

Anticipated acquisition by Geest PLC of the trade and assets of the prepared leaf salad business of G's Marketing Limited

The OFT's decision on reference under section 33 given on 23 March 2005. Full text of decision published 5 April 2005

Please note square brackets indicate information replaced by a range or excised at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **Geest PLC (Geest)** is a public limited company registered in England whose shares are listed on the London Stock Exchange. It supplies fresh prepared foods, including wholehead and prepared leaf salad, in the UK and elsewhere in Europe.
2. **G's Marketing Limited (G's Marketing)** is a family business based in the UK which grows, purchases and sells fresh vegetables and salads. Its fresh salad business comprises the supply of wholehead salads and prepared leaf salads. The turnover associated with the prepared leaf salad business in the financial year 2003/2004 was £18.6 million.

TRANSACTION

3. Geest proposes to acquire the fixed assets, personnel and goodwill of G's Marketing's UK prepared leaf salad business (**GM's Prepared Leaf Salad Business**). The parties will also enter into a five year supply agreement for the supply of lettuce as raw material to Geest. G's Marketing will retain its wholehead salad business and the parties will continue to compete in this segment.
4. The parties notified the transaction by merger notice on 18 February 2005; the statutory deadline expires on 5 April 2005.

JURISDICTION

5. As a result of this transaction Geest and GM's Prepared Leaf Salad Business will cease to be distinct. The combined UK share of supply of prepared leaf salad exceeds 25 per cent. Therefore, 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.

RELEVANT MARKET

6. The parties are both active in the fresh salad sector; in particular, the transaction will result in an overlap in the supply of prepared leaf salad in the UK. No overlap arises in the supply of wholehead salad, since this part of the business is being retained by G's Marketing.

Product market

7. The parties submit that the fresh salad sector comprises both wholehead salad and prepared leaf salad. According to the parties wholehead salads are heads of lettuce and salad vegetables (such as tomatoes, spring onions, etc.) that are not washed, cut and mixed. This view is not wholly supported by third parties, most of whom stated that wholehead salad comprises only different types of lettuce. Prepared leaf salad is a bagged salad, whose primary ingredient is leaf. A sachet of dressing and other ingredients, (such as carrots, tomatoes and croutons) are often included. The salad is cut, washed and placed in plastic bags, ready for immediate consumption.
8. The competitive effects of the transaction in both the fresh salad sector and the narrower prepared leaf salad segment will be considered below. The consideration of the narrower segment does not preclude a wider market definition, but is consistent with the approach adopted by the OFT of examining the narrowest possible frame of reference.

Geographic market

9. Lettuce, the main raw material for prepared leaf salad, is supplied on a European basis (with all lettuce sold in the UK being sourced from abroad on a seasonal basis from October until May). Preparation and packaging of prepared leaf salad has traditionally been done in the UK. The parties, although considering the geographic scope to be as wide as the UK, suggest that there is no reason why products intended for sale in the UK could not be easily and cost-effectively

packaged elsewhere in Europe and add that some Continental suppliers are beginning to do so.

10. Some third parties noted that European entry is possible, but another pointed to the short shelf life and the fact that most European salads are not washed and ready to eat, as factors that would hinder entry. Customers can source lettuce from a wide range of countries, but do not consider it practical to source prepared leaf salad from a long distance due to the transport costs and short shelf life. As a result, customers aim to source from the UK.
11. Previous OFT decisions have considered the geographic scope of the supply of consumer food products to be national. The parties submit that they supply customers that make sales in Northern Ireland. For the purposes of this investigation, the geographic scope is considered to be as wide as the UK.

HORIZONTAL ISSUES

Market shares

12. As a result of the transaction, Geest will increase its UK share of supply of fresh salad from around [...] per cent to [less than 25] per cent. The fresh salad sector is fragmented and this share of supply does not give rise to concerns.
13. Estimated shares of supply of the parties and their competitors in the prepared leaf salad segment are set out in Table 1. The combined share of supply resulting from the transaction is [35-45] per cent, with an increment of [less than 10] per cent.

Table 1: Share of supply (by value) of prepared leaf salads in the UK (2004)

COMPANY	% based on retail sales
Geest	30-40
G's Marketing	0-10
<i>Combined</i>	<i>35-45</i>
Nature's Way Foods	20-30
Vitacress	10-20
Kanes Food Ltd	10-20
Soleco UK	Less than 10
Del Monte Fresh	Less than 5
Others	Less than 5

Source: The parties' best estimates.

