
Anticipated acquisition by Greencore Foods Limited of Uniq plc

ME/5117/11

The OFT's decision on reference under section 33(1) given on 23 September.
Full text of decision published 10 October 2011.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Greencore Foods Limited** is a subsidiary of Greencore Group plc (jointly with its group of companies, '**Greencore**'), which is headquartered in Dublin and listed on the London Stock Exchange. Greencore manufactures a range of convenience foods in the UK and the USA, and distributes vegetable oils and fats and molasses. Greencore had worldwide revenues of around £870 million in 2010.
2. **Uniq plc ('Uniq')** manufactures sandwiches, salads and desserts in the UK. It is listed on the London Stock Exchange. Uniq's UK turnover was around £312 million in 2010.

TRANSACTION

3. On 12 July 2011 Greencore announced that it had made a recommended cash offer for the entire issued, and to be issued, ordinary share capital of Uniq. On 16 August 2011 Greencore announced that it had received valid acceptances in respect of around 97.9 per cent of Uniq's issued share capital.

JURISDICTION

4. As a result of this transaction Greencore and Uniq will cease to be distinct. The UK turnover of Uniq exceeds £70 million, so the turnover test in

section 23(1)(b) of the Enterprise Act 2002 (the 'Act') is met. Therefore, the OFT believes that it is or may be the case that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

5. The OFT's administrative deadline for a decision is 23 September 2011.

INTRODUCTION

6. The parties overlap in the manufacturing and supply of sandwiches, meal salads and desserts.
7. The parties stated that sandwiches and meal salads form part of the 'food to go' ('FtG') segment, which also includes sushi (which is manufactured by Greencore but not by Uniq). The parties submitted that FtG products share certain product characteristics, fulfil the same consumer needs, are typically merchandised together, are purchased by the same retail and food service customers, and can be made by the same suppliers with a high degree of supply-side flexibility. They submitted that for these reasons each product category within the FtG segment exerts a competitive constraint on the other categories. Third-party comments on this point were mixed.
8. However, the OFT's starting point is to take the narrowest plausible candidate market in which the parties overlap, then to consider whether these may be widened through demand-side substitution and, if appropriate, to consider if substitution on the supply-side allows several products that are not demand-side substitutes, to be aggregated into one wider market.¹ The OFT considers that in the present case, given in particular the substantial differences between the overlap products in the FtG segment, there is insufficient evidence of demand- and supply-side substitutability between these products to consider them to be part of the same market.
9. Below, the OFT has therefore considered the merger in relation to the supply of sandwiches, meal salads and desserts in turn. The OFT recently considered the supply of manufactured sandwiches and meal salads in its investigation of the anticipated acquisition by Greencore of Northern Foods. This acquisition was abandoned in March 2011 before the OFT took a

¹ See *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010), paragraphs 5.2.6 to 5.2.19.

decision,² but the OFT had at that stage already obtained third-party comments. In the present case, to reduce the burden on third parties, the OFT has taken these comments into account in as far as they relate to market definition, given that the relevant products involved in the Greencore/Northern merger were the same (that is, manufactured sandwiches and meal salads) and the comments were received only around half a year before the date of the present decision.

SANDWICHES

Market definition - product market

10. The parties both produce a range of manufactured sandwiches, including sandwich triangles, wraps, rolls and filled baguettes, for retail customers, such as grocery retailers, and food service customers, such as coffee chains and catering companies. Manufactured sandwiches are pre-prepared in large facilities away from the final selling points to end-consumers.

Supply to retail customers and food service customers

11. The parties both focus largely on the supply to retail customers.³ In several previous decisions concerning food products, the OFT distinguished separate markets for retail customers and food service customers because of factors including differences in pack sizes, service levels, brand sensitivity, health and safety requirements, and lack of common suppliers.⁴

12. In this case, the parties submitted that this segmentation is not appropriate for, in particular, the following reasons:

- there is direct demand-side substitution because manufactured sandwiches are supplied in the same form to both retail and food service customers in terms of packaging, quality and container size; customers can and do switch between suppliers irrespective of their customer focus

² Northern Foods was subsequently acquired by BH Acquisitions (see OFT decision of 6 April 2011).

³ Greencore and Uniq supply around [] and [] per cent respectively of their total sandwich sales to food service customers. They do not supply any public sector customers such as schools, prisons and hospitals and therefore the OFT has not further considered the supply to these customers.

