



HJ Heinz and HP Foods

A report on the completed acquisition of the HP Foods companies by HJ Heinz Company and HJ Heinz Company Ltd

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The Competition Commission has excluded from this report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂].

Acquisition by HJ Heinz Company and HJ Heinz Company Ltd of the HP Foods Group

Contents

	<i>Page</i>
Summary	3
Findings	6
1. The reference.....	6
2. The products and companies.....	6
Tomato ketchup.....	6
Brown sauce.....	6
Barbecue sauce.....	7
Baked beans.....	7
Tinned pasta products.....	7
Overlap products.....	7
The retail and food service sectors.....	8
The retail sector.....	8
The food service sector.....	9
Heinz.....	10
HP.....	11
3. Background to the merger and the relevant merger situation.....	11
The transaction.....	11
Previous merger decisions.....	12
The rationale for the merger.....	13
Divestment by Heinz of HP Food's ethnic foods business.....	14
Jurisdiction.....	15
4. Market definition.....	16
The product markets.....	16
Retail and food service sectors.....	16
Ketchup and brown sauce in the retail sector.....	18
Own-label products and branded products.....	22
Barbecue sauce in the retail sector.....	24
Baked beans and tinned pasta products in the retail sector.....	25
Product market: conclusions.....	27
The geographic market.....	28
Heinz's views.....	28
Other parties' views.....	29
Our analysis.....	29
Conclusions on market definition.....	29
5. Assessment of the competitive effects of the merger.....	29
Factors affecting rivalry in the relevant markets prior to the merger.....	30
The retail ketchup market.....	30
The retail brown sauce market.....	33
The retail barbecue sauce market.....	34
The retail baked beans market.....	40
The retail tinned pasta products market.....	43
The food service market.....	46
The counterfactual.....	48
The future of HP absent the merger.....	48
Retail ketchup.....	49
Retail brown sauce.....	49
Retail barbecue sauce.....	49
Retail baked beans—counterfactual.....	50

	Retail tinned pasta products—counterfactual.....	50
	Retail baked beans and tinned pasta products—post-acquisition market developments	50
	Food service.....	51
	Conclusions on the counterfactual	52
	Effects of the merger	52
	The retail ketchup market.....	52
	The retail brown sauce market.....	55
	The retail barbecue sauce market.....	56
	The retail baked beans market.....	58
	The retail tinned pasta products market.....	61
	The food service market.....	64
	Coordinated effects	66
6.	Findings.....	66

Appendices

- A: Terms of reference and conduct of the inquiry
 - B: Financial data for Heinz and HP
 - C: Market definition: details of analysis
 - D: Disposal of HP's ethnic foods business
 - E: Sales data and market shares
 - F: Econometric analysis of competitive constraints
 - G: Sales negotiations, pricing and promotions
 - H: The counterfactual
 - I: Buyer power and market entry
- Glossary

Summary

1. On 26 October 2005, the Office of Fair Trading (OFT) referred the completed acquisition by HJ Heinz Company and HJ Heinz Company Limited (together Heinz) of HP Foods Limited, HP Foods Holdings Limited and HP Foods International Limited (together HP) to the Competition Commission (CC) for investigation and report under the Enterprise Act 2002 (the Act). We were asked to investigate whether a 'relevant merger situation' had been created and, if so, whether the creation of that situation had resulted, or might be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK or parts of the UK for goods or services. We are required to publish our final report by 11 April 2006.
2. We found that, as a result of the merger, Heinz and HP ceased to be distinct and that the turnover test in the Act was satisfied. As a result, we found that there was a relevant merger situation within the meaning of the Act.
3. Heinz and HP overlap in the supply of tomato ketchup (ketchup), brown sauce¹ and barbecue sauce in the UK. Heinz also produces baked beans and tinned pasta products for supply in the UK. HP-branded baked beans and tinned pasta products are currently manufactured and sold by Premier Foods plc (Premier) under a licence from HP which is due to expire in March 2006. The acquisition of HP brings the HP brand for baked beans and tinned pasta products under the control of Heinz, and it is therefore necessary to consider the effect of the merger on the relevant markets containing these products.
4. Ketchup, brown sauce, barbecue sauce, baked beans and tinned pasta products reach final consumers through two distribution channels. The retail sector distribution channel sells food for consumption in the home and includes supermarkets and grocery stores. The food service distribution channel sells food for out-of-home consumption, for example in pubs, restaurants, hospitals and schools.
5. We distinguished separate markets for the supply of the relevant products to the retail sector and the food service sector. Within the retail sector, we further distinguished separate markets² for the supply in the UK of:
 - (a) ketchup to retail customers (the retail ketchup market);
 - (b) brown sauce to retail customers (the retail brown sauce market);
 - (c) barbecue sauce (classified by Information Resources Incorporated, a supplier of point-of-sale data, as such) to retail customers (the retail barbecue sauce market);³
 - (d) baked beans to retail customers (the retail baked beans market); and

¹Heinz supplies brown sauce to the food service sector in the UK but not to retail customers.

²The evidence was inconclusive as to whether own-label versions of the relevant products were in the same retail market as their branded counterparts. However, for the purposes of this inquiry, we considered it appropriate to include own-label products within a working definition of each of the relevant product markets.

³We found that barbecue sauce appeared to be in a separate retail market from ketchup and brown sauce but that the boundaries of this market were not well defined. We therefore adopted a narrow but plausible working market definition for barbecue sauce, namely that of the supply to retail customers of barbecue sauce classified as such in the retail sector sales data supplied by Information Resources Incorporated (IRI) (usually, but not always, labelled 'barbecue sauce'). However, we looked at broader market definitions in addition when we analysed the effect of the merger on competition.

- (e) tinned pasta products to retail customers (the retail tinned pasta products market).
6. We considered it likely that the relevant markets in the food service sector were no narrower than the equivalent markets in the retail sector (ie separate markets for each of ketchup, brown sauce, barbecue sauce, baked beans and tinned pasta products). We also considered it possible that there might be wider markets in the food service sector as a result of supply-side substitutability.
 7. We considered what would have happened had Heinz not acquired HP. We concluded that:
 - HP and Heinz would have remained independent participants in the retail markets for ketchup, barbecue sauce, baked beans and tinned pasta products and in the food service sector;
 - Heinz would not have entered the retail brown sauce market; and
 - Premier would not have launched Branston-branded baked beans and tinned pasta products as a reaction to the impending expiry of its licence for HP-branded versions of these products.
 8. We found that the retail ketchup market was highly concentrated and became more so as a result of the merger compared with the counterfactual. However, we could not conclude, on the basis of the available evidence, that there was a competitive constraint operating between Heinz ketchup and HP's Daddies ketchup prior to the merger. Further, we considered that the merger had not increased Heinz's portfolio power and that it had not had any effect on the extent of buyer power, if any, in the retail ketchup market. Although there were high barriers to branded entry to the market prior to the merger, we expected that the merger had not increased these barriers. We therefore did not expect that the price of either Daddies ketchup or Heinz ketchup would rise as a result of the merger. Nor did we expect that the merger would lead to a loss of service, product choice, innovation or quality. We therefore concluded that the merger has not resulted, and may not be expected to result, in an SLC in the retail ketchup market on the basis of unilateral effects.
 9. We did not expect that Heinz would have entered the retail brown sauce market absent the merger. However, we considered that HP perceived Heinz to be a potential competitor in this market. Nonetheless, given the existence of other potential entrants and our view that Heinz was not especially well-positioned to enter the market, we did not consider that Heinz on its own exercised a constraint on HP prior to the merger. Further, given the range of products owned by Heinz prior to the merger and the evidence that retailers negotiated with manufacturers on a product-by-product basis, we did not consider that the merger increased Heinz's portfolio power, if any, in this market. We therefore did not expect that there would be any increase in prices or loss of service, product choice, innovation or quality as a result of the merger. We concluded that the merger has not resulted, and may not be expected to result, in an SLC in the retail brown sauce market on the basis of unilateral effects.
 10. We found that the retail barbecue sauce market was highly concentrated and became more so as a result of the merger under various market definitions that we considered. There was also some evidence that HP barbecue sauce was a competitive constraint on Heinz barbecue sauce prior to the merger. However, barriers to branded entry into this market appeared to be low and Heinz's and HP's market shares appeared to be falling. We also considered that there was buyer

power in this market since particular brands of barbecue sauce were not ‘must stock’ items for retailers and branding seemed less important than for other products we considered. We saw no evidence that the merger would weaken buyer power, create or increase the scope for portfolio effects or raise the low barriers to entry. We did not expect price rises in this market as a result of the merger. We also did not expect that the merger would be likely to lead to a loss of service, product choice, innovation or quality on the basis of unilateral effects. We concluded that the merger has not resulted, and may not be expected to result, in an SLC in the retail barbecue sauce market on the basis of unilateral effects.

11. We found that both the retail baked beans market and the retail tinned pasta products market were highly concentrated and became more so as a result of the merger. However, taking account of the available evidence, we could not conclude that there was a competitive constraint operating between Heinz and HP in either market prior to the merger. Further, we considered that the merger had not increased Heinz’s portfolio power and that it had not had any effect on the extent of buyer power, if any, in either of these markets. Although there were high barriers to branded entry into both markets prior to the merger, we did not expect that the merger had increased these barriers. We therefore did not expect that the price of Heinz baked beans, Heinz tinned pasta products, HP baked beans or HP tinned pasta products would rise as a result of the merger. Nor did we expect that the merger would lead to a loss of service, product choice, innovation or quality. We therefore concluded that the merger has not resulted, and may not be expected to result, in an SLC in the retail baked beans market or the retail tinned pasta products market on the basis of unilateral effects.
12. If separate markets were to be defined for each of the relevant products in the food service sector, then the only significant overlap between Heinz and HP would be in the supply of brown sauce. Any such food service brown sauce market would be highly concentrated prior to the merger, and increasingly so after the merger. We found that most sales of the relevant products in the food service sector were made through distributors and that there was some buyer power due to suppliers bidding for supply agreements, ease of customer switching and the relative unimportance of branding. We considered that these factors also led to lower barriers to entry than in the equivalent retail markets. There was evidence that pre-merger competition between Heinz and HP in the food service sector was not strong. We therefore did not expect that an effect of the merger would be an increase in prices of the relevant products. Further, since there was no evidence of Heinz bundling or tying its products in the past and there were low barriers to customer switching, we did not expect that the merger would increase Heinz’s ability to bundle and/or tie its products in the food service sector. Nor did we expect that the merger would be likely to lead to a loss of service, product choice, innovation or quality. We therefore concluded that the merger has not resulted, and may not be expected to result, in an SLC in any food service sector market(s) for the relevant products on the basis of unilateral effects.
13. We found no evidence of coordinated effects in any of the relevant markets, and no parties raised any concerns with us as to their possible existence. We concluded, therefore, that the merger has not resulted, and may not be expected to result, in an SLC in any of the relevant markets on the basis of unilateral or coordinated effects.

Findings

1. The reference

- 1.1 On 26 October 2005, the OFT referred the completed acquisition by Heinz of HP to the CC for investigation and report. The reference was made under section 22 of the Act. The reference requires the CC to consider whether a relevant merger situation⁴ has been created that has resulted, or may be expected to result, in an SLC within any market or markets in the UK for goods and services.⁵ Our terms of reference are set out in Appendix A, together with an explanation of how we have conducted our inquiry. Section 39 of the Act requires that we publish our final report by 11 April 2006.
- 1.2 This document, together with the appendices, constitutes our findings. Further information, including non-commercially sensitive versions of main party and third party written submissions, can be found on our website.⁶ We cross-refer to these documents where appropriate. We have also given full consideration to the points raised in the submissions made to us.

2. The products and companies

Tomato ketchup

- 2.1 Ketchup is a sweet-tasting, tomato-based table sauce that is generally added to a host food immediately prior to consumption. Common host foods (ie foods with which ketchup is consumed) include chips, prepared potatoes and fish.⁷ The main inputs to its manufacture are tomato paste, vinegar, spices, sugar, salt and water, with glass, plastics and closures required for packaging. The key steps of the manufacturing process are mixing, heating, [✂], cooling and packaging.
- 2.2 In common with the other products described below, precise recipes for ketchup tend to be trade secrets, the disclosure of which would constitute a breach of confidence. Processing techniques may also be considered confidential know-how and be protected by confidentiality agreements and restricted access.

Brown sauce

- 2.3 Brown sauce is a spicy-tasting, brown-coloured table sauce first developed in the UK in the 19th century. Brown sauce is most popular in the UK, although it is also available in a number of other countries around the world. Like ketchup, it is generally added to a host food immediately prior to consumption. Common host foods include bacon, eggs and chips.⁸ The main inputs to its manufacture are tomato paste, vinegar, spices, sugar and/or other sweeteners, salt, dates (in some recipes) and water, with glass, plastics and closures required for packaging. The manufacturing process is broadly similar to that for ketchup.

⁴Defined in section 23 of the Act.

⁵The CC inquiry is specifically concerned with answering the statutory questions in section 35 of the Act and does not permit the CC to consider any issues relating to the wider functioning of the markets concerned or the public interest.

⁶www.competition-commission.org.uk/inquiries/ref2005/heinz/index.htm.

⁷Taylor Nelson Sofres Family Food Panel (TNS FFP) survey data, annual to May 2005.

⁸TNS FFP survey data, annual to May 2005.

Barbecue sauce

- 2.4 Barbecue sauce is a relatively new type of table sauce in the UK that is also usually added to food immediately prior to consumption.⁹ It is strongly flavoured and is marketed as being suitable (among other things) for adding to barbecued foods, although its usage is not confined to barbecues. The precise definition of barbecue sauce is somewhat unclear, and is an issue that is further addressed in relation to market definition in paragraphs 4.33 to 4.38. There are many strongly-flavoured thick ‘add-on’ sauces available, and new product introduction is more common than in the case of ketchup and brown sauce (although only some of these new products are specifically identified in the product name as being barbecue sauces). Patterns of consumer usage and demand are still evolving. Barbecue sauce has broadly similar ingredients and manufacturing processes to ketchup and brown sauce, although additional ingredients are added to give barbecue sauce its characteristic flavour. In this report, we use the term ‘table sauce’ to refer to ketchup, brown sauce and barbecue sauce collectively.

Baked beans

- 2.5 Baked beans are tinned beans in tomato sauce. They are particularly popular in the UK, although they are also available in other countries. The main inputs to the manufacturing of baked beans are beans (usually navy beans), tomato paste, vinegar, thickeners, sugar, salt and spices, with steel used for packaging. The manufacturing process involves making the tomato sauce by mixing and heating the relevant ingredients; sorting and cooking the beans and mixing and canning the final product. Baked beans may also have added to them items such as sausages, chicken nuggets and black pudding.

Tinned pasta products

- 2.6 Tinned pasta products consist of tinned pasta in tomato sauce. The main inputs to the manufacturing of tinned pasta products are pasta, tomato paste, sugar and other sweeteners, salt, cornflour and spices, with steel used for packaging. The main steps in the manufacturing process involve putting the cooked pasta in the cans, making the sauce, putting the sauce in the can and closing and sterilizing the cans. There is a wide variety of pasta shapes such as spaghetti, fusilli, spaghetti rings and also shapes based on children’s cartoon characters (licensed from the owner of the copyright to such characters). Tinned pasta products may also contain additional items such as sausages and meatballs.

Overlap products

- 2.7 Heinz produces, inter alia, ketchup, brown sauce,¹⁰ barbecue sauce, baked beans and tinned pasta products for supply in the UK. HP produces, inter alia, ketchup, brown sauce and barbecue sauce for supply in the UK. Heinz and HP therefore overlap in the supply of ketchup, brown sauce and barbecue sauce in the UK.¹¹

⁹For example, Heinz launched a barbecue sauce range in the UK in 1996/97.

¹⁰Heinz supplies brown sauce to the food service sector in the UK but does not supply brown sauce to retail customers. See further discussion of the food service and retails sectors in paragraphs 2.9 to 2.18.

¹¹Heinz and HP also make other sauces that are not the subject of this reference. For example, HP makes Lea and Perrins Worcestershire sauce.

2.8 In addition, Premier produces HP-branded baked beans and tinned pasta products under a licence from HP which is due to expire in March 2006.¹² The merger has brought the HP brand for baked beans and tinned pasta products under the control of Heinz. It is therefore necessary to consider the effect of the merger on the relevant markets containing these products, as well as the overlap products between Heinz and HP listed in the previous paragraph.

The retail and food service sectors

2.9 Ketchup, brown sauce, barbecue sauce, baked beans and tinned pasta products reach final consumers through two distribution channels: the retail sector distribution channel, and the food service distribution channel. The distinction between these two channels may be summarized as follows:

- Companies in the retail sector sell food for consumption in the home and include supermarkets, independent grocery stores and 'cash-and-carry' wholesalers (to the extent that such wholesalers sell food directly to consumers, or to grocery stores for onward sale to consumers).
- Food service companies provide food for out-of-home consumption and include pubs, restaurants, fast-food chains, hotels, hospitals, prisons, schools, company canteens and the companies that supply them such as wholesalers.

2.10 In both sectors, supplies of the relevant products (ie table sauces, baked beans and tinned pasta) are managed by reference to 'stock-keeping units' (SKUs). Each SKU is a specific size and packaging format variant of a product.¹³ For each product, the range of SKUs supplied to the retail sector is likely to be significantly different from that supplied to the food service sector as a result of the different requirements of each sector. For example, the food service sector is likely to require both larger pack sizes (for bulk use) and smaller pack sizes (sachets for individual use) than the retail sector. Promotional activities and prices will also differ between the sectors. The differences between the retail sector and the food service sector are discussed further in relation to market definition in paragraphs 4.3 to 4.9.

The retail sector

2.11 Consumers can choose between branded and own-label products. Branded products are sold under the manufacturer's brand name (for example, Heinz Tomato Ketchup). In using brands, manufacturers aim to create an association in consumers' minds between the brand and product characteristics of value to the consumer, thereby distinguishing their products from those of rival manufacturers.

2.12 Own-label products are sold under the retailer's name (for example, Asda Tomato Ketchup). Not all retail outlets stock own-label products, but all the large supermarket chains (also known as the retail multiples) such as Tesco, Sainsbury's, Morrisons and Asda do. In relation to the relevant products, retailers typically seek bids from manufacturers for the supply of own-label products. Retailers then place contracts

¹²This is subject to an extension (which has been agreed between the parties) for the duration of our inquiry agreed under the terms of the interim undertakings given to the CC by Heinz. These undertakings were accepted under section 80 of the Act on 13 December 2005 and are available on the CC website at www.competition-commission.org.uk/inquiries/ref2005/heinz/index.htm.

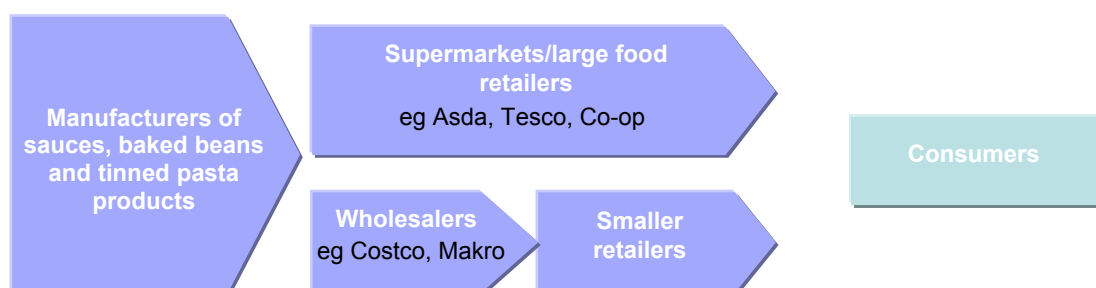
¹³For example, a 500ml plastic bottle of a branded ketchup and a 300ml glass bottle of the same branded ketchup would be different SKUs.

with the chosen manufacturers, and these contracts may come up for periodic renegotiation or retender.

- 2.13 Large retailers such as supermarkets purchase products directly from manufacturers such as Heinz and HP. Smaller retailers may purchase products directly from Heinz and HP through collective purchasing arrangements or they may purchase products through wholesalers. These relationships are illustrated in Figure 1.

FIGURE 1

Retail sector distribution



Source: CC analysis.

