
Anticipated acquisition by Premier Foods plc of RHM plc

The OFT's decision on reference under section 33(1) given on 5 February 2007.
Full text of decision published 14 February 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 for reasons of commercial confidentiality.

PARTIES

1. **Premier Foods plc** (Premier) is a UK company that produces and sells a variety of grocery products, including soups, sauces, vegetarian and convenience foods, sweet spreads, desserts and beverages. Its turnover in the year ending 31 December 2005 was £790 million, of which £[] million was generated from sales to customers in the UK.
2. **RHM plc** (RHM) is a UK company that produces and sells a variety of grocery products including meat-based complements, cooking powders, sauces, noodles and fruit-based sweet spreads. In the year ending 29 April 2006 its turnover was £1,559 million of which £[] million was generated from sales to customers in the UK.

TRANSACTION

3. Premier proposes to acquire the entire issued and to-be-issued share capital of RHM. The parties notified the transaction on 6 December 2006. The administrative deadline is 5 February 2007.

JURISDICTION

4. As a result of this transaction Premier and RHM will cease to be distinct. The UK turnover of RHM 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.

MARKET DEFINITION

5. The parties overlap in the supply of prepared gravies, fruit-based sweet spreads, ambient temperature wet cooking sauces, dry cooking sauces, whips (for example *Angel Delight*) and noodles.
6. There is minimal overlap between the parties in the supply of dry cooking sauces and whips. In each of these product areas, the parties account for less than five per cent of supply. Furthermore, there are a number of other competitors present in these sectors which would be expected to act as a constraint on the parties post-merger. As a result, competition concerns are not considered to arise in these sectors, and these sectors will not be considered further.
7. With regards to the supply of noodles, a distinction can be made between plain egg noodles (for use in Asian dishes) and flavoured noodles (such as *Batchelors Super Noodles*). This distinction was supported by third party responses. As Premier does not supply plain egg noodles, the overlap is limited to the supply of flavoured noodles. The increment in the shares of supply for this product are small and there are a number of significant competitors, therefore the proposed transaction is not considered to give rise to competition concerns in this sector either and therefore this sector will not be considered further.

Product market

Prepared gravies and stock

8. Prepared gravy is sold in a variety of formulations: powders or granules, frozen sauces, ambient temperature and fresh chilled wet sauces. Similarly, stock is predominantly sold in cube form, but also in powder, ambient temperature wet and fresh chilled wet formulations. Premier produces and sells dried gravy granules and stock cubes under the *OXO* brand, while RHM produces and sells dry and wet gravies under the *Bisto* brand.

9. The parties submitted that dried gravies (granules and powders) account for more than 98 per cent of total UK prepared gravies retail sales and dried stock (cubes and powders) account for more than 95 per cent of total UK retail sales prepared stock. Given the predominance of dried gravies, the OFT has not sought to reach a conclusion as to the extent to which the product scope is based on different formulations (such as dried gravy granules and fresh chilled wet sauces), as the competition assessment does not materially change.
10. In considering substitutability between prepared gravies and stock, the European Commission, in the *Unilever/Bestfoods* case¹ concluded that bouillon² is a distinct market. Although it reached no definitive conclusions as to market definition, it sought to distinguish between prepared gravies and stock for the UK, on the basis that demand side substitutability between the two was considered to be limited.
11. On the demand side, the parties submitted that in response to a 5-10 per cent increase in price, consumers would not switch between prepared gravies and stock. The parties stated that customers do not regard prepared gravies as an acceptable substitute for stock, given their different textures³ and few consumers regard stock as an acceptable substitute to gravy.⁴
12. Evidence provided by third parties suggests that consumers buy both products and that the choice between prepared gravies and stock is dependent on a number of factors, including the level of culinary expertise and the meal occasion.
13. A third party referred to a survey⁵ that showed that although stock is the most substitutable category for prepared gravies (after other prepared gravies) switching is relatively low between the two. This is reflected in the responses from third parties. All customers stated that switching between

¹ Decision of the European Commission of 28 September 2000, *Unilever/Bestfood* (COMP/M.1990).

² The term used to describe gravies and stock.