⁴ See, for example, *HJ Heinz/HP Foods Group*, OFT decision of 26 October 2005, paragraphs 9 and 10, and Competition Commission report of 24 March 2006, paragraphs 4.3 to 4.9; *Bernard Matthews/Lincs Turkeys*, OFT decision of 27 August 2010, paragraph 19; and *Princes/canning business of Premier Foods Group*, OFT decision of 22 June 2011, paragraph 25.

- there is indirect demand-side substitution because manufactured sandwiches sold by retailers and food service customers such as coffee chains compete at the end-consumer level
- there is supply-side substitutability because the production process and equipment as well as the food safety regimes are the same regardless of customer type; also, there are no consistent differences in delivery methods between retail and food service customers, and
- the same firms supply both types of customer under the same conditions of competition.

13. The OFT's investigation in this case and the abandoned Greencore/Northern merger broadly confirmed these factors (see, for example, the similarities between the suppliers listed in Tables 1 and 2 below). The OFT also notes that, as also submitted by the parties, brand sensitivity, which was one of the reasons for distinguishing between retail and food service customers in previous cases, is largely absent in the supply of manufactured sandwiches given the prevalence of own-label branding.

14. However, the OFT may define relevant markets for separate customer groups if the effects of a merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers, and require a separate analysis.⁵ In the Greencore/Northern merger, some third parties suggested that large retail customers could potentially only be supplied by large suppliers of manufactured sandwiches. The merging parties are both likely to fall within this category of suppliers. Based on the scale of production that large retail customers require, the OFT could not exclude the possibility that it may be appropriate to consider the supply to retail customers separately. Therefore, despite the significant arguments for a combined market for the supply of manufactured sandwiches to retail and food service customers, on a cautious basis the OFT has considered the supply to retail customers separately. Since the merger does not give rise to competition concerns on either this basis or on the basis of a combined market, it was not necessary for the OFT to reach a conclusion on the exact scope of the relevant product market in this respect.

⁵ *Merger Assessment Guidelines*, paragraph 5.2.28.

Manufactured sandwiches and sandwiches prepared in-store

15. The parties submitted that suppliers of manufactured sandwiches face a significant competitive constraint from the supply of sandwiches that are prepared in-store. These sandwiches are either pre-prepared, for example by national chains like Greggs and Pret A Manger, or prepared to the individual customer's order, for example by the national Subway chain. The parties stated that these sandwiches are considered substitutable by consumers, as they fulfil the same consumer needs and are often sold in the same or adjacent outlets.
16. The parties provided evidence suggesting that prices charged by stores reflect their business model and target customer group rather than where their sandwiches are produced. For example, relatively high prices are charged by Waitrose and Marks & Spencer for manufactured sandwiches and by Pret A Manger for sandwiches prepared in-store, while relatively low prices are charged by Asda and Tesco for manufactured sandwiches and by Greggs for sandwiches prepared in-store. The parties further provided some evidence that grocery retailers consider they compete with sandwiches prepared in-store and that the parties themselves take these sandwiches into account in their business strategy.
17. The parties submitted that competition at the end-consumer point of the supply chain translates into upstream pressure on suppliers of manufactured sandwiches. However, the parties also acknowledged that there are differences between the supply of manufactured sandwiches and in-store prepared sandwiches, such as in the scale of production. The OFT considers that sandwich sellers that prepare their own sandwiches do not form alternative suppliers for customers of the merging parties. For this reason, the OFT has not included the supply of in-store prepared sandwiches in the relevant product market.
18. The parties further stated that retail customers of manufactured sandwiches can and do self-supply. As an example, they referred to Morrisons, which prepares around half of its sandwiches requirements in-store and buys the remainder of its sandwiches from sandwich manufacturers. However, the scale of self-supply is currently limited (Morrisons appears to be the only large grocery retailer that self-supplies significant quantities) and the OFT did not obtain sufficient evidence that the ability for customers of manufactured sandwiches to self-supply could affect the profitability of a price rise by a hypothetical monopolist supplier

of manufactured sandwiches.⁶ The OFT has therefore not included the self-supply of sandwiches by customers of manufactured sandwiches into account in its market definition.

19. The OFT has, however, considered the supply of in-store prepared sandwiches and the self-supply of sandwiches by customers of manufactured sandwiches as potential constraints in the competition assessment below.

Conclusion

20. For the reasons set out above, the OFT has considered the merger by reference to the supply of manufactured sandwiches to retail customers, both separately and combined with the supply to food service customers.