The food service sector

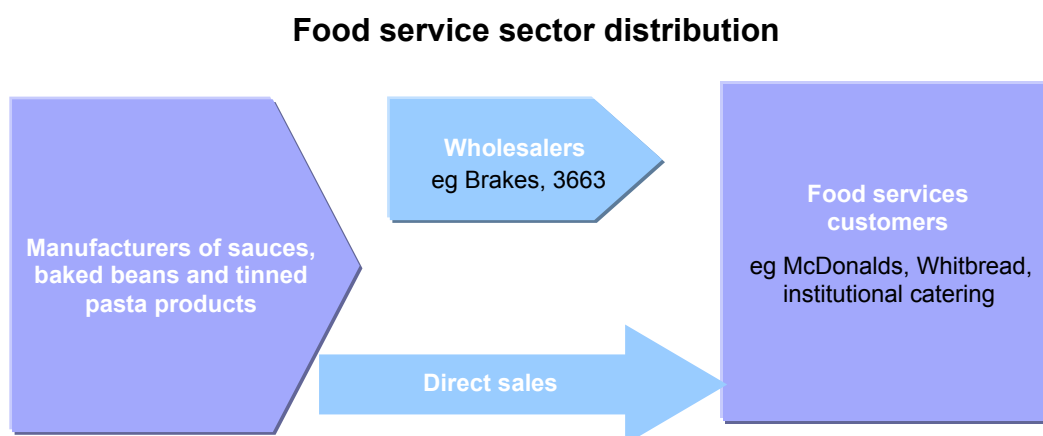
- 2.14 The food service sector covers both the commercial sector (for example, restaurants, pubs and hotels) and the institutional sector (for example, hospitals, prisons, canteens and schools).
- 2.15 In the food service sector, a distinction may be made between 'back-of-house' use of sauces (in the kitchen) and 'front-of-house' use (sauces made available to consumers to add to the meal themselves). Sauces for back-of-house use are usually supplied in a bulk packaging format whereas front-of-house sauces may be supplied in single-serving sachets or portions.¹⁴ A similar distinction between front-of-house and back-of-house use does not generally arise in the case of baked beans and tinned pasta products, since these products will normally be prepared for the consumer in the kitchen.
- 2.16 Branded products are more likely to be used in front-of-house applications where the brand is visible to the final consumer.¹⁵ One party in the food service sector told us that there were also some advantages in using branded products in back-of-house applications, in that customers might ask about the brand being used prior to purchasing a meal, and the brand could be mentioned in menu copy.
- 2.17 Unbranded products are also available, comprising own-label products (carrying the name of the wholesale distributor, for example) and generic products (simply labelled 'ketchup' etc). Some customers may purchase both branded products for front-of-house use and unbranded products for back-of-house use.
- 2.18 Distribution of the relevant products in the food service sector is either through wholesalers or direct from the manufacturer to food service end-user customers such

¹⁴However, sauces supplied in bulk may also be decanted into smaller containers for front-of-house use.

¹⁵Manufacturers may benefit from front-of-house use of branded products as this may improve consumers' awareness of and loyalty to the brand in both the food service and retail sectors.

as major restaurant chains. Wholesalers may either deal with end-user customers on their own account or act as delivery channels for customers who have negotiated directly with the manufacturers. These relationships are illustrated in Figure 2.

FIGURE 2



Source: CC analysis.

Heinz

- 2.19 Heinz is a major international food company with its headquarters in Pittsburgh, Pennsylvania, USA. It operates in 110 countries worldwide and had a turnover in the year ended 27 April 2005 of \$8.9 billion (£5.2 billion).¹⁶
- 2.20 Heinz's UK and Ireland business is projected to generate sales of £[£] million in the year ending 26 April 2006, making it the largest part of Heinz's business outside North America. It is split into four primary product groups: quick service meals, sauces, frozen food and infant nutrition.
- 2.21 Heinz manufactures the relevant products (among others) for supply to the UK as follows:
- (a) Heinz-branded ketchup is manufactured at its factory in Elst in the Netherlands for the UK retail sector. Heinz also supplies the UK food service sector with branded and own-label ketchup largely sourced from its factory at Telford in the UK.
 - (b) Branded and own-label brown sauce is sourced for supply to the UK food service sector from its factories in Telford, Elst and Turnhout in Belgium. Heinz does not supply brown sauce to the UK retail sector.
 - (c) Heinz-branded barbecue sauce is manufactured for supply to the UK retail sector, and both branded and own-label barbecue sauce for supply to the food service sector is sourced from its factories in Telford, Elst and Turnhout.
 - (d) Heinz-branded baked beans and tinned pasta products are manufactured for both the retail and food service sectors at its factory at Kitt Green near Wigan.
- 2.22 Appendix B provides further financial information on Heinz.

¹⁶Exchange rate used £1=\$1.70.

HP

- 2.23 HP is primarily a supplier of various sauces in the UK under the HP, Daddies and Lea & Perrins brand names. HP's parent company (prior to its sale to Heinz in 2005) was Groupe Danone SA (Danone). HP's turnover in 2004 was £165 million, £102 million of which related to its activities in the UK. As of December 2004, it employed 449 people.
- 2.24 HP manufactures and markets sauces in the UK and the USA, which it also exports to around 75 other countries. Its sauce brands include HP (for brown sauce), Daddies (for brown sauce and ketchup) and Lea & Perrins (for Worcestershire sauce). At the time of the merger HP also distributed and sold imported ethnic speciality food products in the UK and Europe, sold mainly under the Amoy (Chinese products) and Rajah (Indian products) brands, as well as acting as an agent for the importation and distribution of a range of ethnic products manufactured by third parties.
- 2.25 At the time of the merger, HP was divided into six business units, one of which (Retail Sauce UK) sells sauces to retailers in the UK and Ireland and another of which (Foodservice UK) sells products (including sauces) to the food service sector.
- 2.26 HP has its headquarters in Enfield in the UK and has two UK manufacturing sites, one at Aston in Birmingham and one at Worcester. Ketchup, brown sauce and barbecue sauce are exclusively produced at its Aston site as follows:
- (a) ketchup for sale to the UK retail and food service sectors under the Daddies brand name.¹⁷ It does not currently produce own-label ketchup for either the retail or food service sectors in the UK;
 - (b) brown sauce for sale to the UK retail and food service sectors under the HP and Daddies brands. HP also produces own-label brown sauce for supply to the UK retail sector, but planned to exit this business when its last remaining contract expires in early 2006; and
 - (c) barbecue sauce for sale to the UK retail and food service sectors under the HP brand.¹⁸ It does not currently produce own-label barbecue sauce for either the retail or food service sectors in the UK.
- 2.27 As described in paragraph 2.8, HP does not produce baked bean or tinned pasta products. HP-branded baked bean and tinned pasta products are produced under a licence to Premier which is due to expire in March 2006.
- 2.28 Appendix B provides further financial information for HP.

3. Background to the merger and the relevant merger situation

The transaction

- 3.1 On 16 August 2005, Heinz completed its purchase of HP from Danone for a total cash consideration of £470 million. There were two parts to the transaction:

¹⁷HP Foods does sell ketchup under the HP brand for export and UK food service but in both cases the quantities are minimal.

¹⁸Financial data from Heinz showed that sales of HP-branded barbecue sauce were only £16,000 in 2005.

(a) HJ Heinz Company Ltd, the UK subsidiary of HJ Heinz Company (the US parent) purchased HP Foods Ltd and HP Foods Holdings Ltd for £400 million cash; and

(b) HJ Heinz Company purchased HP Foods International Ltd¹⁹ for £70 million cash.

3.2 In addition, Heinz agreed to [REDACTED].

3.3 The sale of HP to Heinz was the culmination of an auction process undertaken by Danone. A summary of the auction process is presented in Table 1 of Appendix H. Having sought expressions of interest from selected possible purchasers, Danone sent an information memorandum to interested parties around 24 March 2005. Danone received ten bids by the 14 April 2005 deadline for initial non-binding offers ('the first round'). Of the ten bids, eight were from trade buyers and two were from private equity houses. Following the receipt of further information about HP, five of the first round bidders submitted further bids to Danone by the 2 June 2005 deadline for binding offers ('the second round'). Four of the second-round bidders were trade buyers and one was a private equity house.

3.4 Following the deadline for binding offers, further negotiations were conducted and HP was sold to Heinz on 18 June 2005 conditional on the deal not being prohibited by either the Irish or German competition authorities.²⁰ The acquisition was cleared by the Competition Authority of the Republic of Ireland (on 11 August 2005²¹) and by the Bundeskartellamt (BKA) of Germany (on 13 July 2005²²).

Previous merger decisions

3.5 Given the different market conditions prevailing in the UK (for example, the presence of different brands and different categories of products), the decisions of competition authorities elsewhere in Europe about the acquisition of HP by Heinz, whilst of interest, are of no direct relevance to our inquiry.²³

3.6 Various other merger decisions by competition authorities were drawn to our attention as being of relevance to our inquiry. These merger decisions included:

(a) the decision of the European Commission in 2000 not to oppose the acquisition of Bestfoods (a manufacturer of, among other things, savoury products, ketchup, mayonnaise and other dressings) by Unilever Plc and Unilever NV, subject to compliance with undertakings set out by the European Commission ('the Unilever/Bestfoods decision'),²⁴ and

(b) the OFT's decision of 28 April 2005 not to refer to the CC the acquisition by Bakkavor Group HF of Geest Plc ('the Bakkavor/Geest decision').²⁵ These

¹⁹HP Foods International Ltd is the holding company for Lea & Perrins Inc, the US company that owns and operates the Lea & Perrins Worcestershire sauce plant in New Jersey, and sells the Lea & Perrins products manufactured there primarily to retailers and food service wholesalers in the USA.

²⁰[REDACTED]

²¹Determination number M/05/033 www.tca.ie/decisions/mergers/determinations/m_05_33_p1d.pdf.

²²BKA reference number V B2-77-05. This decision has not yet been published by the BKA.

²³In the course of the Competition Authority of Ireland's investigation, Heinz submitted econometric analysis prepared by the economic consultancy LECG. The purpose of this econometric analysis was to support Heinz's views on market definition. The Irish Competition Authority also obtained econometric analysis and economic advice from Dr Vincent Hogan of University College Dublin to help it assess (among other things) the validity and robustness of the LECG analysis. Heinz submitted similar analysis to us during the course of our inquiry, also prepared by LECG. We consider this econometric analysis, for example, in paragraph 4.20 and Appendix C.

²⁴Case No Comp/M.1990, 28 September 2000 www.europa.eu.int/comm/competition/mergers/cases/decisions/m1990_en.pdf.

²⁵Decision given on 28 April 2005 and published on 11 May 2005, www.of.gov.uk/NR/rdonlyres/00744747-A0A3-4E4E-9460-25653F9ADA7F/0/BakkavorGeest.pdf.

companies overlapped in the production of chilled ready meals, dips, salad dressings and sauces.

- 3.7 We considered the relevance of the merger decisions listed in the previous paragraph during our inquiry, particularly in relation to geographic and product market definition (see, for example, paragraphs 4.31 and 4.57).

The rationale for the merger

- 3.8 Danone told us that it decided to refocus its operations around three core business areas (namely fresh dairy products, sweet biscuits and bottled waters) as a result of a strategic review in 1996 and 1997. Following that review, Danone made a series of disposals of businesses in non-core areas. Danone told us that it had finally decided in February 2005 to dispose of HP since it was not part of one of these three core business areas. Danone was advised that there was an upturn generally in mergers and acquisitions activity which would be likely to result in HP realizing a satisfactory price.
- 3.9 The process by which Danone sold HP is described in Appendix H. Prior to the auction, in September 2004, Danone's advisers carried out a valuation of HP which was reconsidered in May 2005 when HP updated its business plan. Danone's advisers put an enterprise value on HP of between €[redacted] (£[redacted]) and €[redacted] (£[redacted]).²⁶
- 3.10 The first and second rounds of the auction are described in Appendix H. Of the five second-round bids, two were for parts of the HP business only. Danone told us that it had a preference for a sale of the whole business to one buyer and therefore that it did not pursue these two bids, which, even if added together, were of lesser value than the other three bids. [redacted]
- 3.11 Heinz's bid of approximately €700 million (£470 million) was within the range of enterprise values which Danone's advisers had put on the HP business (see paragraph 3.9). Heinz was also prepared to (a) [redacted], and (b) [redacted].²⁷
- 3.12 Heinz told us that it was interested in acquiring HP for several reasons:
- (a) It was a rare opportunity to acquire an established table sauces business, an area of business in which Heinz considered itself to have a core competence.
 - (b) Heinz considered that there was likely to be scope to develop the business along lines Danone had not recently been interested in pursuing.
 - (c) It would allow Heinz's UK and Ireland business to reweight its activities in favour of sauces, bringing it into line with the rest of Heinz and improving the financial performance of the UK and Ireland business.
 - (d) Heinz's advisers identified \$[redacted] (£[redacted]) of annual synergies arising from the merger, \$[redacted] (£[redacted]) of which were in Europe and \$[redacted] (£[redacted]) of which were in the USA.²⁸

²⁶This valuation was derived from (a) an analysis of revenue and profit (EBITDA and/or EBITA) multiples for comparable quoted trading companies (plus a [redacted] per cent premium); (b) a similar analysis in respect of ten comparable merger transactions in the USA, Europe and the UK since November 1994; and (c) a valuation based on discounted cash flow analysis using a weighted average cost of capital between [redacted] and [redacted] per cent.

²⁷[redacted]
²⁸[redacted]

- 3.13 Heinz's advisers carried out a detailed analysis of the HP business, which assessed its prospects, the value to be placed on it and the situation of likely competing bidders. They assumed that the ethnic foods business of HP, as defined in Appendix D, paragraph 2, would be sold by Heinz following the merger for the reasons set out in Appendix D, paragraph 4.
- 3.14 In carrying out a valuation of HP, Heinz's advisers made certain growth projections for various parts of HP's business in Europe under its ownership. We compared these volume and product mix projections with those in HP's strategic plan drawn up prior to the sale in May 2005 for the period 2005 to 2009. We considered that, where the growth projections made by Heinz were higher than those made by HP prior to the acquisition, these were plausible changes based on Heinz's stated plans for the products in question and did not indicate that Heinz had been prepared to pay an unjustifiably high price to acquire HP.
- 3.15 In its final appraisal, Heinz put a value of £[redacted] on the HP businesses it wished to keep, a value of £[redacted] on the ethnic food business and other non-core parts of the business and a net present value of £[redacted] on the synergies, making a total value of £[redacted]. (A greater ability to realize synergies could have influenced its willingness to pay more than other bidders for the business.) Heinz also evaluated a downside case which gave a total value for HP of £[redacted].
- 3.16 On the basis of its analysis, Heinz made an initial offer of £[redacted] for HP. Heinz subsequently raised its offer to a final offer of £470 million. As explained in paragraph 3.2, Heinz also agreed [redacted]. The offer was accepted by Danone.

Divestment by Heinz of HP Food's ethnic foods business

- 3.17 During our inquiry, the statutory restrictions on share dealings contained within the Act and the interim undertakings given by Heinz and accepted by the CC on 13 December 2005²⁹ prevent Heinz from transferring ownership of the HP business or any of its subsidiaries.³⁰ These ensure that, during the course of the inquiry, Heinz cannot take any action which might prejudice the inquiry or prevent the CC from imposing a suitable remedy in the event of an SLC finding.
- 3.18 On 4 November 2005 we received a request from Heinz that, prior to the end of our inquiry, it be permitted to sell the assets and liabilities of HP Food's ethnic foods business along with BE International Ltd, the holding company for the overseas operations of this business (together, 'the ethnic foods business').
- 3.19 Details of Heinz's request and our assessment are set out in Appendix D. We considered whether the disposal would prejudice our findings or otherwise hinder our ability to impose remedies in the event of our finding an SLC in respect of the merger. In our Issues Statement³¹ we sought views on Heinz's request. We noted that:
- We received no expressions of concern about the proposed divestment from any party.

²⁹Section 77(2)(c) of the Act contains the statutory restrictions on share dealing. This section prohibits the transfer of ownership or control of any enterprise to which the reference relates without the CC's consent, whether or not undertakings have been accepted. The CC's powers to seek and accept interim undertakings are contained in section 80 of the Act.

³⁰Paragraph 1(c) of the Heinz Interim Undertakings which are available on the CC's website at: www.competition-commission.org.uk/inquiries/ref2005/heinz/index.htm.

³¹The Issues Statement was published on 7 December 2005 and is available on the CC website at www.competition-commission.org.uk/inquiries/ref2005/heinz/index.htm.

- The ethnic foods business had no links to the relevant products of Heinz and HP except for a distribution agreement for certain HP lines; we were unconcerned about this distribution agreement because of its limited scale.
 - Sale of the ethnic foods business would have a very limited effect on the ease with which any necessary remedies could be implemented. The distinct and stand-alone nature of the ethnic food business and its relatively low value suggested that its transfer would have done little damage to the integrity of a stand-alone HP divestiture package, if this were to prove to be necessary. We also believed that the attractiveness of a licence or brand divestiture remedy would not be unduly restricted by the existence of the distribution agreement given to ABF to sell HP products within the ethnic channel.
- 3.20 We therefore gave consent on 12 January 2006³² to the divestment by Heinz of HP's ethnic foods business, without prejudice to the outcome of our inquiry or any remedies we may need to impose as a result.
- 3.21 For the avoidance of doubt, we noted that our decision to permit Heinz to sell the business did not preclude any further investigation of the ABF acquisition by the OFT or the CC.

Jurisdiction

- 3.22 Under the Act³³ we are required to establish whether a 'relevant merger situation' has been created and, if so, whether the creation of that situation has resulted, or may be expected to result, in an SLC within any market or markets in the UK or parts of the UK for goods or services. Section 23 of the Act provides that a relevant merger situation is created if two or more enterprises have ceased to be distinct and at least one of the turnover or share of supply tests is met.
- 3.23 Any two enterprises cease to be distinct if they are brought under common ownership or common control. As described in paragraph 3.1, on 16 August 2005, Heinz acquired the entire issued share capital of HP from Danone. The reference was made on 26 October 2005. Enterprises carried on by or under the control of Heinz have ceased to be distinct from enterprises carried on by or under the control of HP and did so not more than four months before the reference.
- 3.24 In the last completed financial year, which ended on 31 December 2004, HP had a total turnover (net sales after discounts) of £165 million, of which the UK turnover was £102 million. As a result, the turnover test in section 23(1)(b) of the Act (namely that the value of the turnover in the UK of the enterprise being taken over exceeds £70 million) is satisfied and we do not have to consider whether the share of supply test is met.
- 3.25 The CC has territorial jurisdiction in relation to the acquisition because HP and the UK subsidiary of Heinz (HJ Heinz Company Ltd) are incorporated in and carry on business in the UK.
- 3.26 We therefore found that, as a result of the merger, enterprises carried on by or under the control of Heinz ceased to be distinct from enterprises carried on by or under the control of HP. We also found that HP's UK turnover exceeded £70 million and that, as a result, the turnover test was met. We thus concluded that there was a relevant

³²This is available on the CC website at www.competition-commission.org.uk/inquiries/ref2005/heinz/index.htm.

³³Section 35.

merger situation within the meaning of the Act. This was not disputed by any party during the course of our inquiry.

4. Market definition

- 4.1 As set out in the CC's merger guidelines,³⁴ an important element in deciding whether a merger would result in an SLC is to define the relevant market or markets. There are normally two dimensions to the definition of a market, the product market and the geographic market. The products that should be included in the relevant market and the geographic boundaries of that market are determined by substitutability; that is, the extent to which customers can readily switch between substitute products, or suppliers can readily switch their facilities between the supply of substitute products. The generally accepted conceptual approach seeks to identify the extent to which customers could readily demand, or suppliers readily supply, adequate substitute products in response to a small but significant non-transitory increase in price (SSNIP) imposed by a hypothetical monopolist of a certain product or products.
- 4.2 The effect of customers switching to substitute products following a SSNIP is called demand-side substitution. Information on product characteristics such as physical properties and intended use can also be useful in the analysis of demand-side substitution. The effect of suppliers commencing or increasing the supply of the products whose price rises following a SSNIP is called supply-side substitution.

The product markets

Retail and food service sectors

Heinz's view

- 4.3 Heinz supported a distinction between retail and food service sector markets. It noted that this distinction was drawn by the European Commission in the Unilever/Bestfoods decision and by the OFT in the Bakkavor/Geest decision. Heinz pointed out that, although a number of manufacturers supplied both the retail and food service sectors, and there was substantial supply-side substitution between them, some suppliers of the relevant products operated in one sector or the other and the demand-side characteristics were different. In particular, Heinz noted that:
- retail sector customers were different from food service sector customers;
 - there was a service element in the food service sector lacking in the retail sector;
 - different sales forces serviced each sector;
 - different product pack sizes (particularly for back-of-house use) and pricing structures applied; and
 - different health and safety regimes applied.

³⁴*Merger References: Competition Commission Guidelines, CC2*, available on the CC website at www.competition-commission.org.uk/rep_pub/rules_and_guide/index.htm.

Other parties' views

- 4.4 One member of the public, as well as one manufacturer [§], specifically commented that they considered there to be separate product markets for supply to food service customers and to the retail sector. Within the food service sector, one food service manufacturer noted that, in its view, front-of-house and back-of-house uses were in the same market.

