



News Release

68/04

26 November 2004

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

Statement of issues

The Competition Commission (CC) has today published an issues statement as part of its inquiry into the completed acquisition by Napier Brown Foods Plc of James Budgett Sugars Ltd.

The issues statement follows the initial process of gathering information, views and evidence and identifies clearly for all interested parties the specific questions and areas the inquiry will be examining. These will form the basis of hearings with Napier Brown.

The inquiry was referred by the Office of Fair Trading (OFT) on 12 October and the CC is seeking to establish whether the merger has resulted, or may be expected to result, in a substantial lessening of competition within the market for the supply of sugar to industrial users in the UK. The CC is required to publish its final report by 28 March 2005.

The full issues statement is attached at the end of this release and raises issues concerning:

- (a) market definition;
- (b) assessment of the competitive effects of the merger;
- (c) the counterfactual—what would be likely to happen in the absence of the merger;
and
- (d) relevant customer benefits that might arise as a result of the merger.

If the inquiry Group considers that the merger may be expected to result overall in a substantial lessening of competition, it will consider whether and, if so, what remedies might be appropriate and will issue a further statement at a later date. Any customer benefits may be taken into account in determining remedies.

The CC has yet to reach any conclusions, and will not do so until it has discussed these issues with Napier Brown. The purpose of making the statement of issues public is to inform all interested parties and give them an opportunity to raise any further points with the CC. Information about the reference is available on the CC's web site at:

www.competition-commission.org.uk/inquiries/current/napierbrown/index.htm

Anyone wishing to comment on any of the issues set out below is requested to do so by 10 December 2004 in writing to:

Damien Kelly, Inquiry Secretary
Napier Brown/James Budgett merger inquiry
Competition Commission
Victoria House
Southampton Row
LONDON
WC1B 4AD

Or email: damien.kelly@competition-commission.gsi.gov.uk.

The CC will now continue to gather evidence in this inquiry and will publish its provisional findings according to the administrative timetable available on the CC's web site.

Notes for editors

1. The Enterprise Act 2002 empowers the OFT to refer to the CC completed or proposed mergers for investigation and report which create or enhance a 25 per cent share of supply in the UK (or a substantial part thereof) or where the UK turnover associated with the enterprise being acquired is over £70 million.
2. The Napier Brown/James Budgett inquiry group consists of five members: Christopher Clarke, (Group Chairman) Tony Hadfield, Peter Stoddart, Catherine Waddams and Martyn Webster.
3. The CC has a 24-week period in which it is required to publish its report, which may be extended by no more than eight weeks if it considers that there are special reasons why the report cannot be published within that period.
4. Further information on the CC and its procedures, including its policy on the provision of information and the disclosure of evidence, can be obtained from its web site at www.competition-commission.org.uk.
5. Enquiries should be directed to Francis Royle on 020 7271 0242 (email francis.royle@competition-commission.gsi.gov.uk) or Rory Taylor on 020 7271 0398 (email rory.taylor@competition-commission.gsi.gov.uk).

The issues that the CC intends to consider are:

Market definition

- (a) The appropriate definition of the relevant markets affected by the acquisition, and in particular:
- (i) Whether white granulated sugar, bulk liquid sugar, and other types of sugar including speciality sugars form a single product market or constitute separate relevant markets.
 - (ii) Whether differences between sugar derived from cane and sugar derived from beet are of sufficient importance to some customers for them to constitute separate relevant markets.
 - (iii) Whether alternatives such as glucose and artificial sweeteners, or specific types of sweetener such as 'isoglucose' and 'inulin syrup', form part of the same relevant product market(s).
 - (iv) Whether the supply of sugar to industrial customers, to retail customers and to supermarkets for sale under their own label, form a single product market or, constitute separate product markets.
 - (v) If the supply of sugar to industrial customers constitutes a separate product market, whether it is most appropriately distinguished in terms of packaging size, the relative importance of recognized brands or otherwise.
 - (vi) Whether the bidding process and the ability of sugar suppliers to charge different prices to different customers results in separate markets for different types or sizes of customer, or segments within markets that need to be considered separately.
 - (vii) Whether the geographic scope of the relevant market(s) is Great Britain, the UK including Northern Ireland, or wider than the UK.

