

Statement of issues

The issues that the CC intends to consider are:

Market definition

- (a) The appropriate definition of the economic markets affected by the merger (the 'relevant markets'), in particular:
- (i) whether there is one product market for 'cold, thick, table sauces' (eg tomato ketchup, brown sauce, barbecue sauce) or whether there are separate product markets for some or all thick sauces, which may possibly also include thin sauces (eg soy, Worcester);
 - (ii) the extent of the product market(s) for tinned baked beans and for tinned pasta products and whether any other foods are in such product market(s);
 - (iii) whether there are separate markets for food service customers (for example, catering establishments, wholesalers selling to catering establishments) and retail sector customers (eg grocery stores, 'cash & carry' wholesalers). If there are such separate markets, whether within the food service market there are separate sub-markets for 'front of house' (ie provision separately to the customer at the table) and 'back of house' (ie where the sauce etc is added to the product before serving to the customer) usage;
 - (iv) whether the leading brands for tomato ketchup, brown sauce, barbecue or other thick sauces, tinned baked beans and tinned pasta are in the same product market(s) as other brands and/or 'own label' versions of these products; and
 - (v) whether the geographic scope of the relevant market(s) is/are national.

Assessment of the competitive effects of the merger

- (b) The potential competitive effects of the merger within the relevant market(s), in particular:
- (i) how, and to what extent, Heinz and HP Foods competed in the supply of products in each of the relevant markets prior to the merger, for example whether the supply of products to food service (catering) customers was characterized by competitive bidding for contracts;
 - (ii) whether there are significant barriers to entry or expansion in each of the relevant market(s), whether the merger has raised or lowered any such barriers or may be expected to do so and, hence, the likelihood of future entry or expansion, taking into account the implications of recent market developments including the introduction of new branded products such as Branston Baked Beans;
 - (iii) whether, and to what extent, Heinz and HP Foods face actual and/or potential competition both pre- and post-merger from manufacturers in the supply to the relevant market(s) where those manufacturers are located in the UK, in other parts of the EU or elsewhere;

- (iv) whether, and to what extent, Heinz and HP Foods face actual and/or potential competition both pre- and post-merger from other brands and/or own label products in the supply to the relevant market(s), including the role of Heinz, HP Foods and own-label suppliers in determining prices;
- (v) the nature and extent of any countervailing buyer power held by either retail sector customers or food service customers, including the role of price and shelf space negotiations, promotions, the frequency of actual or threatened product delisting, barriers to customers switching between one supplier and another in the relevant market(s), and whether any of these factors varies by type and size of customer or distribution channel;
- (vi) whether there are any portfolio effects (eg bundling of products) arising from the range of 'must stock' and other products supplied by Heinz and HP Foods both pre- and post-merger;
- (vii) the effect on competition of the structure of prices between suppliers and their customers (ie retail sector customers and food service customers), and whether this varies by type and size of customer or distribution channel;
- (viii) the relative importance of price and non-price factors (such as quality, service level, product specification, reliability of supply, innovation and consumer demand for 'must stock' products) to competition in the relevant market(s);
- (ix) whether, and to what extent, the merger may be expected to lead to prices higher than would otherwise be the case, a reduction in service for some or all customers or a reduction in innovation in the relevant market(s) (non-coordinated effects);
- (x) whether the merger may be expected to increase the likelihood of coordinated effects or make existing coordination, if any, more sustainable or more effective in the relevant market(s) so as to lead to prices higher than would otherwise be the case, a reduction in service for some or all customers, or a reduction in innovation in the relevant market(s) (coordinated effects);
- (xi) whether the merger may be expected to give rise to and/or intensify existing vertical effects, if any; and
- (xii) whether the merger is likely to give rise to efficiency gains, and if so, whether these will increase competition in the relevant market(s) or have other benefits.

Counterfactual

- (c) What would have happened in the short to medium term had the merger not occurred (the counterfactual), and in particular:
 - (i) whether HP would have remained a competitor to Heinz in some or all of the relevant market(s);
 - (ii) whether the strength of the competition offered by HP Foods' brands in the relevant market(s) would have changed over this time period;
 - (iii) whether, and if so when, Heinz would have entered the supply of brown sauce to retail sector customers; and

- (iv) the continuation of the licence for manufacture of baked beans and tinned pasta products under the HP brand to an independent third party.

Remedies

- (d) Should the Group conclude that the completed 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) Should it be necessary to decide the question of appropriate remedies, the Group may have regard to any relevant customer benefits. Relevant customer benefits are lower prices, higher quality, or a greater choice of services, or greater innovation in any market in the UK. The Group therefore wishes to explore whether or not any relevant customer benefits might arise as a result of the merger, and if so what these benefits are likely to be.

Developments following the merger transaction

The CC also seeks views on whether there are any reasons why it should not give its consent under section 77 of the Enterprise Act 2002 to the sale, before the end of the inquiry, of the ethnic food business of HP Foods Ltd, as requested by Heinz following an agreement on 20 October 2005 for the sale of that business.