Market definition – geographic market

21. The parties submitted that the market was national, given that both the main suppliers and their main customers supply and procure manufactured sandwiches on a national basis. They stated that suppliers' distribution capabilities allow sandwiches manufactured at a single location to be distributed throughout the UK within 24 hours of production. This was confirmed by third parties. The parties further submitted that it is arguable that the Republic of Ireland should be included in the geographic market, because some manufacturers supply sandwiches to Ireland from their UK manufacturing facility.
22. On a cautious basis, and consistent with previous decisions involving food products,⁷ the OFT has considered the market for the supply of manufactured sandwiches to be national.

Unilateral effects

23. As set out in Table 1 below, the parties will have a combined share of around [30-40] per cent in the supply of manufactured sandwiches in the UK to retail customers and food service customers.

⁶ *Merger Assessment Guidelines*, paragraph 5.2.20 (fourth bullet point).

⁷ See, for example, the decisions listed at footnote 4 and the OFT's decision of 12 July 2011 in *Kerry/Headland*, paragraphs 71 to 73.

Table 1: Supply of manufactured sandwiches to retail customers and food service customers in the UK

Supplier	Volume (millions of units)	Share of supply (per cent)
Greencore	[]	[20-30]
Uniq	[]	[5-15]
Merged firm	[]	[30-40]
Adelie	[]	[15-25]
Northern	[]	[10-20]
Samworth	[]	[10-20]
The Sandwich Factory	[]	[0-10]
Bakkavor	[]	[0-10]
Freshway	[]	[0-10]
Hain Celestial	[]	[0-10]
Others ⁸	[]	[5-15]
Total	[]	100

Source: Greencore's estimates.

24. When the supply of manufactured sandwiches to retail customers only is considered, Table 2 below shows that the parties have a combined share of around [35-45] per cent.

⁸ Including Anchor Catering, Charles Jarvis, Fresh! Naturally Organic, Impress Sandwiches, Raynor Foods, S&L Catering, Tasties of Chester, DD's, Halal Kitchen, Sandwich King, PJ's Foods and Tuck Box.

Table 2: Supply of manufactured sandwiches to retail customers in the UK

Supplier	Volume (millions of units)	Share of supply (per cent)
Greencore	[]	[25-35]
Uniq	[]	[5-15]
Merged firm	[]	[35-45]
Northern	[]	[15-25]
Samworth	[]	[15-25]
Adelie	[]	[5-15]
The Sandwich Factory	[]	[0-10]
Bakkavor	[]	[0-10]
Freshway	[]	[0-10]
Hain Celestial	[]	[0-10]
Others	[]	[0-10]
Total	[]	100

Source: Greencore's estimates.

25. The parties' combined share of [35-45] per cent in the supply of manufactured sandwiches to retail customers is not at a level that concerns over unilateral effects can be ruled out.⁹ This also applies to the parties' combined share in the supply to retail and food service customers. Although this share, at [30-40] per cent, is somewhat lower, this market is wider than the narrowest plausible market and the OFT's investigation did not enable it to conclude that the narrower market for only retail customers might not be more appropriate. However, as set out below, there are a number of factors to allay any significant competition concerns.

Competing suppliers

26. There are three other suppliers that supply significant volumes to large grocery retailers: Northern, Samworth and Adelie. In addition, the parties estimate that The Sandwich Factory and Bakkavor each supply around [10-20] per cent of manufactured sandwiches purchased by one of the four largest grocery retailers. Bidding data supplied by the parties for tenders by large grocery retailers show that all of these suppliers, as well as for example Freshway and Hain Celestial, have bid for and in many cases also won supply contracts in the past five years. Most of these suppliers were also mentioned by third parties as alternative suppliers to the merging

⁹ *Merger Assessment Guidelines*, paragraph 5.3.5.

parties. Further, the parties submitted that the shares of supply in Table 2 underestimate the competitive importance of suppliers that have proportionately more sales to food service customers, in particular Adelle, since for the reasons set out above (see paragraph 12), they considered such suppliers to be viable suppliers to retail customers — a view broadly confirmed by third parties (see paragraph 13). After the merger, the parties will therefore continue to face significant competition from alternative suppliers.

Closeness of competition

27. The parties submitted that Greencore and Uniq are not close competitors in the supply of manufactured sandwiches. Uniq is primarily a dedicated supplier of sandwiches to Marks & Spencer, whereas Greencore supplies a number of large grocery retailers but not Marks & Spencer. The parties also provided an internal Greencore document stating that [].
28. This was broadly confirmed by third parties. One customer noted that it currently sees Uniq as a relatively weak supplier that lacks stability, in contrast to Greencore.