Our analysis

- 4.5 We noted the reasons for Heinz's view (as set out in paragraph 4.3) that there was a distinction to be drawn between the retail sector and the food service sector. We also noted that this distinction was drawn in other merger decisions³⁵ and by other parties with whom we discussed the issue during our inquiry. We did not see any evidence to suggest that such a distinction was incorrect.
- 4.6 As explained in paragraph 2.15, sauces may be used in both back-of-house and front-of-house applications in the food service sector. Bulk packaging formats are suitable for back-of-house use and for decanting for front-of-house use. Consumer-sized bottles and small sachets are suitable for front-of-house applications. In contrast, the vast majority of baked beans and tinned pasta products will be sold in bulk packaging formats³⁶ and prepared in the kitchen before serving. Although we heard evidence (for example, from food service customers) that branded sauces were more likely to be used in front-of-house applications where the brand is visible to the final consumer than in back-of-house applications, we did not find sufficient evidence to consider that the food service sector should be further broken down into separate sauce markets for front-of-house and back-of-house use, nor for sachets and bulk packaging formats.
- 4.7 In addition to the evidence from food service customers that branded products might be less important in back-of-house applications in the food service sector than in the retail sector, Heinz also submitted data that indicated that the own-label share of supply of each of ketchup, brown sauce and barbecue sauce in the food service sector was double or more that of each sauce in the retail sector. We also noted that, according to data submitted by Heinz, end-user customers such as government institutions and staff catering organizations were responsible for about 27 per cent of sales in the food service sector. We considered that it was reasonable to expect that such end-user customers would be less brand sensitive than end-user customers such as hotels, pubs and restaurants for whom the provision of food was a profit-making opportunity. Taken together, we considered that these factors indicated that own-label table sauces were likely to be in the same market as branded table sauces in the food service sector. We expected that the vast majority of baked beans and tinned pasta products were used in back-of-house applications in the food service sector and we considered that they were also likely to be in the same market as their branded counterparts in food service.

³⁵The European Commission's Unilever/Bestfoods decision and the OFT's Bakkavor/Geest decision.

³⁶Heinz estimated (based on AC Nielsen data) that 37 per cent of sales of sauces in the food service sector were sachets and 63 per cent were sales in bulk (where bulk included consumer-sized bottles for the tabletop). We considered that this indicated that a minimum of 45 per cent of sauce sales to the food service sector were front-of-house sales (ie 37+8 per cent), but noted that it could be higher since bulk sales may also be decanted into other receptacles for front-of-house use. On the other hand, AC Nielsen data covers only a proportion of wholesalers that collectively cover about 30 per cent of the food service market. It does not cover institutions that may buy directly from suppliers such as prisons and hospitals and which arguably have a lower requirement than commercial food service customers for sauce sachets. This could mean that the AC Nielsen data over-estimates the proportion of sachet sales in the food service sector.

- 4.8 We considered whether there was supply-side substitutability between the retail and food service sectors in relation to the relevant products. Heinz told us that a number of manufacturers supplied both the retail and food service channels, that there was substantial supply-side substitution between them, but that many suppliers operated in one channel or the other. We considered that the high costs and timescales associated with developing a retail brand (see Appendix I, paragraphs 7 to 9) would preclude supply-side substitutability from the food service sector to branded supply of the relevant products in the retail sector. It seemed more plausible that there might be supply-side substitutability from the retail sector to the food service sector, but we noted that a supplier of the relevant products would still need to develop new packaging formats, new distribution channels and new customer relationships.
- 4.9 Given our analysis of the competitive effects of the merger in the food service sector (see paragraphs 5.154 to 5.164) and our analysis of the relevant markets in the retail sector, we considered it likely that the relevant markets in the food service sector were no narrower than the equivalent markets in the retail sector (ie separate markets for each of ketchup, brown sauce, barbecue sauce, baked beans and tinned pasta products). We also considered that supply-side factors indicated that there might be wider markets in the food service sector covering several of the relevant products (for example, a market for table sauces more generally).

Ketchup and brown sauce in the retail sector

Heinz's views

- 4.10 Heinz submitted that ketchup and brown sauce were in separate markets distinct from one another and from other sauces. This view was based on consumer surveys highlighting the different characteristics and uses of the products; the results of an econometric model created for Heinz by economic consultancy LECG (showing that a SSNIP test resulted in the products being in separate markets), and the manner in which industry participants and observers treated the relevant products.

Other parties' views

- 4.11 Competing suppliers, large retail customers and a food service customer submitted views to us regarding the appropriate market definition(s) for ketchup and brown sauce. They considered that ketchup and brown sauce were in separate markets [X]. The reasons given for this view included: the strongly different taste of ketchup and brown sauce (leading to insufficient substitutability from the consumers' point of view); different consumer profiles for each sauce; and the small prospect that consumers would switch from one to the other in the event of a change in the relative price of the products.
- 4.12 One member of the public made a submission to us in which he set out his view that there was a single market for ketchup and brown sauce. He felt that, if ketchup were unavailable or it increased in price, consumers would use brown sauce (and vice versa). He noted that ketchup and brown sauce were used on similar host foods, had similar ingredients and manufacturing processes, were offered together in similar types of restaurant and cafe and were positioned close together on retailers' shelves. He submitted that any evidence indicating that large numbers of consumers use either ketchup or brown sauce (and not both) should be interpreted as indicating that consumers who purchase one have no need to purchase the other, as their needs in the single relevant product market for ketchup and brown sauce were fulfilled.

Our analysis

- 4.13 We considered first whether ketchup and brown sauce are in the same product market by examining price-based evidence. We analysed data regarding promotional activity for ketchup and brown sauce from Heinz and the major retailers. These products are characterized by frequent, deep price promotions like ‘three-for-two’ offers or an offer of a certain significant percentage extra for free.
- 4.14 Promotional activity changes the relative price of ketchup to brown sauce significantly for short periods. A ‘buy one, get one free’ (BOGOF) promotion, for example, results in a price reduction of 50 per cent for the promoted product. We expected that, if ketchup and brown sauce were substitutes, then there should be a transfer of sales volumes to the product whose price had been reduced and a decrease in the sales of products that were close substitutes for the promoted product.
- 4.15 We noted, however, that, as set out in Appendix C, there were several reasons that we needed to exercise care in interpreting the results from such analysis. In particular, we noted that it was possible that changes in sales volumes would be a result of household stocking behaviour (known as ‘larder loading’) rather than substitution.³⁷ Further, promotions result in relative price changes that are much larger than the normal 5 per cent price change used in a SSNIP test. These relative price changes are also of limited duration, rather than being the non-transitory price changes required for a SSNIP test.
- 4.16 The effect of larder loading would be an increase in the sales volume of the promoted product during the promotional period (with no corresponding reduction in the sales of other products) followed by depressed sales volumes of the promoted product (ie lower than the pre-promotion levels) when the promotion ceased.³⁸ We considered that it was possible that larder loading was occurring but we did not see evidence (such as depressed sales volumes following promotions) that indicated that our analysis was likely to be invalidated as a result of larder loading.
- 4.17 We compared the timing of promotions of ketchup with data from Information Resources Incorporated (IRI) on the sales volumes and values of ketchup and brown sauce at a range of retailers.³⁹ We also examined the effect of an increase in the wholesale price of HP brown sauce in August 2005 on the sales of Heinz ketchup. This analysis is set out in Appendix C. The key results of this analysis were that sales of HP brown sauce and Daddies brown sauce did not decline in response to price promotion of Heinz ketchup and that there was no evidence of switching to Heinz ketchup when the price of HP brown sauce was increased. We took the view that this analysis indicated that there were separate markets for ketchup and brown sauce.

³⁷This was a particular risk for sauces such as ketchup and brown sauce for two reasons. First, Heinz informed us that consumers purchased ketchup only four times a year on average (other calculations indicate that purchase frequency may be somewhat higher, but still considerably less than one purchase a month per purchaser on average). Secondly, the products have long shelf lives. (The same caveat does not apply if the evidence indicated a lack of such switching behaviour since lack of switching is not likely to be a result of larder loading.)

³⁸Heinz told us that promotional activity helped to grow overall sales in a product category and to attract customers away from other competing products. According to Heinz, if larder loading were the predominant effect of promotional activity, then promotional activity would not cause sales growth over time, and manufacturers and retailers would have little incentive to undertake such activity. However, we considered that there were other reasons why manufacturers might promote (for example, brand building to deter potential competitors from entering the market).

³⁹The ultimate source of sales volume and value data provided by Heinz and retailers during the course of our inquiry is IRI, a supplier of point-of-sale scanner data. Data is supplied on a four-week period basis for each SKU, and covers all formats of store for a particular retailer (eg superstores, mid-range stores, convenience stores). IRI data covers sales at Asda, Co-op, Iceland, Sainsbury's, Morrisons (including Safeway where applicable), Tesco, Waitrose, Alldays, Balfours, Bells, Booths, Botterills, Budgens, D Sands, Europa, GT Smiths & Sons, Jacksons, Leathleys Quality Fayre, Morning Noon & Nite, Right Choice, Smile News, T&S, TM Retail and Whistle Stop.

- 4.18 To examine further whether branded brown sauce might be in the same market as branded ketchup (ie whether the price of Heinz ketchup might be constrained by the price of branded brown sauce), we analysed the effect of a retail price increase for Heinz ketchup in 2003 on the sales volumes of HP brown sauce and Daddies brown sauce. The details of this analysis are set out in Appendix C. Once the seasonality of sales volumes of HP and Daddies brown sauce had been taken into account, this analysis did not provide any evidence that there was any increase in branded brown sauce sales as a result in the reduction of the branded brown sauce price relative to Heinz ketchup.
- 4.19 We noted HP internal documents⁴⁰ that appeared to indicate high levels of switching to ketchup following the replacement of a 255g glass bottle of HP brown sauce with a 285g plastic bottle in 2004. If correct, this could have supported the case for Heinz ketchup imposing a material constraint on HP brown sauce.⁴¹ However, when we examined these events (see Appendix C), we found that we could not rely on the analysis carried out for HP for the purposes of market definition. This was because Heinz ketchup had been promoted—and the Heinz top-down ketchup format had been progressively introduced—over the same period as the 285g plastic bottle of HP sauce was introduced, making the cause of the increase in Heinz ketchup sales volumes unclear.
- 4.20 Heinz told us that the econometric model produced for Heinz by LECG (described in Appendix C) supported the case for considering ketchup and brown sauce to be in separate markets distinct from one another and from other sauces. Our evaluation of the LECG model is also set out in Appendix C. On the basis of this evaluation, we concluded that we could not rely on the LECG model to provide definitive guidance as to the boundaries of the relevant product markets for ketchup or brown sauce, although we noted that the results of LECG’s work were not inconsistent with our own quantitative analysis of the effect of promotional activity (see paragraph 4.17).
- 4.21 One major retailer told us that it would not promote what it considered to be competing products at the same time as it felt this would neutralize the impact of a promotion. Promotions would only be run simultaneously for what it considered to be complementary products. Therefore we were able to obtain some evidence as to whether retailers regarded ketchup and brown sauce as competing with each other (ie whether they were in the same market) by examining whether retailers promoted ketchup and brown sauce at the same time. Our analysis of the timing of ketchup and brown sauce promotions (see Appendix C, paragraphs 33 and 34) indicated that the major retailers tended not to promote branded ketchup and brown sauce at the same time. Taken by itself, this might indicate that ketchup and brown sauce compete with each other.
- 4.22 Heinz submitted that the different characteristics and intended uses of ketchup and brown sauce supported the case that ketchup and brown sauce were in different markets. Heinz considered that:

⁴⁰A study carried out for HP by AC Nielsen.

⁴¹We also noted HP and Heinz internal documents that made comparisons between Heinz ketchup and HP brown sauce. An HP internal document benchmarked the performance of HP brown sauce against Heinz ketchup. A brand and advertising tracking study prepared for Heinz by Research International following the merger compared (among other things) Heinz ketchup and HP brown sauce brand awareness, alongside awareness of own-label and Daddies sauces. The existence of such comparisons between Heinz ketchup and HP brown sauce might support the case that Heinz ketchup imposed a material constraint on HP brown sauce. However, Heinz submitted that, in the case of the HP benchmarking document, there were no other branded brown sauces that HP’s study could have tracked. Therefore Heinz considered that such benchmarking between HP brown sauce and Heinz ketchup indicated only that the leading brands of ketchup and brown sauce were comparable, not substitutable. HP submitted that, although it used Heinz as a benchmark for its own performance, this did not indicate that HP saw Heinz ketchup and HP brown sauce as competing with each other.

- The consumer profiles of ketchup and brown sauce were different (younger people preferring ketchup and older people, especially men, preferring brown sauce).
 - Ketchup and brown sauce were consumed largely at different times of the day and on some different host foods.
 - The majority of customers used one or the other, not both, as an accompaniment across all host foods (and an even greater proportion of consumers used only one or the other for a particular host food such as eggs, bacon, baked beans, sausages, chips, fish and chicken). In terms of each product's use, therefore, very few consumers ever alternate between ketchup and brown sauce on any particular host food.
 - Ketchup and brown sauce looked and tasted entirely different.
- 4.23 Heinz's evidence for these views is described in more detail in Appendix C. One retailer submitted customer demographic data presented to it by a supplier in April 2005 that also indicated a younger age profile for ketchup than brown sauce, as did another retailer's analysis of its sales data.
- 4.24 We note, however, that, in the SSNIP test for market definition, it is the number and actions of customers likely to switch between different types of table sauces in response to small relative price changes that are relevant. Heinz also submitted that, on the basis of purchasing data, [X] per cent of households purchased either ketchup or brown sauce, 40 per cent bought both and [X] per cent bought one or the other ([X] per cent ketchup and [X] per cent brown sauce).⁴² This could be interpreted as suggesting that 40 per cent of ketchup purchasers might switch between different table sauces in response to changes in relative price. However, we considered that we could not draw this conclusion from household purchasing data. This is because households might purchase both ketchup and brown sauce due to variation in the preferences of different household members or because they used ketchup and brown sauce on different foods, rather than because ketchup and brown sauce were substitutable.
- 4.25 We next considered supply-side substitutability in relation to ketchup and brown sauce. In relation to production of these sauces, we heard evidence from Heinz and other manufacturers that the manufacturing processes for ketchup and brown sauce were very similar. We were told that production and packaging of both sauces involved the same sort of equipment and ingredients. However, a major retailer told us that although supply-side substitution was 'theoretically possible', and did arise with respect to the supply of own-label products, it was not a significant factor for the supply of branded versions of the relevant products. In this context, we also noted evidence on the costs and timescales associated with establishing or extending a brand for the relevant products, discussed further in relation to market entry in Appendix I, paragraphs 7 to 9. Thus, although entry appeared to be technically feasible, we considered that there were high barriers to entry into branded supply of ketchup and brown sauce.

⁴²Source: TNS Superpanel. The TNS Superpanel is the largest UK household consumer purchasing panel.

Own-label products and branded products

Heinz's view

- 4.26 Heinz considered that the relevant product markets included own-label products in each case. Heinz pointed to information in a recently published AC Nielsen report *The Power of Private Label 2005*,⁴³ including:
- the high share of own-label sales in Great Britain compared with many other countries surveyed;
 - the development by manufacturers of different variants of own-label products at different price points;
 - the widespread penetration of own-label products among consumers;
 - positive UK consumer responses to own-label products when surveyed; and
 - a general increasing equivalence in terms of quality and pricing in the minds of consumers.
- 4.27 Heinz also considered that it was widely accepted that own-label products generally operated as a competitive constraint on branded products and that the retailer's name on an own-label product could effectively act as a brand.⁴⁴ It noted that other merger decisions treated own-label products as being part of the same market as branded products.⁴⁵
- 4.28 In relation to ketchup, Heinz provided data showing an inverse correlation between own-label and Heinz ketchup market shares (on both aggregated and retailer-specific bases) and argued that own-label products operated as a competitive constraint on the pricing of Heinz ketchup. We calculated that there had been an increase of about 60 per cent (on a pence per kg basis) in the price differential between Heinz and own-label ketchups over the last three years. Heinz told us that the widening differential was the result of its introduction of 'top-down' packaging. Heinz stated that any increase in the relative price of Heinz ketchup not associated with an improved product would result in a decline in Heinz's market share to the benefit of own-label ketchups, and provided evidence to support this view from a market analysis carried out for Heinz when it was considering the introduction of its top-down products.
- 4.29 Heinz considered that similar factors indicated that branded and own-label brown sauce products were in the same market. Heinz noted that branded brown sauce appeared to have gained market share at the expense of own-label brown sauce products in 2005, and that the relative sales rates of branded and own-label brown sauce were influenced by promotions and relative pricing. In relation to barbecue and meal occasions sauces,⁴⁶ Heinz noted that, in its view, the market was dynamic and

⁴³This report covered the own-label sector generally and was not specific to table sauces, baked beans or pasta. It can be found at www2.acnielsen.com/reports/documents/2005_privatelabel.pdf.

⁴⁴We noted, however, that a brand and advertising tracking study carried out for Heinz by Research International in 2005 [§].

⁴⁵Heinz listed (among others) the CC's Supermarkets report (2000—Cm 4842), the European Commission's Unilever/Bestfoods decision, the European Commission's Unilever/Amora-Maille decision (Case M.1802 of 8 May 2000), the OFT's United Biscuits/Jacobs Bakery decision (10 September 2004) and the OFT's British Sugar/Billington Food Group decision (4 August 2003). In relation to the question of whether own-label and branded products are part of the same product market, the Unilever/Bestfoods decision refers to the Unilever/Amora-Maille decision, which in turn refers to the European Commission's decision in Kimberly-Clarke/Scott decision Case No M.623 (16/01/1996).

⁴⁶Heinz considered that barbecue sauce was part of a larger market that Heinz termed the 'barbecue and "meal occasion" sauces' market—see paragraph 4.33.

hotly contested, with frequent entry and a variety of competitors, both branded and own label.

Other parties' views

- 4.30 Several manufacturers and retailers [redacted] stated that own-label products constrained branded pricing, although one of these retailers considered that the price of a Heinz-branded product and an own-label product were largely unrelated. Another retailer [redacted] considered that Heinz would be aware of the differential between its brand and the retailer's own-label offering when Heinz set its prices, although it also acknowledged that there did not appear to be much interaction between own-label and branded products when the relative price between them changed. One manufacturer [redacted] told us that it did not think own label was a constraint on branded. One member of the public submitted that own-label products could not be considered to act as a constraint in the relevant product markets due to the strength of the available brands in these markets. He considered that own-label products would only appeal to the most price-sensitive consumers, and therefore that the demographics of own-label consumers were likely to differ significantly from those of consumers buying branded products.

Our analysis

- 4.31 We considered quantitative and qualitative evidence as to whether own-label prices constrained branded prices, which would mean that own-label products were in the same market as branded products.⁴⁷ We noted the treatment of own-label products and branded products in other merger decisions referred to by Heinz (see paragraph 4.27). However, we considered that such decisions, and the other qualitative evidence we examined, were not directly relevant to our inquiry. For example, we noted that several of the product categories under consideration in this inquiry featured market-leading brands, including Heinz ketchup, Heinz baked beans and HP brown sauce.⁴⁸ These brands had high market shares, high levels of consumer recognition, high retail price differentials compared with own-label products and were long established in the relevant markets.⁴⁹ Also, markets vary considerably and develop over time, necessitating a new and separate consideration of each market based on that market's prevailing conditions.
- 4.32 We noted the data that Heinz submitted to us showing an inverse correlation between own-label and branded market shares. However, we considered that further quantitative analysis was necessary. This was because an inverse correlation in market shares might arise simply from the fact that market shares must always sum to 100 per cent, and we needed to examine in more detail the effect of promotions (ie changes in relative prices) for the purposes of market definition. Our analysis of the quantitative and qualitative evidence we obtained is set out in Appendix C, including an examination of the effect of own-label ketchup promotions on the sales of branded ketchup. On the basis of this analysis, we considered that there did not appear to be

⁴⁷We noted that market definitions could be asymmetric. For example, it was possible that branded prices constrained own-label prices and that therefore branded products were in the same market as own-label products, without own-label products necessarily being in the same market as branded products. In any event, the qualitative and quantitative evidence we received did appear to suggest that branded ketchup and brown sauce constrained their own-label counterparts (ie that branded ketchup and brown sauce were in the same market as own-label sauces). For example, Heinz submitted that one-quarter of the sales volume won following the introduction of its 342g plastic bottle of Green Tomato Ketchup came from switching from own-label and other branded ketchup (with one-quarter from other Heinz ketchup and half from new customers).

⁴⁸This was supported by the brand and advertising tracking study carried out for Heinz by Research International in 2005 which concluded, among other things, that Heinz was by far the strongest brand in the sauces grocery category.

⁴⁹For example, Heinz's 2005 Annual Review says that 'Heinz remains the top brand in the UK' (source: www.heinz.com/2005annualreport/review.html).

sufficient evidence to confirm with any degree of certainty that own-label ketchup was in the same market as branded ketchup or that own-label brown sauce was in the same market as branded brown sauce.⁵⁰ Our conclusions as to the appropriate treatment of own-label and branded products in terms of market definition is set out in paragraph 4.51.

Barbecue sauce in the retail sector

Heinz's views

4.33 Heinz considered that barbecue sauce was part of a larger market that Heinz termed the 'barbecue and "meal occasion" sauces' market. Heinz stated that this market comprised: other (non-ketchup, non-brown) strongly-flavoured sauces such as chilli sauce and hot and spicy sauce; other strongly flavoured, typically tomato-based, salsas and relishes; and marinades. It supported this view by noting that the LECG econometric model indicated that barbecue sauce on its own did not constitute a separate market. Heinz also pointed to:

- the growth in barbecuing; the resultant growth in strongly-flavoured sauces, salsas and relishes;
- the importance of some sauces which could be used as marinades prior to cooking as well as on the plate after cooking;
- the fact that all the products in Heinz's suggested market could be used on the same kind of host foods and on the same sort of meal occasions; and
- the element of seasonality in the sale of these products.