³ Gravies have greater viscosity, higher fat content and relatively mild taste.

⁴ Mixing stock with other ingredients to form gravy can be used in place of prepared gravies, although Premier's studies suggested that stock has too strong or crude a taste to make palatable gravy.

⁵ AC Nielsen ('ACN') Key Expenditure Movements in Stock and Gravy, 2003.

prepared gravies and stock is limited, with one customer stating that its data showed that promotions on *Bisto* had no impact on the sales of stock. Similarly, an analysis of the relationship between the price of prepared gravies and stock sales did not indicate that there was any significant or discernable correlation between the two products.

14. On the supply side, the parties submitted that production of dried gravies, stocks, sauces and soups all involve the same, basic production equipment and processes, so switching into the supply of prepared gravies can be timely and at relatively low cost. This was supported by responses from competitors.
15. Whilst supply side substitution appears feasible, customer responses indicated that demand side switching is limited, with final consumers seeing the products as complements rather than substitutes. Such low levels of switching would suggest that it is appropriate to treat prepared gravies and stock as separate candidate product markets. However, for the sake of completeness, a cautious approach has been taken the OFT has also examined share data on the basis of a combined frames of reference incorporating both products, as this does not affect the overall assessment.

Distinction between retail and foodservice sectors

16. Both the parties and third parties responses suggested that it was appropriate to distinguish between sales to the retail sector and the foodservice sector. On the demand side, the configuration and pack sizes demanded by customers in the foodservice sector are likely to be different. Furthermore, foodservice customers are generally considered to be less brand sensitive than those in the retail sector. On the supply side, while there are a number of suppliers to the foodservice sector who may be capable of supplying the retail sector, it is unclear to what extent branding may present a barrier to switching. Therefore, a cautious approach has been taken and the supply of prepared gravies and stock to the two different sectors will be considered separately.

Fruit-based sweet spreads

17. Fruit-based sweet spreads (jams, marmalade and fruit curds) are part of a range of products, sweet spreads, which are generally used on toast and bakery goods either for breakfast or other snack meals.

18. Within this frame of reference, Premier produces and sells jams and marmalades under the *Hartley's* and *Weight Watchers* brands and marmalades under the *Roses* brand. RHM produces and sells jams and marmalades under the *Robertson's* and *Frank Cooper* brands.
19. The parties submitted that, on the demand side, fruit-based sweet spreads competed with all other sweet spreads (especially honey⁶) for the same type of uses and the same customers. The parties' internal documents review all types of sweet spreads together and consider the gains and losses between them.
20. Third parties responses, however, stated that a 5-10 per cent increase in the price of one type of fruit-based sweet spread (such as jam) would be accepted by final consumers and that very little switching occurs between the types of fruit-based sweet spreads (or between types of sweet spreads).
21. This suggests that the product frame of reference may be as narrow as each of the different types of fruit-based sweet spreads (in particular jam or marmalade). Market studies⁷ and Premier's own internal documents on sweet spreads clearly distinguish between jam and marmalade. In addition, a customer stated that its data on the impact of a promotion on *Hartley's* jam showed that there was little switching out of the marmalade segment to *Hartley's* jam.
22. One third party considered that jams and marmalades should be further segmented in three different categories, namely standard, extra and reduced sugar based on EU regulations' classification of fruit and sugar content in jam.⁸ However, the parties argued that this segmentation based on EU regulations is not widely recognised and the use of the terms 'standard' and 'extra' vary between suppliers. This is supported by responses by other third parties, which referred to *Hartley's* and *Robertson's* jams as 'standard' jams although their fruit content means that under EU regulations they are classified as 'extra' jams.

⁶ Premier is also active in the supply of lemon curds, honey, peanut butter and chocolate spread.

⁷ Mintel, 'Sweet Spreads', April 2005.

⁸ Mintel, 'Sweet Spreads', April 2005.

