

Anticipated joint venture between KG Growers Limited, S.A.T. Ltda Alconeras and Driscoll Strawberry Associates Inc.

The OFT's decision on reference under section 33(1) given on 11 January 2007. Full text of decision published 29 January 2007.

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

PARTIES

1. **KG Growers (KGG)** is a growers' cooperative, which sells its members' produce (strawberries, raspberries, blackberries and blueberries) through its wholly owned subsidiary KG Fruits (KGF).
2. **S.A.T. LTDA Alconeras (Alconera)** is a Spanish registered company, which produces and supplies berries to customers in the UK. Alconera UK Limited (AUK) is a UK registered subsidiary of Alconera.
3. **Driscoll Strawberry Associates (DSA)** is a procurer and supplier of berries and plant material to customers in various parts of the world. DSA is the ultimate parent company of Driscoll European Genetics (DEG), a wholly owned subsidiary of Driscoll International BV engaged in plant breeding and propagation.
4. **Berry Alliance BV (BA)** is a private limited Dutch company, owned jointly by Driscoll International and Alconera, which supplies berries to multiple retailers in Europe.

TRANSACTION

5. The parties will form a joint venture company, Newco, whose shareholders will be Driscoll International Holdings BV (40 per cent), Alconera (20 per cent) and KGG (40 per cent). Newco will acquire the European sales and marketing businesses and activities of KGF, AUK, and BA as well as the operations of the KGG breeding programme.
6. The parties notified the transaction on 13 November 2006 and the administrative deadline expires on 11 January 2007.

JURISDICTION

7. As a result of this transaction the parties will cease to be distinct. The parties overlap in the supply of berries (strawberries, raspberries, blueberries and blackberries) to the UK and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

FRAME OF REFERENCE

8. The parties (KGG, Alconera (through AUK) and DSA (through KGF)) overlap in the supply of strawberries, raspberries, blackberries, and blueberries to the UK market. This involves purchasing berries from growers for sale mainly to multiple retailers.
9. KGG and DSA (via DEG) are also engaged in plant breeding and development of new berry varieties for the UK market. The parties have submitted that the plant breeding programme of KGG has not yet produced any berry varieties which are capable of being exploited commercially¹. Therefore, the impact of any horizontal overlap between the parties in respect of their breeding programmes is minimal and therefore this activity is not considered.

¹ DEG varieties are used exclusively by its producing partners, KG and Alconera. Although, they also buy berries (and plants) from other growers to meet demand. Alconera appears to have no breeding programme.

10. DEG supplies berry plants in the UK² but none of the other parties is active in this field.

Supply of berries to the UK market

11. Raspberries and strawberries are grown in the UK with significant quantities being imported in winter months when British berries are not in season. Blueberries and blackberries are not generally grown commercially in the UK and are mostly imported.

Product frame of reference

12. The OFT looked at whether the appropriate frame of reference should be for all types of berries or for each type of berry separately. The parties submitted that the appropriate frame of reference should be for all berries including strawberries, raspberries, blueberries and blackberries.
13. The parties submitted that climate and soil conditions suitable to grow one type of berry will often be suitable to grow other types of berries and that it is relatively easy to switch between growing different berries the only requirement being to replace the plant in the ground. However, some third parties disagreed. Third parties commented that the time taken for each berry plant to become established and be capable of producing berries (in particular blueberries which may take 5 years to bear fruit) meant that it was not very easy to change to growing different types of berries in a timely manner. They also emphasised the importance of access to good varieties of berries and to breeding programmes.
14. On the demand side, third parties indicated that the differences in taste, colour and appearance between different types of berries make it likely that they form separate product markets. Most berries are sold through multiple retailers. None of the multiple retailers contacted by the OFT said they preferred to buy a particular type of berry and that they prefer to offer the range of berries to their customers but that there will be a significant proportion of end consumers who view different types of

² Plants developed by breeders such as DEG are grown to commercial numbers ('multiplied') under contract and breeders then sell these plants to growers. Growers pay a royalty on the plants purchased.

berries as being non-substitutable. Differences in retail prices support this (for example, on average blueberries were over 160 per cent more expensive than strawberries in 2005).

15. It is not necessary to reach a conclusion on the product frame of reference as the outcome of the competition assessment would not change regardless of whether all berries or each type of berry is examined. The OFT has analysed the merger using both approaches.

