

## REFERENCE RELATING TO THE COMPLETED MERGER BETWEEN CLIFFORD KENT HOLDINGS LIMITED AND DEANS FOOD GROUP LIMITED THROUGH NOBLE FOODS LIMITED

### Notice of possible remedies under Rule 11 of the Competition Commission Rules of Procedure

#### Introduction

1. On 13 September 2006, the Office of Fair Trading, in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act) and its power under section 35(6) of the Act, referred to the Competition Commission (CC) the completed merger of Deans Food Group Limited (Deans) and Clifford Kent Holdings Limited, parent company of Stonegate Farmers Limited (Stonegate), through Noble Foods Limited (Noble) for investigation and report within a period ending on 27 February 2007.
2. In its provisional findings on the reference notified to these parties (the main parties) on 22 December 2006, the group of CC members (the group) appointed to consider this reference concluded provisionally that the transaction has resulted in the creation of a relevant merger situation; and that the creation of that situation has resulted or may be expected to result in a substantial lessening of competition (SLC) in the:
  - (a) supply of cage and barn, of free range and of organic shell eggs to retailers;
  - (b) supply of free range liquid eggs and of cage liquid eggs, to those customers in the UK for whom the use of imported eggs provides a poor substitute; and
  - (c) procurement of shell eggs from producers in the UK;
3. This notice sets out the actions which the group considers it might take, including any recommendations it might make for action on the part of others, for the purpose of remedying the SLC and any resulting adverse effects identified in the provisional findings and invites comments on possible remedies.

#### Criteria

4. In choosing appropriate remedial action, the CC will have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects identified as expected to result from the merger. When deciding on an appropriate remedy, the CC will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality. Between two remedies that the CC considers equally effective, it will choose that which imposes the least cost or restriction.

## Possible remedies on which views are sought

### Divestment

5. Views are now invited on whether divestment would be effective in addressing the SLC identified as expected to result from the merger. In particular views are sought on:
  - the scope of the divestment package. The group is currently of the view that in this case the divestment of the Deans business or of the Stonegate business, provided that constitutes a business capable of competing on a stand-alone basis, should be sufficient to address the SLC. The group is also of the view that if the divestment is to be of the current Stonegate business additional assets or contracts may need to be added to the business. Views are invited on which business should be divested from Noble, on the scope of the divestment package and in particular on whether the divestment package should also include additional assets or contracts;
  - possible purchasers. In order to be an effective remedy, divestment would need to result in the divested business being purchased by someone who would operate it as an effective competitor in the market. Views are invited on possible suitable purchasers.
6. The group is not, at this stage, proposing other remedies for discussion as it considers that behavioural remedies are unlikely to be effective in addressing the SLC and its resulting adverse effects. Notwithstanding this, the group remains willing to consider any practical alternative remedies to divestment that the main parties or other persons would like to propose which they consider would address the expected SLC effectively.
7. The group also considers it unlikely that it will recommend that remedial action should be taken by others.

### Relevant customer benefits

8. The group will also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of section 30 of the Act arising from the merger. Such benefits might comprise lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services. A benefit is only a relevant customer benefit if the CC believes that: (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.
9. The group welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits.

### Next steps

10. The main parties are requested to provide the inquiry secretary, David Peel ([david.peel@cc.gsi.gov.uk](mailto:david.peel@cc.gsi.gov.uk) or Victoria House, Southampton Row, London, WC1B 4AD) with any views, including any practical alternative remedies they wish the group to consider, by 19 January 2007.

11. A copy of this notice will be posted on the CC's web site (<http://www.competition-commission.org.uk/inquiries/ref2006/stonegate/index.htm> ). Other interested parties are requested to provide any views, including any other practical remedies they wish the group to consider, to the same address by the same date, 19 January 2007.

*Barbara Mills*

Barbara Mills  
Group Chair  
5 January 2007

*Note:*

This notice of possible actions to remedy the SLC and any resulting adverse effects is given having regard to the provisional findings notified to the main parties on 05 January 2007. The main parties have until 25 January 2007 to respond to the provisional findings. In the light of any responses by the main parties, or by other interested or affected third parties, the CC's findings may alter, in which case the CC may consider other possible remedies, if appropriate.