

Anticipated acquisition by Tulip Limited of George Adams & Sons Limited and George Adams & Sons (Holdings) Limited

No: ME/3379/07

The OFT's decision on reference under section 33(1) given on 6 December 2007. Full text of decision published 20 December 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 and clarity.

PARTIES

1. **Tulip Limited** (Tulip) is active in the rearing of pigs, purchase and slaughter of pigs, and sale of fresh and processed meat, primarily pork. Tulip is the UK subsidiary of Danish Crown AmBA (Danish Crown), a Danish co-operative and international food producer with worldwide production and sales.
2. **George Adams & Son Limited and George Adams and Sons (Holdings) Limited** (collectively George Adams) is active in the purchase and slaughter of pigs, and the sale of fresh and processed pork meat. The UK turnover of George Adams in the financial year to 31 March 2007 was £[] million.

TRANSACTION

3. Tulip proposes to acquire the whole of the issued share capital of George Adams.

4. The parties notified the OFT by way of a Merger Notice on 26 October 2007. The statutory deadline expires on 6 December 2007.¹

JURISDICTION

5. As a result of this transaction Tulip and George Adams will cease to be distinct. The UK turnover of George Adams exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. 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.

BACKGROUND

6. The European Commission (EC) has considered a number of cases involving Tulip's parent company Danish Crown, the most recent of which was Danish Crown/Flagship Foods (Flagship Foods) in 2004.²
7. In that case the EC found separate product markets for the supply of pig meat for further processing, and the supply of processed pork products including a number of sub-markets.
8. Other cases involving Danish Crown that have been considered by the EC are 'Danish Crown/Steff-Houlberg'³ and 'Danish Crown/Vestjyske Slagtetier'.⁴

MARKET DEFINITION

9. The parties overlap in three areas:
 - the supply of pig meat for further processing
 - the supply of fresh pig meat for consumption
 - the supply of processed pork products

¹The 20 working day statutory deadline was extended by 10 days under section 97(2) of the Enterprise Act 2002.

² M.3401

³ M.2662

⁴ M.1313

10. Although the parties submitted that pig meat may be part of a wider market for all meat types, the OFT has not found general support for this proposition. The conclusion that pig meat does not form part of a wider market for meat is supported by the decision in the Flagship Foods case as well as by third parties who responded to the OFT. The OFT has therefore taken a cautious approach and has considered pig meat as separate from meats originating from other animals.

Product market

The supply of pig meat for further processing

11. In Flagship Foods, the EC defined the market as pig meat for further processing. The conclusion that the product market did not include other meats was based on consumer preferences for specific types of meat, and also empirical evidence showing that customers were unlikely to switch between different types of meat. Third party respondents in this case largely confirmed that pig meat is generally not substitutable with other meats, and the OFT has found no reason to depart from the approach taken by the EC.

The supply of fresh pork for consumption

12. The parties submitted that the frame of reference should be the supply of fresh meat for consumption. However, in Danish Crown/Vestjyske Slagtetier, the EC confirmed a separate market for the supply of fresh pork for consumption. It also subdivided the market into the supply to the retail and catering sectors. Taking this case into consideration as well as third party views obtained as part of this investigation, the OFT believes the appropriate frame of reference is likely to be for the supply of fresh pork for consumption. However, there has been no need to conclude on whether separate product frames of reference exist for fresh pork for the retail or catering trade given that no competition concerns arise on either a narrow or broad frame of reference.

The supply of processed pork products

13. The parties submitted that the correct frame of reference should be the supply of processed meat. In the Flagship Foods case, the EC found a separate market for the supply of processed pork products, which was

further divided into a number of different categories on the basis of a lack of substitutability between different types of processed pork products.

