

Terms of reference and conduct of the inquiry

Terms of reference

1. On 13 September 2006 the OFT sent to the CC a merger reference which was revised on 12 December 2006 (in order to clarify the merging entities, in particular to include a reference to Clifford Kent, and making some minor typographical changes). The following sets out the revised 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) Noble Foods Limited ('Noble Foods'), created for the purposes of this merger, has acquired the majority of the shares in Deans Food Group Limited ('Deans') and Clifford Kent Holdings Limited (Clifford Kent) parent company of Stonegate Farmers Limited ('Stonegate') such that enterprises carried on by or under the control of Deans have ceased to be distinct from enterprises carried on by or under the control of Clifford Kent; and
 - (ii) and as a result the condition specified in section 23(3) of the Act prevails or prevails to a greater extent with respect to the supply in the UK of shell eggs and the supply of processed egg; and
 - (b) the creation of that situation has resulted in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services including the supply of shell eggs, the supply of shell eggs to retailers and the supply of liquid egg.
 2. Now, therefore, the OFT, in exercise of its duty under section 22(1) of the Act, hereby refers to the CC, for investigation and report within a period ending on 27 February 2007, 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.
 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**
Senior Director Competition
Office of Fair Trading

Conduct of inquiry up to provisional findings

2. On 13 September 2006, we adopted the interim undertakings agreed by the OFT with Noble Foods (and others) for the purpose of preventing pre-emptive action. Because of continuing concerns about the integration of the merged businesses, the original undertakings were replaced by new interim undertakings on 20 November 2006, which have remained in force for the duration of the inquiry. A monitoring trustee was also appointed on 29 November 2006 to monitor the compliance with the interim undertakings, in particular the degree of integration of the merged businesses, with the purpose of preventing action that might prejudice the inquiry or the taking of remedial action following the inquiry should the CC conclude that the merger may be expected to result in an SLC. The monitoring trustee has remained appointed during the course of the inquiry.
3. Notices inviting interested parties to submit evidence to the CC were placed in *Poultry World*, *The Grocer* and *Retail Week*.
4. An invitation to express views was posted on the CC website at www.competition-commission.org.uk/inquiries/ref2006/stonegate/index.htm. In addition, evidence was sought from third parties including rival egg packers and suppliers, farmers, retailers, food manufacturers, catering companies, egg wholesalers, importers, trade associations and trades unions.
5. Written evidence and oral submissions were received. Non-sensitive submissions received from third parties can be found on the CC website together with summaries of points made in oral evidence. Hearings were held with 12 third parties prior to publication of our provisional findings.
6. We received written evidence from Noble Foods. A non-sensitive version of its main submission can be found on the CC website. Two hearings were held with Noble Foods, Deans and Stonegate prior to publication of our provisional findings.
7. The administrative timetable for the inquiry was published on the CC website together with details of the group of CC members conducting the inquiry on 6 October 2006. It was amended on 15 February 2007.
8. Members of the group, accompanied by staff, visited cage (intensive) egg and free-range egg poultry farms operated by or under contract to Noble Foods, a shell egg packing facility operated under contract to Noble Foods and a liquid egg processing plant owned and operated by Framptons.
9. In the course of the inquiry the CC sent Noble Foods a Statement of Issues and a number of working papers. The Statement of Issues has been published on the CC website.
10. A notice of provisional findings, a summary of provisional findings and a notice of possible remedies were published on 5 January 2007. A non-sensitive version of the provisional findings was published on our website on 11 January 2007. We invited further evidence from both Noble Foods and third parties. A remedies working paper was published on 5 March 2007. A number of hearings were held with third parties and three hearings were held with Noble Foods, Deans, and Stonegate to discuss remedies.
11. On 9 February 2007 the members of the group decided to invite comments from the parties on whether the reference period should be extended under section 39(3) of the Act.

12. Having taken account of comments received from the parties on 15 February 2007 the group decided that the reference period should be extended by eight weeks to 24 April 2007.
13. The CC would like to thank all those who have assisted in the inquiry.
14. A copy of this report has been placed on the CC website.