23. On the supply side, the parties submitted that all fruit-based sweet spreads are made using a common group of basic ingredients and the same basic production equipment and processes. As a result, switching production between types of fruit-based sweet spreads is technically feasible and can be completed with relative ease and speed. This has been confirmed by third parties.
24. Based on the evidence available, there are good arguments on the supply side that fruit-based sweet spreads should be considered together. However, in light of limited demand side switching a cautious approach has been taken and a narrower frame of reference adopted for the purposes of the analysis in this case, with jams and marmalades considered separately. The ability of suppliers to switch between the supply of jam and marmalade is considered in greater detail in the context of new entry or expansion.

Ambient temperature wet cooking sauces

25. Premier produces and sells ambient temperature wet cooking sauces under the *Batchelors*, *Homepride* and *Loyd Grossman* brands. RHM produces and sells ambient temperature wet cooking sauces under the *Bisto* and *Sharwood's* brands.
26. Past OFT and European Commission decisions⁹ have distinguished between table and cooking sauces due to their different usage. Cooking sauces are used during meal preparations, whilst table sauces are applied on the meal by the 'final' consumer just prior to eating the dish. The OFT has received no evidence to suggest a departure from this conclusion.
27. A further distinction can be made, based on the formulation of the sauces, between wet and dry cooking sauces; and on the temperature, between hot (or ambient) and cold sauces. Past regulatory decisions¹⁰ have also

⁹ For example, decision of the European Commission of 28 September 2000, Unilever/Bestfood (COMP/M.1990), and OFT merger decision on the anticipated acquisition of Bakkavor Group Hf of Geest, 28 April 2005.

¹⁰ Decision of the European Commission of 28 September 2000, Unilever/Bestfood (COMP/M.1990), and OFT merger decision on the anticipated acquisition of Bakkavor Group Hf of Geest, 28 April 2005.

considered the same distinct frames of reference. Third parties responses supported this distinction.

28. The parties asserted that the appropriate product frame of reference is the supply of ambient temperature wet cooking sauces. The parties argued that ambient temperature wet cooking sauces are made in a broad range of tastes, with different nuances shading into the next, make it difficult and inappropriate to further segment the supply of ambient temperature wet cooking sauces.
29. Market reviews and studies done for the parties and third parties tend to segment ambient temperature wet cooking sauces, based on demand side considerations, such as flavour, into a number of different categories.¹¹
30. However, the parties submitted that there is a high degree of commonality in the production equipment and processes required for different sauces, so switching production lines is relatively easy. This is a view which is confirmed by competitors. Responses from third parties gave a timescale of between six weeks to three months for switching of production lines to take place. Competitors also stated that there is enough spare capacity to extend the production to other lines of products, should that be needed.¹²
31. Based on the evidence available it appears that switching of production between different types of cooking sauces on the supply side is technically feasible and can be done at both a relatively low cost and reasonably quickly. On the demand side, ambient temperature wet cooking sauces could be further segmented, depending on the taste of the sauces. However, it has not been necessary to reach a definitive conclusion on this point as it does not result in a material impact on the competitive assessment in this case.

Geographic market

32. The parties submitted that the appropriate geographic frame of reference for all of the product overlaps was at least the UK. The feasibility of supply

¹¹ A primary distinction can be made between 'Italian' sauces and other sauces. Other sauces typically include traditional sauces (all European sauces except Italian) and 'Ethnic' sauces. The latter is further sub-divided into 'Oriental', 'Indian' and 'Tex-Mex' sauces.

¹² A competitor estimates that the cost of setting up a full filling line for capacity extensions would cost approximately £4 million and would take 12 to 18 months to complete.

from outside the UK, particularly for own-label products, and the presence of continental brands, suggests that it could be wider than the UK.

33. Third parties responses indicated that main suppliers of the overlap products are based in the UK and the majority of products are sourced through UK based companies. Previous regulatory decisions¹³ on consumer food products also found the appropriate geographic frame of reference to be the UK since the major customers of the parties operate on a national basis.
34. In addition, a couple of the overlaps products are particular to the UK. Prepared gravies (especially dried gravies) and marmalades are not consumed to the same extent in other countries.
35. In view of the above, the appropriate geographic frame of reference for all areas of product overlap is considered to be the UK. However, it is recognised that imports from overseas based suppliers may be a credible constraint, especially in the context of new entry and expansion.