14. The corresponding HHIs indicate that the prepared leaf salad segment is concentrated and the increment is high. We have therefore examined the competitive constraints that Geest will face in this segment post-merger.
15. Shares of supply have fluctuated over time, depending on the supply decisions of customers. Geest's share has fallen from [35-45] per cent in 2000 to [30-40] per cent in 2004. Del Monte's share has reduced from [less than 15] per cent in 2000, following a change of ownership. At the same time G's Marketing's share increased from [less than 5] per cent to [5-10] per cent and Nature's Way saw its share increase from [less than 10] per cent to [20-30] per cent. The shares of Kanes, Florette and Vitacress have remained relatively stable over the same period. It is expected that shares of supply will continue to fluctuate in the future as business is won and lost from national multiples.
16. The majority of customers and competitors contacted by us believe that Geest and G's Marketing were close competitors in prepared leaf salad before the transaction. Evidence from the majority of customers and competitors suggests that all the remaining firms, including Del Monte Fresh, are close competitors. Customers stated that they would have a satisfactory choice of alternative suppliers after the merger. The salads sold by the parties are own label, with brand recognition and ownership resting with the national multiples, so issues of brand loyalty do not arise.
17. Only one competitor expressed concerns about the transaction due to the perceived possibility of Geest entering into exclusive deals with national multiples, thus foreclosing the market to others suppliers. However, customers contacted by us maintain that they will switch following a price increase and that they are able to do so because no contracts are in place. The evidence suggests that exclusive deals are not prevalent and that most customers currently dual or multi-source. Other competitors contacted by the OFT in this inquiry were unconcerned.

Barriers to entry and expansion

18. According to the parties the following three categories of existing suppliers could enter the UK prepared leaf salad segment: growers of lettuce, suppliers of chilled foods and Continental European suppliers of prepared leaf salad.
19. The parties submit that barriers to entry are low because no expenditure is required for advertising own label brands,¹ entry is not hindered by the existence

¹ According to the parties 94 per cent of prepared leaf salads sold in the UK are retailer-branded. The only major brand sold in the UK is the 'Florette' brand, supplied by the French company Soleco.

of supply agreements and the national multiples can, and do, sponsor new entry into the sector. This indicates that new entry is theoretically possible from all three categories identified above. The analysis is supported by evidence from some competitors suggesting that entry is possible provided that the capital costs can be met. However, the majority of competitors do not believe that new entry is likely due to the competitive pressures faced by companies in the prepared leaf salad segment, i.e. downward pressure on prices exerted by the national multiples and high levels of spare capacity. In practice, new entry is unlikely to act as a competitive constraint on Geest following the acquisition.

20. Considering expansion, competitors contacted by us in this inquiry indicated that spare capacity is at 15-40 per cent and could easily be deployed in response to a price increase in prepared leaf salads. Therefore, the competitive constraint will come from existing competitors with spare capacity rather than from new entry.

Buyer power

21. Main customers for fresh salad are national multiples: [the majority] of Geest's fresh salad sales and [the majority] of G's Marketing's fresh salad sales are to national multiples.
22. Competitors contacted by us in this inquiry agree with the parties' view that the national multiples have buyer power and that the sector is therefore highly competitive. The national multiple customers contacted by us in this inquiry indicated that they have the ability to negotiate discounts. Further, there are no written contracts and orders are placed informally, often on a seasonal basis. The threat of customers exercising buyer power is credible, both due to the ease of switching and the number of alternative suppliers from which customers state they can source supplies. Therefore, buyer power will act as a competitive constraint on Geest after the transaction.

VERTICAL ISSUES

23. After the transaction, G's Marketing will continue to grow and sell lettuce and will supply Geest with lettuce as a raw material for prepared leaf salad under a five-year agreement. Pursuant to this agreement Geest will purchase certain minimum quantities, expected to represent approximately [] per cent of its total lettuce requirements. The parties submit that there are numerous other growers of lettuce in the UK and abroad (including Spain, France, Morocco and Holland). Customer evidence supports this assertion. The vertical arrangement in question does not raise competition concerns.

THIRD PARTY VIEWS

24. We received responses to our inquiries from all of the customers and competitors of Geest and G's Marketing that we approached. One competitor raised some concerns; these are addressed in the competitive assessment above. All other competitors and all customers were unconcerned.

ASSESSMENT

25. The transaction results in an increment in Geest's share of supply of prepared leaf salads in the UK from [30-40] per cent to [35-45] per cent. Although the segment is relatively concentrated, customers contacted by us stated that they will have sufficient choice of suppliers after the transaction. Moreover, they are able to switch supplier because there are no formal supply contracts. The majority of sales are to national multiples who can exert countervailing buyer power; competitors noted that the sector is highly competitive as a result. The presence of spare capacity will also act as a competitive constraint. These factors eliminate any concerns arising from the relatively high shares of supply and level of concentration in the segment.
26. 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

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