14. The EC concluded that within the market for the supply of processed pork products there were subdivisions for (a) raw cured products, which may be further sub-divided into bacon and sausages (although the EC did not reach a view on this potential further subdivision), (b) processed meat for cold consumption, (c) canned meat, (d) cooked sausages, (e) pates and pies, and (f) ready prepared dishes and components for ready prepared dishes.
15. It is possible that supply side substitution may allow producers of processed pork products to move across some of the market boundaries identified by the EC with relative ease. However, given the limited additional evidence obtained in this case and taking a cautious approach, the OFT has used the same sub-divisions as identified by the EC in the Flagship Foods case. However, it has not been necessary to conclude on the product frame of reference, given that no competition concerns arise on any basis.

Geographic market

The supply of pig meat for further processing

16. The parties submitted that the relevant geographic market for pig meat for further processing should be at least EU wide. They estimated that around [60 to 70] per cent of all pig meat for processing in the UK is imported.
17. Data from the Meat and Livestock Commission confirms that within pig meat for further processing imports make up the majority of supply.
18. In Flagship Foods, the EC did not conclude on the appropriate geographic market for pig meat for further processing as there were no concerns on either a national or EC-wide market, but it noted that a large amount of pig meat was procured from outside the UK in a geographic area that comprises Denmark, the Netherlands, Germany, France and Spain and to a lesser extent countries like Poland and Hungary.
19. Third parties respondents pointed out that the origin of pig meat for further processing was not of primary concern, particularly in light of the fact that it is used as a raw material in making other pig meat products.

20. This would tend to confirm the parties' view that the geographic frame of reference is likely to be wider than the UK. However, it has not been necessary to conclude on this point given that no competition concerns arise on either a narrow or broad geographic frame of reference.

The supply of fresh pork for consumption

21. The parties submitted that the geographic frame of reference for fresh pork for consumption should be EU-wide on the basis that [25 to 35] per cent of fresh pork meat consumed in the UK is imported.
22. The high proportion of imports suggests that the frame of reference is wider than the UK. However, it has not been necessary to conclude on this issue given that no competition concerns arise on either a national or wider geographic frame of reference.

The supply of processed pork products

23. The parties submitted that that the level of trade between member states and the high level of imports into the UK mean that the frame of reference for most categories of processed pork products is likely to be wider than UK wide.
24. In Danish Crown/Vestjyske Slagtetier the EC found that the market for processed meat was wider than national as consumer preferences with regard to the origin of the pork were far less strong than with regard to fresh pig meat.
25. In this case, however, it appears that the market for some categories of processed pork products may be national.⁵ Nevertheless, as no competition concerns are raised on the basis of either geographic frame of reference within processed pork products there has been no need to reach a conclusion on this point.

⁵ For example, in Flagship Foods it was noted that the market for traditional British sausages may be national in scope.

HORIZONTAL ISSUES

Unilateral effects

The supply of pig meat for further processing

26. On an EU wide basis the parties estimate that their combined share of supply is around [10 to 20] per cent with an increment of [0 to five] per cent.
27. If an assessment is made on the basis of a UK-wide geographic frame of reference including imports the parties hold an estimated [40 to 50] per cent share of supply including an increment of around [0 to five] per cent.
28. The OFT does not believe that competition concerns arise on either frame of reference given the small increment in Tulip's share from the addition of George Adams, and the remaining presence of several significant suppliers as well as numerous smaller suppliers post-merger. Further, to the extent that the frame of reference is not considered more broadly than the UK (including imports), the OFT considers, on the basis of the evidence received and responses from third parties, that the potential supply of additional pig meat for further processing from other countries within the EU would impose an additional competitive constraint on the merged entity. This overall view is supported by third party respondents who were generally unconcerned about adverse unilateral effects on competition arising from this merger.

The supply of fresh pork for consumption

29. The parties combined share of supply post merger will be around [10 and 20] per cent in the UK with several other large suppliers remaining. Given this low share the OFT does not believe that competition concerns arise in the supply of fresh pork for consumption.