HORIZONTAL ISSUES

PREPARED GRAVIES AND STOCK

Prepared gravies – retail sector

36. RHM, with *Bisto*, is the largest supplier of prepared gravies with a share of supply around [60-70] per cent. Premier, with *OXO* branded gravy, is the second largest branded supplier but is much smaller and of a similar size to the other branded competitors with a share of supply of [0-10] per cent.
37. The parties argued that *OXO*'s position of the second largest branded gravy in the sector is misleading as it overstates its competitive significance. They submitted that its shares of supply have been declining in recent years¹⁴ and that [].¹⁵ The parties submitted that this is evidence of the *OXO* brand's failure to compete effectively with *Bisto*. The parties stated

¹³ For example the Competition Commission's report on the completed acquisition of HP Foods Group by HJ Heinz Company and HJ Heinz Company Ltd, 24 March 2006.

¹⁴ In the last two years its share of supply (by value) has declined by [0-5] per cent to [0-10] per cent.

¹⁵ []

that despite promotional efforts, the *OXO* brand is so heavily identified with stock (with its thin consistency and strong flavour), it does not meet consumers' expectations of gravy. A number of *OXO*'s product lines are also produced in sachets which may not be as directly substitutable for the 'everyday' bulk jars sold by *Bisto*.

38. Other branded prepared gravies shares of supply have been growing as *OXO*'s have been declining. McCormick re-launched its *Schwartz* branded line of speciality gravy sachets¹⁶ in the UK in 2002-2003, and has enjoyed strong growth, with its share of supply (by value) increasing to over five per cent in the last year.
39. The parties argued that supermarket own label prepared gravies, rather than *OXO*, represent the strongest constraint on *Bisto*'s sales and are its closest competitor. Own label prepared gravies have a combined share of supply of 20 per cent and this share has been increasing in recent years.¹⁷ Own label gravies are also sold in the same 'everyday' jar format as *Bisto*, increasing the likelihood that consumers will view the two as close substitutes. Internal documents provided by the parties indicated that *Bisto*'s monitors the performance of own label products []. It should be noted that neither Premier nor RHM supply any significant quantities of own label prepared gravies to retailers¹⁸.
40. Furthermore, surveys carried out by the parties indicated that [] per cent of the representative sample would not consider buying own label prepared gravies, suggesting that the majority of consumers would be willing to switch from branded to own label prepared gravies (following a price increase). In addition, a consumer survey conducted by the parties indicated that [].
41. Customers have stated that own label prepared gravies do impose a competitive constraint as they provide a value alternative at a similar quality and that their relative prices follow a similar pattern to branded prepared gravies. This suggests that own label prepared gravies will act as a competitive constraint post-merger.

¹⁶ *Schwartz* offers a range of flavoured gravies in single use sachets.

¹⁷ It should be noted that 95 per cent of prepared gravies are sold through the retail sector.

¹⁸ Neither Premier nor RHM actively pursue retailer own label supply opportunities.

42. Based on the evidence available own label prepared gravies would appear to be the closest competitors to *Bisto* and would be expected to act as a strong constraint post-merger. Although it has a smaller share of supply, *Schwartz*, with its strong growth in sales, may increasingly constrain the merged entity's behaviour. It is therefore considered that the loss of *OXO* gravy as a constraint on *Bisto* would not significantly affect competition post-merger. Furthermore, the majority of customers did not have significant concerns about this merger as regards the supply of prepared gravies to the retail sector.

