

Terms of reference and conduct of the Inquiry

Terms of reference

1. Whereas in exercise of its duty under section 22(1) of the Enterprise Act 2002 (“the Act”) to make a reference to the Competition Commission (“the CC”) in relation to a completed merger the Office of Fair Trading (“the OFT”) believes that it is or may be the case that-
 - (a) a relevant merger situation has been created in that:
 - (i) enterprises carried on by or under the control of Napier Brown Foods plc have ceased to be distinct from enterprises carried on by or under the control of James Budgett Sugars Ltd; and
 - (ii) the value of the turnover in the United Kingdom of the enterprises carried on by or under the control of James Budgett Sugars Ltd exceeds £70 million; and
 - (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services, namely the supply of sugar to industrial users in the United Kingdom.
2. Now, therefore, the OFT, in exercise of its duty under section 22 of the Act, hereby refers to the CC, for investigation and report within a period ending on **28 March 2005**, the following questions in accordance with section 35 of the Act-
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
3. In relation to the question whether a relevant merger situation has been created, the CC shall exclude from consideration one of the subsections (1) and (2) of section 23 of the Act if they find that the other is satisfied.

(signed) Vincent Smith

Director of Competition Enforcement, Office of Fair Trading
12 October 2004

Conduct of inquiry

1. We placed a notice inviting interested parties to submit evidence to the CC in *British Sugar, Catering and Licensing Review, Convenience Store, The Grocer* and *International Sugar Journal*. We sought evidence from customers and other sugar resellers, UK and EU producers, government departments, trade associations,

consumer bodies and other interested parties. We also posted on the CC web site¹ an invitation to express views to us.

2. We received evidence in written and oral submissions and in response to the NOP customer survey. Non-sensitive submissions that we received from third parties can be found on the CC web site, together with a summary of points made in oral evidence. We held hearings with 13 third parties.
3. Members of the Group, accompanied by staff, visited NBF Head Office in London and JBS Head Office in Chelmsford, Essex.
4. We received written evidence from NBF and JBS. A non-sensitive version of their submission can be found on the CC web site. In addition, the companies attended separate hearings.
5. In the course of our inquiry we sent to NBF, and published on the CC web site at the relevant time, a Statement of Issues; a Notice of Provisional Findings and the non-sensitive version of our provisional findings report.
6. We should like to thank all those who assisted in our inquiry.
7. A copy of this report has been placed on the CC web site.

¹www.competition-commission.org.uk.