

Anticipated acquisition by G Costa (Holdings) Ltd, a subsidiary of Associated British Foods plc of Worldwing Investments Ltd, the holding company for the Patak Group

The OFT's decision on reference under section 33(1) given on 6 August 2007. Full text of decision published 10 August 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 for reasons of commercial confidentiality.

PARTIES

1. **G Costa (Holdings) Ltd** (Costa) is a wholly owned subsidiary of Associated British Foods plc (ABF), an international food, ingredients and retail group. Costa sells a variety of cooking ingredients through its 'Blue Dragon' range. ABF also owns ABF Grain Products Ltd, which through its division, Westmill Foods (Westmill), supplies flour, rice, noodles and other ethnic food products to retail and non-retail customers in the UK and Europe.
2. **Worldwing Investments Ltd** (Worldwing) is the holding company for the Patak Group (Patak) of companies. Patak manufactures markets and distributes Indian ambient temperature wet cooking sauces, curry pastes, chutneys, pickles, Indian ready meals, snacks and bread in the UK. Its UK turnover for 2006 was approximately £[].

TRANSACTION

3. Costa is proposing to acquire Patak via the acquisition of the entire issued share capital of Worldwing. The parties notified the transaction on 11 June 2007. The administrative deadline is 6 August 2007.

JURISDICTION

4. As a result of this transaction Costa and Worldwing will cease to be distinct. The parties overlap in the supply of Indian ambient temperature wet cooking sauces 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. The parties overlap in the supply of the following products:
 - ambient temperature wet cooking sauces
 - Indian cooking ingredients such as curry paste
 - Indian condiments such as chutneys and pickles
 - pappadums¹
 - rice, and
 - naan bread.

Product scope

6. The parties supply these products to both the retail and non retail sectors. The OFT has previously² distinguished between sales to the retail and the non-retail sectors due to differences in distribution channels, pack sizes, service levels and that non-retail customers are generally considered to be less brand sensitive than those in the retail sector. The OFT found no evidence during its investigation to suggest a departure from this approach.
7. The non-retail sector could be segmented further into wholesale, ethnic to ethnic and foodservice sectors. However the parties submitted that there is a high degree of supply side substitution between the different channels and that customers in these channels generally require either the larger formats of the products or purchase multi-packs.

¹ These are also known as poppadums.

² For example OFT merger decision on the completed acquisition of HJ Heinz Company of HP Foods Group, 26 October 2005, and OFT merger decision on the anticipated acquisition by Premier Foods plc of RHM plc, 5 February 2007.

8. However in this case, it has not been necessary to reach a definitive conclusion on this segmentation of the non-retail sector as no competition concerns are considered to arise regardless of whether the channels are examined together or separately.

Retail sector

9. With regards to the supply of Indian condiments and pappadums, the increment in the parties' shares of supply is [0-5] per cent. Furthermore, there are a number of competitors present in these sectors who will continue to act as a competitive constraint on the parties' behaviour. The proposed transaction therefore is not considered to give rise to competition concerns in these sectors and so will not be considered further.
10. There is minimal overlap between the parties in the supply of rice and naan bread. In each of these product sectors, the parties account for [0-5] per cent of supply. Furthermore, there are a number of other competitors present in these sectors which would be expected to act as a constraint on the parties post-merger. As a result, competition concerns are not considered to arise in these sectors either, so these sectors will not be considered further.

Ambient temperature wet cooking sauces

11. Previous regulatory decisions³ have considered the supply of ambient temperature wet cooking sauces to be separate from table sauces and other formulations of cooking sauces (dry cooking sauces and cold cooking sauces). The OFT found no evidence in this case to suggest departing from this view but has also considered whether there might be any narrower market segmentation relevant to this case.

³ The European Commission's *Unilever/Bestfood* decision of 28 September 2000, and the OFT's decision on the anticipated acquisition by Bakkavor Group Hf of Geest, 28 April 2005.