Buyer power

29. The parties submitted that large customers, which account for the vast majority of their sales, have significant buyer power. The parties noted that it is easy for customers to switch suppliers, given the lack of long-term contracts, the low cost of switching and the absence of strong brands in the market. They further stated that large customers typically have at least two suppliers and provided some evidence suggesting that large retailers switched volumes between their suppliers because of price, quality and service as well as the development of new sandwich lines. The buyer power of customers is also likely to be strengthened by the fact that they buy not only sandwiches but also other products from the parties.
30. The parties also submitted that the negotiating position of customers is strengthened by the implicit threat that they may vertically integrate into the manufacture of sandwiches. As noted above (paragraph 18), Morrisons makes around half of its sandwiches itself, and some other retailers also make limited quantities.
31. The parties submitted that smaller customers are relatively unaffected by the merger, as Uniq's strategy is to supply only its present two

customers.¹⁰ Also, the parties submitted that smaller customers have at least some buyer power and have a larger pool of potential suppliers, including local suppliers, given that they require smaller volumes.

32. Third-party comments suggested that at least some customers may have a degree of buyer power and that in particular large retail customers regularly switch volumes between suppliers. None of the customers contacted by the OFT raised concerns about the merger.¹¹ However, given the other constraints on the merging parties set out in this section, there was no need for the OFT to conclude on the extent to which buyer power forms an additional constraint on the merging parties and whether buyer power extends to all customer groups.

Barriers to entry and expansion

33. The parties submitted that competing suppliers have significant spare capacity such that they can respond quickly and easily to customers switching supplies. They also noted that suppliers could expand their capacity at low cost. The parties further submitted that barriers to entry are low, in particular for suppliers of other food products that already have existing relationships with customers.
34. The parties' submissions in this respect were to a significant extent confirmed by third parties in this investigation and the investigation of the abandoned Greencore/Northern merger.

Other constraints

35. As noted above (paragraphs 15 to 17), for at least some end-consumers sandwiches prepared in-store are an alternative to manufactured sandwiches sold by the parties' customers. This therefore forms an indirect constraint on the parties and their competitors in the supply of manufactured sandwiches, which would serve to dampen the profitability of any attempted price increases, since at least a proportion of end-consumers would switch to sandwiches prepared in-store.

¹⁰ Marks & Spencer and Supplair (which supplies British Airways).

¹¹ One customer expressed some concern that Greencore had recently implemented a cost price increase for manufactured sandwiches and another product. However, this customer was not otherwise concerned about the merger. The OFT does not consider that this price increase in itself raises a concern about the merger, because it occurred before completion of the merger and, as the customer acknowledged, it may be explained by rising input prices and Greencore is not the only supplier applying cost price increases.

Conclusion

36. Taking all of the factors set out above into account, the OFT considers that after the merger the parties face sufficient constraints to reach the conclusion that the merger does not give rise to a realistic prospect of a substantial lessening of competition ('**SLC**') in the supply of manufactured sandwiches, whether or not the supply to retail customers is considered separately.

MEAL SALADS

Market definition – product market

37. The parties are active in the supply of meal salads to retail and food service customers. Meal salads include leaf-based salads, rice, pasta and couscous salads, that are intended to form a complete meal. These often include some protein element with the dressing already added or provided as part of the pack, as well as the necessary cutlery. Meal salads are typically merchandised in retail stores as part of the FtG offering, the salad bar fixture or, as in the case of certain pasta or rice-based salads, in the chilled produce fixture.

Supply to retail customers and food service customers

38. The parties submitted that the supply of meal salads to retail customers forms part of the same product market as the supply to food service customers. They suggested that the products sold into the two channels are the same, involve the same manufacturing processes, share the same distribution channels and are also supplied by the same set of producers. The parties further submitted that sales of meal salads into the food service sector form a relatively small proportion of the overall sales at circa five per cent.
39. However, since large retail customers may require large volumes of meal salads that can potentially only be supplied by large suppliers, as might be the case for manufactured sandwiches (see paragraph 14 above), on a cautious basis the OFT has assessed the effects of the transaction on a separate retail customer market as well as a combined retail and food service customer market. As the merger does not raise competition concerns on either basis, it was not necessary for the OFT to reach a conclusion on market definition in this respect.

