isle is relatively strong across all frozen pizza segments, except economy (where the parties do not overlap). It holds around 50 per cent in the branded frozen pizza segment, and therefore OFT views it as providing an effective competitive constraint on the parties.
40. Green Isle and Dr Oetker brands are both strong in thin and crispy, whereas Schwan's brand is marginal. Green Isle has leading brands in Deep Pan and Premium, with both Dr. Oetker and Schwan's brands having a significantly less share of supply in these segments. In terms of Snacking/ Kids, Schwan's brands are strong, and Green Isle provides the major competitive constraint in this segment. Schwan's is the only supplier brand active in the Economy segment.<sup>17</sup>
41. Considering the different types of frozen pizzas, one third party agreed that Goodfella's (one of Green Isle's strongest brands) is a key competitor of the parties, and it viewed Dr. Oetker within the UK as having a 'marginal brand'. However, a competitor [ ] contended that there was intense competition between the three main brands in the frozen pizza segment, two of which the merging parties own (Chicago Town Pizza and Ristorante).
42. Segmenting the frozen pizza market as above would tend to suggest that Dr. Oetker and Schwan's are not particularly close competitors to each other and that their product portfolios are largely complementary. This evidence would also tend to indicate that the Green Isle brands/products provide a stronger constraint on the parties, than they do on each other.

### **Own-labels active across all segments**

43. Own labels are active in each of the segments of frozen pizzas. They account for differing proportions of value of the frozen pizza category across each of the major retailers. For Iceland and Asda, own labels account for over 50 per cent of the frozen pizza category by value. In Tesco; Sainsbury's and Morrison's they account for less, at between 25 and 35 per cent. If an average is taken for all own brands across the multiple retailers, they account for around a third.

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<sup>17</sup> IRI scanner data AC Nielsen January 2008 - September 2008.

## **Conclusion**

44. The evidence provided suggests that, although the market shares of the merged entity are quite high in terms of branded pizzas, there is significant constraint from Green Isle's frozen pizza brands, especially from their number one brand Goodfella's, and an increasing constraint from own-label frozen pizzas. Segmenting the frozen pizza market by types of pizza suggests that the increments in each sub-segment would be very small and would support the contention that Green Isle is a closer competitor to Dr Oetker, than Schwan's.
45. There has also been a history of product development from own-label and Green Isle that will continue to act as a competitive constraint on the merged entity. Therefore, taking all this evidence into account, the OFT does not believe that the merger can be expected to result in a substantial lessening of competition given the existing competitive constraints within the market and to an extent, the existence of weaker constraints outside of the market (chilled pizza category).

## **BARRIERS TO ENTRY AND EXPANSION**

46. The parties submitted that there were a number of ways in which there could be expansion or new entry into the market:
  - i. expansion of range or volume by existing frozen pizza producers
  - ii. adaptation of manufacturing facilities by a frozen food producers or chilled pizza producer to enable production of frozen pizzas
  - iii. De novo entry.
47. The parties submitted that expansion of an existing frozen pizza producer's product line is quite easy and inexpensive and the most likely form of entry. The parties cited 14 instances of new products being introduced both at the own label and the branded levels in the last three years. These included for example Chicago Town Takeaway, Goodfella's Solo and Goodfella's Pizzeria.
48. The parties submitted that an existing frozen food producers or a chilled pizza producer would already have the basic elements to enter the frozen pizza market. A competitor agreed that a supplier with similar process lines, taking as an example a supplier of chilled pizza, could switch to supplying frozen pizza with relative ease, for example by adding a freezing unit to its manufacturing line. They also considered that other frozen convenience food manufacturers might be able to switch supply to frozen pizzas.

49. The parties suggest that there have been a number of new entrants by own-label suppliers in the last five years, most notably Freiburger, Roncadin and Rolli. It is also possible that fringe players within the frozen pizza category may be able to expand their market share, or introduce sub-brands. Such fringe competitors include Findus, McCain or Heinz. Within the frozen pizza category, Findus (and own-labels), showed the fastest growth.
50. However, there was evidence from a third party customer that felt that entry would be unlikely, especially in the current economic climate, with the need to access sufficient capital to invest in new buildings. A competitor estimated that commissioning a new, single production facility of sufficient scale, would require capital investment of around 20 million euros. [ ]
51. This evidence seems to suggest that there may be a number of plausible channels of new entry. However, given the OFT's conclusion it has not been necessary to reach a view on new entry.

## **BUYER POWER**

52. The parties submitted that the existence of significant buyer power, by the multiples, provides a constraint on the ability of the merged entity to raise prices, reduce promotions, or reduce the quality of their pizzas.
53. Multiples are an important channel for frozen pizza suppliers given that the majority (over 80 per cent) of the parties' frozen pizzas are sold through multiple retailers. The parties argued that their multiple customers could de-list them with minimal effect on their turnover and profits, given the wide range of other pizza products on offer. The parties also argued that the market is volatile and the de-listing of product lines is common.
54. The parties felt that the possibility of de-listing was compounded by the perception by the multiples that their product offering, save for Chicago Town, was not considered a 'must-stock'. A third party retailer identified must have brands as Chicago Town Pizza and Goodfella's. The fact that only one of these brands are owned by the merging parties, would suggest that the merger will not increase the bargaining power of the merged entity in selling products to retail multiples.
55. There is some evidence to suggest that the major multiples have some buyer power, and that this has led to a high level of discount promotion. However, it has not been necessary for the OFT to conclude on the

presence or extent of any buyer power given the lack of competition concerns.

## **COORDINATED EFFECTS**

56. The parties argue that co-ordinated effects are unlikely, among other things, on the basis of the strong presence of own label products, the multiplicity of competitive parameters and the heterogeneity at the product level. The OFT has no reason to dispute this contention and co-ordinated effects are not explored further. No third party expressed concerns on this point.

## **THIRD PARTY VIEWS**

57. Third party views have been referenced in the relevant sections of the competitive analysis above.

## **ASSESSMENT**

58. The parties overlap in the supply of branded frozen pizzas.

59. It was not considered necessary to segment the market by retail channel, as the OFT has concluded, in previous retail mergers, that grocery retail multiples act as a constraint on convenience stores. The OFT believes this approach is particularly appropriate for the frozen pizza market. As such the focus of our analysis was on the supply of branded frozen pizzas across all retail outlets.

60. The OFT considered there to be sufficient evidence to suggest that own-label frozen pizzas act as a constraint on branded frozen pizzas. The chilled pizza category was, however, not considered to exert sufficient constraint to be included.

61. Taking a cautious approach to market scope and excluding all chilled pizzas, the combined market share of the parties is around 30 per cent including an increment of around 10 per cent. However, concerns regarding this market share are mitigated by a number of factors.

62. The parties operate in different segments of the market: in no segment is the increment more than 2 per cent. In addition, there is convincing evidence that Green Isle is a closer competitor to Dr Oetker, than Schwan's. The OFT also noted the existence of constraints from outside the market, in particular the chilled pizza category (specifically in relation to the thin and crispy segment).

63. Some buyer power may be expected, with around 80 per cent of frozen pizza sales being made through the major multiples but it has not been necessary to conclude on this point.
64. 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 22(1) of the Act.