Prepared gravies and stock

43. If the relevant product frame of reference is widened to include stock and therefore if we consider the extent to which *OXO* stock cubes impose any additional constraint alongside *OXO* gravy on the price of *Bisto* gravy, similar conclusions can be drawn. As well as Premier and RHM, there are a number of competitors in the supply of prepared gravies and stock. In particular, Unilever, with its *Knorr* stock cubes, has about [10-20] per cent share of supply of prepared gravies and stock.
44. The parties argued that *Bisto* gravy is not the closest competitor to *OXO* stock cubes; rather *Knorr* stock cubes as these two products have common characteristics (strong taste, thin consistency), and common uses (flavouring and seasoning) which set them apart from prepared gravies. Premier's internal documents show that *Knorr* stock cubes and secondarily Kallo, Marigold and own label stock, not *Bisto* prepared gravies, consistently serve as the products against which Premier assesses the performance of *OXO* stock cubes. Customers also confirmed that they considered *Knorr* to be the closest competitor to *OXO* stock. The fact that the *OXO* brand entered into the supply of prepared gravies would also suggest that its stock cube is not a close substitute to *Bisto* gravy.
45. Post-merger the two parties combined will be the largest supplier in the sector, with a share of supply (by value) of [60-70] per cent (increment [20-25] per cent) and hold the two leading brands in the sector, namely *OXO* stock cubes and *Bisto* gravy. However, the OFT does not consider that these shares of supply fully reflect the competitive situation and relative dynamics between competitors. As discussed above, the parties' products are significantly differentiated and do not impose a particularly strong competitive constraint on one another. Furthermore, there are a

number of other competitors present in the sector, whose products represent closer substitutes, and therefore will act as a strong constraint on the parties' products post-merger.

Barriers to entry and expansion

46. At a technological level, all parties confirmed that barriers to entry and expansion into the supply of prepared gravies and stock appear feasible at relatively low cost.
47. The parties contended that companies, with the necessary expertise and capabilities, would be interested in entering or expanding into the production of prepared gravies and have identified a number of potential entrants. In particular they highlighted the expansion of McCormick's *Schwartz* branded gravies (which has gained a [0-10] per cent share of supply since re-launching in 2002-2003).
48. However, third parties have argued that the parties' large shares of supply and reputation of their brands may act as a deterrent to possible new entry and, with the exception of McCormick, there has been no significant entry into the sector for a number of years.
49. The parties argued that although prepared gravies is a mature product market, there has been innovation and entry. In particular, the parties stated that 'speciality gravies' (such as *Schwartz*) are being driven by a number of companies and that there are a growing number of entrants in the supply of fresh chilled gravies. This was supported by another third party, who has indicated that it is actively considering entering the retail sector in the UK in the near future. It considers that the sector has changed over recent years, with more formats of products available, such as wet prepared gravies and more flavour variants, so that its products have a better chance of competing in the sector than previously.

Conclusion

50. Overall, Premier and RHM do not appear to be close competitors in the supply of prepared gravies and stock (whether considered separately or together). The number and strength of brands and own label products in both sectors, the changing conditions within prepared gravies are considered by the OFT to provide a competitive constraint that is sufficient

to offset any potential loss of competition which might arise from the merger. As a result, competition concerns are not considered to arise in the supply of prepared gravies and stock to the retail sector.

Food service sector

51. The parties are the second (RHM) and fourth (Premier) largest suppliers of prepared gravies to the UK food service sector, although Premier only has a share of supply of around [0-10] per cent.
52. Third parties indicated prices, quality and service are more important than brands in this sector, suggesting that competitors without an established brand may pose an even stronger constraint to the parties than in the retail sector.
53. Third parties raised concerns regarding the loss of a strong competitor (RHM) which was seen as limiting price inflation in the past (with branded and own-label products). One third party alleged that Premier has a reputation, following previous acquisitions of other products, of introducing price increases. However, there was limited evidence to support this proposition.
54. Overall, the transaction only results in a relatively small increment to the merged entity's share of supply. Furthermore, there are a number of significant suppliers, such as Unilever and Nestlé, already present in the sector who will continue to act as a constraint on the parties' behaviour. Given these factors, the OFT considers that the acquisition does not give rise to competition concerns in respect of the supply of prepared gravies to the UK food service sector.

FRUIT-BASED SWEET SPREADS

Jams

55. The parties submitted that competition in the supply of jams is robust as there are numerous suppliers present, including overseas manufacturers and cost-effective, competitive smaller suppliers.
56. Post-merger the parties will have a combined share of supply (by value) of around [25-35] per cent (a [10-15] per cent increment) for jams. The next

largest competitor is a similar size to Premier with a share of supply (by value) of [5-15] per cent, the remaining suppliers have shares of supply of [0-10] per cent or less.