Meal salads and side salads

40. The parties submitted that there may be a degree of substitutability between meal salads and side salads such as coleslaw and potato salads. On the demand-side, the parties stated that the two products are often merchandised alongside one another. This may suggest that end-consumers see both products at least to some extent as substitutable. The end-consumer could purchase a meal salad as an accompaniment to a main meal as is typical of side salad consumption, while side salads could accompany a protein element and as such provide the complete meal that meal salads are intended to provide.
41. Third-party views collected as part of the OFT investigation into the abandoned merger between Greencore and Northern Foods as well as in the present case, were mixed as to the degree of substitutability between meal salads and side salads. One respondent, in a similar vein of argument to the parties, noted that the two salad types were typically retailed in close proximity. Another, however, noted that the eating occasion was different, since side salads formed part of a meal, whereas meal salads were typically consumed as a snack.
42. On a cautious basis, the OFT has considered the impact of the transaction in a separate market for meal salads as well as in a market for both meal and side salads. There was no need for the OFT to consider a possible separate market for side salads, since Greencore does not supply any side salads and such a market would therefore not be affected by the merger. Given that no competition concerns arise in any of these possible markets, there was no need for the OFT to reach a conclusion in this respect.

Conclusion on product market definition for meal salads

43. Based on the preceding discussion, the OFT has assessed the effects of the transaction on a combined market for the supply of meal salads to retail and food service customers. However, the OFT, in its unilateral effects assessment below, also considers whether the supply of meal salads to retail customers is likely to be significantly affected by the merger. The OFT has also separately considered the supply of both meal and side salads.

Market definition – geographic market

44. The parties submitted that the relevant geographic market for assessing the merger in relation to the supply of meal and side salads is national in scope, for the same arguments presented in paragraph 21 above in relation to the supply of manufactured sandwiches. Furthermore, they stated that meal and side salads have typical shelf lives of five to seven and nine to 12 days respectively, meaning they could be delivered to stores throughout the UK in a timely manner and regardless of the location of the production facility.
45. The OFT did not obtain any evidence that suggested that the market could be narrower than national. The OFT has therefore assessed the merger in relation to a national geographic market for the supply of meal and side salads.

Unilateral effects

46. The shares of supply for meal salads that were provided by the parties regard the supply to retail customers. As can be noted in Table 3 below, the parties' combined share in volume terms in the UK supply of meal salads to retailers is circa [five-15] percent, with an increment [of 0-10] percent. Given that the OFT has drawn the market narrowly, these market shares are not at a level that would ordinarily give the OFT cause for concern over unilateral effects.

Table 3: Supply of meal salads in the UK to retailers

Supplier	Volume (millions of units)	Share of supply (per cent)
Greencore	[]	[0-10]
Uniq	[]	[0-10]
Merged firm	[]	[5-15]
Bakkavor	[]	[25-35]
Northern	[]	[20-30]
Samworth	[]	[5-15]
Kanes Foods	[]	[5-15]
Del Monte	[]	[0-10]
Others ¹²	[]	[10-20]
Total	[]	100

Source: Greencore's estimates.

47. The parties also told the OFT that while they did not have any reliable figures which quantify the volumes of meal salads supplied to food service customers, they estimated that less than five percent of meal salad sales were through the food service channel. They also stated that circa [] per cent of Uniq's sales were to food service customers, while Greencore []. Therefore, the parties' shares in the supply of meal salads to both retail and food service customer do not differ significantly from those presented in Table 3.
48. As regards the supply of both meal and side salads to retail and food service customers, the shares of supply for the parties and their main competitors to retail customers are given below in Table 4.

¹² Including Adelle, Freshtime, Southern Salads, Florette, Fresh! Naturally Organic, Avondale Foods and Axgro Foods among others.

Table 4: Supply of meal and side salads in the UK to retailers

Supplier	Sales (£million)	Share of supply (per cent)
Uniq	[]	[10-20]
Greencore	[]	[0-10]
Merged firm	[]	[10-20]
Bakkavor	[]	[30-40]
Northern	[]	[20-30]
Kanes Foods	[]	[0-10]
Samworth	[]	[0-10]
Del Monte	[]	[0-10]
Others ¹³	[]	[5-15]
Total	[]	100

Source: Greencore's and Uniq's estimates.