12. The parties submitted that the appropriate product frame of reference is the supply of ambient temperature wet cooking sauces. On the supply-side, OFT previously found⁴ that there is a high degree of commonality in the production equipment and processes required for different tastes of ambient temperature cooking sauces, so switching production lines is relatively easy.
13. Customer responses, however, stated that a 5-10 per cent increase in the price of Indian ambient temperature wet cooking sauces would be accepted by final consumers and that any switching between the tastes of ambient temperature wet cooking sauces would be limited. Market studies⁵ segment ambient temperature wet cooking sauces, based on demand side considerations, such as flavour, into a number of different categories.⁶ This suggests that the product frame of reference may be as narrow as Indian ambient temperature wet cooking sauces.
14. Based on the evidence available it appears that switching of production between different types of ambient temperature wet cooking sauces on the supply side is technically feasible and can be done at both a relatively low cost and reasonably quickly. However, in light of limited demand side switching, a cautious approach has been taken and the narrow frame of reference of Indian ambient temperature wet cooking sauces has been adopted for the purposes of the analysis in this case.

Indian cooking ingredients

15. The parties overlap in the supply of Indian cooking ingredients, in particular in the supply Indian pastes.⁷
16. It has not been necessary to reach a definite conclusion as to whether Indian cooking ingredients should be considered separately or as part of a wider frame of reference for all cooking ingredients, since no competition concerns arise irrespective of the frame of reference adopted.

⁴ The OFT's decision on the anticipated acquisition by Premier Foods plc of RHM plc, 5 February 2007.

⁵ Mintel, 'Cooking Sauces', December 2006.

⁶ A primary distinction can be made between 'Italian' sauces and other sauces. Other sauces typically include traditional sauces (all European sauces except Italian) and 'Ethnic' sauces. The latter is further sub-divided into 'Oriental', 'Indian' and 'Tex-Mex' sauces.

⁷ ABF's subsidiary, Westmill, supplies Indian cooking ingredients under the Rajah brand.

Non retail sector

17. The parties' only notable overlap in the non-retail sector is in the supply of Indian condiments. For all the other products⁸, the overlaps are limited and, in each case, a number of competitors are present. The proposed transaction, therefore, is not considered to give rise to competition concerns in these product sectors and they are not considered further.

Indian condiments

18. The parties⁹ overlap in the supply of Indian condiments. They submitted that Indian condiments primarily include chutneys and pickles.
19. It has not been necessary to reach a definite conclusion as to whether Indian condiments should be considered separately or part of a wider frame of reference for all condiments, since no competition concerns arise irrespective of the frame of reference adopted.

Geographic market

20. The parties submitted that the narrowest geographic frame of reference for all of the product overlaps is the UK. They submitted that there is a significant degree of competition from imported products and stated that Costa sources many of its products from outside the UK, including the Far East.
21. Third party responses stated that the majority of suppliers of the products are based in the UK. Previous regulatory decisions¹⁰ on consumer food products also found the appropriate geographic frame of reference to be the UK since the major customers of the parties operate on a national basis.
22. In view of the above, the appropriate geographic frame of reference for all areas of product overlap is considered to be the UK. However, it is

⁸ These are: Indian ambient temperature wet cooking sauces; Indian cooking ingredients; pappadums; rice and naan bread.

⁹ ABF's subsidiary, Westmill, supplies Indian condiments under the Rajah brand.

¹⁰ 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.

recognised that imports from overseas based suppliers may be a credible constraint, especially in the context of new entry and expansion.

HORIZONTAL ISSUES

Retail sector

Indian ambient temperature wet cooking sauces

23. In the supply of Indian ambient temperature wet cooking sauces, Patak is the second largest UK supplier with a share of supply of [25-30] per cent. However ABF, through Costa and Westmill, has a limited presence in this sector. The transaction therefore results in minimal ([0-5] per cent) increment to the merged entity's shares of supply.
24. Premier will remain the largest supplier with a share of supply of [35-40] per cent. Retailers' own label Indian ambient temperature wet cooking sauces also have a strong presence with a share of supply of [20-25] per cent. These competitors will therefore continue to act as a strong constraint on the parties' behaviour post merger.
25. Given these factors, the OFT considers that the merger does not give rise to competition concerns in respect of the supply of Indian ambient temperature wet cooking sauces.

Indian cooking ingredients

26. Patak is the largest supplier of Indian cooking ingredients with a share of supply of [85-90] per cent. Westmill is one of a number of suppliers with a share of supply of [0-5] per cent.
27. Post-merger, although the two parties combined will continue to be the largest supplier of Indian cooking ingredients, the increment is very small which suggests that the constraint imposed by Westmill on Patak pre-merger is minimal. In addition, customers stated that they do have alternative suppliers and that they did not have any concerns.
28. Furthermore, based on the evidence provided, barriers to entry or expansion in the supply of Indian cooking ingredients by suppliers of other Indian products would appear to be low (as discussed below).

