Anticipated acquisition by G's Marketing Ltd of Norman Olverson Ltd

The OFT's decision on reference under section 33(1) given on 27 February 2007. Full text of decision published 8 March 2007.

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

PARTIES

1. **G's Marketing Limited** (G's Marketing) is a producer and supplier of fresh fruit and vegetables. It has a wholly owned trading subsidiary, G's Fresh Beetroot Limited (G's), which is primarily active is the production of vacuum packed and fresh cooked dipped beetroot. It is also involved in the sale of raw beetroot. Its turnover in year ending 8 April 2006 was £9.96 million.

2. **Norman Olverson Limited** (Olverson) is a UK company which is primarily active in the production of vacuum packed and fresh cooked dipped beetroot. It is also involved in the sale of raw beetroot. Its turnover in the year ending 31 October 2005 was £3.96 million.

TRANSACTION

3. G's Marketing proposes to acquire the entire issued share capital of Olverson. The parties notified the transaction by way of a Merger Notice on 16 January 2007. The statutory deadline is 27 February 2007.

JURISDICTION

4. As a result of this transaction G's Marketing and Olverson will cease to be distinct. The parties overlap in the supply of vacuum packed and fresh cooked dipped beetroot and have combined shares of supply in the UK in excess of 25 per cent, so 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

5. Beetroot is sold in four formats:

- Raw beetroot - sold in bulk, bunches or loose for processing, wholesale and retail.
- Vacuum packed beetroot - beetroot that has been vacuum cooked and has a shelf life of six months.
- Fresh cooked dipped beetroot - beetroot that has been cooked and vinegar dipped (which acts as preservative) and packed in flexible packaging. It has a shelf life of up to 15 days.
- Pickled beetroot – sold in jars/bottles and has a shelf life of two years.

6. The parties overlap in the supply of raw beetroot, vacuum packed beetroot and fresh cooked dipped beetroot.

7. With regards to the supply of raw beetroot, the parties appear to account for less than ten per cent of supply in the European Union (EU)[1]. Furthermore, there are a number of other suppliers present in the sector and third parties do not have any concerns. As a result, competition concerns are not considered to arise in this sector and therefore the supply of raw beetroot will not be considered further.

[1] Evidence was provided by the parties to show that beetroot is grown across the EU and that it is traded on a pan-European basis.

Product frame of reference

8. Vacuum packed and fresh cooked dipped beetroot are used in salads, as a side vegetable or an ingredient in other dishes. Both are considered as 'fresh produce' as they need to be consumed within five days of opening. They are also seen as convenience products as the beetroot does not have to be peeled and cooked like raw beetroot.

9. The differences between vacuum packed and fresh cooked dipped beetroot are in their shelf life (six months and 15 days respectively) and a difference in taste (fresh cooked dipped has a slight vinegary taste).

10. On the demand side, the parties submitted that there is substitution between these two types of beetroot and more generally amongst all the types of beetroot. They provided consumer data to support this view. Some third parties have confirmed that consumers are willing to substitute between vacuum packed and fresh cooked dipped beetroot and that following a 5-10 per cent rise in price of vacuum packed beetroot, consumers would switch to fresh cooked dipped beetroot and vice versa.

11. However, some third parties disagreed stating that consumers tend to be loyal to a certain type of beetroot due to their taste differences, so following a 5-10 per cent rise in price in either fresh cooked dipped or vacuum packed beetroot, switching would not occur. One third party stated that vacuum packed beetroot is also seen as a healthier option as it is additive free.

12. On the supply side, the parties and a third party have stated that substitution between vacuum packed and fresh cooked dipped beetroot is not hindered on any technical grounds and can be completed with relative ease and speed.

13. Based on the evidence available, there are arguments that vacuum packed and fresh cooked dipped beetroot should be considered together. However, in light of the mixed third party responses regarding demand side switching a cautious approach has been taken. A narrower frame of reference has therefore been adopted for

the purposes of the analysis in this case, with vacuum packed and fresh cooked dipped beetroot considered separately.

Geographic frame of reference

Vacuum packed beetroot

14. The parties submitted that the long shelf life of vacuum packed beetroot means that importing and storage are feasible. The parties stated that imports occur throughout the year and estimated that importers supply around 20 per cent of vacuum packed beetroot sold in the UK. In particular, the parties considered that French suppliers compete directly with UK suppliers, which has been confirmed by competitors.

