

Competition Commission Acceptance of Undertakings No. 7 of 2004

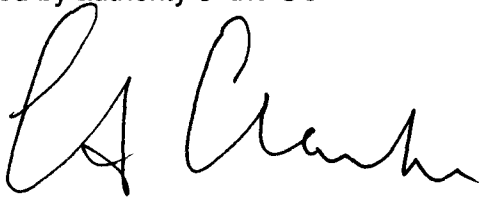
**IN THE MATTER of a reference to the Competition Commission
dated 12 October 2004 concerning the acquisition by
Napier Brown Foods plc of James Budgett Sugars Ltd**

Whereas on 12 October 2004 the Office of Fair Trading, in exercise of its duty under section 22 of the Enterprise Act 2002 ('the Act') referred to the Competition Commission ('the CC') the completed acquisition by Napier Brown Foods plc of James Budgett Sugars Ltd:

And whereas Napier Brown Foods plc has agreed to give undertakings to the CC under section 80 of the Act for the purpose of preventing pre-emptive action, to ensure that no action is taken which might prejudice the reference or impede the taking of any action by the CC under Part 3 of the Act which may be justified by the CC's decisions on the reference:

Now the CC pursuant to section 80(2) of the Act hereby accepts the undertakings, a copy of which is set out in the attached Annex below, and accordingly the undertakings come into force in accordance with section 80(5) of the Act:

Signed by authority of the CC



Christopher Clarke
25 November 2004

**COMPLETED ACQUISITION BY NAPIER BROWN FOODS PLC OF JAMES
BUDGETT SUGARS LTD**

**UNDERTAKINGS GIVEN BY NAPIER BROWN FOODS PLC TO THE
COMPETITION COMMISSION PURSUANT TO SECTION 80 OF THE
ENTERPRISE ACT 2002**

Whereas, on 12 October 2004, the OFT made the reference to the CC under section 22 of the Act concerning the completed acquisition by Napier Brown Foods PLC of James Budgett Sugars Ltd,

And whereas the CC wishes to ensure that no action is taken pending final determination of the reference which might prejudice that reference or impede the taking of any action by the CC under Part 3 of the Act which might be justified by the CC's decisions on the reference,

And whereas the reference has not been finally determined in accordance with section 79(1) of the Act,

Now NBF hereby gives to the CC the following undertakings pursuant to section 80 of the Act for the purpose of preventing pre-emptive action

Management of the JBS business until determination of proceedings

- 1 Except with the prior written consent of the CC, NBF undertakes that it will not during the specified period, take any action which might prejudice the reference to the CC or impede the taking of any action under the Act which may be justified by the CC's decisions on the reference and in particular, take any action which might
 - (a) lead to the integration of the JBS business with the NBF business,
 - (b) transfer the ownership or control of the JBS business, or
 - (c) otherwise impair the ability of the JBS business to compete independently in any of the markets affected by the acquisition

- 2 Further and without prejudice to the generality of paragraph 1, NBF will at all times during the specified period, procure that except with the prior written consent of the CC
 - (a) the JBS business is carried on separately from the NBF business and JBS's separate sales or brand identity is maintained; For the avoidance of doubt, this shall include JBS bidding for business independently of NBF and in competition with it as JBS would have done in the ordinary course of business had it not been acquired by NBF
 - (b) the JBS business is maintained as a going concern and sufficient resources are made available for the development of the JBS business on the basis of its pre-merger business plans, [

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- (c) **except in the ordinary course of business, no substantive changes are made to the organisational structure of the JBS business or to the management responsibilities within the JBS business,**
- (d) **the nature, description, range and quality of goods and services currently supplied in the United Kingdom by each of the two businesses are maintained and preserved, [**
✂]
- (e) **except in the ordinary course of business for the separate operation of the two businesses, [**
]✂
- (i) **the assets of the JBS business are maintained and preserved, including facilities and goodwill,**
- (ii) **none of the assets of the JBS business are disposed of, and**
- (iii) **no interest in the assets of the JBS business is created or disposed of;**
- (f) **there is no integration of the information technology of the two businesses, and the software and hardware platforms of the JBS business shall remain essentially unchanged, except for routine changes and maintenance,**
- (g) **no key staff are transferred between the two businesses,**
- (h) **all reasonable steps are taken to encourage all key staff to remain with the JBS business, and**
- (i) **no business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the two businesses, shall pass, directly or indirectly, from JBS (or any of its employees, directors, agents or affiliates) to NBF (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business and on the basis that**
- (i) **any such information is provided solely to the Managing Director and Finance Director of NBF who will be made aware of the confidential and commercially sensitive nature of the information and that it must be used solely for the purposes of preserving the economic viability, competitiveness and marketability of the JBS business until final determination, and**
- (ii) **should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the JBS business and/or destroyed**
- (j) **For the purposes of paragraph 2(i) it shall not be regarded as strictly necessary in the ordinary course of business for customer/supplier specific information concerning volumes, prices, and timing in respect**