29. It is therefore considered that the loss of Westmill as a constraint on Patak would not significantly affect competition post-merger in the supply of Indian cooking ingredients.

Non retail sector

Indian condiments

30. The parties submitted that the only notable overlap is in the supply of Indian condiments in the ethnic to ethnic channel within the non-retail sector, with Patak's products competing with Westmill's Rajah branded ones. The parties stated that for Indian condiments they have a combined sales value of approximately £[].
31. One third party raised concerns that the Patak and Rajah brands are close competitors in smaller independent stores. Another third party stated that the Rajah brand is the second most popular brand after Patak's.
32. However, the parties stated that there are a number of other suppliers of Indian condiments (such as Ahmed Foods, Simtom, Ferns, Laziza, Natco and Pasco). They also stated that TRS (a wholesaler which also manufactures its own branded products) has recently de-listed Rajah branded pickle products, replacing these with its own brand.
33. In addition, the parties also submitted that Westmill sells a wide range of products in the ethnic to ethnic channel and that Indian condiments sold under the Rajah brand represent [0-5] per cent of its overall business.
34. Post-merger, the parties will continue to face competition from a number of other competitors in the supply of Indian condiments. Furthermore, barriers to entry and expansion are low (as discussed below). As a result, sufficient competitive constraints are considered to exist such that no competition concerns arise in relation to the supply of Indian condiments to the non-retail sector.

Barriers to entry and expansion

35. The parties submitted that there are relatively low barriers to entry and expansion for both the retail and non-retail sectors. They stated that both

Westmill and Patak source a number of their products from overseas, in particular, India and Pakistan for the supply of Indian food products. Another UK competitor also stated that it imports all of its products.

36. With regards to the retail sector, the parties referred to the success of Geeta's that has built a significant position in the supply of Indian food products in the UK and the recent entry by Bombay Brasserie and Shere Kahn. Third parties confirmed that it is relatively easy technically for new entrants to supply these products.
37. In addition, according to a market report¹¹, Indian cooking aids¹² and accompaniments¹³ value sales have grown by 9.5 per cent and 19.1 per cent respectively since 2002. The market report also states that there is potential for new entrants into the market with 'fresh ideas'.
38. With regards the non-retail sector, the parties stated that a number of existing Indian and Pakistani based manufacturers have chosen to enter the UK ethnic to ethnic channel of the non-retail sector in recent years with use of strong brand presence in their home countries.
39. The parties also submitted that major customers, such as TRS and Natco, have expanded their businesses with sales of both third party and own label products. The parties stated that these own label products have been introduced to replace or complement branded product ranges. These own label products are now also being sold in smaller specialist retail stores.
40. Overall, on the basis of the available information, the OFT considers that new entry and expansion by existing competitors and customers would provide a credible constraint on the parties' behaviour post-merger in both the retail and non-retail sectors.

THIRD PARTY VIEWS

41. The majority of third parties were not concerned by this transaction. The only concern raised, regarding strength of the merged entity with the Patak and Rajah brands in the ethnic wholesale sector, has been addressed above.

¹¹ Mintel, 'Indian Foods', January 2007.

¹² This includes cooking sauces, pastes and Indian spices such as curry powder.

ASSESSMENT

42. The parties overlap in the supply of Indian ambient temperature wet cooking sauces; Indian cooking ingredients such as curry paste; Indian condiments such as chutneys and pickles; pappadums; rice; and naan bread.
43. In relation to the supply of pappadums; rice; and naan bread, the overlaps are small and there are a number of other competitors present. With regards the supply of Indian ambient temperature wet cooking sauces, there will continue to be a number of UK suppliers, including Premier the largest supplier, that will continue to act as a competitive constraint on the parties' behaviour post-merger. Furthermore, customers were not concerned.
44. For the supply of Indian cooking ingredients, although the merger involves the largest supplier of this product, the transaction results in a very small increment to the merged entity's shares of supply. In addition, customers stated that they do have alternative suppliers and that they did not have any concerns. These factors suggest that the merger does not give rise to competitive concerns in respect of the supply of Indian cooking ingredients.
45. For the supply of Indian condiments to the non-retail sector, the constraint imposed by the remaining competitors combined with the potential for new entry and expansion by competitors and customers are considered by the OFT to pose a sufficient constraint on the parties' behaviour post-merger.
46. 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

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

¹³ This includes naan bread, poppadums, samosas, onion bhajis and chutneys.