Other parties' views

4.34 In relation to barbecue sauce, there were very few firm views from other parties as to the appropriate market definition. One manufacturer [X] submitted a list of products which it considered to be competing with its own range of barbecue sauces. The list included marinades and glazes as well as products within IRI's barbecue sauce classification. Another supplier of sauces active in this segment [X] told us that it tended to concur with a wider rather than narrower view of the market, including hot sauces and marinades. One member of the public felt that barbecue sauce was in a separate market from ketchup and brown sauce, and noted that it was used on grilled rather than fried food. He noted that, in his view, it tended not to be shelved particularly near ketchup and brown sauce in retailers. One retailer [X] considered that barbecue sauce was closer to brown sauce than ketchup, and that consumers were likely to switch to brown sauce in the face of a barbecue sauce price rise. Another retailer [X] noted that brands were less well established in relation to barbecue sauce than in relation to ketchup and brown sauce.

Our analysis

4.35 In terms of quantitative analysis, the strong seasonality in the sales of barbecue sauce made it difficult to identify and evaluate evidence for causal links between

⁵⁰We note, however, that academic economics literature does suggest that own-label products compete with branded products because they exist partly to increase retailers' bargaining power with branded manufacturers. For a survey of some of this literature, see, for example, Bergès-Sennou, F, P Bontems and V Réquillart (2004) 'Economics of Private Labels: A Survey of Literature', *Journal of Agricultural & Foods Industrial Organisation*, volume 2, article 3.

changes in price and changes in sales volumes to determine whether there was switching between barbecue sauces and other sauces. However, with this limitation in mind, we examined evidence of the effect at certain retailers of an increase in the price of HP barbecue sauce in mid-2005, and whether this price increase had any effect on the sales of Heinz ketchup (see Appendix C). This analysis did not provide any evidence that ketchup and barbecue sauce were in the same market.

- 4.36 The LECG econometric model submitted to us by Heinz did not focus on barbecue sauce, but, according to Heinz, did indicate that barbecue sauce on its own was not a separate market. As described in Appendix C, we concluded that we could not rely on the LECG model to provide definitive guidance on market definition in relation to barbecue sauce. However, our analysis of the extent to which retailers' promotional activities for ketchup, brown sauce and barbecue sauce overlap with each other (also set out in Appendix C) indicated that barbecue sauce appeared to be a complement to (rather than competing with) ketchup and brown sauce.
- 4.37 We heard evidence from manufacturers and retailers in general that brand loyalty was not as strong in relation to barbecue sauce as it was for ketchup and brown sauce.⁵¹ There has been less time for brand loyalty to establish itself (Heinz told us that Heinz barbecue sauce was introduced in 1996/97, whereas Heinz ketchup was launched in the 19th century). It is also supported by the evidence from IRI sales data of frequent entry of new brands and types of barbecue and related sauces that suggests that the costs elsewhere associated with branded market entry may be less significant in relation to these sauces. We also saw evidence that, on average across retailers and over time, there was a smaller retail price differential between branded and own-label barbecue sauce than between branded and own-label ketchup and brown sauce.⁵² We therefore considered that the boundaries of any market for barbecue sauce were likely to be porous and subject to change over time, making it difficult precisely to define the relevant market.
- 4.38 We were presented with evidence that, in relation to supply-side substitution, barbecue sauce was in a very similar position to that of ketchup and brown sauce as set out in paragraph 4.25. There was no evidence that there was anything unique or particularly demanding regarding the production of barbecue sauce. As for ketchup and brown sauce, the ability of manufacturers to switch production capacity into the supply of branded barbecue sauce would be limited by the costs and timescales required to establish or extend a brand into this product category.

Baked beans and tinned pasta products in the retail sector

- 4.39 As explained in paragraphs 2.7 and 2.8, Heinz and HP do not overlap in the production of baked beans or tinned pasta. HP-branded baked beans and tinned pasta are made by Premier under a licence from HP which is due to expire in March 2006. The merger has brought the HP brand for baked beans and tinned pasta products under the control of Heinz. It is therefore necessary to consider what the relevant markets are for these products and to consider the effect of the merger on those markets.

⁵¹However, one supplier of barbecue sauces considered that brands were probably stronger in the barbecue sector than for ketchup or brown sauce.

⁵²Over the period from June 2002 to May 2005 in the IRI data that Heinz submitted, the relative price of Heinz to own-label barbecue sauce was 1.0 and the relative price of HP to own-label barbecue sauce was 1.06. The relative prices of both Heinz and HP to other brands averaged 0.7 in the period. However, one retailer [redacted] told us that its retail price for HP barbecue sauce was about 60 per cent higher than its retail price for own-label barbecue sauce.

Heinz's views

- 4.40 Heinz initially did not submit any view as to the relevant markets for baked beans and tinned pasta products, arguing that it was unnecessary for us to define these markets since HP was not an active manufacturer or supplier of these products.
- 4.41 Heinz subsequently told us that it treated baked beans and tinned pasta products as separate for the purposes of managing its business. Further, although it had not undertaken any detailed analysis, Heinz told us that it considered baked beans and tinned pasta products to be in separate markets for the following reasons:
- The consumer demographics for baked beans and tinned pasta products were different, with all family members eating baked beans and children consuming more tinned pasta products.
 - Heinz researched and analysed baked beans and tinned pasta products separately, and industry data for these products was collected separately.
 - Retailers treated baked beans and tinned pasta products separately.
- 4.42 Heinz also stated that it believed that consumers viewed both plain baked beans and baked beans with additional food items such as sausages to be closely aligned. In Heinz's view, baked beans and baked beans with additional food items were in the same market, and the same applied for tinned pasta products.
- 4.43 According to Heinz, own-label versions of baked beans and tinned pasta products were in the same markets as branded baked beans and tinned pasta products respectively, and were the nearest competitors to Heinz in each market.

Other parties' views

- 4.44 One retailer considered that baked beans and tinned pasta products were in the same market because, for example, both beans and spaghetti were purchased for children. Another retailer [redacted] stated that, in its opinion, consumers were very unlikely to switch from beans to pasta because of price promotions. One member of the public considered that there were separate markets for tinned beans and tinned pasta, noting that they tended to be eaten on different occasions with different accompanying foods. One manufacturer [redacted] stated that baked beans and tinned pasta products could be regarded as a distinct product market, but did not go on to clarify whether, within that market, there were separate markets for baked beans and tinned pasta.

Our analysis

- 4.45 We examined recent changes to the prices of baked beans and tinned pasta products⁵³ and found only one pricing event that could provide some evidence as to whether they were in the same or separate markets: in autumn 2004, there was an increase of 40 per cent in the spot-market price of navy beans, in response to which Heinz told us that it increased the price of its baked beans to retailers by [redacted] per

⁵³Our use of the terms 'baked beans' and 'tinned pasta products' includes baked beans and pasta tinned with other foods (eg sausages and chicken nuggets). Such products appear to be only a relatively minor proportion of all tinned beans and pasta sold. Data from one major retailer for the past three years showed that 8 per cent of the value of baked beans sold was for baked beans including other foods and 12 per cent of the value of tinned pasta products was for tinned pasta including other foods.

cent⁵⁴ in January 2005. We obtained evidence from one retailer showing that it passed this wholesale price increase through as a retail price increase for Heinz baked beans in January 2005. We analysed the effect of this change in the relative price of Heinz baked beans on the volume of tinned pasta products sold. This analysis is set out in Appendix C and indicates that there was no increase in the volume of tinned pasta products sold in response to the increase in the price of Heinz baked beans. We considered that this supported the case that there were separate markets for baked beans and tinned pasta products.

- 4.46 Responses from major retailers to our retailer questionnaire indicated that, in general, they did not consider that consumers would switch between baked beans and tinned pasta products in response to changes in the relative price of one to the other (ie that they were in separate markets). We also noted that certain retailers appeared to consider these product categories to be complements rather than competitors since they usually promoted Heinz tinned pasta products for some or all of the same time as Heinz baked beans. As noted in paragraph 4.44, views from other parties varied as to whether baked beans and tinned pasta were purchased by consumers to fulfil the same or different requirements.
- 4.47 All major retailers submitted that there would be little if any switching to own-label baked beans in response to a 5 per cent increase in the price of branded baked beans, which is consistent with branded and own-label baked beans being in separate markets. However, one retailer noted that a 5 per cent increase in the price of Heinz baked beans would amount to a change of only a few pence and would therefore not be significant enough to affect consumer behaviour.
- 4.48 In relation to supply-side substitutability, we noted similarities between the ingredients and manufacturing processes for baked beans and tinned pasta meals. Heinz told us that it could make some baked bean and tinned pasta products on the same production lines (albeit that when products were switched across different production lines, the production lines might run at different line speeds). However, as for ketchup, brown sauce and barbecue sauce, the ability of manufacturers to switch production capacity between the supply of branded baked beans and tinned pasta products would be limited by the costs and timescales required to establish or extend a brand into these product categories.

Product market: conclusions

- 4.49 We concluded that it was appropriate to distinguish separate markets for the supply of the relevant products to the retail sector and the food service sector. Within the retail sector, we further distinguished separate markets for the supply of each of ketchup, brown sauce, baked beans and tinned pasta.
- 4.50 We found that barbecue sauce appeared to be in a separate retail market from ketchup and brown sauce but that the boundaries of this market were not well defined. As a starting point, we adopted a narrow but plausible working market definition for barbecue sauce, namely that of the supply of barbecue sauce classified as such by IRI (usually, but not always, labelled 'barbecue sauce'⁵⁵) to retail customers. However, we looked at other market definitions when we analysed the effect of the merger on competition (see paragraphs 5.120 to 5.127).

⁵⁴This was confirmed by retailers' responses to our customer questionnaire, although Somerfield told us that the increase was [X] per cent and Morrisons told us that the increase was [X] per cent.

⁵⁵All the sauces in IRI's barbecue sauce classification have the word 'barbecue' in the product description in the IRI data. Product descriptions also include phrases such as 'Texas Hot', 'Smokey Bacon', 'Smokey Tomato', 'Chicken N Ribs' and 'Sticky Barbecue'.

- 4.51 The evidence was inconclusive in regard to whether own-label versions of ketchup, brown sauce, barbecue sauce, baked beans and tinned pasta products were in the same retail market as their branded counterparts. We noted other merger decisions⁵⁶ and academic literature supporting the treatment of branded and own-label versions of grocery products as being in the same market. We also considered that there was likely to be great variability between markets in the relative strength of brands and own-label products, and the extent to which own-label products might act as a constraint, in those markets. For the purposes of this inquiry, we considered it appropriate to include own-label products within a working definition of each of the relevant product markets, and to further consider the extent of the own-label and branded constraint in each market when assessing the effect of the merger on competition.
- 4.52 We considered it likely that the relevant markets in the food service sector were no narrower than the equivalent markets in the retail sector (ie separate markets for each of ketchup, brown sauce, barbecue sauce, baked beans and tinned pasta products), and might be wider (for example, a market for table sauces more generally).

The geographic market

Heinz's views

- 4.53 Whilst noting that some factors indicated that the retail markets for table sauce products were acquiring a European dimension, Heinz considered these retail markets to be national in scope. In support of this view, Heinz noted that:
- There were differing brands and market shares in different countries across Europe
 - The appeal of products such as brown sauce was largely limited to the UK.
 - [REDACTED]
 - The major retail customers operated mostly at a national level (and made their own-label offerings available only nationally).
 - [REDACTED]
- 4.54 Heinz told us that the reasons it considered that Northern Ireland was in the same market as the rest of the UK were that: Northern Ireland had the same market structure as the rest of the UK; [REDACTED].
- 4.55 Heinz submitted that the geographic scope of the food service market was national but noted that it had conducted negotiations on a European-wide level with a number of multinational customers and that it occasionally marketed food service products on a European-wide basis.

⁵⁶See the cases listed in the footnote to paragraph 4.27.

Other parties' views

4.56 No other parties expressed strong views on the geographic market definition. They appeared to accept generally that national market definitions for ketchup, brown sauce, barbecue sauce, baked beans and tinned pasta products were appropriate.

Our analysis

4.57 We noted Heinz's views and those of other parties (as set out in paragraphs 4.53 to 4.56). We also noted that there were a number of other merger decisions supporting the case for a national market scope for these sorts of product markets. We concluded that the relevant geographic market was the UK.

Conclusions on market definition

4.58 On the basis of paragraphs 4.3 to 4.57, we concluded that the relevant markets for the purposes of our inquiry were the markets for the supply in the UK of:

- (a) ketchup to retail customers (the retail ketchup market);
- (b) brown sauce to retail customers (the retail brown sauce market);
- (c) baked beans to retail customers (the retail baked beans market); and
- (d) tinned pasta products to retail customers (the retail tinned pasta products market).

4.59 We found that the boundaries of the market containing barbecue sauce were not well defined. We adopted a narrow but plausible working market definition for barbecue sauce, namely that of the supply of barbecue sauce classified as such by IRI (usually, but not always, labelled 'barbecue sauce') to retail customers.

4.60 We considered it likely that the relevant markets in the food service sector were no narrower than the equivalent markets in the retail sector (ie separate markets for each of ketchup, brown sauce, barbecue sauce, baked beans and tinned pasta products), and might be wider (for example, a market for table sauces more generally).

5. Assessment of the competitive effects of the merger

5.1 In this section we look at the competitive effects of the acquisition of HP by Heinz in the relevant markets. We first discuss factors affecting rivalry in each of the relevant markets prior to the merger. We then consider what was likely to have happened if the merger had not occurred (the counterfactual). We consider finally the expected effects of the acquisition in each of the relevant markets.⁵⁷

⁵⁷In assessing the effect of the merger on competition, we need to compare the competitive situation following the merger with the counterfactual. As will be seen in paragraph 5.72, the counterfactual is not the same as the pre-merger situation because HP's brands would have a different independent owner. In terms of competition, however, the pre-merger situation was an appropriate proxy for the counterfactual since, in both cases, HP's brand would have remained independent of Heinz.

Factors affecting rivalry in the relevant markets prior to the merger

The retail ketchup market

Concentration

5.2 We took as a starting point for the assessment of rivalry in the retail ketchup market the level of concentration. Table 1 summarizes the market shares based on sales volumes and values for the 52 weeks ended 14 May 2005. Further details are provided in Appendix E. Table 1 indicates that the relevant market was already highly concentrated prior to the merger, with a Herfindahl-Hirschman Index⁵⁸ (HHI) value, based on market shares by value, of over 6,300.⁵⁹

TABLE 1 Pre-merger retail ketchup market concentration by volume and value

	Volume '000 kg	Market share %	Value £'000	Market share %
Heinz	40,766	65.6	77,937	77.6
HP (Daddies)	2,272	3.7	2,952	2.9
Other branded	689	1.1	827	0.8
Own label	<u>18,445</u>	<u>29.7</u>	<u>18,761</u>	<u>18.7</u>
Total	<u>62,171</u>	<u>100.0</u>	<u>100,477</u>	<u>100.0</u>
HHI pre-merger		5,194		6,375

Source: CC analysis of IRI data provided by Heinz for the 13 four-week periods from the four-week period ended on 12 June 2004 to the four-week period ended on 14 May 2005.

Notes:

1. Columns may not sum to totals due to rounding.
2. HHI values are calculated from the underlying raw data, not the rounded market share figures shown in the table. The HHI indicated is an upper bound as it assumes other branded products are produced by one manufacturer.

Extent of competitive constraint between Heinz ketchup and Daddies ketchup

- 5.3 As part of our work on the competitive effects of the merger, we sought to assemble evidence about the extent to which Heinz and Daddies ketchup competed prior to the merger.
- 5.4 A potential indicator of the degree of competition between the brands is the relationship between the price promotions of one and any changes in the level of sales of the other. Our hypothesis is that if sales of one fall appreciably during periods when the other is being sold at a discount to its usual price, the two brands are likely to be in direct competition. Placing the brands under the same ownership will remove that competition.
- 5.5 We considered whether promotions of one of the ketchup brands involved in this merger affected the sales of the other.⁶⁰ One way in which we sought to answer this question was by using econometric analysis. A full account of this work is in

⁵⁸The HHI is a measure of market concentration calculated as the sum of squared market shares. Paragraph 3.10 of the *CC Merger Guidelines*, CC2, notes that 'In its guidelines, the OFT states that it is likely to regard any market with an HHI in excess of 1,800 as highly concentrated, and any market with an HHI in excess of 1,000 as concentrated.' We had regard to these thresholds as part of our wider competitive assessment.

⁵⁹This HHI value is calculated by treating the other branded market share and the own-label market share as if they each belonged to one market participant only.

⁶⁰We noted that there were many possible effects of promotions, including some or all of: an increase in consumption of the promoted product by existing consumers, switching by consumers from an unpromoted (branded or own-label) product to the promoted product and larder loading (see paragraph 4.16).

Appendix F. Our econometric analysis, based on sales data from two of the largest supermarkets,⁶¹ showed that for ketchup:

- The sales of each of Daddies and Heinz rose when they were on promotion.
- In general, the increase in sales increased the market share of the promoted brand.
- To the extent that the unpromoted brand did see a decline in sales volume and also lost market share, these changes were very small.
- In general, there was a very high degree of unexplained variability in the likely impact of a promotion on the sales (volumes and shares) of the unpromoted branded or own-label products. Therefore, although typically a promotion had a very small adverse effect on the unpromoted products' sales, there would be frequent occasions when there would be no observable effect, or an opposite effect to that expected.
- In general, the results did not demonstrate with statistical confidence that promotions adversely affected the sales of the unpromoted brand.

5.6 According to this analysis of data from promotions, there was limited competition between Heinz and Daddies ketchup. Daddies is also a very much smaller brand than Heinz, with only about 6 per cent of Heinz's sales volume (see Table 1). Even quite large increases in Daddies' volume affected Heinz's volumes by only small amounts. On these grounds, we believed there was very limited constraint, if any, imposed on Heinz by Daddies' promotional actions. We considered that the swings in volume were too small and too unpredictable.

5.7 For example, at one of the supermarkets we looked at, our analysis showed that the average effect of a Daddies ketchup promotion over a four-week period was a gain of 0.6 tonnes by Daddies and a loss of 0.4 tonnes by Heinz. The average Daddies gain of 0.6 tonnes represents [X] per cent of the average volume of ketchup sold in a four-week period by Daddies at that supermarket ([X] tonnes) and the average Heinz loss of 0.4 tonnes represents less than [X] per cent of the average volume of ketchup sold in a four-week period by Heinz at that supermarket ([X] tonnes). These gains and losses would be made against a background where the variability (measured as one standard deviation) in the volume of ketchup sold around this average from one four-week period to another was 7 tonnes for Daddies (about 12 times the average promotional gain for Daddies) and 19 tonnes for Heinz (48 times the average loss for Heinz).⁶²

5.8 We also considered the effect of Heinz promotions on Daddies. We considered that the identified small impact of Heinz's promotions on Daddies' sales and its variability and unpredictability demonstrated that Heinz was not a constraint on Daddies.

Competitive constraints: other evidence

5.9 In the context of its submissions on the competitive constraints acting on Heinz and Daddies ketchup, Heinz submitted data from TNS Superpanel research regarding the proportion of households purchasing Heinz, Daddies and own-label ketchup. These figures are set out in Table 2.

⁶¹[X]

⁶²All the figures in this paragraph are rounded, and hence may not agree precisely with the figures set out in Appendix F.

TABLE 2 Household purchasing data for Heinz, Daddies and own-label ketchup

Of the households buying ketchup, percentage buying Heinz only	
Of the households buying ketchup, percentage buying Daddies only	
Of the households buying ketchup, percentage buying Daddies and Heinz	
Of the households buying ketchup, percentage buying Daddies and own label	
Of the households buying ketchup, percentage buying Daddies, Heinz and own label	
Of the households buying ketchup, percentage buying own label only	

Source: TNS Superpanel data from Heinz for the 52 weeks ending 6 November 2005.

- 5.10 The data in Table 2 indicates that only 6 per cent⁶³ of households purchasing Heinz ketchup also purchased Daddies ketchup. However, 44 per cent⁶⁴ of the households purchasing Daddies ketchup also purchased Heinz ketchup. Taken on its own, this could appear to support the existence of a competitive constraint from Heinz ketchup to Daddies ketchup because a large proportion of households purchasing Daddies ketchup also purchased Heinz.
- 5.11 An overlap in household purchasing may indicate purchasers responding to changes in retail price due to branded ketchup promotions. However, such buying patterns may also be due to other reasons such as unavailability of a particular brand or SKU in certain outlets at the time of the shopping visit, or different tastes within a household.
- 5.12 In the context of whether Daddies ketchup imposed a competitive constraint on Heinz ketchup prior to the merger, Heinz pointed to the results of a conjoint market analysis it had commissioned to determine the optimum pricing for its top-down ketchup products. The market analysis was carried out in mid-2004 and indicated that, if the price of Heinz top-down ketchup were to increase above a certain threshold, consumers would switch to other Heinz SKUs and own-label ketchup. It made no reference to Daddies ketchup. Further, we noted that a brand and advertising tracking study prepared for Heinz by Research International in 2005 did not make any mention of Daddies ketchup either. The fact that neither of these studies mentioned Daddies ketchup supported the case that there was very limited, if any, competitive constraint from Daddies ketchup to Heinz ketchup.

