OFFICE OF FAIR TRADING

Completed acquisition by Dr Schär Srl of part of the gluten-free food products business of Royal Numico NV

The OFT's decision on reference under section 22(1) given on 27 March 2007. Full text of decision published 4 April 2007.

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

PARTIES

1. **Dr Schär Srl (Dr Schär)** is a company based in Italy that manufactures and distributes gluten-free food products. In the UK, it sells its products under the 'Dr Schär' and 'Dietary Specials' brands through its part-owned subsidiary **Nutrition Point Limited (Nutrition Point)**. It also produces gluten-free products under the 'Glutano' brand, which are distributed in the UK and Ireland by Gluten Free Foods, an independent company.

2. **Royal Numico NV (Numico)** is a nutrition company active in the baby food and clinical nutrition segments. In the gluten-free food products sector, it is active through two subsidiaries, **UK Nutricia Clinical Care**, which distributes products under the brands 'Trufree' and 'Glutafin', and **SHS International**, which distributes products under the brand 'Juvela'. The UK turnover associated with the Trufree and Glutafin business is approximately £[ ] million.

TRANSACTION

3. The transaction was completed on 20 December 2006. It involved the acquisition by Dr Schär of assets related to Numico's gluten-free foods business traded under the brands Glutafin and Trufree (the Glutafin and Trufree business). The acquired assets include intellectual property rights,

inventory, contracts, employees, customer information and goodwill, but not manufacturing assets. [ ]

4. [ ].

5. The OFT's statutory deadline for deciding whether to refer the merger to the Competition Commission is 4 May 2007 and the administrative deadline is 5 April 2007.

JURISDICTION

6. As a result of this transaction Dr Schär and the Glutafin and Trufree business have ceased to be distinct. The parties overlap in the supply of gluten-free foods, where their combined share of supply in the UK is around [30-40] per cent, and consequently the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

FRAME OF REFERENCE

Product scope

7. The parties overlap in the supply of gluten-free food products such as bread, flour mixes, sweet and savoury biscuits, crisp breads and desserts, to both the retail and the prescription segments. The evidence before the OFT suggests that even if each food product was taken separately the outcome of the assessment would be the same.

8. Gluten-free foods sold through retailers tend also to be wheat-free. Gluten-free foods sold through the prescription sector may be wheat-free but many times are not. Consumers of gluten-free products may be grouped into three categories:

   a) wheat-intolerant consumers

   b) 'social choice' consumers, who are able to consume foods containing gluten (and wheat) but who choose not to because of perceived health or weight-loss benefits, and

c) diagnosed coeliacs or diagnosed sufferers of dermatitis herpetiformis.

9. Demand-side substitution between the two distribution channels is limited. Wheat-intolerant and 'social choice' consumers purchase gluten-free products from retail outlets, while diagnosed coeliacs and sufferers of dermatitis herpetiformis are eligible to acquire basic gluten-free products on prescription from pharmacies, hospitals and NHS trusts. The parties submit that only basic foodstuffs are available on prescription, and therefore many diagnosed coeliacs and sufferers of dermatitis herpetiformis purchase gluten-free products through the retail sector to access a wider range and more luxury items such as chocolate gluten-free biscuits.

10. The parties submit that there is a high degree of supply-side substitution between manufacturing to the prescription and retail sector. Substitution from prescription products to retail products requires the removal of the wheat starch to make gluten-free only products appealing also to the wheat-intolerant and 'social choice' consumers. The parties claim that this can be done in six months. Substitution from retail to prescription involves obtaining the necessary approvals to have products listed in the prescription list, which the parties estimate costs around £5,000 and takes 14 weeks.

11. However, due to the lack of evidence to corroborate the parties' arguments in relation to the ease of supply-side substitution and the fact that the competitive assessment is the same regardless of the product scope adopted, a cautious view is taken and the two distribution channels are analysed separately.

Geographic scope

12. There seem to be no impediments to importing gluten-free food products into the UK. Indeed, the products sold by Dr Schär are produced in continental Europe. However, the parties did not produce any evidence that the geographic scope is wider than the UK. The evidence before the OFT does not suggest that the appropriate frame of reference should be any narrower than the UK, for which reason a cautious approach is taken and the impact of the transaction is assessed at a national level.

HORIZONTAL ISSUES

Supply of gluten-free products through the retail sector

13. Numico supplies the retail sector with 'Trufree' products, while Dr Schär's products are sold under the 'Dietary Specials' brand.[1] The parties' combined share of supply is around [30-40] per cent (increment of around [5-15] per cent), and there remains a considerable number of alternative suppliers in the market. Sales of own-label products are increasing, and in some retailers the share of supply of own-label gluten-free products is higher than that of the top branded products.

Supply of gluten-free products through the prescription sector

14. Dr Schär supplies the prescription sector with products under its brands Dr Schär and Dietary Specials, and its share of supply is around [5-15] per cent.[2] Before the transaction Numico supplied [80-90] per cent of the sector with its brands Juvela (share of supply of around [35-45] per cent) and Glutafin (share of supply of around [40-50] per cent).

15. The transaction separated the two leading brands (Juvela and Glutafin). Following the transaction, Dr Schär has a share of supply of around [50-60] per cent (the combined shares of the brands Dr Schär, Dietary Specials and Glutafin), and Numico of around [35-45] per cent (Juvela). Therefore, the actual effect of the transaction is to decrease the degree of concentration in the market.

THIRD PARTY VIEWS

16. Initially a number of third parties expressed concerns about the transaction, but these seemed to be based on a misunderstanding that Numico was divesting all of its gluten-free food products business, which would have resulted in Dr Schär supplying [85-95] per cent of the prescription sector. Once it was clarified that Numico is maintaining the Juvela business, third parties were unconcerned.

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[1] [ ] per cent of the total sales of 'Dietary Specials' products are supplied on prescription.

[2] As noted above, Dr Schär produces the 'Glutano' products which are sold to the prescription segment, but the sale and marketing of the products is done through Gluten Free Foods, a company independent of Dr Schär.

ASSESSMENT

17. The parties overlap in the supply of gluten-free food products through retailers and by prescription.

18. In the retail sector, Dr Schär will be the supplier of the most popular branded gluten-free food products and is increasing its share of supply by around [5-15] per cent to a resulting share of around [30-40] per cent. However, evidence before the OFT suggests that there is sufficient competition from alternative brands by smaller suppliers and from own-label products. Indeed, some retailers have larger sales of own-label than of Dr Schär's and Numico's products.

19. In the prescription sector, the effect of the transaction is to separate the two leading brands, Juvela and Glutafin. Numico reduced its share of supply from [80-90] to [35-45] per cent and the market is less concentrated as a result.

20. 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

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