57. Some third parties considered that Premier and RHM were each other's closest competitor and that they will have a stronger position if only the mid-priced standard¹⁹ jam is considered. This is because most other competitors appear to be focussed on the premium jam segment, suggesting that their jams are not as close substitutes for the parties' products as the parties' products are to each other.
58. However, the parties have stated that innovation (such as increasing fruit content and introducing new flavours) and competition in the jam sector has been driven by these premium products (such as Andros' *Bonne Maman* and *St Dalfour*). For example, Premier stated that the launch of *Hartley's* 'Best' with increased fruit content was to meet the standards led by premium jams. *Robertson's* also increased its fruit content in 2005 to remain competitive within the jam sector as a whole not just with *Hartley's*.
59. This is supported by a sector report²⁰ that states that there is a significant trend towards premium jams and a move away from the standard variety as consumers are looking for higher fruit content and less sugar. In particular, Andros' *Bonne Maman* brand has grown from a niche product to become the UK's number two brand of jam with a share of supply of [5-15] per cent in less than ten years. Whilst the fastest growing brand between 2002 and 2004 was *St Dalfour* (another premium brand) with a [40-45] per cent rise in sales.²¹
60. In addition, the parties argued that some supermarket own label jams are marketed to an extent as branded (for example Tesco *Finest* or Sainsbury's *Taste the Difference*) and are becoming increasingly important competitors. Most third parties confirmed that own label jams are a credible constraint to branded ones with a share of supply of [25-35] per cent, especially as retailers are not just supplying own label products for the more price sensitive consumers, but also supplying own label 'premium' jams. The

¹⁹ Third parties referred to *Hartley's* and *Robertson's* jams as 'standard' jams as they are mid-priced jams unlike 'premium' jams which are more expensive.

²⁰ Mintel, 'Sweet Spreads', April 2005.

²¹ Mintel, 'Sweet Spreads', April 2005.

majority of customers have stated that they do not have concerns in respect of the supply of jams.

61. The jam sector appears to be very competitive with a number of suppliers and own label products that will provide a sufficient competitive constraint post-merger to offset any loss of competition between the parties.

Wholesale supply for own label jams

62. The merger will also affect the wholesale supply of own label jams, for which Premier and RHM have a combined share of supply of about [55-65] per cent.
63. However, the parties submitted that UK retailers have a number of committed suppliers and competition is intense for these contracts, especially as branding is not a factor. Premier provided a number of examples of lost contracts for the last two months.²² In addition, none of the customers stated they are concerned about the availability of wholesale jam suppliers post merger.
64. Given these factors, the OFT considers that the merger does not give rise to competition concerns in respect of the wholesale supply of jams for retailer's own labels.

Marmalade

65. *Robertson's* is the clear brand leader within the marmalade segment with a share of supply of around [25-35] per cent. *Hartley's* is the second largest branded supplier but is much smaller and of a similar size to the other branded competitors with a share of supply of [0-10] per cent. In addition, own label marmalades represent [20-30] per cent of all marmalades sold.
66. No evidence was provided to suggest that the parties' brands are the closest competitors in the supply of marmalade. In the parties' internal documents, they assess performance of their products against all other brands and own label marmalades.

²² []

67. A sector report suggests that the trend for innovation (such as in different flavours, cuts and lower sugar content) and for premium products that is occurring in the supply of jams is also occurring in the marmalade segment.²³ This supported by the parties' internal documents that show that non-orange standard (such as three fruit marmalades) and healthier marmalades are gaining shares from standard marmalades.
68. In addition, St Dalfour supplies thick cut orange spread, which although not officially categorised as marmalade, may act as an alternative for consumers.²⁴
69. Customers have stated that they stock a number of brands of marmalade²⁵ as well as own label products. This suggests that other branded and own label marmalades will act as a credible competitive constraint post-merger.