49. Table 4 shows that the parties' combined share in the supply of meal and side salads, at around [10-20] per cent with an increment of around [0-10] per cent, is higher than in the supply of meal salads alone. As for meal salads, there is no reason to believe that their share would be significantly different if the supply to retail and food service customers was considered together. However, although the market is drawn more widely than the market for meal salads, the parties' combined share is still at a level that does not normally give rise to competition concerns, particularly when considered together with the points set out below (paragraphs 50 to 52).

Competitive conditions post-merger

50. The parties submitted that the merger only raises a minimal customer overlap in relation to the supply of meal salads, with respect to the supply to []. They further noted that following the merger, there would remain many potential suppliers of both meal and side salads to any of their customers, such that competition would not be significantly affected.
51. The parties told the OFT that their customers enjoyed a significant degree of negotiating strength, given the concentrated nature of their respective customer bases. For example, [] of their respective customers in the supply of meal salads accounted for circa [] per cent of Greencore's and circa [] per cent of Uniq's supply. Further, the majority of their customers source meal and side salads from multiple suppliers. This, they stated, could be used to flex volumes between suppliers, ensuring they could

¹³ Including the suppliers referred to as other suppliers at Table 3.

preserve competitive pressures on their supply bases. Third parties broadly confirmed the parties' submissions in this area.

52. The parties also stated that the supply of meal and side salads was characterised by low barriers to entry, especially given that entry would not require significant capital costs as production is relatively labour intensive as it largely involves the assembly of raw materials. Greencore pointed to its own experience of entry, which it did under encouragement from the major retailers and using spare capacity in its existing sandwich production facility. The parties also stated that several of their competitors had significant spare capacity, which would defeat any attempted price increases.

Conclusion

53. Taking the factors discussed above in the round, the OFT concludes that the merger does not raise a realistic prospect of an SLC in relation to the supply of meal (and side) salads, including on the supply of meal (and side) salads to retailers.

DESSERTS

Market definition – product market

54. The parties are both active in the manufacture and supply of a range of desserts. Greencore supplies celebratory cakes and chilled hot-eating desserts¹⁴ such as crumbles, pies and baked cheesecakes. Greencore also supplies a range of frozen desserts to the food service industry. Uniq mainly supplies a range of chilled ready-to-eat ('RTE') desserts in pots such as trifles and chocolate desserts, as well as yoghurts, chilled fresh custard and fruit compotes.¹⁵

¹⁴ Chilled hot-eating desserts are typically consumed at sit-down events, require a degree of preparation by the consumer (heating in an oven or microwave), typically made with better quality ingredients and packaging, sold in larger packs and retail at higher pricing points than other desserts.

¹⁵ In July 2011 Uniq announced that it would stop producing yoghurts from April 2012. In August 2011 it announced that it would exit its 'everyday desserts' business (including some of its chilled RTE pot desserts) and would focus on its premium desserts business from the first half of 2012. The parties submitted that Uniq made these exit decisions unilaterally without participation by Greencore in the decision making process. However, as these decisions may still be reversed and it is not clear to what extent these decisions were related to Greencore's proposed acquisition of Uniq, on a cautious basis the OFT has assessed the acquisition based on Uniq's current production of desserts.

55. The parties submitted that the only potential product market delineation under which any overlap exists, is in relation to the supply of chilled desserts. Therefore the parties suggested a product market which includes chilled RTE pot desserts, chilled hot eating desserts and patisserie products, including cheesecakes but excluding yoghurts and ambient cakes. However, the parties noted that Greencore does not supply chilled RTE pot desserts and as such there is no overlap in relation to this segment. The only overlapping product between the parties is chilled hot eating rice puddings,¹⁶ but the OFT has not considered further whether this segment forms a distinct product market given the parties' low combined shares (around [10-20] per cent with an increment of [0-10] per cent for chilled hot eating rice puddings and around [0-10] per cent in the supply of all chilled rice puddings).
56. As Uniq does not supply any desserts to food service customers and Greencore does not supply the overlap category (chilled desserts) to food service customers, the OFT has only considered the supply of desserts to retailers.
57. The OFT in Premier Foods/Kraft Foods, while leaving the product market definition open, considered the competitive effects of the merger on a variety of product market definitions, including a putative market for the supply of all types of custard (ambient RTE, chilled RTE, instant and powder).¹⁷
58. One respondent to the OFT's call for views in relation to the present merger, suggested that end-consumers saw potted yoghurts as an alternative to other chilled deserts. It also suggested that given consumers were price-conscious, even a small price rise in chilled desserts would see a significant proportion of these switch to potted yoghurts. It further noted that while chilled and ambient desserts showed significant consumer overlap, consumers were only likely to consider other chilled lines, located in close proximity of the display fixture. Furthermore, the respondent told the OFT that the eating occasions were significantly different.¹⁸

¹⁶ The parties also both produce cheesecake products, but these are manufactured differently and sold in different formats and store locations.