Competitive constraint between Heinz ketchup and Daddies ketchup: conclusions

- 5.13 Taking account of paragraphs 5.3 to 5.12, we could not conclude that there was a competitive constraint operating between Heinz ketchup and Daddies ketchup prior to the merger. Nor did we see any evidence that Daddies ketchup imposed a constraint on own-label ketchup (see Appendix F).

Non-price competition

- 5.14 We received little evidence of significant competition on the basis of innovation, service levels, product choice or quality. The introduction by Heinz of top-down packaging appeared to be the most significant innovation over last three years. We noted that a brand and advertising tracking study prepared for Heinz by Research International in 2005 found that the Heinz brand was considered by consumers to be particularly innovative in respect of the sauces grocery category. However, one major retailer [redacted] told us that it did not consider either Heinz or HP to be particularly innovative compared with other multinational branded manufacturers. The evidence

⁶³Calculated as [redacted].

⁶⁴Calculated as [redacted].

we received indicated that price competition was the predominant form of competition in this market.

The retail brown sauce market

Concentration

5.15 Table 3 sets out both volume and value market shares in the retail brown sauce market. Table 3 indicates that this market was highly concentrated prior to the merger, with an HHI (based on market shares by value) of over 7,200.

TABLE 3 Pre-merger retail brown sauce market concentration by volume and value

	<i>Volume '000 kg</i>	<i>Market share %</i>	<i>Value £'000</i>	<i>Market share %</i>
Heinz*	1	0.0	1	0.0
HP (HP and Daddies)	12,702	73.8	31,623	84.3
Other branded	725	4.2	1,368	3.6
Own label	<u>3,794</u>	<u>22.0</u>	<u>4,504</u>	<u>12.0</u>
Total	<u>17,221</u>	<u>100.0</u>	<u>37,496</u>	<u>100.0</u>
HHI pre-merger		5,943		7,271

Source: CC analysis of IRI data provided by Heinz for the 13 four-week periods from the four-week period ended on 12 June 2004 to the four-week period ended on 14 May 2005.

*One large Heinz Brown Sauce SKU (2.5kg) appeared in the data over the period concerned. This is because IRI data covers some retailers that also sell into the food service sector. The quantities are negligible and do not change our conclusion that Heinz was not active in the retail brown sauce market.

Notes:

1. Columns may not sum to totals due to rounding.
2. HHI values are calculated from the underlying raw data, not the rounded market share figures shown in the table. The HHI indicated is an upper bound as it assumes that other branded products are produced by one manufacturer.

5.16 As can be seen from Table 3 and as noted in paragraph 2.8, Heinz was not active in the retail brown sauce market prior to the merger (although Heinz did supply both Heinz-branded and own-label brown sauce to the food service sector in the UK).

Market entry

5.17 We considered that Heinz was a credible entrant to branded supply in the retail brown sauce market due to the presence of Heinz in adjacent markets (the retail ketchup market and the retail barbecue sauce market), the strength of the Heinz brand in those adjacent markets and the presence of Heinz in the supply of both branded and own-label brown sauce to the food service sector. We also saw evidence that Heinz had evaluated the launch of a retail brown sauce product. All of these factors indicated that Heinz had the financial, commercial and technical capability to enter branded supply in the retail brown sauce market.

5.18 We therefore considered whether the potential entry of Heinz to the retail brown sauce market was constraining the behaviour of HP in that market prior to the merger. If so, harm might arise from the merger as a result of the elimination of this constraint on HP.

5.19 We noted that there were two ways in which Heinz might have been constraining HP in the retail brown sauce market prior to the merger: (a) as an actual potential competitor to HP, objectively likely to enter the market, or (b) by being perceived by HP as a potential competitor to it, in both cases causing HP to modify its behaviour, for example limiting its prices for HP brown sauce to make entry less attractive to Heinz and others.

- 5.20 Heinz told us that, although it had undertaken an evaluation of the launch of a retail brown sauce product, [§].
- 5.21 As further discussed in the context of our counterfactual analysis (see paragraphs 5.76 to 5.79), we considered that Heinz's evaluation of the launch of a retail brown sauce product was insufficiently well-developed for us to form an expectation that Heinz was an actual potential competitor to HP prior to the merger.
- 5.22 HP told us that, although it considered the possibility of Heinz entering the retail brown sauce market prior to the merger, it had no internal documentation of any analysis of this risk. HP also noted that, in so far as it considered the possibility of Heinz entry, it considered the threat to be a theoretical one rather than a real prospect and it took no action to deter Heinz entry. It noted that it also considered the possibility of entry by other sauce manufacturers such as Unilever.
- 5.23 In relation to other potential entrants, Heinz pointed out that a number of other suppliers with sauce brands and sauce production expertise could expand into the retail brown sauce market in the UK, for example Unilever⁶⁵ and Chef.⁶⁶ Our own investigation into potential entrants into the supply of table sauces in the UK verified that there were a considerable number of manufacturers already active in adjacent product or geographic markets. We saw evidence that branded entry to the retail brown sauce market had recently occurred, in that Premier launched Branston-branded brown sauce in early 2006.
- 5.24 We considered that although Heinz was one of a number of perceived potential competitors to HP in the retail brown sauce market, it did not on its own exercise a constraint on HP prior to the merger, given the other potential entrants to this market that remained and HP's perceptions of those potential entrants.

The retail barbecue sauce market

Concentration

- 5.25 As explained in paragraph 4.50, we found that, although barbecue sauce was not in the same market as either ketchup or brown sauce, there was considerable uncertainty regarding the boundaries of the economic market containing barbecue sauce. We therefore took the approach of adopting a narrow but plausible market definition for barbecue sauce as a working market definition, namely the supply of barbecue sauce (classified by IRI as such) to retail customers. We then examined whether broadening the market definition would have a material effect on the outcome of our analysis.⁶⁷
- 5.26 Table 4 summarizes the market shares for three different candidate markets based on sales value for the 52 weeks ended 5 November 2005. The market definitions used (corresponding to A–C respectively in Table 4) were:
- (a) barbecue sauces (classified by IRI as such) only;
 - (b) barbecue sauces, chilli sauces and hot and spicy sauces (including curry, tandoori, tikka, Thai, pepper, Cajun, Mexican, peri peri and spicy sauces); and

⁶⁵One possible Unilever brand is Hellman's, best known for mayonnaise.

⁶⁶Chef is a brand of ketchup in the Republic of Ireland made by Jacob Fruitfield Food Group.

⁶⁷We adopted this approach on a working basis because a narrower market was likely to be more concentrated than a wider market. If there were no competition problems in a narrowly defined market, then there were unlikely to be problems in a more broadly defined market.

(c) barbecue and ‘meal occasion’ sauces as suggested by Heinz (see paragraph 4.33). This market included barbecue sauces, chilli sauces, hot and spicy sauces, relishes and other thick sauces (including sauces with flavours such as garlic, honey, mustard, coriander, lemon, lime, mango, hoi sin and teriyaki).

5.27 As shown in Table 4, each of these markets is highly concentrated, with HHI values (based on value market shares) ranging from 2,900 to over 3,500. The total value of the market varies considerably from about £10 million to about £45 million, depending on the market definition adopted. Heinz submitted that, in any plausible market containing barbecue sauce, Heinz’s and HP’s shares were declining over time and the market share for other branded sauces was increasing. The two years’ worth of data available to us and set out in Tables 5 to 8 in Appendix E confirm that this is the case for the three markets described in the previous paragraph.

TABLE 4 Pre-merger retail barbecue sauce market concentration by value

	Market definition					
	A		B		C	
	Value £'000	Market share %	Value £'000	Market share %	Value £'000	Market share %
HP	4,218	40.6	6,128	24.6	9,493	21.1
Heinz	1,821	17.5	2,809	11.3	4,623	10.3
Other branded	2,828	27.3	12,940	52.0	23,551	52.2
Own label	1,527	14.7	3,013	12.1	7,385	16.4
Total	10,394	100.0	24,891	100.0	45,052	100.0
HHI pre-merger		2,916		3,583		3,545

Source: CC analysis of IRI data provided by Heinz for the 52 weeks ended 5 November 2005.

Notes:

- Columns may not sum to totals due to rounding.
- HHI values are calculated from the underlying raw data, not the rounded market share figures shown in the table. The HHI indicated is an upper bound as it assumes that other branded products are produced by one manufacturer.
- Market as defined in (a) to (c) respectively in paragraph 5.26.

Extent of competitive constraint between Heinz barbecue sauce and HP barbecue sauce

5.28 We used econometric analysis as one approach to examining the extent to which Heinz barbecue sauce and HP barbecue sauce competed prior to the merger, as we did for ketchup (see paragraph 5.5). We looked at whether promotions of one of these barbecue sauce brands affected the sales of the other, using sales and promotional data for products in the narrowly defined market (ie market definition A) described in paragraph 5.26. A full account of this work is given in Appendix F. Our econometric analysis, based on sales data from two of the largest supermarkets,⁶⁸ showed that for barbecue sauce:

- The sales of both Heinz and HP, and their market shares, rose when they were on promotion.
- To the extent that Heinz saw a decline in sales volume and also lost market share when HP was on promotion, these changes were small.

⁶⁸We used data from [redacted] and [redacted]. We were only aware of one other retailer, [redacted], that sold own-label barbecue sauce. However, we were unable to include [redacted] data in this analysis due to difficulties in matching the dates of promotional activity with sales volumes in the data provided.

- The results did not demonstrate with statistical confidence that promotions of Heinz adversely affected the sales volume of HP. Nor did they demonstrate with statistical confidence that promotions of HP adversely affected the sales or shares of Heinz at one of the supermarkets.
 - However, the results did demonstrate with statistical confidence that promotions of Heinz adversely affected the shares of HP, and that promotions of HP adversely affected the sales volumes and shares of Heinz at one of the supermarkets, although not at the other.
- 5.29 According to this analysis based on a narrow market definition, HP barbecue sauce competed with Heinz barbecue sauce and potentially constrained its price in one of the supermarkets we looked at. There was some statistical evidence that HP promotions also affected Heinz's share of sales at the other supermarket.
- 5.30 For example, our analysis showed that at one of the supermarkets, the average effect of an HP BBQ sauce promotion over a four-week period was a gain of 4 tonnes by HP and a loss of 1 tonne by Heinz. The average HP gain of 4 tonnes represents [X] per cent of the average volume of BBQ sauce sold in a four-week period by HP ([X] tonnes) and the average Heinz loss of 1 tonne represents [X] per cent of the average volume of BBQ sauce sold in a four-week period by Heinz ([X] tonnes). These gains and losses would be made against a background where the variability (measured as one standard error) in the volume of BBQ sauce sold around this average from one four-week period to another was 2 tonnes for HP (about one-half the size of the average promotional gain for HP) and about 2 tonnes for Heinz (about twice the size of the average loss for Heinz).⁶⁹
- 5.31 Given that some of the results of our econometric analysis provided evidence of a possible competitive constraint, we looked at other factors affecting competition in this market.

Market entry

- 5.32 Heinz submitted that barriers to entry were low for barbecue sauce for the following reasons:
- Established food manufacturers could easily enter by extending existing food brands.
 - Leading food manufacturers had plants that could support entry with limited investment, and there were no technological, intellectual property, legal or manufacturing issues to overcome.
 - Co-packaging (ie one manufacturer contracting with another to undertake packing on its behalf) was common, allowing manufacturers to mitigate the importance of scale economies.
 - UK retailers did not require fixed fees to place products on their shelves (allowing niche products to be launched easily) and were willing to support innovative entry.
- 5.33 In relation to the payment of fees to retailers in the retail barbecue sauce market, one supplier [X] told us that it did have to pay fees [X].

⁶⁹All the figures in this paragraph are rounded, and hence may not agree precisely with the figures set out in Appendix F.

- 5.34 We asked major retailers about the payment of such fees. Four retailers [redacted] told us that they did not require fees to stock products, but some of them went on to note that suppliers might offer payments to secure shelf space or payments might be sought from suppliers to cover the cost of promotional display space and other promotional costs. Another retailer [redacted] told us that it might occasionally agree a payment from a supplier for a new product launch, but this was not common and had not happened in the recent past for barbecue sauces. This retailer also told us that it might seek payment for the costs of access to promotional space. Another retailer [redacted] told us that it might agree a payment for the introduction of a new product in certain circumstances to cover the costs associated with such an introduction.
- 5.35 To examine the extent of market entry and exit, we analysed IRI data submitted to us by Heinz covering the three-year period from June 2002 to May 2005. We looked at all instances of entry and exit in the narrowly-defined candidate market (Market A) for barbecue sauce consisting of those products in IRI's barbecue sauce classification. We considered that high levels of entry would indicate that it was relatively easy to enter the market, and low levels of exit would indicate that entry into the market was sustainable. Table 5 sets out our results.⁷⁰

⁷⁰Unsurprisingly, given the seasonality in consumption of barbecue sauce, we found that entry events were clustered around spring each year.

TABLE 5 Entry and exit in IRI's barbecue sauce category* four weeks ended 15 June 2002 to the four weeks ended 14 May 2005

Entry			Maximum market share %
Brand	Date†		
1	Ainsley Harriott	May 2003	}
2	Californian Seasonings‡	April 2003	
3	Cattlemens'	April 2005	
4	Chef	May 2003	
5	Discovery	April 2004	
6	English Provender Co	May 2003	
7	Hellmann's	July 2004	
8	Nando's	April 2004	
9	Walkers Wood	April 2003	
10	Wild Harvest	April 2003	
Exit			Maximum market share %
Brand	Date§		
1	Australian	September 2004	}
2	Blue Dragon	December 2002	
3	Californian Seasonings‡	December 2003	
4	Cool Chile Co	December 2004	
5	Figaro	September 2002	
6	Kansas City	July 2002	
7	Old Ranch House	December 2004	
8	Rowat's	August 2002	
9	Simply Delicious	January 2005	
10	Taylor's	December 2004	

Source: IRI provided by Heinz and CC calculations.

*Based upon IRI classification of barbecue sauce.

†Four-week period in IRI data when brand first appears.

‡Entered and exited.

§Four-week period in IRI data after which brand has no sales until end of data (but brand may have had several periods of zero sales broken by a period or two of low sales prior to this).

¶Appears to have sold just one or two 200g bottles periodically in 2002 before disappearing from the data.

#Appears to have sold just one 500g bottle in June 2002 before disappearing from the data.

5.36 There are three aspects of Table 5 worth noting:

- There were around 30 brands of barbecue sauce in total in the IRI data submitted by Heinz, so two-thirds entered and/or exited the data in the three-year period.⁷¹
- Four new brands out of ten were launched by extending existing, related food brands (Chef, Discovery,⁷² Hellman's and Nando's⁷³).
- The scale of entry (as measured by the maximum share of barbecue sauce sales achieved by a brand) appears larger than the scale of exit⁷⁴ although the average market share gained by entrants was small.

⁷¹There were 30 brands in the data but only two retailers own-label barbecue sauces were itemized separately, the others being aggregated into 'other own label'. The actual number of brands could therefore be slightly higher than 30.

⁷²Discovery makes Mexican and other spicy foods.

⁷³A chain of chicken restaurants and also a supplier of Nando's branded sauces.

⁷⁴By this measure, the scale of entry was ten times bigger than the scale of exit. The sum of entrants' maximum market shares was 14 per cent and the sum of maximum market shares for brands exiting the market was 1.4 per cent. This will not be representative if it takes much longer for a brand to 'die' than it does for it to be 'born'. This does not appear to be the case, however. [X] provides a comparator in this regard, both entering and exiting the IRI sales data in the period, albeit on a very small scale. Nonetheless, [X] took six four-week periods to reach its maximum market share and just one further four-week period before it had no sales. Moreover, on average the other nine entrants took 11 four-week periods to reach their maximum

5.37 One supplier of sauces active in this sector [redacted] told us that the major retailers were looking for variety and that they were able to test the likely success of new sauces over the summer months. This supplier considered that entry was quite frequent and sustained, although it noted that there were cases of unsuccessful entry. We did not find a great deal of other evidence that entry tended to be sustainable in terms of ongoing profitability, given the extent of exit observed. One retailer told us that this product category was relatively crowded and it was regularly approached by suppliers offering to provide it with products. Two retailers [redacted] told us that they de-listed products based on their failure to achieve satisfactory sales, among other reasons. We noted that many new entrants into the retail barbecue sauce market could be vulnerable to de-listing on this basis, given their relatively low market shares. On balance, we considered that branded entry into barbecue sauce (narrowly-defined) appeared to be relatively easy and the two years' worth of data available to us (see Tables 5 to 8 in Appendix E) indicated that market shares were shifting between market participants.

Buyer power in the retail barbecue sauce market

5.38 The CC's merger guidelines state in paragraph 3.58 that 'in assessing the effects of the merger, the Commission may consider whether buyers, either because of their size or commercial significance to suppliers, for example, have the ability to prevent the exercise of market power by suppliers'. We therefore considered, in the context and circumstances of this inquiry, the extent to which retail customers might be able to constrain suppliers in the retail barbecue sauce market:

- We considered the ease with which retail customers could find and switch to alternative suppliers. Major retailers told us that they tended to see more viable alternatives to Heinz and HP for barbecue sauce than they did for ketchup and brown sauce.⁷⁵ No retailers told us that Heinz and HP barbecue sauces were 'must stock' items.⁷⁶
- We considered the extent to which buyers possessed a credible threat of setting up their own supply arrangements. We noted that at least three of the major retailers sold own-label barbecue sauce.⁷⁷
- We also noted from pricing data submitted to us by two retailers and IRI sales data that there did not appear to be a price premium between the Heinz and HP brands, other brands and own-label barbecue sauce.⁷⁸

5.39 In relation to buyer concentration, Heinz submitted that eight major retailers represented some [redacted] per cent of its barbecue sauce business.⁷⁹

market shares, whereas the seven brands exiting the market other than [redacted] took on average ten four-week periods for their shares to decline to zero from the maximum.

⁷⁵Specifically, [redacted] did not see any alternatives to Heinz and HP, [redacted] submitted 'for barbecue sauce and other speciality sauces with less established brands, there is a stronger case for alternative products being acceptable to [redacted] customers', [redacted] and [redacted] both saw Hellman's and smaller branded product ranges as alternatives, and [redacted] submitted 'there are a small selection of alternatives' (specifically citing Unilever, ie Hellman's).

⁷⁶A 'must stock' product is a grocery item that consumers expect a retailer to stock to such an extent that, if a retailer does not stock it, then consumers would switch to other retailers.

⁷⁷[redacted]

⁷⁸As set out in the footnote to paragraph 4.37, over the period from June 2002 to May 2005 in the IRI data that Heinz submitted, the relative price of Heinz to own-label barbecue sauce was 1.0 and the relative price of HP to own-label barbecue sauce was 1.06. The relative prices of both Heinz and HP to other brands average 0.7 in the period. However, one retailer [redacted] told us that its retail price for HP barbecue sauce was about 60 per cent higher than its retail price for own-label barbecue sauce.

⁷⁹Asda, Morrisons, Sainsbury's and Tesco represented [redacted] per cent of the value of Heinz's barbecue business in the 2005 financial year and four other major retailers (Co-Op, Iceland, Somerfield and Waitrose) accounted for a further [redacted] per cent. [redacted] In this regard, [redacted] sales of Heinz barbecue sauce accounted for [redacted] per cent of its total barbecue sauce sales in 2005 and they also accounted for [redacted] per cent of Heinz's sales of barbecue sauce. We therefore considered that [redacted] reliance on Heinz

5.40 On balance, and against the background of the CC's guidelines, as referred to in paragraph 5.38 above, we considered that there was buyer power in the retail barbecue sauce market, with less emphasis on brands and with own label more effectively acting as a competitive constraint. Unlike ketchup and brown sauce, it did not appear that particular brands of barbecue sauce were 'must stock' products for retailers. We noted, however, that while the factors discussed in paragraph 5.38 appeared to apply to the major retailers, it was not clear that their buyer power would necessarily protect Heinz's and HP's smaller retail barbecue sauce customers.

Other features of the barbecue sauce market

5.41 Other features of the market we noted included the fact that, despite the strength of the HP and Heinz brands in other markets (brown sauce and ketchup respectively), there was no evidence of any portfolio effects (as described further in paragraphs 5.114 to 5.116). The lack of clarity as to the precise boundaries of the market containing barbecue sauce appeared to be a function of the relative immaturity (and porosity) of this product category compared with ketchup and brown sauce, with significantly more new product introduction. For example, we noted that Heinz's barbecue sauce was first introduced in 1996/97, making it a much younger product than either Heinz ketchup or HP brown sauce.

The retail baked beans market

Concentration

5.42 Tables 6 and 7 set out market shares for the retail baked beans market based on IRI sales values and volumes.⁸⁰ Further details are provided in Appendix E. Tables 6 and 7 indicate that the relevant market was already highly concentrated prior to the merger, with an HHI (based on value market shares) of over 5,200.

