

**COMPLETED ACQUISITION BY PRINCES LIMITED OF  
THE CANNING BUSINESS OF PREMIER FOODS GROUP LIMITED**

**PROPOSED UNDERTAKINGS TO BE GIVEN BY PRINCES LIMITED TO THE  
OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE  
ACT 2002**

**WHEREAS:**

- (a) Princes acquired the Premier Foods Canning Business by way of an asset purchase agreement that completed on 23 July 2011;
- (b) It appears to the OFT that, as a consequence of that transaction, a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the CC for further investigation where it believes that it is or may be the case that the creation of that merger situation has resulted, or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the Acquisition to the CC;
- (f) The OFT further considers that the undertakings given below by Princes are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has resulted or may be expected to result from it, as specified in the OFT's decision dated 22 June 2011 under section 22 of the Act; and
- (g) Princes gave initial undertakings on 25 July 2011 in respect of the Acquisition pursuant to section 71 of the Act for the purposes of preventing pre-emptive action. Pursuant to section 71(6) of the Act, these initial undertakings cease to be in force on the acceptance by the OFT of the undertakings in lieu given below by Princes.

**NOW THEREFORE** Princes hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has resulted or may be expected to result from it.

## **Effective date of the undertakings**

- 1.1 These undertakings shall take effect from the date that, having been signed by Princes, they are accepted by the OFT.

## **Divestment of the Divestment Business**

- 2.1 Princes shall, prior to the acceptance of these undertakings by the OFT, enter into a legally binding agreement (or agreements) to divest, to the satisfaction of the OFT, the Divestment Business as a going concern to the Proposed Purchaser on terms approved by the OFT in advance of acceptance of these undertakings.
- 2.2 Princes shall be deemed to have complied with the obligation at paragraph 2.1 if, prior to the acceptance of these undertakings by the OFT, it has entered into a legally binding agreement or agreements with the Proposed Purchaser, conditional on formal OFT approval of the Proposed Purchaser and acceptance of these undertakings, provided that the completion of the divestment of the Divestment Business contemplated by such agreement or agreements takes place within a period not exceeding three months from the date these undertakings take effect (as set out in paragraph 1.1 above).
- 2.3 Without prejudice to the generality of paragraph 2.1 above, Princes shall take the following measures to the extent they may be necessary in the opinion of the OFT to effect the sale of the Divestment Business in accordance with the provisions of these undertakings:
  - (a) the transfer of rights and contracts exclusively related to the Divestment Business, and the transfer of the brand name relating to the Divestment Business, save where such transfer can only be effected by means of the consent of a third party in which case Princes shall take steps to procure the consent of that third party or secure alternative arrangements where such consent cannot be secured;
  - (b) the transfer of all assets, used exclusively in the Divestment Business;
  - (c) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise; and
  - (d) The Divestment Business shall include all existing inventory of the Divestment Business, as required by the Purchaser.
- 2.4 Princes shall ensure that the sale and purchase agreement entered into for the purposes of paragraph 2.1 above includes a warranty that the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as part of a viable and active business in competition with Princes and other competitors in the production, marketing and wholesale distribution of ambient food products in the UK.

- 2.5 In the event that Princes fails to complete the divestment of the Divestment Business in accordance with paragraph 2.1 above, the OFT may appoint a Trustee in accordance with paragraphs 4.1 to 4.7 below, unless Princes presents to the OFT, within 20 Working Days of Princes notifying in writing the OFT of the failure to complete the divestment, for the OFT's approval an alternative proposed purchaser or purchasers to whom the Divestment Business may be divested as a going concern and where the OFT approves that alternative proposed purchaser or purchasers. Where the OFT does not approve the alternative proposed purchaser or purchasers, then the OFT may appoint a Trustee in accordance with paragraphs 4.1 to 4.7 below.

### **Approval of purchaser and terms of divestment**

- 3.1 For the purposes of the OFT approving the Proposed Purchaser and the terms of the divestment of the Divestment Business, Princes and/or the Proposed Purchaser shall, save as required or permitted by the OFT, satisfy the OFT that:
- (a) the acquisition of the Divestment Business by the Proposed Purchaser remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
  - (b) the Proposed Purchaser is independent of and unconnected to Princes and the Group of Interconnected Bodies Corporate to which Princes belongs and any Associated Person or Affiliate of Princes or such Group of Interconnected Bodies Corporate;
  - (c) the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as part of a viable and active business in competition with Princes and other competitors in the production, marketing and wholesale distribution of ambient food products in the UK; and
  - (d) the acquisition by the Proposed Purchaser of the Divestment Business does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.
- 3.2 The OFT may require Princes and/or the Proposed Purchaser to provide it with such information and documentation as it may reasonably require to satisfy the OFT that the Proposed Purchaser will fulfil the requirements set out in paragraph 3.1 above.