¹⁷ See the OFT's decision dated 24 May 2005 in *Premier Foods Plc/Kraft Foods Inc*, particularly paragraphs 13-20.

¹⁸ For example they noted that the eating occasion for chilled desserts is more planned, less family-orientated and more indulgent than other desserts.

59. The parties submitted to the OFT that they had excluded yoghurts from their market analysis, although yoghurts are chilled and sold in pots, because yoghurts differ from chilled desserts in significant respects, including in consumption occasion, packing (with yoghurts often sold in multi-packs), manufacturing requirements and suppliers. As there is no overlap between the parties in yoghurts (Greencore does not supply them) and the parties' share in the combined supply of chilled desserts and yoghurts is lower than their share in the supply of chilled desserts,¹⁹ the OFT has not further considered the supply of yoghurts.
60. Given the existence of diverging views regarding the precise product market definition, the OFT has adopted a cautious approach and assessed the effects of the merger on a variety of potential product market definitions for the overlap products, namely the manufacture and supply to retailers of the following:
- chilled hot-eating desserts
 - chilled desserts and
 - all desserts.

Given the lack of competition concerns on any basis, it was not necessary for the OFT to reach any conclusions on product market definition.

Market definition – geographic market

61. The parties did not make any specific representations regarding the geographic market in the supply of desserts. However, given that the parties supply customers throughout the UK from their production facilities and in view of the fact that the OFT has not received evidence warranting a departure from that adopted in manufactured sandwiches and meal salads, as discussed above, it proceeds by considering a national market.

Unilateral effects

The supply of chilled desserts and all desserts

62. The parties' combined shares of supply in relation to each of the supply of chilled desserts and the supply of all desserts to retailers in the UK are set out in Table 5 below.

¹⁹ The parties estimated that their combined share of supply of chilled desserts and yoghurts is around [five-15] per cent with an increment of around [0-10] per cent, compared to their combined share of around [15-25] per cent for chilled desserts only (see paragraph 62).

Table 5: Supply of chilled desserts and all desserts to retailers in the UK

Supplier	Chilled desserts share (%)	All desserts share (%)
Greencore	[0-10]	[0-10]
Uniq	[10-20]	[5-15]
Merged firm	[15-25]	[10-20]
Laurents (Bakkavor)	[15-25]	[10-20]
Senoble (Elisabeth the Chef)	[5-15]	[0-10]
Nestle	[0-10]	[0-10]
Muller	[0-10]	[0-10]
Blueberry (Samworth)	[0-10]	[0-10]
Others	[30-40]	[45-55]
Total market	100	100

Source: Uniq's estimates, based on Kantar data.

63. As shown in Table 5, in the supply of all desserts to retailers, the parties' combined share is around [10-20] per cent with an increment of circa [0-10] per cent. Although this market has been drawn widely, this share is not at a level that would normally give the OFT cause for concern over unilateral effects of the merger.
64. In relation to the supply of chilled desserts to retailers, the parties have a combined share of circa [15-25] per cent, with an increment of [0-10] per cent. They also provided estimates for their share of the chilled dessert segment that were based on Kantar data. The combined shares using this approach are circa [25-35] per cent, with an increment of circa [0-10] per cent.²⁰ Given that the supply of chilled desserts is not the narrowest plausible market, these shares (in particular the combined share of [25-35] per cent) is not sufficiently low to exclude the possibility of concern over unilateral effects. However, the parties told the OFT that their combined shares are likely to overstate their position in the segment, since their product offering is complementary, with Greencore focusing on the supply of chilled hot eating desserts and baked products, while Uniq focuses on cold set RTE chilled desserts. As noted below (paragraph 67), this was broadly confirmed by third parties.

²⁰ The parties told the OFT that the market share figures calculated using the Kantar data are likely to over-estimate their positions, since the overall market size is likely to exceed the Kantar estimate due to likely measurement errors in the data collection process.