TABLE 6 **Retail baked beans market concentration by value 2005 (plain baked beans only, without additional food items)**

	<i>Market share 2005 %</i>
Heinz	67.7
Premier	6.7
HP beans	5.1
Crosse & Blackwell beans*	0.9
Branston beans*	0.7
Own label	25.3
Other branded	0.4
HHI pre-merger	5,251

Source: Heinz analysis of IRI data for the 52 weeks ended 31 December 2005 and CC analysis.

*Crosse & Blackwell and Branston are brands owned by Premier.

Notes:

1. May not sum to totals due to rounding.
2. HHI values are calculated from the underlying raw data, not the rounded market share figures shown in the table. The HHI indicated is calculated by treating the different Premier brands as if they were produced by separate manufacturers and other branded products as if they were produced by one manufacturer.

and vice versa appeared to be symmetric. Moreover, [§] did not submit that Heinz and HP barbecue sauces were 'must stock' products in the way that Heinz ketchup and HP brown sauce were.

⁸⁰Due to limitations in the available data, these market shares have been calculated on the basis of sales of plain baked beans only, and not baked beans with sausages and other food items. Since such products are only a relatively minor proportion of all baked beans sold (see footnote to paragraph 4.45), we did not consider that this materially affected our assessment of this market.

TABLE 7 Retail baked beans market concentration by volume 2005 (plain baked beans only, without additional food items)

	2005 annualized*		2005 pre-Branston†	
	Volume '000 kg	Share %	Volume '000 kg	Share %
Heinz	139,955	51.1	101,616	50.9
Premier	20,626	7.5	14,885	7.5
HP	15,935	5.8	12,521	6.3
Crosse & Blackwell	3,666	1.3	2,364	1.2
Branston	1,025	0.4	0	0.0
Own label	112,869	41.2	82,772	41.5
Other branded	233	0.1	175	0.1
Total	<u>273,684</u>		<u>199,448</u>	
HHI pre-merger		4,352		4,359

Source: CC analysis of IRI sales volume data provided by Heinz.

*Grossed-up data for the week ended 8 January 2005 to the week ended 3 December 2005.

†Week ended 8 January 2005 to the week ended 24 September 2005.

Notes:

1. Columns may not sum to totals due to rounding.

2. HHI values are calculated from the underlying raw data, not the rounded market share figures shown in the table. The HHI indicated is calculated by treating the different Premier brands as if they were produced by separate manufacturers and other branded products as if they were produced by one manufacturer.

Extent of competitive constraint between Heinz baked beans and HP-branded baked beans

5.43 We used econometric analysis as one approach to examining the extent to which Heinz baked beans and HP baked beans competed prior to the merger, as we did for ketchup and barbecue sauce (see paragraphs 5.5 and 5.28). We looked at whether promotions of one affected the sales of the other, Crosse & Blackwell beans and own-label beans. A full account of this work is given in Appendix F. Our econometric analysis, based on sales data from one of the major retailers,⁸¹ showed that for baked beans:

- The sales of both Heinz and HP beans, and their market shares, rose when they were on promotion.
- To the extent that Heinz, Crosse & Blackwell or own-label beans saw a decline in sales volume and also lost market share when HP was on promotion, these changes to sales and shares were very small.
- HP's, Crosse & Blackwell's and own label's decline in sales volume and market share when Heinz was on promotion were very small.
- There was a very high degree of unexplained variability in the likely impact of a promotion on the sales (volume and share) of the unpromoted products. Therefore, even where the analysis indicated that, in general, a promotion would affect adversely an unpromoted product's sales, there would be frequent occasions where there would be no observable effect, or an opposite effect to that expected.
- The results did not demonstrate with statistical confidence that promotions of Heinz or HP beans adversely affected the sales of the other brand.

⁸¹We used data from [redacted] because it was the only major retailer to provide enough data to conduct this analysis.

- 5.44 According to this analysis of data from promotions, there was limited competition between the two brands. HP is also a much smaller brand than Heinz, with 11 per cent of Heinz's sales volume. Even quite large increases in HP's volume affected Heinz's volumes by only small amounts.
- 5.45 Heinz told us that when HP beans were on promotion, Heinz noticed the effect on sales of its beans. However, according to our analysis, there was, we believed, very limited constraint, if any, imposed on Heinz by HP's promotional actions. The swings in volume were too small and too unpredictable.
- 5.46 For example, at the supermarket we looked at, our analysis showed that the average effect of an HP baked beans promotion over a four-week period was a gain of 13 tonnes by HP and a loss of 11 tonnes by Heinz. The average HP gain of 13 tonnes represents [%] per cent of the average volume of baked beans sold in a four-week period by HP ([%] tonnes) and the average Heinz loss of 11 tonnes represents [%] per cent of the average volume of baked beans sold in a four-week period by Heinz ([%] tonnes). These gains and losses would be made against a background where the variability (measured as one standard error) in the volume of baked beans sold around this average from one four-week period to another was 9 tonnes for HP (about 70 per cent of the average promotional gain for HP) and 65 tonnes for Heinz (about six times the average loss for Heinz).⁸²
- 5.47 As for ketchup, Heinz submitted data from TNS Superpanel research regarding the proportion of households purchasing Heinz, HP and own-label baked beans. These figures are set out in Table 8.

TABLE 8 Household purchasing data for Heinz, HP and own-label baked beans

Of the households buying baked beans, percentage buying Heinz only	<div style="display: flex; align-items: center; justify-content: center;"> <div style="font-size: 2em; margin-right: 10px;">{</div> <div style="text-align: center;">%</div> <div style="font-size: 2em; margin-left: 10px;">}</div> </div>
Of the households buying baked beans, percentage buying HP only	
Of the households buying baked beans, percentage buying HP and Heinz	
Of the households buying baked beans, percentage buying HP and own label	
Of the households buying baked beans, percentage buying Heinz, HP and own label	
Of the households buying baked beans, percentage buying own label only	
Of the households buying baked beans, percentage buying Heinz and own label	

Source: TNS Superpanel data from Heinz for the 52 weeks ending 6 November 2005.

- 5.48 The data in Table 8 indicates that only 15 per cent⁸³ of households purchasing Heinz baked beans also purchased HP baked beans. However, 67 per cent⁸⁴ of the households purchasing HP baked beans also purchased Heinz baked beans. Taken on its own, this could appear to support the existence of a competitive constraint from Heinz baked beans to HP baked beans because such a large proportion of households purchasing HP baked beans also purchased Heinz.
- 5.49 As for ketchup, an overlap in household purchasing may indicate purchasers responding to large changes in retail price due to promotions of branded baked beans. However, such buying patterns may also be due to other reasons such as unavailability of a particular brand or SKU in certain outlets at the time of the shopping visit, or different tastes within a household.
- 5.50 One major retailer [%] told us that HP beans were a viable second brand, and, whilst small compared with Heinz, still had a prominent role in its stores as a frequently

⁸²All the figures in this paragraph are rounded, and hence may not agree precisely with the figures set out in Appendix F.

⁸³Calculated as [%].

⁸⁴Calculated as [%].

promoted line. This retailer was uncertain whether, if HP beans were withdrawn from the market, consumers would switch to Heinz beans or own-label beans. On one hand, the retailer considered it was possible to argue that all purchasers of HP beans would switch to Heinz. This was because the retail price differential between own-label beans and HP beans when not on promotion in its stores was sufficiently high that purchasers of HP beans could be argued to have already taken a decision to buy branded beans instead of own-label beans, and would not revert to own-label beans if HP beans were unavailable. On the other hand, the same retailer said that it was more likely, if HP beans were not available, that consumers would switch to own-label beans, since beans were being purchased for consumption by children who were less brand sensitive.

- 5.51 Taking account of paragraphs 5.43 to 5.50, we could not conclude that there was a competitive constraint operating between Heinz baked beans to HP baked beans prior to the merger. Nor did we see any evidence that HP baked beans imposed a constraint on own-label baked beans (see Appendix F).

Non-price competition

- 5.52 We noted that there had been some innovation over the past few years in the retail baked beans market in terms of new product introduction, including flavoured beans and new tinned bean meal variants. However, the evidence we received indicated that price competition was the predominant form of competition in this market.

The retail tinned pasta products market

Concentration

- 5.53 Tables 9 and 10 summarize the retail pasta products market shares based on IRI sales values and volumes.⁸⁵ Further details are provided in Appendix E. Tables 9 and 10 indicate that the relevant market was already highly concentrated prior to the merger, with an HHI value (based on market shares by value) of over 5,100.

⁸⁵Due to limitations in the available data, these market shares have been calculated on the basis of sales of plain tinned pasta only, and not tinned pasta with sausages and other food items. Since such products are only a relatively minor proportion of all tinned pasta sold (see footnote to paragraph 4.45), we did not consider that this materially affected our assessment of this market.

TABLE 9 **Retail tinned pasta products market concentration by value 2005 (plain tinned pasta only, without additional food items)**

	<i>Market share 2005 %</i>
Heinz	68.6
Premier	11.6
HP pasta	9.6
Crosse & Blackwell pasta	1.8
Branston pasta	0.2
Own label	19.1
Other branded	0.7
HHI pre-merger	5,167

Source: Heinz analysis of IRI data for the 52 weeks ended 31 December 2005 and CC analysis.

Notes:

- Columns may not sum to totals due to rounding.
- HHI values are calculated from the underlying raw data, not the rounded market share figures shown in the table. The HHI indicated is calculated by treating the different Premier brands as if they were produced by separate manufacturers and other branded products as if they were produced by one manufacturer.

TABLE 10 **Retail tinned pasta products market concentration by volume 2005 (plain tinned pasta only, without additional food items)**

	<i>2005 annualized*</i>		<i>2005 pre-Branston†</i>	
	<i>Volume (‘000 kg)</i>	<i>Share %</i>	<i>Volume (‘000 kg)</i>	<i>Share %</i>
Heinz	29,056	54.8	20,389	53.6
Premier	5,298	10.0	3,956	10.4
HP	3,657	6.9	2,655	7.0
Crosse and Blackwell	1,585	3.0	1,301	3.4
Branston	57	0.1	0	0.0
Own label	18,523	34.9	13,622	35.8
Other branded	159	0.3	39	0.1
Total	53,037		38,006	
HHI pre-merger		4,278		4,223

Source: CC analysis of IRI sales volume data provided by Heinz.

*Grossed up data for the week ended 8 January 2005 to the week ended 3 December 2005.

†Week ended 8 January 2005 to the week ended 24 September 2005.

Notes:

- Columns may not sum to totals due to rounding.
- HHI values are calculated from the underlying raw data, not the rounded market share figures shown in the table. The HHI indicated is calculated by treating the different Premier brands as if they were produced by separate manufacturers and other branded products as if they were produced by one manufacturer.

Extent of competitive constraint between Heinz and HP-branded tinned pasta products

5.54 We used econometric analysis as one approach to examining the extent to which Heinz tinned pasta products and HP tinned pasta products competed prior to the merger, as we did for ketchup, barbecue sauce and baked beans (see paragraphs 5.5, 5.28 and 5.43).⁸⁶ We looked at whether promotions of one affected the sales of the other, Crosse & Blackwell pasta and own-label pasta. A full account of this work

⁸⁶To take account of apparent seasonality in the sales of tinned pasta products, we also looked at the effect of promotions on the changes in sales volumes from year to year. Further details are provided in Appendix F.

is given in Appendix F. Our econometric analysis, based on sales data from one of the largest supermarkets,⁸⁷ showed that for tinned pasta products:

- The sales of both Heinz and HP pasta, and their market shares, rose when they were on promotion.
- To the extent that Heinz, Crosse & Blackwell or own-label pasta saw a decline in sales volume and also lost market share when HP was on promotion, these changes were very small.
- To the extent that HP, Crosse & Blackwell or own-label pasta saw a decline in sales volume and also lost market share when Heinz was on promotion, these changes were very small.
- In general, there was a very high degree of unexplained variability in the likely impact of a promotion on the sales of unpromoted products. Therefore, even where the analysis indicated that, in general, a promotion would affect adversely an unpromoted product's sales, there would be frequent occasions where there would be no observable effect, or an opposite effect to that expected.
- The results did not demonstrate with statistical confidence that promotions of HP adversely affected the sales (volumes and shares) of Heinz. Nor did they demonstrate with statistical confidence that promotions of Heinz adversely affected the sales volumes of HP, although they did demonstrate with statistical confidence that Heinz promotions adversely affect the share of HP.

5.55 According to this analysis of data from promotions, there was limited competition between the two brands. HP is also a much smaller brand than Heinz, with 13 per cent of Heinz's sales volume. Even quite large increases in HP's volume affected Heinz's volumes by only small amounts.

5.56 According to our analysis, there was, we believed, very limited constraint, if any, imposed on Heinz by HP's promotional actions. The swings in volume were too small and too unpredictable.

5.57 For example, at the supermarket we looked at, our analysis showed that the average effect of an HP pasta promotion over a four-week period was a gain of 1 tonne by HP and a loss of 5 tonnes by Heinz. The average HP gain of 1 tonne represents [X] per cent of the average volume of pasta sold in a four-week period by HP ([X] tonnes) and the average Heinz loss of 5 tonnes represents [X] per cent of the average volume of pasta sold in a four-week period by Heinz ([X] tonnes). These gains and losses would be made against a background where the variability (measured as one standard error) in the volume of pasta sold around this average from one four-week period to another was 2 tonnes for HP (twice the average promotional gain for HP) and 24 tonnes for Heinz (over four times the average loss for Heinz).⁸⁸

5.58 As for ketchup and baked beans, Heinz submitted data from TNS Superpanel research regarding the proportion of households purchasing Heinz, HP and own-label tinned pasta. These figures are set out in Table 11.

⁸⁷We used data from [X] because it was the only major retailer to provide enough data to conduct this analysis.

⁸⁸All the figures in this paragraph are rounded, and hence may not agree precisely with the figures set out in Appendix F.

TABLE 11 Household purchasing data for Heinz, HP and own label tinned pasta

Of the households buying tinned pasta, percentage buying Heinz only	
Of the households buying tinned pasta, percentage buying HP only	
Of the households buying tinned pasta, percentage buying HP and Heinz	
Of the households buying tinned pasta, percentage buying HP and own label	
Of the households buying tinned pasta, percentage buying Heinz, HP and own label	
Of the households buying tinned pasta, percentage buying own label only	
Of the households buying tinned pasta, percentage buying Heinz and own label	

Source: TNS Superpanel data from Heinz for the 52 weeks ending 6 November 2005.

- 5.59 The data in Table 11 indicates that 22 per cent⁸⁹ of households purchasing Heinz tinned pasta also purchased HP tinned pasta. However, 82 per cent⁹⁰ of the households purchasing HP tinned pasta also purchased Heinz tinned pasta. Taken on its own, this could appear to support the existence of a competitive constraint from Heinz tinned pasta to HP tinned pasta because such a large proportion of households purchasing HP tinned pasta also purchased Heinz.
- 5.60 As already noted for ketchup and baked beans, an overlap in household purchasing may indicate purchasers responding to large changes in retail price due to promotions of tinned pasta products. However, such buying patterns may also be due to other reasons such as unavailability of a particular brand or SKU in certain outlets at the time of the shopping visit, different tastes within a household or, in the case of tinned pasta products in the shape of children’s characters, preferences for the particular characters concerned.
- 5.61 Taking account of paragraphs 5.54 to 5.60, we could not conclude that there was a competitive constraint operating between Heinz tinned pasta and HP tinned pasta prior to the merger. Nor did we see any evidence that HP tinned pasta imposed a constraint on own-label tinned pasta (see Appendix F).

Non-price competition

- 5.62 We noted that innovation in the tinned pasta products market seemed to centre on the introduction of new character shapes⁹¹ and new tinned pasta meal variants. However, the evidence we received indicated that price competition was the predominant form of competition in this market.

The food service market

Concentration

- 5.63 Heinz’s and HP’s overlapping sauce products in the food service sector are ketchup, brown sauce and barbecue sauce. We considered that the overlaps in ketchup and barbecue sauce were trivial in terms of HP’s share of supply, and that the only significant overlap in relation to sauces was in brown sauce. The estimated shares of supply by value for brown sauce in the food service sector are set out in Table 12.⁹²

⁸⁹Calculated as [redacted].

⁹⁰Calculated as [redacted].

⁹¹Our analysis of IRI sales data indicated that approximately 10 per cent of sales by volume of tinned pasta products were character shapes.

⁹²Heinz told us that, due to the fragmented nature of the food service sector and the limited public data available, there are difficulties in calculating total market size and market shares in this sector. In particular, Heinz told us that the AC Nielsen data for the food service sector relates to the sales values from wholesalers covering approximately 30 per cent of the food service

TABLE 12 Pre-merger share of sales of brown sauce in the food service sector 2004

	%
Heinz Branded Own label	<div style="border-left: 1px solid black; border-right: 1px solid black; border-bottom: 1px solid black; padding: 10px 0;"> ⌘ </div>
HP branded*	
Own label	
Other	
HHI pre-merger†	2,662

Source: Heinz's estimates of market shares using AC Nielsen data and Heinz and HP sales data.

*HP told us that it did not supply any own-label brown sauce to the food service sector.

†The HHI indicated is an upper bound as it assumes that other branded products are produced by one manufacturer.

5.64 If there was a separate market for brown sauce in the food service sector, Table 12 indicates that it would be highly concentrated with an HHI value of around 2,600. However, we noted that there was some evidence that there might be a wider market including (but not necessarily limited to) some or all of ketchup, brown sauce and barbecue sauce because of the potential for supply-side substitution, given that:

(a) the ingredients and manufacturing processes for these sauces were similar (see paragraph 4.25) and we were told that the costs for a producer of unbranded brown sauce to begin producing unbranded ketchup, for example, were low;⁹³ and

(b) we were told by Heinz, by some of Heinz's competitors and by one of Heinz's major food service customers that branding was not as important in the food service sector as it was in the retail sector, and was particularly unimportant for back-of-house food service sales.⁹⁴

5.65 All HP-branded baked bean and pasta products in the food service sector are currently supplied by Premier. Heinz estimated that Heinz's share of supply (by value) of baked beans in the food service sector was [X] per cent, five times larger than that of HP-branded products ([X] per cent).⁹⁵ Heinz told us that data was not available for food service tinned pasta.

Competition between Heinz and HP pre-merger: parties' views

5.66 We considered that, while HP-branded brown sauce had a high share of sales of brown sauce in the food service sector, Daddies ketchup was not a strong brand in food service and HP-branded sauces accounted for a small share of sales if the market was considered to contain a range of different types of table sauce. We noted that, in absolute terms, HP's business in food service was very small and its overlap with Heinz largely confined to brown sauce. Evidence from other parties supported the case that pre-merger competition between Heinz and HP was not strong. For example:

- A company that produces branded and unbranded sauces for the food service sector [X] told us that it believed that the market was highly competitive, that

market. No other parties indicated that there were other sources of market share data available. We therefore consider that the estimates of market shares presented in this section should be treated with caution and we do not present a figure for the total size of the market.

⁹³Heinz told us that it considered that these costs would not be significant.

⁹⁴[X] told us that it would be prepared to switch to own-label supplies for its entire front-of-house and back-of-house requirements in response to an unacceptable increase in price.

⁹⁵Heinz estimated the share of supply of Heinz and HP baked beans to the food service sector using data from AC Nielsen for sales for the 52 weeks to 12 March 2005 through food service wholesalers.

Heinz and other sauce producers were under a large amount of competitive pressure leading to lower prices and that own label was a stronger competitor to Heinz than HP.

- A packer and distributor of front-of-house food service sauces [X] told us that it was rarely in competition with HP.
- A food service customer purchasing from both Heinz and HP [X] told us that it did not see HP and Heinz competing strongly in relation to brown sauce for food service.

Supply arrangements and customer switching

- 5.67 Appendix G describes supply arrangements, pricing and promotions in the food service sector for the relevant products. Direct sales to food service end-user customers account for only 19 per cent of sales in this sector: most sales are made to distributors (wholesalers and cash-and-carry operators).
- 5.68 As explained in Appendix G, suppliers may bid against each other for the supply to certain food service customers. We were told by two food service suppliers [X] that suppliers were usually selected on the basis of the price they offered. However, we were told [X] that some supply agreements were agreed on an ongoing basis with terms negotiated annually, leading to suppliers having fewer opportunities to out-price each other.
- 5.69 A packer and supplier of sachets for front-of-house use [X] told us that it often tendered for part supply of a contract. It told us that, while it was at a slight competitive disadvantage because it only supplied sachets for front-of-house use, it was not ruled out of tenders because of this.
- 5.70 Heinz told us that food service customers representing about 10 to 15 per cent of its sales switched annually, and we saw examples of several large contracts lost by it and another food service supplier of the relevant products. A food service customer [X] told us that it was easy to switch suppliers and that it could switch to own-label products if price became an issue (see further discussion of the role of own-label products in the food service sector in Appendix I, paragraph 16).

Buyer power and market entry

- 5.71 We examined the extent of buyer power in the food service sector, and the ease with which suppliers could enter the market. The details of our assessment are set out in Appendix I. In summary, we found that there was some evidence to support the existence of buyer power in relation to the relevant products in the food service sector such as buyer concentration, price deflation, and low barriers to switching as a result of the relative unimportance of branding compared with the retail sector. We also heard evidence from Heinz and other parties to suggest that market entry was possible, particularly given the relative unimportance of branding, but that it might not necessarily be attractive given current market conditions.