Assessment of the competitive effects of the merger

- (b) The potential competitive effects of the merger within the market(s) identified, taking into account the impact on competition of the EU sugar regime, and in particular:
- (i) How, and to what extent, NBF and JBS competed in the supply of the relevant products prior to the acquisition.
 - (ii) Whether, and to what extent, NBF and JBS face actual or potential competition in the supply of the relevant markets from British Sugar plc (British Sugar) and from Tate & Lyle PLC (Tate & Lyle), including the role of those companies in determining prices in the relevant markets, their role as both suppliers and competitors to NBF and JBS, and their ability to use benefits of vertical integration in competing with resellers.
 - (iii) Whether, and to what extent, NBF and JBS provide a competitive constraint on British Sugar and Tate & Lyle and whether the merger will lead to the ability of the merged company to compete more effectively with those companies (whether through its ability to obtain sugar at lower prices, efficiency gains or greater ability to obtain sugar from other sources) enhancing rivalry among the remaining firms.

- (iv) Whether, and to what extent, NBF and JBS face actual or potential competition in the supply of the relevant markets from other resellers of sugar, including food and ingredients wholesalers and larger users selling sugar to other users, and the significance of any constraints on the ability of such resellers to obtain sugar from British Sugar, Tate & Lyle, NBF, JBS or other sources or to obtain 'ex works' prices from British Sugar or Tate & Lyle.
- (v) Whether, and to what extent, NBF and JBS face actual and/or potential competition in the supply of the relevant markets from sugar producers¹ in other parts of the EU or elsewhere, including the scale of imports, the mechanisms through which these are made available to customers and the nature and importance of barriers including constraints arising from the operation of the EU sugar regime.
- (vi) Whether, and to what extent, NBF and JBS face actual and/or potential competition in the supply of the relevant markets from other sources (for example, as the result of the activities of sugar brokers).
- (vii) Whether there are significant barriers to entry or to expansion by other suppliers, whether arising from features of the EU sugar regime or incumbency advantages, including factors such as a need for volume in order to obtain supplies from sugar producers at competitive rates, the difficulty of competing with those producers in the absence of an established customer base or costs of switching supplier.
- (viii) The significance of previous decisions by Competition Authorities and Courts in relation to sugar, including the relevance, if any, of undertakings given by British Sugar to the European Commission in 1986.
- (ix) Whether, and to what extent, there are customers of NBF and JBS for whom those merchants are the only realistic source of supply of sugar.
- (x) The role of 'bidding processes' in the relevant markets, including the effect of price discrimination on competition and the extent to which decisions by suppliers on whether or not to quote constrains the options available to customers.
- (xi) Whether any potential lessening in competition might be offset by the buying power of some customers.
- (xii) Whether the merger is likely to lead to a rise in prices, a reduction in service, support or choice for some or all customers or a reduction in innovation (non-coordinated effects).
- (xiii) Whether the merger is likely to create or increase the likelihood of coordination between suppliers of sugar, so as to lead to a rise in prices, or a reduction in service, support or choice for some or all customers or a reduction in innovation (coordinated effects).
- (xiv) The impact on the above assessments of possible changes to the EU sugar regime in combination with other relevant international arrangements, such as that under which Least Developed Countries export to the EU (the 'Everything But Arms' initiative), including the likely timing of those changes and impacts.

¹ In this statement "sugar producers" is used to refer to sugar beet processors and sugar cane refiners collectively.

Counterfactual

- (c) What would have happened if the merger had not occurred (the counterfactual), and in particular:
- (i) Whether the degree of competition provided by JBS to NBF would have continued at the same level.
 - (ii) The ability of JBS to survive as an independent company in the medium to longer term.
 - (iii) The alternatives open to JBS and its owners, including whether the business could have been sold or otherwise transferred to someone other than NBF.

Remedies

- (d) Should the Group conclude that the proposed merger may be expected to result in a substantial lessening of competition, it will consider whether and, if so, what remedies might be appropriate, and will issue a further statement at a later date.

Relevant customer benefits

- (e) In deciding the question of remedies, should this be necessary, the Group may have regard to any relevant customer benefits. The Group therefore wishes to explore whether or not any significant customer benefits might arise as a result of the merger, and if so what these benefits are likely to be. The Group is interested in whether the merger would be likely to lead to lower prices, higher quality, greater innovation or a greater choice of service.