The supply of chilled hot eating desserts

65. The parties estimated their combined share of the chilled hot eating desserts market to be circa [15-25] per cent, with an increment of circa [0-10] percent. However the parties submitted that this relatively modest share is likely to over-estimate the parties' position in this market, since the only overlapping product is chilled hot eating rice pudding. This segment accounts for the entirety of the increment, with Uniq only supplying two different rice pudding products to M&S (and as noted in paragraph 55 above, the parties' combined share of chilled hot eating rice puddings is only around [10-20] per cent).
66. They further submitted that Uniq does not compete more generally in the hot eating desserts segment, where a significant number of established firms compete for market share, including Samworth, Tideford and Rachel's Organic. Therefore, they argued that the impact of the merger on the segment would be negligible.

Third-party views in relation to desserts

67. Third parties generally did not consider the parties to be close competitors in the supply of desserts or any of the segments discussed above. One third party noted that Greencore is strong in the supply hot/baked desserts while Uniq's specialism is in cold/dairy desserts. Further, it noted that the merger would likely enhance competition in desserts, since Uniq had previously been seen as a risky supplier, a position which would be improved by the merger.
68. Third parties were also of the view that wholesale buyers of chilled desserts enjoyed some negotiating strength. One third party for example noted that supply-base reviews occurred frequently and could be initiated for a variety of reasons, including competitive reactions at the retail level or approaches by competitors to buyers offering competitive terms.
69. In relation to barriers to entry, one third party stated that while new entry would require significant capital investment, entry through a co-packing agreement (that is manufacturing outsourced to a third party) would be possible and viable. As an example of such entry, the third party cited Gü, a supplier of premium desserts, which has achieved a [0-10] per cent share of the desserts market since its entry five years ago.

Conclusion

70. Based on the preceding discussion, the OFT concludes that the merger does not raise a realistic prospect of an SLC in relation to the supply of desserts, or any of the sub-segments considered above.

THIRD-PARTY VIEWS

71. Third-party views have been discussed above where relevant. No third parties raised concerns relating specifically about the merger.²¹

ASSESSMENT

72. The parties overlap in the manufacture and supply of sandwiches, meal salads and desserts.
73. In relation to the supply of manufactured sandwiches, the parties' combined share is circa [30-40] per cent, with an increment of [five-15] per cent. On a cautious basis, the OFT also considered the supply of sandwiches to retailers, in which the parties' combined share is [35-45] per cent (increment [five-15] per cent). The OFT however notes that the parties will continue facing a significant constraint from a number of well-established players, such as Northern Foods, Samworth Brothers and Adelle. Further, it notes that Greencore and Uniq are not each other's closest competitors (for example, Uniq is primarily a dedicated sandwich supplier to Marks & Spencer) and that retailers may enjoy some negotiating power with suppliers. There were also indications that spare capacity may be significant and barriers to entry relatively low. The parties further face indirect constraints from the sale of sandwiches prepared in-store.
74. In the supply of meal salads, the parties' combined share of supply is circa [5-15] per cent, with an increment of around [0-10] per cent. Their combined share in the supply of meal and side salads is somewhat higher at around [10-20] per cent, with an increment of around [0-10] per cent. There are a number of competing alternative suppliers, including Bakkavor and Northern Foods, with significantly higher shares than the parties'. Further, given that the majority of the parties' supply is to retailers, in similarity to the supply of sandwiches, buyers may enjoy some buyer power.

²¹ See, however, also footnote 11.

75. The OFT assessed the effects of the merger in relation to the supply of desserts, chilled desserts and chilled hot eating desserts. The largest combined share arises in the supply of chilled desserts, with one estimate given a combined share of circa [15-25] per cent, with a [0-10] per cent increment. However, there are a number of competing suppliers and the parties are not close competitors in the supply of desserts.
76. Third parties contacted by the OFT did not raise concerns about the merger. Several third parties noted that the parties overlapped minimally, both in terms of product offering and the customer base. One noted that the merger may be rivalry enhancing, seeing that Uniq had been previously seen as a risky supplier, a situation which could be improved following the merger.
77. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

78. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.

END NOTES

1. At paragraph 8, the OFT has stated that in the present case there was insufficient evidence about demand- and supply-side substitutability between products in the FtG segment to consider these products to be part of the same market. The OFT clarifies that this statement refers to the fact that it did not receive a significant volume of evidence on this point and that it was therefore unable to conduct the assessment that would have been necessary to conclude on whether FtG products constituted a relevant market.
2. In relation to paragraph 47, the parties clarified that the percentage of Uniq's sales to food service customers given in this paragraph refers to Uniq's total salad sales rather than its meal salad sales.