

Anticipated acquisition by Diamond Foods Inc of the Pringles business of the Procter & Gamble Company

ME/5042/11

The OFT's decision on reference under section 22(1) given on 27 July 2011. Full text of decision published 8 August 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. **Diamond Foods, Inc. ('Diamond')** is a US corporation listed on the NASDAQ stock exchange and based in San Francisco, California. In the UK, Diamond sells 'Kettle' branded crisps. Diamond had total sales in the UK of approximately £[] million in 2010.
2. **Procter & Gamble ('P&G')** is an international business involved in the production of many products. The 'Pringles' business of P&G sells 'Pringles' extruded potato snacks in a canister and 'Pringles Stix' a recently introduced cracker stick (which is not sold in the UK). The Pringles business had sales in the UK in the financial year 2009 to 2010 of approximately £[] million.

TRANSACTION

3. Diamond intends to purchase the Pringles business of P&G which operates globally. The acquisition will be made indirectly via an acquisition vehicle, Wimbledon Acquisition LLC, a direct wholly owned subsidiary of Diamond. The transaction was announced on 5 April 2011 and is conditional on OFT clearance.

4. The parties notified the transaction to the OFT on 8 June 2011 and the OFT's administrative deadline expires on 3 August 2011.

RATIONALE

5. Diamond informed the OFT that the rationale for the purchase of the Pringles business was, [].

JURISDICTION

6. As a result of this transaction Diamond and the Pringles business of P&G will cease to be distinct. The parties overlap in the supply of snacks in the UK. The turnover test in section 23 of the Act is met as the turnover of Pringles exceeds £70 million. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

MARKET DEFINITION

Product scope

7. Diamond and Pringles overlap in the manufacture and supply of branded savoury snacks. Specifically, Pringles are an extruded snack made from dough whose primary ingredient is dehydrated potato flakes. Kettle Chips are crisps made from fried potatoes. The parties do not overlap in the manufacture and supply of own label savoury snacks and have only a minor overlap in the sale of branded savoury snacks via the food service channel. It has not been necessary to investigate competition concerns within the food services sector as a result.
8. In previous OFT decisions (*Frito Lay/Golden Wonder*¹ and *Longulf/Golden Wonder*²) the OFT considered that all savoury snacks could be regarded as demand-side substitutes, although the OFT did not ultimately reach a

¹ Proposed acquisition by Frito Lay Trading Co. GmbH, a subsidiary of PesiCo Inc. of certain assets of the Golden Wonder Group Ltd, namely the 'Wotsits' brand and associated production and distribution facilities, a report on the advice of the Director General of Fair Trading given 8 July 2002.

² Proposed acquisition by Longulf Trading UK Ltd of certain brands and production lines of the Golden Wonder Group Ltd, report on the advice of the Director General of Fair Trading given on 21 June 2002.

conclusion on this in either case given that those transactions did not raise concerns on any plausible candidate market. The European Commission (in *PesiCo/The PepsiCo Bottling Group*³) has recently echoed comments from its earlier cases in considering that savoury snack products are likely to constitute a separate market to other snack foods (such as confectionary, biscuits and chocolates) on the basis of demand side considerations such as the nutritional and salt contents of these products, and different consumption habits by different types of consumers.

9. The parties submitted that there was reasonable level of substitution between extruded snacks and crisps.
10. On the demand-side, supermarket and wholesale customers unanimously informed the OFT that they considered that crisps and extruded snacks were substitutes and that branded and own branded were also substitutes and that they generally purchased both types of snack. They told the OFT that they expected that there would be sufficient switching by end consumers from one category to the other following a small but significant and non-transitory increase in price to put them in the same market.⁴ In this regard, the OFT did not receive any evidence that the preferences of supermarkets and wholesalers were not well aligned with the preferences of their customers.
11. In its cases referred to above, the OFT also investigated whether own label and branded savoury snacks should be considered together. It noted that, although there could be strategic reasons for not wanting to do so, it was relatively easy for a manufacturer of branded savoury snacks to switch to supply own label. Given that the parties do not overlap in the supply or production of own label savoury snacks in this case, it was not necessary for the OFT to conclude on this.
12. The OFT has not considered it necessary to conclude on the precise scope of the relevant product market in this case since the test for reference does not depend on this. On a cautious basis, however, the OFT has based its assessment on a candidate market for crisps and extruded snacks which is the narrowest basis on which the parties overlap.

³ Case No COMP/M.5633, decision of 26 October 2009, at paragraph 15.

⁴ See Merger Assessment Guidelines, paragraphs 5.2.10 to 5.2.16

Geographic scope

13. The parties submitted that the geographic scope for the supply of crisps and extruded snacks was at least UK-wide because they, along with competitors, supply on this basis. This is in line with the OFT's decision in *Frito Lay/Golden Wonder*.
14. Supermarket and wholesale customers of the parties who responded to the OFT confirmed that they typically purchase on the basis of a single nationwide contract with one or more suppliers. Competitors confirmed that they supplied on a national basis. On this basis, the OFT has assessed this merger on the basis of a UK-wide geographic market.