The supply of processed pork products

30. Post merger the parties will have a combined share of supply in the supply of processed pork products of around [10 to 20] per cent with an increment of around [0 to five] per cent in the UK. However, following the EC case law, and taking a more cautious approach, the market can be

segmented further into categories of processed pork products. Competition concerns are not raised on any basis, because the parties do not have a share of supply in any of the sub-markets of greater than 25 per cent except in the supply of processed pork meat for cold consumption.

31. In relation to the supply of processed pork meat for cold consumption in the UK, the parties will hold a combined share of supply of around [25 to 30] per cent with an increment of around [0 to five] per cent. However, the OFT does not believe that competition concerns arise given the small increment in share from George Adams, and the remaining presence of several significant suppliers as well as numerous smaller suppliers post-merger. This is supported by evidence on switching by supermarket customers which suggests that the parties are not each other's closest competitors and that in fact their customer bases are largely complementary.

Coordinated effects

32. The OFT did not gather evidence in this case sufficient to suggest the presence of coordination pre-merger, or that the merger would facilitate coordination. The merger results in only a small increment in share in each of the markets assessed, and therefore only a small change to market structure, and that increment only adds to the asymmetry between the merged entity and other suppliers. In addition, there will remain numerous suppliers post-merger, making coordination around price or market sharing difficult.
33. Accordingly, the OFT considers that there is no realistic prospect of competition concerns arising on coordinated effects grounds in any of the markets considered because the removal of George Adams does not appear materially to affect the ability or incentive of remaining suppliers to coordinate.

VERTICAL ISSUES

34. One third party was concerned that the parties could refuse to supply them with pig meat. However, given the fact that the merger does not significantly add to Tulip's share of supply at any level of the supply chain, and in the absence of any other evidence received to the contrary, the OFT

does not believe that vertical foreclosure concerns arise as a result of the transaction.

THIRD PARTY VIEWS

35. The majority of third party respondents were generally unconcerned about the merger. There were some third party concerns from both competitors and customers, however, that the merger would place Tulip in control of a large proportion of UK supplies of pig meat. However, given that the OFT has not found evidence that George Adams placed any significant constraint on Tulip pre-merger and the presence of many suppliers post-merger, the OFT does not believe that the merger will significantly alter the competitive landscape.

ASSESSMENT

36. The parties overlap in the supply of pig meat for further processing, the supply of fresh pork for consumption, and the supply of processed pork products. The parties' combined share of supply of fresh pork for consumption is below [10 and 20] per cent in the UK and does not raise competition concerns.
37. Post-merger the parties will account for around [40 to 50] per cent (increment around [0 to five] per cent) of the share of supply of pig meat for further processing in the UK. However, evidence shows that given George Adams' relative size, it does not represent a significant constraint on Tulip and that the competitive landscape would not be significantly affected by the merger given the presence of several significant suppliers as well as numerous small suppliers post-merger. In addition, the OFT considers that the potential supply of additional pig meat for further processing from other countries within the EU would impose an additional competitive constraint on the merged entity. On a wider EU basis, the parties' combined share of supply is far lower at around [between 10 and 20] per cent with an increment of below [0 and 5] per cent and does not therefore raise any competition concerns.
38. Post-merger the parties will hold around [25 and 30] per cent share (increment around [0 and five] per cent) of supply in the supply of processed pork meat for cold consumption in the UK (a sub-division of the supply of processed pork products identified). However, given there is

limited evidence of customers switching between the parties indicating that competition is unlikely to be affected by the merger and in any case, it appears likely that the frame of reference is wider than UK-wide, in which case the parties' share would be significantly less.

39. Although there were some third party concerns from both competitors and customers, the OFT believes that pre-merger George Adams does not represent a strong competitive constraint on Tulip and that the competitive landscape will remain largely unaffected by the merger as the result of a number of suppliers remaining post-merger, as well as the potential supply of additional imports from the EU.
40. 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

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