

Terms of reference and conduct of the inquiry

1. On 7 July 2003 the DTI sent the following reference to the CC:

Whereas it appears to the Secretary of State that it is or may be the fact that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a merger situation qualifying for investigation, as defined in section 64(8) of the Fair Trading Act 1973 (“the Act”) in that:

- (a) enterprises carried on by or under the control of Arla Foods amba will cease to be distinct from enterprises carried on by or under the control of Express Dairies plc (one at least of which is carried on in the United Kingdom); and
- (b) the value of the assets to be taken over exceeds £70 million.

Whereas the said arrangements as described in paragraph (a) if carried out will result in a concentration with a Community dimension within the meaning of Council Regulation (EEC) no 4064/89 of 21 December 1989 on the control of concentrations between undertakings (“the Regulation”);

Whereas the Commission of the European Communities has, pursuant to Article 9(3)(b) of the Regulation, referred the case to the competition authorities of the United Kingdom;

Whereas the old law as defined in paragraph 13(10) of Schedule 24 to the Enterprise Act 2002 applies to this case by virtue of paragraph 13(8) of the Schedule as notification to the European Commission under the Regulation occurred on 16 April 2003 which was before the appointed day within the meaning of paragraph 19(1) of the Schedule:

Now, therefore, the Secretary of State, in exercise of her powers under sections 64, 69 and 75 of the Act, hereby refers to the Competition Commission (“the Commission”) for investigation and report within a period ending on 24 September 2003, the following questions:

- (i) whether arrangements are in progress or in contemplation as described in paragraph (a) above which, if carried into effect, will result in the creation of a merger situation qualifying for investigation;
- (ii) if events so require, whether the actual results of those arrangements are the creation of such a situation; and
- (iii) if so, in either case, whether the creation of that situation may be expected to operate or (if events so require) operates against the public interest.

In relation to the question in paragraph (i) above the Commission shall exclude from consideration one of paragraphs (a) and (b) of section 64(1) of the Act if they find the other satisfied.

In relation to the question in paragraph (iii) above, the Commission shall limit their consideration to such elements in, or possible consequences of, the creation of that situation which relates to the market for supply of fresh processed milk in the United Kingdom.

7 July 2003

(signed) DAVID MINER
An official of the Department of Trade and Industry

2. The composition of the Group of members responsible for this inquiry and report is indicated in the list of members in the preface.

3. Notices inviting interested parties to submit evidence to the CC were placed in *Retail Week* and *Farmers Guardian* and on the CC web site. In addition, we sought evidence and views from milk processors, milk producers, retailers, wholesale food distributors, producers' representatives, local authorities, trade associations and other interested parties. Evidence from such parties (which includes evidence submitted to the European Commission Merger Task Force on Arla Foods/Express Dairies Case No COMP/M.3130) is summarized in Chapter 6. We held hearings with nine of them.

4. We received written evidence from Arla and Express and the companies attended two hearings.

5. Members of the Group, accompanied by staff, went to Chadwell Heath, Droitwich, Leeds and Leicester to visit milk processing plants.

6. In July 2003 we sent an Issues Letter to Arla and Express and subsequently published an Issues Statement for public consultation. This is reproduced at Appendix 2.1. In August 2003 we sent a Remedies Letter to Arla and Express and published a Remedies Statement for public consultation.

7. Some of the evidence obtained during the course of our inquiry was of a confidential nature and our report contains only such information as we consider necessary for an understanding of our conclusions.

8. We should like to thank all those who helped us in our inquiry, particularly Arla and Express.