15. However, customer responses indicated that the majority of their supplies of vacuum packed beetroot are sourced through UK companies. In addition, a number of customers also stated that they prefer to source UK produced vacuum packed beetroot where possible.

16. Although the volume of imports suggests that the supply of vacuum packed beetroot may be EU-wide, in view of some customer preference for UK sourced vacuum packed beetroot, a cautious approach has been adopted. The narrower geographic frame of reference of the UK has therefore been considered for the supply of vacuum packed beetroot. However, it is recognised that imports from elsewhere in the EU may be a credible constraint.

Fresh cooked dipped beetroot

17. Fresh cooked dipped beetroot has a relatively short shelf life of 15 days, suggesting that the ability for customers to source supplies from outside the UK would be limited. The information provided by the parties and third parties suggests that there are currently no significant imports or exports of fresh cooked dipped beetroot. This therefore suggests that the appropriate geographic frame of reference for the supply of fresh cooked dipped beetroot is no wider than the UK.

HORIZONTAL ISSUES

Vacuum packed beetroot

18. Based on the parties' best estimates, G's is the largest UK supplier of vacuum packed beetroot with a share of supply of around [35-45] per cent. Olverson is the fourth and smallest UK supplier with a share of supply of [0-10] per cent. The other two UK suppliers have shares of supply of around [15-25] and [5-15] per cent respectively.

19. In addition, as stated above, imports[2] are estimated to constitute around 20 per cent of vacuum packed beetroot sold in the UK. The parties stated that all of one supermarket's vacuum packed beetroot is supplied by a French importer and that a UK competitor has relocated to France to achieve a cheaper cost base.

20. Third parties confirmed that French suppliers of vacuum packed beetroot are in competition with UK suppliers. Although the majority of the supply of vacuum packed beetroot is sourced from the UK, one customer stated that it has sourced its vacuum packed beetroot from imports, and another stated it would consider imports. None of the customers who responded had concerns regarding the supply of vacuum packed beetroot post-merger.

21. Overall the transaction only results in a relatively small increment to the merged entity's share of supply. Furthermore, there are other UK suppliers and French importers already present in the sector who will continue to act as a constraint on the parties' behaviour and customers do not have any concerns about the merger. Given these factors, the OFT considers that the merger does not give rise to competition concerns in respect of the supply of vacuum packed beetroot.

Fresh cooked dipped beetroot

22. Based on the parties' best estimates, G's is the largest supplier of fresh cooked dipped beetroot with a share of supply of around [60-

[2] The parties stated that vacuum packed beetroot is the type of beetroot most commonly produced in France due to both cultural reasons and the size of the beetroot grown.

70] per cent. Olverson is the third and smallest supplier with around [10-20] per cent share of supply.

23. However these shares of supply do not fully represent the competitive situation in the supply of fresh cooked dipped beetroot. The volume of fresh cooked dipped beetroot supply in the UK is relatively small, around 10,000 tonnes[3]. Therefore a relatively small increase in capacity by a competitor would provide it with the ability to expand its share of supply significantly and therefore pose a strong constraint on the parties post-merger. [ ].

24. The parties submitted that 80 per cent of all beetroot sales are to the major supermarkets and that fresh cooked dipped beetroot is sold to consumers under supermarkets' own label brands. As none of the suppliers of fresh cooked dipped beetroot have any brand strength at the retail level, customers can switch supply more easily. All supermarket customers who responded stated that their negotiating position would not be affected by the merger and none had concerns.

25. In addition, some of the evidence available to the OFT demonstrates that vacuum packed beetroot can impose a constraint on the supply of fresh cooked dipped beetroot. Fresh cooked dipped and vacuum packed beetroot are both stocked by all the main supermarkets and are positioned together within their stores. Both are marketed as salad vegetables and are found together with other prepared fresh salad vegetables such as bags of lettuce[4].