The counterfactual

The future of HP absent the merger

- 5.72 Heinz acquired HP from Danone following an auction as described in paragraphs 3.3 and 3.4. A detailed description of the auction process and our assessment of other

possible outcomes of the auction are set out in Appendix H. As a result of this assessment, we expected that, absent the sale of HP to Heinz, Danone would have sold HP to Company A (one of the other bidders for HP), and that Company A would have immediately sold the HP sauces business including the Daddies brand and the rights to HP baked beans and tinned pasta products to Company B.

Retail ketchup

- 5.73 Under the counterfactual, as set out in the preceding paragraph, we considered that Daddies ketchup would have remained an independent competitor to Heinz ketchup.
- 5.74 [REDACTED] This view was supported by the HP 2005–2009 Strategic Plan, which was prepared before HP was sold to Heinz. [REDACTED] Accordingly we had no reason to expect that Company B would withdraw Daddies ketchup from the market.⁹⁶
- 5.75 We noted that, if Company B had acquired HP, [REDACTED]. We did not consider that Company B's [REDACTED] would give rise to competition concerns in the event that Company B acquired HP because [REDACTED]. We did not consider that Company B's [REDACTED] would give rise to competition concerns for two reasons: [REDACTED].

Retail brown sauce

- 5.76 As set out in paragraph 2.7, Heinz does not currently supply brown sauce to the retail market, although it does supply brown sauce to the food service sector. We considered whether there was any evidence that might have led us to expect that, but for Heinz's acquisition of HP, Heinz would have entered the supply of retail brown sauce.
- 5.77 [REDACTED]
- 5.78 We considered that there was insufficient evidence for us to form an expectation that, absent the merger, Heinz would have entered the supply of retail brown sauce within the period relevant to our inquiry.⁹⁷
- 5.79 As for ketchup, we noted that, if Company B had acquired HP, [REDACTED]. We did not consider that Company B's [REDACTED] would give rise to competition concerns in the event that Company B acquired HP because [REDACTED]. We did not consider that Company B's [REDACTED] would give rise to competition concerns for the same two reasons set out in paragraph 5.75 [REDACTED].

Retail barbecue sauce

- 5.80 Under the counterfactual situation set out in paragraph 5.72 (ie that Company B acquired HP), we considered that HP barbecue sauce would have remained an independent competitor to Heinz barbecue sauce.

⁹⁶[REDACTED]

⁹⁷We note, however, that Heinz was a credible potential entrant to the retail brown sauce market. Any constraint on HP brown sauce provided by the prospect of entry from Heinz has been lost as a result of the Heinz-HP Foods merger. The loss of any such constraint would not have occurred under any of the counterfactual scenarios, since Heinz would have retained the same incentives as prior to the merger to enter the supply of retail brown sauce. This point is discussed further in the context of the competitive effects of the merger (see paragraph 5.117).

5.81 HP barbecue sauce was profitable and we saw no evidence that HP intended to withdraw it from the market. Accordingly, we had no reason to expect that Company B would withdraw HP barbecue sauce from the market.

Retail baked beans—counterfactual

5.82 As explained in paragraph 2.8, Premier produces baked beans (and tinned pasta products—see below) under a licence from HP which is due to expire in March 2006.⁹⁸ [REDACTED] The merger has therefore brought a brand that was previously independent of Heinz under Heinz’s control.

5.83 Heinz argued that, even if Heinz had not acquired HP, Premier’s existing licence to produce HP-branded beans and pasta was due to expire in March 2006 and Premier could have had no expectation that the licence would be renewed. Therefore, in Heinz’s view, HP beans and pasta would not have remained in the market, even had the merger not taken place.

5.84 We considered the likely future of HP-branded baked bean products, had Company B acquired HP instead of Heinz. HP baked beans were profitable and had an established position in the relevant market. We saw no evidence to indicate that HP baked beans would have been withdrawn from the market, and we expected that they would have remained available in competition with Heinz.

Retail tinned pasta products—counterfactual

5.85 Much of the discussion of retail baked bean products set out in paragraphs 5.82 to 5.84 also applies to retail tinned pasta products.⁹⁹ Premier’s turnover of tinned HP pasta products in 2004 was around £[REDACTED] although it had declined over recent years because a considerable number of tinned pasta products had been rebranded by Premier from HP to Crosse & Blackwell.

5.86 We considered the likely future of HP-branded tinned pasta products had Company B acquired HP instead of Heinz. HP tinned pasta products were profitable for Premier and had an established position in the relevant market. We expected that HP tinned pasta products would have remained available in competition with Heinz.¹⁰⁰ Although we noted that turnover from HP pasta products was declining as a result of the rebranding described in the previous paragraph, we expected that this decline in turnover would have ceased after Company B had acquired HP. We also noted that Heinz told us that the endorser brand was more important for pasta made in the shape of children’s characters than the manufacturer’s brand, and that Premier would have retained its endorser brands for pasta shapes even if it could no longer sell HP-branded pasta. We did not consider that this affected our counterfactual analysis for tinned pasta products.

Retail baked beans and tinned pasta products—post-acquisition market developments

5.87 In assessing the effects of the merger on competition, we needed to compare the competitive situation following the merger with what we expected would have

⁹⁸[REDACTED]

⁹⁹Premier launched two Branston-branded tinned pasta products (pasta hoops and straight spaghetti) in October 2005.

¹⁰⁰Danone told us that [REDACTED]. However, if Heinz had not acquired HP Foods, we expected that Company B would have acquired it instead. Therefore Danone’s possible intentions regarding [REDACTED] are not relevant for our consideration of the counterfactual.

occurred in the absence of the merger. We had to take into account post-acquisition developments in the relevant markets in establishing the competitive situation following the merger.

- 5.88 Premier told us that, by the end of July 2005 (after two approaches to Heinz), it had concluded that the HP licence would not be renewed. [REDACTED] Premier told us that it had reacted by launching baked bean products and tinned pasta products under its own Branston brand in October 2005.
- 5.89 As set out in paragraph 5.83, Heinz argued that, even if Heinz had not acquired HP, Premier's existing licence to produce HP-branded beans and pasta was due to expire in March 2006 and Premier could have had no expectation that the licence would be renewed. Further, Heinz pointed out that Premier had identified the risk of the cessation of the HP licence in its Listing Particulars for its initial public offering in 2004. Therefore, in Heinz's view, Premier would have launched Branston beans and pasta (and HP beans and pasta would not have remained in the market), even had the merger not taken place.
- 5.90 In further support of this point, Heinz argued that, in order for Premier to have launched Branston beans and pasta in October 2005, Premier must have been planning their launch from at least six months before this (ie from at least March 2005), before Heinz acquired HP. According to Heinz, six months would have been the minimum time Premier required to launch new branded products such as Branston beans and pasta.
- 5.91 However, Premier told us, as set out in paragraph 5.88, that its launch of Branston beans and pasta was a direct consequence of the merger and would not have happened in its absence. We noted that the launch of Branston beans and pasta meals had no certainty of success and had been undertaken by Premier at considerable cost in terms of advertising and promotional expenditure.¹⁰¹ Premier told us that it had been able to complete all the processes required to introduce the new Branston products in a considerably shorter time period than that suggested by Heinz. In particular, Premier told us that recipe formulation, focus group meetings, product testing, label design, a marketing plan and presentations to retailers were initiated and completed between [REDACTED]. This was backed up by a retailer [REDACTED] which told us that it had been surprised by the unannounced arrival of Branston beans. We considered that the fact that Premier had identified the risk of the cessation of the HP licence in its 2004 Listing Particulars did not mean that Premier expected to lose the licence, simply that Premier was required to identify it—among other risks—as a possibility. We concluded that had Heinz not acquired HP, Branston baked beans and tinned pasta products would not have been launched.

Food service

- 5.92 Had Company B acquired HP instead of Heinz, we expected that HP's food service business would have continued. Under this scenario, we noted that there would be [REDACTED]. However, given our analysis of the competitive effects of the merger in the food service sector (see paragraphs 5.154 to 5.164), we did not consider any such [REDACTED] to be material.

¹⁰¹[REDACTED]

Conclusions on the counterfactual

5.93 On the basis of the analysis in paragraphs 5.72 to 5.92, we formed the expectation that, had Heinz not acquired HP, then, in the period relevant to our inquiry:

- (a) HP and Heinz would have remained independent participants in the retail ketchup market and retail barbecue sauce market.
- (b) Heinz would not have entered the retail brown sauce market but would have remained a credible potential entrant.
- (c) Heinz and HP would have remained independent participants in the retail baked beans market and the retail tinned pasta products market, and Branston baked bean products and Branston tinned pasta products would not have been launched.
- (d) Heinz and HP would have remained independent participants in the food service sector.

Effects of the merger

The retail ketchup market

Effect on concentration

5.94 Using the market share information in Appendix E, Table 13 sets out the effect of the merger on the HHI value for the relevant market. Table 13 indicates that the relevant market is already highly concentrated, will become more so after the merger, and, in particular, the HHI (based on sales values) will increase by about 450.

TABLE 13 Post-merger retail ketchup market concentration by volume and value

	Volume '000 kg	Market share %	Value £'000	Market share %
Heinz	40,766	65.6	77,937	77.6
HP (Daddies)	<u>2,272</u>	<u>3.7</u>	<u>2,952</u>	<u>2.9</u>
Heinz/HP combined	43,037	69.2	80,888	80.5
Other branded	689	1.1	827	0.8
Own label	<u>18,445</u>	<u>29.7</u>	<u>18,761</u>	<u>18.7</u>
Total	<u>62,171</u>	<u>100.0</u>	<u>100,477</u>	<u>100.0</u>
HHI pre-merger		5,194		6,375
HHI post-merger		5,673		6,830
Increase in HHI		479		456

Source: CC analysis of IRI data provided by Heinz for the 13 four-week periods from the four-week period ended on 12 June 2004 to the four-week period ended on 14 May 2005.

Notes:

1. Columns may not sum to totals due to rounding.
2. HHI values are calculated from the underlying raw data, not the rounded market share figures shown in the table. The HHI indicated is an upper bound as it assumes that other branded products are produced by one manufacturer.
3. This table is based on changes in market concentration from the pre-merger situation. We did not consider that the pre-merger situation was materially different from the counterfactual.

5.95 The increase in concentration in the relevant market indicated that the merger potentially raised concerns and provided a starting point for our assessment of the effect of the merger on competition (see paragraph 5.2).

Effect on buyer power

- 5.96 We noted in paragraph 5.38 the possible relevance of the CC's merger guidelines, in the context of the retail barbecue sauce market. We also considered if the merger might have changed the extent of buyer power, if any, in the retail ketchup market, particularly in relation to Heinz and Daddies ketchup.
- 5.97 Heinz argued that there was considerable buyer power in the retail markets for its ketchup, barbecue sauce, baked bean and tinned pasta products, and that this was one of the factors that meant that its acquisition of HP did not adversely affect competition. By way of example, [REDACTED].
- 5.98 As a general background to our assessment of this issue, Appendix G sets out how negotiations on sales, pricing and promotions take place in the relevant markets. The details of our assessment of factors relating to buyer power in the retail ketchup market are set out in Appendix I.
- 5.99 Retailers told us that there were no viable alternatives to Heinz ketchup. Retailers also told us that their margins on Heinz products were smaller than on other branded and own-label products in the same market and we saw data that suggested that retailers had not been able to resist wholesale price increases by Heinz in this market (see Appendix I, paragraph 4). Further, they said that they would not be able to delist Heinz ketchup as it was a 'must stock' product. We had no reason to believe that any buyer power that existed in the retail ketchup market would extend from the larger retail customers such as the major supermarkets to the smaller retail customers purchasing directly from Heinz or HP. However, we noted that, in relation to other brands of ketchup such as Daddies, the brand-strength factors that served to counterbalance buyer power in the case of Heinz ketchup might not be so pronounced.
- 5.100 We considered the possibility of portfolio effects¹⁰² as a result of Heinz acquiring the HP brand (see paragraphs 5.114 to 5.116) and whether this might erode any buyer power in the retail ketchup market. However, we considered that the merger had not increased Heinz's portfolio power compared with the counterfactual, nor had it had any effect on the other factors (identified in the previous paragraph) relating to the extent of buyer power, if any, in the retail ketchup market.

Effect on market entry

- 5.101 The CC's merger guidelines state in paragraph 3.45 that: 'The threat of entry or expansion can act as a constraint, preventing the merged enterprise from exercising market power.' We considered whether the merger had increased the barriers to entry into the retail ketchup market.
- 5.102 In relation to market entry, Heinz submitted that there were many existing or potential manufacturers of own-label sauces, both in the UK and elsewhere in Europe. Although it acknowledged that large-scale new entry into the branded supply of sauces might be considered relatively unlikely due to the relevant markets being mature with well-established brands, Heinz suggested that such entry should not be discounted. Heinz pointed to the recent launch by Premier of baked beans and tinned pasta products under the Branston brand, an established brand for pickle. Heinz also pointed to other major global and UK competitors with established brands that,

¹⁰²Portfolio effects might include Heinz using its combined ownership of the Heinz and HP brands to force its retail customers to buy Heinz's complete line of products.

according to Heinz, were present in adjacent product or geographic markets and had the financial resources, brands, marketing skills and experience to enter the relevant markets.

- 5.103 The details of our assessment of factors relating to entry to the retail ketchup market are set out in Appendix I. In summary, we considered that the barriers to branded entry to this market included obtaining access to retailers' shelf space and financing the large costs of developing and marketing a new brand which could compete effectively with Heinz, by far the leading brand in the market. We thought it possible that these costs could be reduced by extending an existing brand from an adjacent product market. We noted that there were a number of credible potential entrants and we saw that branded entry to the retail ketchup market had recently occurred, in that Premier launched Branston-branded ketchup in early 2006.
- 5.104 We noted that entry into own-label supply in the relevant market would require securing a contract to produce a retailer's own-label ketchup. We saw evidence that retailers periodically retendered their own-label supply contracts and did switch their business between own-label manufacturers. We considered that such retendering would also give existing own-label manufacturers the opportunity to expand production by winning new contracts.
- 5.105 We found that the most significant barrier to branded entry was the high sunk cost associated with developing a new brand. We considered that this cost would not have increased as a result of the merger, given that Heinz already controlled the strong Heinz brand and the merger only gave Heinz control of the weaker Daddies brand. Nor did we consider that the merger would have any effect on the other factors we identified in paragraphs 5.103 and 5.104 relating to market entry. Following the merger, we considered that any move by Heinz to discontinue the Daddies ketchup brand might in fact create a one-off opportunity for entry into the supply of branded ketchup by a new entrant, taking advantage of the period of transition when Daddies was being withdrawn to make a bid for market share and retailer shelf space.
- 5.106 Consequently, although we considered that barriers to branded entry to the retail ketchup market were high, we formed an expectation that the merger had not increased these barriers.

Effect on prices

- 5.107 As set out in paragraph 5.94, the merger causes an increment in HHI of about 450, in a market which is already highly concentrated. It also removes any competitive constraint imposed by Heinz ketchup on Daddies ketchup and by Daddies on Heinz. However, as set out in paragraph 5.13, on the basis of the available evidence, we could not conclude that there were any such competitive constraints in operation prior to the merger. We therefore did not expect that the price of either Daddies ketchup or Heinz ketchup would rise as a result of the merger.

Effect on service, product choice, innovation and quality

- 5.108 Against the lack of evidence of significant competition in this market on the basis of non-price factors prior to the merger, we did not expect that the merger would lead to a loss of service, product choice, innovation or quality.

Conclusions on the effect of the merger on prices, service, product choice, innovation and quality

- 5.109 The considerations in paragraphs 5.107 and 5.108 led us to the expectation that the effect of the merger on the retail ketchup market would not be to lead to prices being higher than would otherwise have been the case, nor to a loss of service, product choice, innovation or quality.

Unilateral effects of the merger in the retail ketchup market

- 5.110 We concluded, therefore, that the merger has not resulted, and may not be expected to result, in an SLC in the retail ketchup market on the basis of unilateral effects.

The retail brown sauce market

Effect on concentration

- 5.111 Heinz was not active in the retail brown sauce market prior to the merger, therefore the merger had no effect on market concentration and post-merger market shares remain as set out in Table 3.¹⁰³

Effect on entry

- 5.112 We considered (as set out in paragraph 5.93) that Heinz was a credible branded entrant to this market, but we did not expect that Heinz would have entered the market absent the merger within the time period relevant to our inquiry (for the reasons set out in paragraphs 5.77 and 5.78). Also, although HP perceived Heinz to be a potential competitor, HP did not take particular steps to respond to this threat and it did not appear that Heinz was especially well-positioned (compared with other credible potential entrants, one of which, Premier, launched Branston-branded brown sauce in early 2006) to constrain HP absent the merger.
- 5.113 We did not hear evidence that any offsetting buyer power that the major retailers might have in this market would be weakened by the elimination of Heinz as a potential competitor. For example, no retailers told us that they had ever threatened to sponsor entry to the market by Heinz as part of their negotiations with HP for the supply of HP brown sauce.

Portfolio effects

- 5.114 Retailers told us that both Heinz ketchup and HP brown sauce were ‘must stock’ items. We noted the possibility that the merger might enable Heinz to use its combined ownership of two ‘must stock’ brands to impose exclusive contracts on its retail customers and force them not to stock competitors’ brands, or to buy Heinz’s complete line of products.¹⁰⁴
- 5.115 There was no evidence that Heinz or HP were able to impose exclusive contracts on their retail customers prior to the merger such that those customers were unable to stock competing brands. Retailers told us that neither Heinz nor HP sought to

¹⁰³The figures in Table 3 are for pre-merger market concentrations. We did not consider that the pre-merger situation was materially different from the counterfactual because [§]. See further discussion in paragraph 5.79.

¹⁰⁴We noted that Heinz’s product portfolio included convenience foods, soups and infant nutrition products as well as ketchup, barbecue sauce, baked beans and tinned pasta products. We also noted that HP supplied other categories of product, such as Lea & Perrins Worcestershire sauce and the Amoy brand of ethnic food products.

combine their negotiations with retailers across categories of products. On the contrary, retailers told us that negotiations were carried out on a product-by-product basis, and that it was possible for retailers to de-list certain Heinz or HP products without affecting negotiations for other products. Given the portfolio of strong brands owned by Heinz pre-merger, we saw no reason to expect that the addition of HP brown sauce would increase Heinz's portfolio power such that it could force retailers to take a complete range of Heinz products or to exclude competitors' products.

- 5.116 We concluded that the merger had not increased the possibility of portfolio effects in the retail brown sauce market. Given that we believed that there would not be an increase in portfolio effects as a result of Heinz acquiring HP brown sauce, we also concluded that there would not be an increase in portfolio effects as a result of Heinz acquiring other less powerful brand and product combinations such as Daddies ketchup, Daddies brown sauce, HP baked beans and HP tinned pasta products.

Effect on prices, service, product choice, innovation and quality

- 5.117 As explained in paragraph 5.112, we did not expect that Heinz would have entered the retail brown sauce market absent the merger, but we did consider that HP perceived Heinz to be a potential competitor in this market. However, given HP's lack of action to deter entry by Heinz, we considered that there was no pre-merger constraint on HP's prices (or levels of service, product choice, innovation and quality) as a result of potential competition from Heinz alone. We therefore did not expect that the elimination of potential competition to HP from Heinz as a result of the merger would have any effect on prices, service, product choice, innovation or quality in this market.

Conclusions on the effect of the merger on prices, service, product choice, innovation and quality

- 5.118 The considerations in paragraph 5.117 led us to the expectation that the effect of the merger on the retail brown sauce market would not be to lead to prices being higher than would otherwise have been the case, nor to a loss of service, product choice, innovation or quality.

Unilateral effects of the merger in the retail brown sauce market

- 5.119 We concluded, therefore, that the merger has not resulted, and may not be expected to result, in an SLC in the retail brown sauce market on the basis of unilateral effects.

The retail barbecue sauce market

Effect on concentration

- 5.120 Using the market share information in Appendix E, Table 14 sets out the effect of the merger on the HHI values for three different candidate markets containing barbecue sauce (as defined in paragraph 5.26). Table 14 indicates that the relevant market will become more concentrated after the merger, and, in particular, the HHI will increase by between 400 and 1,400, depending on the market definition adopted.

TABLE 14 Post-merger retail barbecue sauce market concentration by value

	<i>Market definition</i>					
	<i>A</i>		<i>B</i>		<i>C</i>	
	<i>Value</i>	<i>Market share</i>	<i>Value</i>	<i>Market share</i>	<i>Value</i>	<i>Market share</i>
	<i>£'000</i>	<i>%</i>	<i>£'000</i>	<i>%</i>	<i>£'000</i>	<i>%</i>
HP	4,218	40.6	6,128	24.6	9,493	21.1
Heinz	<u>1,821</u>	<u>17.5</u>	<u>2,809</u>	<u>11.3</u>	<u>4,623</u>	<u>10.3</u>
Heinz/HP combined	6,039	58.1	8,938	35.9	14,116	31.3
Other branded	2,828	27.3	12,940	52.0	23,551	52.2
Own label	<u>1,527</u>	<u>14.7</u>	<u>3,013</u>	<u>12.1</u>	<u>7,385</u>	<u>16.4</u>
Total	<u>10,394</u>	<u>100.0</u>	<u>24,891</u>	<u>100.0</u>	<u>45,052</u>	<u>100.0</u>
HHI pre-merger		2,916		3,583		3,545
HHI post-merger		4,337		4,139		3,973
Increase in HHI		1,421		556		428

Source: CC analysis of IRI data provided by Heinz for the 52 weeks ended 5 November 2005.