of proposed or actual contracts or any equivalent arrangements for the sale or purchase of sugar or information concerning formal, informal and indicative bids to be passed from JBS to NBF or *vice versa* but JBS will be permitted to pass to NBF such aggregated financial management accounting information as is required to enable NBF to comply with its duties to shareholders and with its reporting obligations to its bankers as set out in the agreement between NBF and Royal Bank of Scotland dated 15 December 2003 as long as such management accounting information does not include such customer-specific information

- 3 Except with the prior written consent of the CC, NBF will use all reasonable endeavours to procure that, except in the ordinary course of business for the operation of each of the NBF business and the JBS business, the assets of the JBS business are maintained and preserved, including facilities and goodwill

Compliance

- 4 NBF shall procure that each of its subsidiaries complies with these undertakings as if it had given them
- 5 NBF shall forthwith provide to the OFT and the CC such information or statement of compliance as either of them may from time to time require for the purposes of monitoring compliance by NBF and its subsidiaries with these undertakings. In particular, on the first working day of each month commencing 1st December 2004, NBF shall provide a monthly statement to the CC confirming compliance with these undertakings signed by the Chief Executive Officer of NBF, and the Managing Director of JBS or any person exercising the equivalent functions in the JBS business
- 6 NBF shall comply insofar as it is able with such written directions as the CC may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings

Interpretation

- 7 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament
- 8 For the purposes of these undertakings

"the acquisition" means the acquisition by NB of JBS, completed on 7 July 2004,

"the Act" means the Enterprise Act 2002,

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

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

"the CC" means the Competition Commission,

"control" includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise, and in the case of a body corporate, a person shall for the purposes of these undertakings be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings,

"the decisions" means the decisions of the CC on the questions which it is required to answer by virtue of section 35 of the Act,

"key staff" means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business,

"the OFT" means the Office of Fair Trading,

"the ordinary course of business" means matters connected to the day to day supply of *[goods and/or services]* by JBS and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of JBS,

"the specified period" means the period beginning on the date of these undertakings and terminating when the reference is finally determined in accordance with sections 79(1) and (2) of the Act,

"subsidiary", unless otherwise stated, has the meaning given by section 736 of the Companies Act 1985 (as amended),

"the two businesses" means the NBF sugar business and the JBS business,

"NBF" means Napier Brown Foods plc,

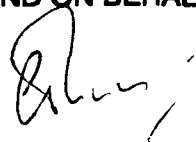
"the NBF sugar business" means the business of NBF and its subsidiaries carried on as at 7 July 2004,

"JBS" means James Budgett Sugars Ltd;

"the JBS business" means the business of JBS and its subsidiaries carried on as at 7 July 2004, and

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

FOR AND ON BEHALF OF NAPIER BROWN FOODS PLC



Signature

Signature

C. THOMAS

Name

Name

Man 'Jm'

Title

Title

22/11/09

Date

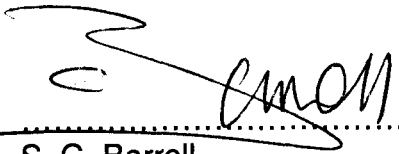
Date

**NAPIER BROWN FOODS PLC
BOARD RESOLUTION**

**Monday 22nd November 2004
10:00 a.m. at International House
1 St. Katharine's Way, London E1W 1XB**

1. Competition Commission Undertakings

The undertakings required by the Competition Commission were tabled. These were approved and C.O.Thomas was authorised to sign on behalf of the Company.

A handwritten signature in black ink, appearing to read 'S. G. Barrell', is written over a horizontal dotted line. The signature is stylized and cursive.

S. G. Barrell
Company Secretary