### **Appointment of a Trustee**

- 4.1 The provisions of paragraphs 4.2 to 4.7 below shall apply only as long as Princes has not satisfied, or where the OFT has reasonable grounds for believing

that Princes will not satisfy, all or any part of the obligation to divest the Divestment Business in accordance with paragraphs 2.1 to 2.5 above.

4.2 Within 15 Working Days of the OFT notifying in writing Princes that it must do so, Princes shall propose to the OFT for approval:

- (a) the names of at least two individuals to exercise the Trustee Functions; and
- (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.

4.3 Princes and/or any individuals nominated pursuant to paragraph 4.2 shall satisfy the OFT that:

- (a) such nominated individuals are each EU nationals with the necessary qualifications to carry out their mandates, and employees or partners of an investment bank, bank, commercial property agent, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;
- (b) such nominated individuals are each independent of Princes and of the Group of Interconnected Bodies Corporate to which Princes belongs and of any Associated Person or Affiliate of Princes or of such Group of Interconnected Bodies Corporate and of any proposed purchasers of the Divestment Business to be sold pursuant to these undertakings, and, in the reasonable opinion of Princes, are appropriate to be appointed as Trustee; and
- (c) such nominated individuals neither are nor shall become exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.

4.4 Within 20 Working Days of the OFT approving, at its discretion, one or more of the persons nominated by Princes and their proposed mandates pursuant to paragraph 4.2 above, and subject to any modifications the OFT deems necessary for the Trustee to carry out the Trustee Functions, Princes shall use its best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the OFT pursuant to paragraph 4.2.

4.5 In the event that:

- (a) Princes fails to propose any person or persons in accordance with paragraph 4.2 above; or
- (b) none of the persons proposed by Princes pursuant to paragraph 4.2 is approved by the OFT; or

- (c) Princes is unable for any reason to appoint within the time limit stipulated in paragraph 4.4 any such person following approval by the OFT,

Princes shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions on the terms of a mandate approved by the OFT. Princes shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the OFT.

4.6 The appointment of the Trustee pursuant to paragraph 4.4 or 4.5 shall be irrevocable unless:

- (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises;
- (b) the Trustee ceases to perform its functions; or
- (c) the OFT is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

4.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 4.6 above, Princes shall, if requested to do so in writing by the OFT, use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions in accordance with such mandate as is approved by the OFT. Princes shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the OFT. Where required by the OFT, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

### **The Mandate**

5. The terms of the mandate proposed by Princes pursuant to paragraph 4.2 above shall, as a minimum, contain all provisions necessary to enable the Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:

- (a) an exclusive, irrevocable mandate to sell the Divestment Business as required by paragraph 6.1 below to a purchaser or purchasers as directed or approved in writing in advance by the OFT at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;
- (b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
- (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and

agents) to enable it to take all steps necessary or appropriate to effect the sale of such Divestment Business;

- (d) a mandate to comply with any orders and/or directions given by the OFT; and
- (e) a mandate to appoint at Princes' expense such advisers as the OFT and/or the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

### **Functions of Trustee**

- 6.1 The Trustee shall seek to procure, within such period as may be specified in writing by the OFT, the completion of the sale of the Divestment Business at no minimum price, to a purchaser or purchasers approved by the OFT in accordance with paragraph 6.3 below.
- 6.2 Without prejudice to the generality of paragraph 6.1, the Trustee shall take any of the measures set out in paragraph 2.3 above in relation to the Divestment Business to the extent to which such measures may be necessary to effect the divestment of the Divestment Business in accordance with that provision.
- 6.3 The Trustee shall not sell or permit the divestment of the Divestment Business to a proposed purchaser unless it has been directed to do so by the OFT or has obtained the OFT's prior written approval in respect of the identity of that proposed purchaser. The Trustee shall notify the OFT of the identity of a proposed purchaser as soon as reasonably practicable prior to the signing of a legally enforceable agreement and in any event at least 20 Working Days in advance of the proposed signing of the proposed sale and purchase agreement in question.
- 6.4 Pending the divestment of the Divestment Business pursuant to paragraph 6.1 above, the Trustee shall monitor Princes' compliance with its obligations under paragraphs 7.1 and 7.2 of these undertakings and shall take such measures as it considers necessary to ensure such compliance.
- 6.5 The Trustee may give written directions to Princes to take such steps as may be specified or described in the directions for the purpose of securing Princes' compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require Princes to:
  - (a) offer any reverse premium or similar inducement to a purchaser; or
  - (b) accept any actual or contingent liability towards a purchaser or otherwise in connection with the divestment of the Divestment Business which would be unusual in scope, duration or financially, having regard to the price and usual market practice in relation to similar disposals.
- 6.6 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or directions made by the OFT for the purposes of carrying out or securing compliance with the undertakings (or any matter