Notes:

- Columns may not sum to totals due to rounding.
- HHI values are calculated from the underlying raw data, not the rounded market share figures shown in the table. The HHI indicated is an upper bound as it assumes that other branded products are produced by one manufacturer.
- This table is based on changes in market concentration from the pre-merger situation. We did not consider that the pre-merger situation was materially different from the counterfactual.

5.121 The increase in concentration in the relevant market (and the aggregation of market shares) indicated that the merger potentially raised concerns regardless of market definition and it provided a starting point for our assessment of the effect of the merger on competition.

Effect on prices

5.122 Our analysis (as set out in paragraphs 5.28 to 5.30) indicated that HP barbecue sauce appeared to exercise a competitive constraint on Heinz barbecue sauce but not on own-label barbecue sauce. Following the merger, this constraint on Heinz barbecue sauce will be eliminated. We considered whether Heinz might be able to increase the price of its barbecue sauce as a result.

5.123 We saw no evidence that the merger would weaken the buyer power we identified in paragraph 5.40, nor increase the scope for portfolio effects or raise the relatively low barriers to branded entry discussed in paragraph 5.37. Heinz and HP did not appear to have been able to use their leading positions in the ketchup and brown sauce markets respectively to gain similar positions in the barbecue sauce market. If Heinz were to attempt to raise the price of its barbecue sauce following the merger, we considered that retailers would be able to resist this as a result of the availability of alternatives including own label and the fact that particular brands of barbecue sauce did not have 'must stock' status. Entrants (and existing barbecue sauce manufacturers) would be able to respond by launching new branded products relatively easily into the market.

5.124 Against a background in which retailers did not express significant concerns about price increases in this market following the merger, and in which the precise boundaries of the relevant market were uncertain due to its continuously evolving nature, we did not expect price rises in this market as a result of the merger.

Effect on service, product choice, innovation and quality

5.125 We saw no evidence that the merger would be likely to lead to a loss of service, product choice, innovation or quality.

Conclusions on the effect of the merger on prices, service, product choice, innovation and quality

5.126 The considerations in paragraphs 5.122 to 5.125 led us to the expectation that the effect of the merger on the retail barbecue sauce market would not be to lead to prices being higher than would otherwise have been the case, nor to a loss of service, product choice, innovation or quality.

Unilateral effects of the merger in the retail ketchup market

5.127 We concluded, therefore, that the merger has not resulted, and may not be expected to result, in an SLC in the retail barbecue sauce market on the basis of unilateral effects.

The retail baked beans market

Effect on concentration

5.128 Tables 15 and 16 set out the effect of the merger on the HHI value for the relevant market. These tables indicate that the relevant market is already highly concentrated, will become more so after the merger compared with the counterfactual, and, in particular, the HHI (based on market shares by value) will increase by over 690.

TABLE 15 **Retail baked beans market concentration by value 2005 (plain baked beans only, without additional food items)**

	<i>Market share 2005 %</i>
Heinz	67.7
Premier	6.7
HP beans	5.1
Crosse & Blackwell beans	0.9
Branston beans	0.7
Own label	25.3
Other branded	0.4
HP/Heinz combined	72.8
HHI pre-merger	5,251
HHI post-merger	5,941
Increase in HHI	691

Source: Heinz analysis of IRI data for the 52 weeks ended 31 December 2005 and CC analysis.

Notes:

1. Columns may not sum to totals due to rounding.
2. HHI values are calculated from the underlying raw data, not the rounded market share figures shown in the table. The HHI indicated is calculated by treating the different Premier brands as if they were produced by separate manufacturers and other branded products as if they were produced by one manufacturer.

TABLE 16 **Retail baked beans market concentration by volume (plain baked beans only, without additional food items)**

	2005 annualized*		2005 pre-Branston†	
	Volume '000 kg	Share %	Volume '000 kg	Share %
Heinz	139,955	51.1	101,616	50.9
Premier	20,626	7.5	14,885	7.5
HP	15,935	5.8	12,521	6.3
Crosse & Blackwell	3,666	1.3	2,364	1.2
Branston	1,025	0.4	0	0.0
Own label	112,869	41.2	82,772	41.5
Other branded	233	0.1	175	0.1
HP/Heinz combined	155,890	57.0	114,137	57.2
Total	273,684		199,448	
HHI pre-merger		4,352		4,359
HHI post-merger		4,947		4,999
Increase in HHI		596		640

Source: CC analysis of IRI sales volume data provided by Heinz.

*Grossed-up data for the week ended 8 January 2005 to the week ended 3 December 2005.

†Week ended 8 January 2005 to the week ended 24 September 2005.

Notes:

1. Columns may not sum to totals due to rounding.

2. HHI values are calculated from the underlying raw data, not the rounded market share figures shown in the table. The HHI indicated is calculated by treating the different Premier brands as if they were produced by separate manufacturers and other branded products as if they were produced by one manufacturer.

5.129 The increase in concentration in the relevant market indicated that the merger potentially raised concerns and provided a starting point for our assessment of the effect of the merger on competition.

Effect on buyer power

5.130 We considered whether the merger had changed the extent of buyer power, if any, in the retail baked beans market.

5.131 Our analysis of the factors relating to buyer power in the retail baked beans market is similar to that for the retail ketchup market as set out in Appendix I. We were told that, as a result of the strength of the Heinz brand, Heinz baked beans were a 'must stock' item for retailers and this would limit the power of retailers in negotiations with Heinz over their purchase. However, retailers told us in their responses to our retailer questionnaire that they tended to see Crosse & Blackwell and Branston beans as branded alternatives to Heinz and HP beans. We also noted that the market share of retailers' own-label beans was about 40 per cent by volume, indicating that many consumers do not have a strong preference for branded baked beans, a factor which might strengthen buyer power, if any.

5.132 We considered that the merger had not had any effect on the factors (identified in the previous paragraph) relating to the extent of buyer power, if any, in the retail baked beans market. Nor, as explained in paragraphs 5.114 to 5.116, did we consider that the merger had increased Heinz's portfolio power.

Effect on market entry

5.133 We considered whether Heinz's acquisition of the HP brand for baked beans could have the effect of increasing barriers to entry to the retail baked beans market.

- 5.134 Our analysis of market entry in the retail baked beans market was similar to that for the retail ketchup market as set out in Appendix I. As well as the requirements for entry set out in that appendix, entrants to the retail baked beans market would additionally need access to a canning facility in order to produce baked beans.
- 5.135 We noted that there had been a recent example of branded entry in that Premier had launched Branston-branded baked beans in October 2005.¹⁰⁵ We considered that the uncertainty over the future of HP beans generated by the merger had created an opportunity for branded market entry, although it appeared that this was a once-off opportunity and did not reflect a general lowering of barriers to entry.
- 5.136 Moreover, we also had recent evidence that retailers were reluctant to maintain more brands of baked beans on their shelves than they considered necessary. Many major retailers [X] had, with the launch of Branston beans, de-listed HP baked beans even though they remained available for the time being from the manufacturer. This supported the case that access to retailers' shelf space—and having sufficient financial resources to achieve a sustainable market share to justify this shelf space—would be a high barrier to branded entry.
- 5.137 We found that the most significant barrier to branded entry was the high sunk cost associated with developing and launching a new brand. We considered that this cost would not have increased as a result of the merger, given that Heinz already controlled the strong Heinz brand and the merger only gave Heinz control of the weaker HP brand. Nor did we consider that the merger would have any effect on the other factors we identified in paragraphs 5.134 to 5.136 relating to market entry. Consequently, although we considered that barriers to branded entry to the retail baked beans market were high, we did not form an expectation that the merger had increased these barriers.

Effect on prices

- 5.138 As set out in paragraph 5.51, we could not conclude that there were any competitive constraints operating between Heinz baked beans and HP baked beans prior to the merger. We therefore did not expect that the price of either Heinz baked beans or HP baked beans would rise as a result of the merger.

Effect on service, product choice, innovation and quality

- 5.139 Given the lack of evidence of significant competition in this market on the basis of non-price factors prior to the merger, we did not expect that the merger would lead to a loss of service, product choice, innovation or quality.

Conclusions on the effect of the merger on prices, service, product choice, innovation and quality

- 5.140 The considerations in paragraphs 5.138 and 5.139 led us to the expectation that the effect of the merger on the retail baked beans market would not be to lead to prices being higher than would otherwise have been the case, nor to a loss of service, product choice, innovation or quality.

¹⁰⁵As set out in paragraph 2.8, Premier produces HP-branded baked beans under a licence from HP which is due to expire in March 2006. Appendix I, paragraph 8, sets out the costs associated with Premier's development and launch of Branston beans.

Unilateral effects of the merger in the retail baked beans market

5.141 We concluded, therefore, that the merger has not resulted, and may not be expected to result, in an SLC in the retail baked beans market on the basis of unilateral effects.

The retail tinned pasta products market

Effect on concentration

5.142 Tables 17 and 18 set out the effect of the merger on the HHI value for the relevant market. These tables indicate that the relevant market is already highly concentrated, will become more so after the merger compared with the counterfactual, and, in particular, the HHI (based on market shares by value) will increase by over 1,300.

TABLE 17 **Retail tinned pasta products market concentration by value 2005 (plain tinned pasta only, without additional food items)**

	<i>Market share 2005 %</i>
Heinz	68.6
Premier	11.6
HP pasta	9.6
Crosse & Blackwell pasta	1.8
Branston pasta	0.2
Own label	19.1
Other branded	0.7
HP/Heinz combined	78.2
HHI pre-merger	5,167
HHI post-merger	6,484
Increase in HHI	1,317

Source: Heinz analysis of IRI data for the 52 weeks ended 31 December 2005 and CC analysis.

Notes:

1. Columns may not sum to totals due to rounding.
2. HHI values are calculated from the underlying raw data, not the rounded market share figures shown in the table. The HHI indicated is calculated by treating the different Premier brands as if they were produced by separate manufacturers and other branded products as if they were produced by one manufacturer.

TABLE 18 Retail tinned pasta products market concentration by volume 2005 (plain tinned pasta only, without additional food items)

	2005 annualized*		2005 pre-Branston†	
	Volume '000 kg	Share %	Volume '000 kg	Share %
Heinz	29,056	54.8	20,389	53.6
Premier	5,298	10.0	3,956	10.4
HP	3,657	6.9	2,655	7.0
Crosse & Blackwell	1,585	3.0	1,301	3.4
Branston	57	0.1	0	0.0
Own label	18,523	34.9	13,622	35.8
Other branded	159	0.3	39	0.1
HP/Heinz combined	32,713	61.7	23,044	60.6
Total	53,037		38,006	
HHI pre-merger		4,278		4,223
HHI post-merger		5,033		4,973
Increase in HHI		755		750

Source: CC analysis of IRI sales volume data provided by Heinz.

*Grossed-up data for the week ended 8 January 2005 to the week ended 3 December 2005.

†Week ended 8 January 2005 to the week ended 24 September 2005.

Notes:

1. Columns may not sum to totals due to rounding.

2. HHI values are calculated from the underlying raw data, not the rounded market share figures shown in the table. The HHI indicated is calculated by treating the different Premier brands as if they were produced by separate manufacturers and other branded products as if they were produced by one manufacturer.

5.143 The increase in concentration in the relevant market indicated that the merger potentially raised concerns and provided a starting point for our assessment of the effect of the merger on competition.

Effect on buyer power

5.144 We considered whether the merger had changed the extent of buyer power, if any, in the retail tinned pasta products market.

5.145 Our analysis of buyer power in the retail tinned pasta products market is broadly similar to that for the retail baked beans market as set out in paragraphs 5.130 to 5.132. Additionally, for pasta made in the shape of children's characters, we noted that Heinz told us that manufacturers' brands were less important than the 'endorser brand', ie the children's character in whose shape the pasta is made. We noted that the market share of retailers' own-label tinned pasta was about 35 per cent by volume, indicating that a reasonable proportion of consumers do not have a strong preference for branded tinned pasta; a factor which might strengthen buyer power, if any.

5.146 We considered that the merger had not had any effect on the factors (identified in the previous paragraph) relating to the extent of buyer power, if any, in the retail tinned pasta products market. Nor, as explained in paragraphs 5.114 to 5.116, did we consider that the merger had increased Heinz's portfolio power.

Effect on market entry

5.147 We considered whether Heinz's acquisition of the HP brand for tinned pasta products could have the effect of increasing barriers to entry to the retail tinned pasta products market.

- 5.148 We considered that the same analysis of barriers to entry to the retail baked beans market (see paragraphs 5.133 to 5.137) would apply to the retail tinned pasta products market. We noted that there had been a recent example of branded entry in that Premier had launched Branston-branded straight spaghetti and spaghetti loops in October 2005. For the same reasons as set out in paragraph 5.135 in relation to baked beans, we considered that the uncertainty over the future of HP tinned pasta generated by the merger had created a once-off opportunity for branded market entry, but did not reflect a general lowering of barriers to entry.
- 5.149 As for baked beans, we found that the most significant barrier to branded entry to the retail tinned pasta products market was the high sunk cost associated with developing a new brand. We considered that this cost would not have increased as a result of the merger, given that Heinz already controlled the strong Heinz brand and the merger only gave Heinz control of the weaker HP brand. Nor did we consider that the merger would have any effect on the other factors identified in the previous paragraph relating to market entry. Consequently, although we considered that barriers to branded entry to the retail tinned pasta products market were high, we did not form an expectation that the merger had increased these barriers.

Effect on prices

- 5.150 As set out in paragraph 5.61, we could not conclude that there were any competitive constraints operating between Heinz tinned pasta products and HP tinned pasta products prior to the merger. We therefore did not expect that the price of either Heinz tinned pasta products or HP tinned pasta products would rise as a result of the merger

Effect on service, product choice, innovation and quality

- 5.151 Given the lack of evidence of significant competition in this market on the basis of non-price factors prior to the merger, we did not expect that the merger would lead to a loss of service, product choice, innovation or quality.

Conclusions on the effect of the merger on prices, service, product choice, innovation and quality

- 5.152 The considerations in paragraphs 5.150 and 5.151 led us to the expectation that the effect of the merger on the retail tinned pasta products market would not be to lead to prices being higher than would otherwise have been the case, nor to a loss of service, product choice, innovation or quality.

Unilateral effects of the merger in the retail tinned pasta products market

- 5.153 We concluded, therefore, that the merger has not resulted, and may not be expected to result, in an SLC in the retail tinned pasta products market on the basis of unilateral effects.

The food service market

Effect on concentration

5.154 Table 19 sets out the effect of the merger on market shares and the HHI value in relation to the supply of brown sauce in the food service sector.¹⁰⁶ If there was a separate market for brown sauce in the food service sector, Table 19 indicates that this market would be highly concentrated, with the merger causing an HHI increment of nearly 1,000.

TABLE 19 Post-merger share of sales of brown sauce in the food service sector, 2004

	%
Heinz Branded	$\left[\begin{array}{c} \times \end{array} \right]$
Own label	
HP branded*	
Heinz/HP combined	
Own label	
Other	
HHI pre-merger†	2,662
HHI post-merger	3,650
Increase in HHI	988

Source: Heinz's estimates of market shares using AC Nielsen data and Heinz and HP sales data.

*HP told us that it did not supply any own-label brown sauce to the food service sector.

†The HHI indicated is an upper bound as it assumes that other branded products are produced by one manufacturer.

5.155 For brown sauce, Heinz and HP have an estimated share of sales of $\left[\times \right]$ per cent and $\left[\times \right]$ per cent respectively. These shares might be indicative of potential adverse effects arising from the merger. However, such effects might be mitigated by features of the market that constrain Heinz's behaviour.

5.156 The merger will also result in Heinz increasing its estimated share of supply of baked beans to the food service sector from $\left[\times \right]$ to $\left[\times \right]$ per cent. Data is not available to allow us to assess the effect of the merger on Heinz's share of supply of tinned pasta products to the food service sector.

Effect on customer switching, buyer power and market entry

5.157 We saw no evidence that the merger would have any affect on the factors identified in paragraphs 5.67 to 5.71 relating to customer switching, the extent of buyer power and ease of entry into the relevant food service market(s).

Effect on prices

5.158 If there was a competitive constraint between Heinz and HP prior to the merger (for example, if the presence of HP in a bidding situation resulted in Heinz placing a lower bid or vice versa) then a possible effect of the merger would be that Heinz would be able to increase its prices. However, as set out in paragraph 5.66, we found evidence that pre-merger competition between Heinz and HP in the food service sector was

¹⁰⁶As explained in paragraph 5.63, shares of supply for ketchup and barbecue sauce are not shown, as overlaps in ketchup and barbecue sauce are trivial in terms of HP's share of supply. Also, these figures should be treated with caution due to the way they have been estimated from the limited data available. Figures for the total size of the market are not presented for the same reason.

not strong. This was supported by the views of some of Heinz's competitors and an end-user customer:

- One competitor [X] told us that it was concerned that HP prices might fall as a result of the merger.
- Another competitor [X] told us that it considered price increases would be difficult to achieve following the merger.
- A further competitor [X] stated that, while the merger would enable Heinz to offer a wider range of products and increase its scale, it would make little difference to the level of competition it already faced from Heinz.
- A customer told us that it thought the acquisition would not affect its ability to buy competitively from Heinz.

5.159 We therefore did not expect that an effect of the merger would be an increase in prices in the food service sector.

Effect on Heinz's ability to bundle and/or tie

5.160 With the addition of the HP brand, Heinz might have an increased ability to bundle or tie its products in the food service sector.¹⁰⁷ For example, Heinz might tie its products such that customers wishing to purchase Heinz or HP branded sauces would have to obtain all their sauces from Heinz. The effect of any such tying might particularly be felt by customers wishing to purchase sauces for front-of-house use, where any benefits from having branded products available to consumers might be most perceptible. By tying its unbranded products with its HP-branded and Heinz-branded products, Heinz might be able to foreclose the market to competitors that do not produce brands for supply to the food service sector.

5.161 However, we considered it unlikely that the merger would increase Heinz's ability to bundle or tie its products. While the merger gave Heinz the second most popular brand of brown sauce in food service, Heinz already had the most popular brands of ketchup, brown sauce and barbecue sauce in the food service sector before the merger. We received no evidence that product tying had taken place in the past. Further, as set out in Appendix I, paragraph 16, we did not consider that brands were sufficiently important in the food service sector—whether for front-of-house or back-of-house use—to reduce the ease with which customers could switch to other suppliers, including those supplying unbranded products. We considered that Heinz and HP brands were unlikely to be strong enough in the food service sector to enable Heinz to foreclose the relevant market(s) to its competitors.

5.162 We therefore did not expect that an effect of the merger would be to increase Heinz's ability to bundle and/or tie its products in the food service sector.

Effect on service, product choice, innovation and quality

5.163 Given the lack of evidence that non-price rivalry on the basis of factors such as innovation was an important form of competition in this market, we did not expect that the merger would be likely to lead to a loss of service, product choice, innovation or quality.

¹⁰⁷Bundling occurs when a firm offers to sell only packages containing more than one unit of a product. Tying occurs when a firm offers for sale only packages containing different products.

Conclusions on the effect of the merger on prices, service, product choice, innovation and quality

- 5.164 The considerations in paragraphs 5.157 to 5.162 led us to the expectation that the effect of the merger on the food service market(s) for the supply of the relevant products would not be to lead to prices being higher than would otherwise have been the case, nor to loss of service, product choice, innovation or quality.

Unilateral effects of the merger in the food service sector

- 5.165 We concluded, therefore, that the merger has not resulted, and may not be expected to result, in an SLC in the food service market(s) for the supply of the relevant products on the basis of unilateral effects.

Coordinated effects

- 5.166 In accordance with paragraph 3.42 of the CC's merger guidelines, we considered whether the merger would maintain or exacerbate any existing coordinated effects or increase the likelihood of coordinated effects in the relevant markets.
- 5.167 We found no evidence of coordinated effects, and no parties raised any concerns with us as to their possible existence. We concluded, therefore, that the merger may not be expected to result in an SLC in any of the relevant markets on the basis of coordinated effects.

6. Findings

- 6.1 On the basis of paragraphs 5.109, 5.118, 5.126, 5.140, 5.152 and 5.163 we do not expect that the acquisition of HP by Heinz will lead to prices being higher than would otherwise be the case, nor to a loss of service, product choice, innovation or quality in the retail ketchup market, the retail brown sauce market, the retail barbecue sauce market, the retail baked beans market, the retail tinned pasta products market or the relevant food service market(s). On the basis of paragraphs 5.110, 5.119, 5.127, 5.141, 5.153, 5.164 and 5.166, we conclude that the acquisition of HP by Heinz has not resulted, and may not be expected to result, in an SLC in those markets.