

Summary of decisions and reports¹

S&W Berisford Limited and British Sugar Corporation Limited: A report on the Proposed Merger HC 241, March 1981

- Proposed acquisition of British Sugar, the largest sugar producer in Great Britain by S&W Berisford, the largest merchant.
- The report recognizes that there is limited competition in the British market for sugar, but identifies two kinds of competition: the threat of imports of sugar from continental Europe limits the price of sugar in Great Britain; sugar bought by merchants from Tate & Lyle and British Sugar for resale on their own account.
- The MMC recommended to the Secretary of State for Trade the following remedies: to cease trading in Tate & Lyle sugar and sugar products, save for the acquisition of sugar for incorporation in Berisford's or British Sugar's own products; to maintain British Sugar as a separate subsidiary.

Tate & Lyle PLC and Ferruzzi Finanziaria SpA and S & W Berisford PLC: A report on the existing and proposed merger, February 1987

- Tate & Lyle and Ferruzzi Finanziaria SpA involved in proposals for some form of merger with S&W Berisford PLC (Berisford) with the aim of controlling Berisford's subsidiary, British Sugar.
- With respect to the Tate & Lyle reference, the MMC concluded that the acquisition may be expected to operate against the public interest. The MMC could not recommend any action to remedy or prevent the particular effects adverse to the public interest. The MMC recommended that the proposed acquisition should not be allowed and provided a further recommendation that the Government address the structural problems in the CAP sugar regime which put Tate & Lyle at a serious disadvantage.
- With respect to the Ferruzzi reference, the MMC concluded that the merger situation may be expected to operate against the public interest. The MMC could not find any remedies which would be effective in removing the perceived detriments were the merger to go ahead. The MMC recommended to the Secretary of State for Trade and Industry that the proposed acquisition by Ferruzzi of 70 per cent of the issued share capital of British Sugar should not be allowed.

Napier Brown Foods PLC v British Sugar PLC 18 July 1988 European Commission Case No IV/30.178 Napier Brown–British Sugar

- NB alleged that British Sugar had, contrary to Article 86, abused the dominant position which it holds in the UK granulated sugar market.

¹The nomenclature used in the decisions has been used in this summary. All European Commission cases, unless otherwise stated, were upheld on appeal.

- The EC considered that British Sugar has abused its dominant position by refusing to supply industrial sugar to NB without objective necessity, the intention or foreseeable result of which would have been to precipitate the removal of NB from the UK retail sugar market, thereby reducing competition on that market.
- The EC considered that British Sugar infringed Article 86 by pursuing against Napier Brown a course of conduct intended to damage Napier Brown's business or to secure its withdrawal from the British retail sugar market, or both. A fine of 3 million ECU was imposed on British Sugar. In October 1986, British Sugar informed the EC that it intended to implement a comprehensive compliance programme in order to ensure that in the future the Company fulfilled all of its obligations under Article 85 (1) and particularly Article 86 of the Treaty.

Tate & Lyle PLC and British Sugar PLC: A report on the proposed merger, January 1991

- Proposed acquisition of British Sugar, the largest sugar producer in Great Britain by Tate & Lyle, the largest sugar refiner in Great Britain.
- The report noted that the UK market for sugar is governed by a system of production quotas and price support under the EC sugar regime which severely limits the scope for and extent of competition between suppliers.
- The MMC concluded that the merger situation may be expected to operate against the public interest. The MMC could not find any remedies which would be effective in removing the perceived detriments were the merger to go ahead. The MMC recommended to the Secretary of State for Trade and Industry that the merger should not be permitted to proceed.

Commission decision of 14 May 1997 relating to a proceeding pursuant to Article 86 of the EC Treaty (IV/34.621, 35.059/F-3 - Irish Sugar plc) OJ [1997] L 258/1

- Decision concerned allegations that Irish Sugar had abused its dominant position on the Irish sugar market by seeking to restrict competition both from imports of sugar from other member states and from small sugar packers within Ireland.
- The EC decided that Irish Sugar had been able to maintain a significantly higher price level for packaged retail sugar in Ireland compared with that in other member states, notably in Northern Ireland, and has been able to keep its ex-factory prices, particularly for bulk sugar for 'domestic' Irish consumption, amongst the highest in the Community, to the detriment of both industrial and final consumers in Ireland
- The EC decided that Irish Sugar had infringed and abused its dominant position (Article 86 of the EC Treaty), The EC recommended fine of 8.8 million ECU on Irish Sugar plc, a subsidiary of the Greencore Group.

Commission decision of 14 October 1998 relating to a proceeding under Article 85 of the EC Treaty (IV/ 33708 Ð British Sugar, IV/33709 Ð Tate & Lyle, IV/ 33710 Ð Napier Brown, IV/33711 Ð James Budgett & Son) 1999/210/EC

- Decision concerned allegations of coordination by two sugar manufacturers British Sugar and Tate & Lyle, and two sugar merchants, Napier Brown and James Budgett of their pricing policy for industrial white granulated sugar in Great Britain.

- The EC decided that the parties had infringed Article 85(1) by participating in an agreement and/or concerted practice the object of which was to restrict competition by the coordination of the parties' pricing policy on the market for industrial sugar in Great Britain.
- The EC recommended fines of 39.6 million European Currency Units (ECU) on British Sugar, ECU 7 million on Tate & Lyle (reduced to ECU 5.6 million on appeal), ECU 1.8 million on Napier Brown and ECU 1.8 million on James Budgett.

Südzucker/Saint Louis Sucre Decision of 20 December 2001, OJ[2003] L103/1

- Proposed acquisition of Saint Louis Sucre by Südzucker. The EC, following an in-depth market investigation, revealed that the operation would have strengthened Südzucker's already dominant position in the markets for industrial sugar and retail sugar in southern Germany and Belgium.
- The EC found three relevant product markets:
 - Industrial sugar.
 - Retail sugar.
 - Sugar for distributors' private labels.
- In order to address these competition concerns, Südzucker offered to divest its majority shareholding in Belgium's Suikerfabriek van Veurne SA and to place 90,000 tonnes of sugar a year at the disposal of an independent trader in southern Germany.
- The EC considered these commitments to be sufficient and would contribute to an opening of the southern German market as well as an improvement of the competitive situation in Belgium. As a result of these commitments, the EC approved the acquisition.
- 2003/259/EC, Südzucker / Saint Louis Sucre, Official Journal L 103 , 24/04/2003.

Sweet Fifteen: The Competition on the EU Sugar Markets. Swedish Competition Authority Report 2002:7 (December 2002)

- In May 2002, The Swedish Competition Authority was commissioned to conduct a survey and to analyse structural problems within the EU sugar trade.
- The report aimed to cover the competition situation on the EU sugar markets from certain aspects. These aspects were defined as follows:
 - Illustrate the incentives for beet growers/sugar producers to compete and/or to influence the design of the regulatory system;
 - present examples of the market situation with regard to industrial buyers of sugar and sugar consumers; and to
 - map out how the present regulatory system affects the markets for alternative sweeteners, potential competition and product development within the sugar sector.

- The analysis made a number of conclusions for consideration when conducting the mid-term evaluation of the Common Agricultural Policy.