

Terms of reference and conduct of the inquiry

Terms of reference

1. On 26 October 2005 the OFT sent us the following 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 Commission”) 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 H J Heinz Company will cease to be distinct from enterprises carried on by or under the control of HP Foods Limited, HP Foods Holdings Limited and HP Foods International Limited; and
 - (ii) the value of the turnover in the United Kingdom of the enterprises carried on by or under the control of HP Foods Limited, HP Foods Holdings Limited and HP Foods International 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 and services, namely the markets for the supply of tomato ketchup, the supply of brown sauce, the supply of barbecue sauce, and the supply of tinned baked beans and tinned pasta products to retail customers in the United Kingdom.
 2. Now, therefore, the OFT, in exercise of its duty under section 22 of the Act, hereby refers to the Commission, for investigation and report within a period ending on 11 April 2006, 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 will be created, the Commission 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
26 October 2005

Conduct of the inquiry

2. We placed a notice inviting interested parties to submit evidence to the CC in *Daily Mail*, *The Guardian*, *Financial Times*, *Convenience Store*, *Retail Week*, *The Grocer* and *Independent Retail News*. In addition, we sought evidence from competitors, suppliers, manufacturers, major grocery retailers, cash and carry warehouses, trade associations, trade unions and appropriate government departments.
3. The administrative timetable for the inquiry was published on the CC website¹ together with details of the Group members conducting the inquiry at the start of the inquiry in November 2005. It was amended in January 2006.
4. Members of the Group, accompanied by staff, visited the premises of HP Foods at Aston and an ethnic supermarket at Nechells, Birmingham.
5. Non-sensitive written submissions that we received from third parties can be found on the CC website, together with summaries of key arguments and views from third parties. We held hearings with 13 third parties. We also sent out questionnaires and information requests to major grocery retailers and manufacturers.

¹www.competition-commission.org.uk.

6. We received written evidence from Heinz. A non-sensitive version of its main submission was published on the CC website. In addition, Heinz attended two hearings.

7. In the course of our inquiry we sent Heinz and published on the CC website at the relevant time the acceptance of the interim undertakings, a Statement of Issues and the CC's consent to the sale of HP's 'Ethnic Foods Business' to ABF. We also sent Heinz a copy of our non-confidential version of the provisional findings.

8. We should like to thank all those who assisted in our inquiry.

9. A copy of this provisional findings report has been placed on the CC website.