26. Although some third parties stated that consumers are loyal to a certain type of beetroot, the consumer data provided by the parties showed that over a quarter of the consumers that purchase fresh cooked dipped beetroot also purchase vacuum packed beetroot (around 13 per cent buy both types) or pickled beetroot (around ten per cent buy both types). A small proportion of customers buy all three types (around two per cent). This view that fresh cooked dipped

[3] By comparison, the supply of pickled beetroot is over 30,000 tonnes.
[4] Pickled beetroot is located with other pickled vegetables in jars/bottles such as onions and cabbage and raw beetroot is found with the other root vegetables.

and vacuum packed beetroot are close substitutes was supported by a number of third parties.

27. Post-merger, although the two parties combined will be the largest supplier of fresh cooked dipped beetroot (according to the parties' best estimates), there have been no concerns raised by customers. The OFT considers that the remaining competitor (Axgro Food Ltd), along with some potential consumer switching with vacuum packed beetroot and the threat of entry (discussed below), as well as the relative ease in which customers could switch suppliers act as a strong constraint. Together, these constraints would prevent the merged entity from increasing in price (and/or reducing quality) in the supply of fresh cooked dipped beetroot.

Barriers to entry and expansion

28. The parties submitted that similar basic production equipment such as peelers are used for all processed beetroot and that only additional pieces of equipment (such as a retort cooker for vacuum packed beetroot) are required to switch between the different processing methods. The parties estimated that the likely cost of switching processing production between vacuum packed and fresh cooked dipped beetroot would be £250,000 (£360,000 for pickled beetroot processors) with a lead time of six months.

29. In addition, the parties submitted that raw beetroot suppliers could begin processing beetroot. The parties estimated that the likely set up costs for a new entrant would be around £630,000 with a lead time of around six months A third party has provided similar cost and timings information.

30. Based on the evidence available to the OFT, expansion and entry into the supply of fresh dipped cooked beetroot is not hindered on any technical grounds and can be completed with relative ease and speed.

31. The parties maintained that beetroot suppliers from elsewhere in the EU can easily enter the supply of fresh cooked dipped beetroot. As UK customers are already using non UK suppliers within the EU for their vacuum packed beetroot, the OFT believes, particularly given

the low costs involved, that UK customers could also source their requirements for fresh cooked dipped beetroot from them.

32. A number of customers have confirmed that they are willing to sponsor entry by a new supplier or expansion by an existing supplier.

33. In addition, according to a market report[5], beetroot has benefited from its 'superfood'[6] status with the volume sales reported to have increased by around 12 per cent in 2006. This evidence suggests that entry and expansion into the supply of beetroot is potentially an attractive prospect.

34. The willingness by customers to sponsor entry in particular represents a strong and credible constraint on the merged entities' behaviour. Combined with the existing constraint from the remaining competitors and some demand side substitution between the different types of beetroot, the OFT believes that no competition concerns arise in the supply of fresh cooked dipped beetroot.

THIRD PARTY VIEWS

35. All but one third party were unconcerned by this transaction. The customers stated that they considered they had sufficient alternative options available to them. One competitor expressed concerns that as G's supplies a wide range of salad vegetables to supermarkets, post-merger it will become increasingly difficult for smaller suppliers to supply supermarkets. However the OFT believes evidence submitted by the parties and customers shows that the choice of supplier is based on the price and quality of the beetroot, irrespective of whether an additional range of products (such as other salad vegetables) was being supplied.

ASSESSMENT

36. The parties overlap in the supply of raw beetroot, vacuum packed beetroot and fresh cooked dipped beetroot. In relation to raw

[5] Fresh Fruit and Vegetables, Mintel Market Intelligence January 2007.
[6] 'Superfoods' are foods which possess the highest concentrations of beneficial nutrients such as antioxidants, lycopene, vitamins and minerals.

beetroot, the overlap is small and there are a number of other competitors present, therefore competition concerns do not arise.

37. With regards the supply of vacuum packed beetroot, there will continue to be a number of other UK suppliers and French importers present who will to act as a constraint G's behaviour post-merger. No customer was concerned.

38. For the supply of fresh cooked dipped beetroot, although the merger combines the largest and third largest suppliers of this product, there have been no concerns raised by customers. The constraint imposed by the remaining competitor and some consumer switching to vacuum packed beetroot, combined with the potential for new entry and expansion are all considered by the OFT to pose a sufficient constraint on G's behaviour post-merger.

39. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

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