Barriers to entry and expansion

70. The parties submitted that expansion of an existing producer's product line is quite easy and inexpensive, as the same basic manufacturing process is used to produce all types and flavours of jams and marmalades. In addition, as manufacturers typically apply the same brand across different flavours and types (such as premium) of jams and marmalades, promotional and marketing costs do not pose any significant barrier to switching. This was confirmed by third parties. They also stated that they have excess capacity for potential expansion.
71. The parties also submitted that new entry can be achieved, if pursued on a smaller scale, as shown by the success of numerous launches of new sweet spreads in the recent past, including the launch of fruit conserves, expansion in the cuts and flavours of marmalade, introduction of reduced-sugar spreads.²⁶

²³ Mintel, 'Sweet Spreads', April 2005.

²⁴ Mintel, 'Sweet Spreads', April 2005.

²⁵ The parties stated that Somerfield stocks seven marmalades, whilst Tesco and Asda each stock 11 marmalades.

²⁶ The parties submitted that Duerr's launched a range of low-carbohydrate fruit spreads (late 2004), RHM Robertson's jams reformulation (2005) and that there has been various innovations from smaller-sized competitors – for example the introduction of three-fruit marmalade (Baxter's), more sophisticated flavours (St Dalfour, Wilkin & Sons) and more 'organic' lines (Baxter's and Streamline Foods).

72. Competitors have argued that de novo entry is difficult. It was suggested that it was difficult for new entrants to quickly establish the necessary reputation to be viable and successful. They also mentioned that taste specificities in the UK for jam and marmalade as well as quality and health regulations, add to the difficulties facing overseas suppliers and raise the cost of the necessary investment.
73. The parties maintained that suppliers from continental Europe can easily enter the supply of jams. Three of the top six UK suppliers of jams are based overseas (Andros, St Dalfour and Streamline Foods). The parties submitted that Asda is known to be sourcing their requirements for own label supplies from the Netherlands. In addition, continental suppliers are thought to have excess capacity to satisfy demand, a proposition that has been confirmed by third parties' responses.
74. The parties stated that continental suppliers are currently producing marmalade, despite the fact that it is mainly consumed in the UK. The parties gave details of a number of branded and own label marmalades that are currently being manufactured in Continental Europe²⁷, which suggest that continental suppliers would act as a credible competitive constraint.

Conclusion

75. There are a number of significant competitors within both the jam and marmalade segments. Furthermore, expansion by continental suppliers into the UK would also appear to represent a credible constraint. Therefore the OFT considers that the acquisition does not give rise to competition concerns in respect of the supply of fruit-based sweet spreads.

WET AMBIENT TEMPERATURE COOKING SAUCES

76. The parties submitted that the merger may be expected to increase effective competition in the supply of wet ambient cooking sauces,

²⁷ For example, Andros sells Bonne Maman-branded marmalades, produced in France, in at least two varieties (Bitter Orange and Mandarin Orange). These marmalades are stocked by Sainsbury. ASDA sells Whole Earth-branded orange marmalade produced in Spain, as well as an own label marmalade of continental origin.

because it will create a second supplier²⁸ that is more comparably sized and better able to compete with Masterfoods, the market leader. They also contended that the existence of numerous smaller suppliers ensures that competition in the market is sustained after the merger. Third parties confirmed the parties' proposition that a number of other competitors, both multi-national (such as Unilever) and smaller suppliers, are active in the market.

77. With regard to own-label products, third party responses stated that they directly compete and pose a credible constraint on pricing decisions by brand manufacturers. Most third parties responses also stated that brand loyalty is not particularly high in the ambient temperature wet cooking sauces category.
78. However, third party concerns were raised in the supply of ambient temperature wet cooking sauces to the Indian and Oriental segments, where the parties have a strong presence. The parties will have three of the leading brands within these segments so customers have argued that there will be less competition on innovation in terms of new products/cuisines and less choice for final consumers.
79. The parties submitted there are a number of significant competitors (including Masterfoods and Patak) in these two segments to act as a competitive constraint on the parties' behaviour. In addition, retailer own label products have [20-30] per cent and [15-25] per cent share of supply in the Indian and Oriental segments respectively. Given these factors, the OFT considers that the merger does not give rise to competition concerns in respect the supply of ambient temperature wet cooking sauces to the Indian and Oriental segments.