HORIZONTAL ISSUES

Unilateral effects

Market shares

15. The parties estimate that they have a combined share of supply in the supply of crisps and extruded snacks of 12.9 per cent, with a 4.3 per cent increment from Diamond (see table below).⁵ This combined share is not high enough to give the OFT cause for concern over unilateral effects, given that the OFT has drawn the market where the parties overlap narrowly. Were the OFT take a broader market definition as its starting point (savory snacks) the combined market shares of the parties would be even lower.⁶ Were the OFT to take a narrower view of the market—and consider crisps and extruded snacks separately—there would be no overlap between the parties.

⁵ Table based on Euromonitor figures provided by the parties for 2009. The data provided relates to the retail level, however, the parties have argued that it is appropriate to assume that shares for the parties' wholesale sales to retail customers will closely correspond to the shares given above. The OFT received no evidence to contradict this.

⁶ Based on the parties' Datamonitor evidence, they would have a combined share in the supply of sweet and savory snacks in the UK of 8.6 per cent with an increment of 2.9 per cent from Diamond.

Company	Market share, per cent
P&G (Pringles)	8.6
Diamond	4.3
Combined share	12.9
PepsiCo Inc.	46.2
United Biscuits Holdings Inc.	12.7
Lorenz Snackworld GmbH	1.9
Tyrells Potato Chips	0.9
Tayto Ltd	0.6
Intersnack Knabber-Geback GmbH & Co KG	0.6
Associated British Foods plc	0.6
Snacks Unlimited	0.5
Seabrook Potato Crisps	0.5
Red Mill Snack Foods	0.4
Salty Dog	0.2
Others	21.9
Total	100

16. The merged firm will continue to face competition from several rivals, not least PepsiCo which has by far the largest share in crisps and extruded snacks (under its Walkers crisps, Doritos, Red Sky, Quavers and Monster Munch brands) and United Biscuits (with its Philleas Fogg, McCoys, Hula Hoops and Skips brands). Moreover, McCoys (United Biscuits (UK) Limited) and Seabrooks have experienced year on year growth of 12.9 per cent and 25.1 per cent respectively.

Closeness of competition

17. The parties submit that they are not particularly strong competitors with one another in terms of brand positioning or consumer brand perception. Kettle Chips which are positioned as a premium product and face strong competition from Walkers 'Red Sky' crisps, for example, which are also considered to be a premium brand. Pringles are not considered to be a premium brand and face strong competition from Walkers crisps and Doritos in particular.
18. This is supported by internal documents provided by the parties. [].

19. Customers were unconcerned about the merger and generally source a variety of snack products from different suppliers. All believed there to be a wide choice of crisps and extruded snacks currently available on the market. The consensus from customers was that having a choice of three suppliers in the market would enable them to be supplied competitively.
20. On the basis of the above, the OFT does not consider that the merger gives rise to a realistic prospect of an SLC on the basis of unilateral effects.

Barriers to entry and expansion

21. The parties submitted that barriers to entry and expansion are low in extruded snacks and crisps. Competitors confirmed this view and indicated that it is relatively easy to expand capacity over a relatively short period.
22. One competitor commented that it was relatively easy for a new entrant to begin supply of savoury snacks in the UK and that this could be done through owned manufacture or through a brand developed by licensed manufacture. They pointed to recent examples of this of relatively new start-ups like Tyrrells or licensed brands like Marmite, Hairy Bikers and Nandos.
23. Consistent with this, competitors indicated that there had been several examples of expansion into the market and that the sector was one that was experiencing growth. The latest available IRI data⁷ indicates that the market has experienced 6.7 per cent growth by value overall in the last year and is predicted to grow further.⁸
24. That said, given the outcome of its competition assessment above, the OFT has not found it necessary to conclude on whether entry or expansion would be sufficient to avert any SLC.

⁷ For 52 w/e 22 January 2011.

⁸ Kantar World Panel data for 52 w/e 20 February 2011.

Buyer power

25. Given its findings, the OFT has not needed to conclude on whether buyer power would be sufficient to outweigh any competition concerns in this case.

THIRD PARTY VIEWS

26. Third party comments have been discussed above where relevant. In general, neither customers nor competitors were concerned about the merger and considered that the parties were not close competitors and that there would be sufficient competition post-merger.

ASSESSMENT

27. In the UK, the parties overlap in the production and supply of extruded snacks and crisps.
28. Unilateral concerns do not arise as a result of the proposed transaction. The parties have an estimated combined market share of around 12.9 per cent (with an increment of 4.3 per cent) in the supply of crisps and extruded snacks—the narrowest candidate market on which the parties overlap—and continue to face competition from other rivals. The OFT received no evidence that the parties were closer competitors than these modest market shares imply. Most competitors were unconcerned by the merger. The parties' main customers, that is, the major supermarkets, informed the OFT that they believed they would retain a sufficient degree of choice post-merger.
29. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

30. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.