incidental thereto) and shall provide to the OFT such information and reports in relation to the carrying out of the Trustee Functions as the OFT may require. The Trustee shall promptly report in writing to the OFT if the Trustee concludes on reasonable grounds that Princes is failing to comply with any of its obligations under these undertakings.

- 6.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Princes nor shall the Trustee Functions be extended or varied in any way by Princes save with the prior express written consent of the OFT.

### **Obligations of Princes following appointment of Trustee**

- 7.1 Princes shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 7.2 Princes shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to:
- (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 6.5 above; and
  - (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

### **Remuneration of Trustee**

8. Princes shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 5 above.

### **Interim action**

- 9.1 Pending completion of the divestment of the Divestment Business to the satisfaction of the OFT in accordance with the provisions of these undertakings, save as otherwise agreed in advance in writing by the OFT, Princes shall ensure that:
- (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the Acquisition, the Divestment Business is maintained as a going concern and sufficient resources are made available for the development of the Divestment Business on the basis of its pre-merger plans and no change is made to the pre-merger industrial or commercial strategy or the investment policy of the Divestment Business;
  - (b) except in the ordinary course of business, no substantive changes are made to the organisational structure of the Divestment Business or the management responsibilities within the Divestment Business;

- (c) the Divestment Business is maintained and preserved, including facilities and goodwill;
- (d) the nature, description, range and standard of goods and services currently supplied by the Divestment Business are maintained and preserved;
- (e) the separate trading name and/or the separate sales or brand identity of the Divestment Business is maintained;
- (f) except in accordance with paragraph 2.1 above, no assets of the Divestment Business are disposed of, and no Interest in such assets is created or disposed of, other than in the ordinary course of business;
- (g) there is no integration, or further integration of the information technology used by Princes with that used by the Divestment Business and the software and hardware platforms of Princes and the Divestment Business shall remain essentially unchanged, except for routine changes and maintenance;
- (h) all reasonable steps are taken to encourage all Key Staff to remain with the Divestment Business; and
- (i) to the extent it has not already occurred, no Confidential Information relating to the Divestment Business shall pass, directly or indirectly from the Divestment Business (or any employees, directors, agents or Affiliates of the Divestment Business) to Princes (or any of its employees, directors, agents or Affiliates), or vice versa, except where strictly necessary in the ordinary course of business or in any of the following circumstances:
  - (a) the transfer of any accounting information necessary to allow Princes' Chairman to monitor and review the financial performance of the Divestment Business, provided that such accounting information is not passed on to any other person within Princes who is directly involved in any business in actual or potential competition with the Divestment Business;
  - (b) the transfer of any information required in connection with Princes' dealings with the OFT;
  - (c) the transfer of any information necessary for compliance with any statutory or accounting obligations to the extent that such compliance cannot be achieved separately by each of the businesses and including for the avoidance of doubt the compilation of consolidated accounts in line with the existing accounting practices of Princes and the Divestment Business;
  - (d) any steps necessary in order for Princes to comply with these undertakings, including the transfer of information necessary for the divestment process,

provided that, upon divestment of the Divestment Business, any records or copies (electronic or otherwise) of Confidential Information held by Princes in relation to the Divestment Business (or vice versa) shall be returned to the relevant business and any copies destroyed (except as may be necessary for the purposes of compliance with the obligations in sub-paragraph (c) of paragraph 9.1(i) above).