Barriers to entry and expansion

80. The parties submitted that the same basic equipment and processes as in the production of gravy and stock are used for manufacturing cooking sauces. Switching production between different tastes of ambient temperature wet cooking sauces and entry from neighbouring sectors appears to be relatively easy. The conversion of the necessary lines is

²⁸ This refers to shares of supply based on value of sales. The volume based shares show that the new entity will marginally be the largest supplier in the market.

estimated to take between two and three months. Competitors also confirmed that excess capacity does exist in their production lines and this could be readily deployed if expansion was needed.

81. Competitors' responses confirmed that there are no significant technical barriers to entry. However they stated that the costs are significantly higher when considering de novo entry as they estimate that setting up a new facility would take 12 to 18 months and would cost between £7 and £11 million.²⁹
82. The most significant barrier to de novo entry is building and promoting a new brand. The increased consolidation in the supply of ambient temperature wet cooking sauces in recent years³⁰ has meant that a number of strong brands are currently present. A third party alleged that consumers are more likely to switch to buy a known brand's new product than a new entrant's product, so argued that brand expansions are generally more successful than de novo entry.

Conclusion

83. Overall, on the basis of the information available regarding the number of significant competitors and relatively low barriers to expansion, the OFT considers that the acquisition does not give rise to any competition concerns in respect of the supply of ambient temperature wet cooking sauces.

PORTFOLIO EFFECTS

84. Competitors have argued that as a result of the merger, the parties might enjoy increased portfolio power and leverage in negotiating with retailers. The portfolio they offer includes two 'iconic' brands and a number of other strong brands. It was argued that this may allow the parties to ensure better trading terms for their products, in shelf space, listing of products and brands outside this category, higher promotional and cross promotional activity.

²⁹ £6-10 million for premises and assets and £1 million commissioning costs.

³⁰ Following Campbell's acquisition by Premier and the current proposed acquisition.

85. The parties have stated that their products are not bundled but supplied separately, therefore trading conditions will not change post merger. In addition, both *OXO* and *Bisto* brands generate less than ten per cent of sales for Premier and RHM respectively.
86. Responses from customers confirmed that they negotiate on a product-by-product basis rather than across a range of products or categories. In addition, they consider that they will still have alternative supply options post-merger and the majority of retailers stock own label products in these overlap areas.
87. Based on the information provided, the OFT does not consider that parties' negotiating position with respect to retailers will be significantly enhanced post-merger and therefore does not consider that any portfolio power concerns arise.

VERTICAL ISSUES

88. The merger does not give rise to any vertical issues.

THIRD PARTY VIEWS

89. Third party views have been referenced in the relevant sections of the competitive analysis above.

ASSESSMENT

90. The parties overlap in the supply of prepared gravies, fruit-based sweet spreads, ambient temperature wet cooking sauces, dry cooking sauces, whips and noodles. In relation to dry cooking sauces, noodles and whips, the overlap is small and there are a number of other competitors present in these sectors: therefore competition concerns do not arise.
91. For prepared gravies and stock to the retail sector, (whether prepared gravies is considered separately or together with stock), although the merger combines the leading supplier of prepared gravies and the leading supplier of stock (both with strong brand presence), they are not each other's closest competitor. The constraint imposed by own label supplies on *Bisto* gravies and other stocks on *OXO*, combined with the potential for

new entry and expansion by branded and/or non-branded competitors is considered to pose a sufficient constraint on the parties' behaviour post-merger.

92. With regards to the supply of prepared gravies to the foodservice sector, the transaction only results in a relatively small increment to the merged entity's share of supply. Furthermore, there are a number of significant suppliers already present in the sector who will continue to act as a constraint on the parties' behaviour post-merger.
93. For fruit-based sweet spreads (namely both jam and marmalade), where post-merger the parties will have around [30-40] per cent share of supply, there are a number of competitors present and expansion by continental suppliers into the UK would appear to represent a credible constraint. No competition concerns were raised regarding the wholesale supply of own label jams. Similarly, for the supply of ambient temperature wet cooking sauces, the number of significant competitors and the relative ease of expansion in the sector is considered to pose a sufficient constraint to offset any loss of competition arising from the merger.
94. 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

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