Geographic frame of reference

16. The parties submitted that the geographic scope is wider than the UK because berries are imported in substantial quantities when UK grown berries are not in season. However, there are several factors that the parties put forward which make it arguable that the geographic frame should be the UK. First, there is a strong national preference by consumers for domestically produced berries at the times of year when they are available. Secondly, the principal customers in the UK are the multiple retailers which tend to be national in scope, and thirdly, suppliers tend to operate standalone UK-based marketing companies to market their berries to UK based customers.
17. One third party confirmed that there was a preference amongst final customers for British grown raspberries and strawberries when they were in season. However, third parties confirmed that because of the short growing season for these in the UK and the demand for year round supplies, significant quantities of these and the other berry types are imported.
18. On the basis of the evidence available to the OFT it is considered that the relevant geographic frame of reference is at least as wide as supply of berries for sale in the UK. However, there is no need to conclude as the outcome of the competition assessment is the same regardless of the geographic frame adopted. In this case, the OFT has adopted a cautious approach and examined the merger on the basis on the UK.

HORIZONTAL ISSUES

Share of supply

19. Post transaction the parties' combined share of supply for strawberries (which account for the largest part of the berry market) is around [25 to 35] per cent with an increment of around [0 to 10] per cent and for raspberries it is around [35 to 45] per cent with an increment of around [5 to 15] per cent. UK sales of blueberries and blackberries are considerably less as are the parties' shares of supply (the parties hold below 20 per cent of each of these). In addition, the parties face strong competition for all berry types, in particular from Berryworld and Summer Fruit Company.
20. Post transaction the parties' combined share of supply for all berry types is around [25 to 35] per cent with an increment of around [0 to 10] per cent.

Non co-ordinated effects

21. The parties are not in direct competition with each other in the supply of each berry type since they generally supply berries at different times of year because these are sourced from different regions around the world. The time of year when the parties' have a transient high share of supply is off-season when demand is low.
22. From the evidence available, the parties face strong competition in all segments and the demand for all berry types is predicted to grow significantly over the next few years. Although KGF is the UK's largest supplier of raspberries and strawberries, the increment arising from the merger is small.
23. Berries in the UK are predominately sold to major supermarkets. Supermarkets told the OFT that they are able and willing to switch suppliers and had no concerns about the merger.

Co-ordinated effects

24. One competitor was concerned about coordinated effects although it was unable to point to any evidence of this and the characteristics of this market make co-ordination unlikely. Prices for berries fluctuate considerably through the year as do volumes produced. The berries themselves are highly perishable and it would be difficult to ensure coordination of prices and/ or quantities. For these reasons it would be difficult for any punishment mechanisms to be effective. Breeders are developing new varieties of berries to ensure supply through the year while the parties themselves are trying to differentiate their product from that of their competitors through branding and product labelling that identifies their particular berry varieties. Also, demand is growing rapidly reducing the stability required for coordination.

VERTICAL ISSUES

25. Some competitors were concerned that the parties would foreclose access by UK growers to its plant varieties unless the grower agreed to only supply the berries produced to the parties. The parties deny that the contracts prevent growers from using other varieties or selling berries to other berry suppliers. Furthermore, the merger does not change the number of plant providers and the parties' share of supply both as a plant provider (estimated to be less than 10 per cent) and as berry supplier indicates it does not have sufficient market power to stop other growers successfully switching to alternative varieties. Other competitors agreed the merger made little difference in this regard.

THIRD PARTY VIEWS

26. Customers were not concerned about this merger and competitor concerns are addressed above.

ASSESSMENT

27. The parties overlap relation to the supply of berries to the UK. Post transaction the parties' combined shares of supply for raspberries and strawberries range from [25 to 45] per cent and for blackberries and blueberries are below 20 per cent.

28. Retailers generally source their products from multiple suppliers and were not concerned about the joint venture. In addition, the parties do not appear to be in direct competition with each other as they generally supply berries at different times of year as they source from different places around the world. From the evidence available it is considered that the parties face strong competition in all segments.
29. The OFT does not consider that this proposed transaction will significantly increase the likelihood for coordinated behaviour in the supply of berries in the UK, nor did it find evidence to support vertical concerns.
30. 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

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