### **Continued separation**

- 10.1 Except with the prior written consent of the OFT, following the divestment of a Divestment Business pursuant to these undertakings, Princes or any member of the Group of Interconnected Bodies Corporate to which Princes belongs:
- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
    - (i) any Interest in the Divestment Business;
    - (ii) any Interest in any company carrying on or having Control of the Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of Princes, or of any members of the Group of Interconnected Bodies Corporate to which Princes belongs, of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
    - (iii) other than in the ordinary course of business, any of the assets of the Divestment Business;
  - (b) shall procure that no employee or director of Princes or of any member of the Group of Interconnected Bodies Corporate to which Princes belongs, for so long as they are an employee or director of Princes or of any member of the Group of Interconnected Bodies Corporate to which Princes belongs, holds or is nominated to any directorship or managerial position in the Divestment Business or any directorship or managerial position in any company or other undertaking carrying on or having Control of the Divestment Business without the OFT's prior written consent;
  - (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the Divestment Business or of any company or other undertaking carrying on or having Control of the Divestment Business; and
  - (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of Princes or of

any member of the Group of Interconnected Bodies Corporate to which Princes belongs directly or indirectly acquiring the Divestment Business or doing any of the things listed in sub-paragraphs (a), (b) and (c) above.

## **Compliance**

- 11.1 Princes shall comply promptly with such written directions as the OFT may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
  - (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 11.2 Princes shall procure that any member of the same Group of Interconnected Bodies Corporate as Princes complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as Princes shall be attributed to Princes for the purposes of these undertakings.
- 11.3 Where any Affiliate of Princes is not a member of the same Group of Interconnected Bodies Corporate as Princes, Princes shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

## **Extension of time limits**

- 12 The OFT may, in response to a written request from Princes, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

## **Provision of Information**

13. Princes shall furnish promptly to the OFT such information as the OFT reasonably considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

## **Interpretation**

- 14.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 14.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.

14.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

14.4 For the purposes of these undertakings:

**"Acquisition"** means the acquisition by Princes of the Premier Foods Canning Business completed on 23 July 2011 pursuant to a sale and purchase agreement dated 7 February 2011, as subsequently amended;

**"Act"** means the Enterprise Act 2002;

**"Affiliate"** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

**"Associated Person"** means a person or persons associated with Princes within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

**"business"** has the meaning given by section 129(1) and (3) of the Act;

**"CC"** means the Competition Commission;

**"Confidential Information"** means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

**"Control"** shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**"Divestment Business"** means the whole or substantially the whole of the rights, assets, interests and obligations of or associated with the Fray Bentos brand as operated immediately prior to the Acquisition, including without prejudice to the foregoing:

(a) all or substantially all tangible and intangible assets which are necessary to ensure the viability and competitiveness of the Fray Bentos brand and which are capable of being transferred, including relevant know-how and recipes – as well as any personnel employed by Princes specifically and principally in relation to the sales and/or marketing of products under the Fray Bentos brand, to the extent required by the Proposed Purchaser and subject to such employees agreeing to relocate (excluding any employees seconded into the management team for the Divestment Business specifically for the purpose of implementing the divestment);

(b) all or substantially all licences, permits, consents and authorisations issued by any governmental organisation for the benefit of the Fray Bentos brand and which are capable of being transferred; and

(c) all existing retail customer contracts for Fray Bentos branded canned products, to the extent possible; all customer, credit and other records of the Fray Bentos brand;

**PROVIDED THAT** it is acknowledged by Princes and the OFT that the Divestment Business does not include:

(i) any freehold, leasehold or other interest in any premises;

(ii) any manufacturing assets or equipment, other than the manufacturing assets sufficient to enable the Proposed Purchaser to produce current volumes of pies and puddings;

(iii) any contract for the provision of business support functions such as finance, payroll, invoicing, IT support, general administration and reception services; and

(iv) any cash at bank or in hand held in connection with the Fray Bentos brand, in both cases as at 23 July 2011;

**"Group of Interconnected Bodies Corporate"** has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

**"Interest"** includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

**"OFT"** means the Office of Fair Trading;

**"Premier Foods Canning Business"** means the canning business of Premier Foods Group Limited;

**"Princes"** means Princes Limited;

**"Proposed Purchaser"** means Baxters Food Group Limited;

**"Subsidiary"** shall be construed in accordance with section 1159 of the Companies Act 2006, unless otherwise stated;

**"UK"** means the United Kingdom of Great Britain and Northern Ireland;

**"Working Days"** means any days of the week other than a Saturday or a Sunday or any day that is a public holiday in England; and

unless the context requires otherwise, the singular shall include the plural and vice versa.