

Anticipated acquisition by James Finlay Limited of Flamingo Holdings Limited

The OFT's decision on reference under section 33 given on 29 June 2007.  
Full text of decision published 9 July 2007.

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**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 and clarity.**

**PARTIES**

1. **James Finlay Limited** (Finlays) is a wholly-owned subsidiary of **John Swire & Sons Limited** (JS&S), a commercial group active in property, aviation, marine services and the trading and industrial sector. Finlays produces and supplies cut flowers and black tea, together with agency services, parts distribution services and other plantation interests. The UK turnover associated with Finlays in 2006 was approximately £66 million.
2. **Flamingo Holdings Limited** (Flamingo) is a vertically integrated horticulture business active in the growing, processing and packaging, airfreight operation, marketing and wholesale distribution of cut flowers and fresh vegetables. Flamingo concentrates its cut flower wholesaler activities in the UK with its own African production sites, including six major farms in Kenya operated by its wholly-owned Kenyan subsidiary (Homegrown Kenya Limited), as its primary source of supply. Flamingo's UK turnover for the financial year ended 31 December 2006 was approximately £[ ] million.

**TRANSACTION**

3. On 17 May 2007, Finlays announced its proposal to acquire the entire issued share capital in Flamingo and the parties notified the transaction to the OFT by way of a Merger Notice. The extended statutory deadline expires on 29 June 2007.

## **JURISDICTION**

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

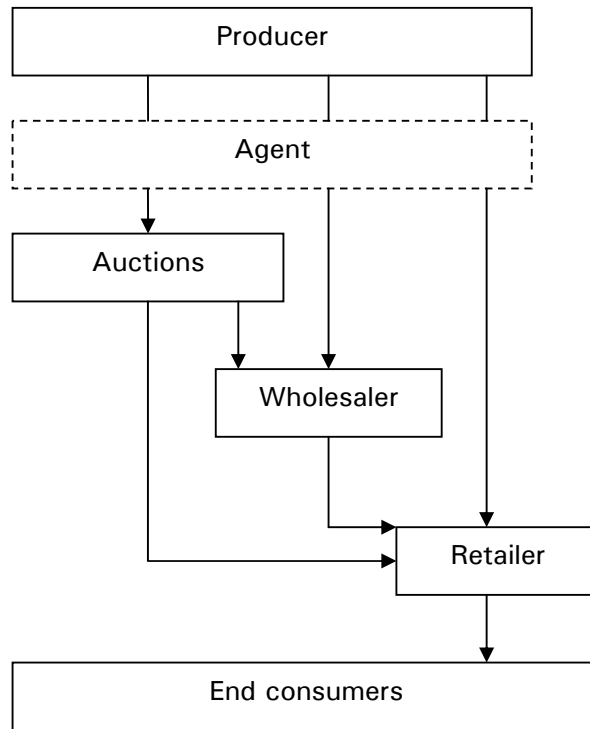
## **BACKGROUND**

5. Flowers are grown on dedicated flower farms where conditions are regulated in order to cultivate different varieties, often on a year-round basis. These flowers are then supplied cut to flower retailers (for example, grocery multiples or florists) either directly or via intermediaries for onward sale. Although some cut flower producers are vertically integrated, most do not retail their products directly. Instead, cut flowers are typically sold either via intermediaries (wholesalers or agents) which transport the product to retailers, or to flower auctions<sup>1</sup> directly or via intermediaries to be bought by wholesalers for on-sale or by retailers.

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<sup>1</sup> These are wholesale markets created by producers, for example within Europe, to market their products and serve to set the benchmark price for cut flowers. There are about ten European flower auctions, with approximately one third of all flowers imported into the EU coming through this channel. Four of these auctions are based in the Netherlands where German, Dutch and UK (among other) intermediaries source produce for on-sale to retailers in the UK and Continental Europe.

Figure 1: Distribution network of cut flowers



6. The parties contend that the primary rationale for the merger is Finlays' wish to move away from its traditional role as a cut flower producer to become a vertically integrated cut flower supplier with UK access. As a vertically integrated supplier with direct UK sales, the parties contend that Flamingo provides an important link between an expansive primary production base, including partner outgrowers and key UK customers.

## FRAME OF REFERENCE

### Product market

7. The parties overlap in the production and wholesale supply of cut flowers.

### The production of cut flowers

8. The parties submit that the relevant product market is at least as wide as the production of cut flowers. On the demand side, they argue that with certain isolated exceptions – for example, roses on St Valentine's Day – a high degree of substitutability exists for customers (including flower retailers and end consumers) between different varieties of flowers. From a

supply-side perspective, the parties argue that it is possible for growers to switch production from one flower variety to another relatively quickly (between 14 and 22 weeks depending on type) and switching costs are not prohibitive.

9. In line with the views of third parties (which did not contradict the parties' submissions on product market definition), the impact of this transaction on competition has been analysed widely in respect of the production of all flower varieties.<sup>2</sup> However, it is not necessary to conclude on the exact product market as no substantial lessening of competition issues arise whichever frame of reference is adopted.

#### The wholesale supply of cut flowers

10. The parties submit that the relevant product market is at least as wide as the supply of cut flowers via wholesalers and flower auctions. For example, they opine that in the event of a five to ten per cent rise in the price of the wholesale supply of cut flowers in the UK, retail multiples could buy or increase – in some cases at short notice - their existing supply from alternative sources, including flower auctions.<sup>3</sup> The parties also opine that a separate product market in respect of the wholesale supply of fair-trade<sup>4</sup> (as opposed to non fair-trade) flowers is not appropriate as the level of customer demand is not yet sufficiently strong when set against price, albeit that such demand is growing in Europe.
11. Evidence provided to the OFT corroborates the important links played by intermediary wholesalers (local and foreign) and auctions in the physical supply chain for cut flowers in Europe, including the UK. However, the OFT has not been able to establish within the time available – and third parties have been mixed in their views on – the extent of the competitive constraint provided by auctions to the wholesaler route and further product scope segmentation based on market route features can be considered. For example, supply to multiple retailers via wholesalers could be distinguished by their requirements in terms of packaging, labelling, quality control and other logistical services to which the

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<sup>2</sup> The OFT believes, based on the evidence gathered, that the same approach can reasonably be taken in respect of flower wholesaling and, therefore, the segmentation of the wholesale supply of cut flowers – discussed below – by flower variety is not considered further.

<sup>3</sup> [ ]

<sup>4</sup> These are flowers which are certified with the fair-trade mark satisfying the internationally agreed standards covering social, environmental and economic development.

wholesaler appears to add significant value.<sup>5</sup> In respect of fair-trade flowers, a separate category may reasonably be identified as some third parties indicated that there is limited or no substitutability with non fair-trade flowers.

12. For completeness, the OFT has taken a cautious view and analysed the impact of this transaction on competition on a wide interpretation of the wholesale supply of cut flowers (including sales channels via wholesalers and flower auctions), in addition to more narrowly either on the basis of wholesaler supply to multiple retailers or limited uniquely to fair-trade flowers. Given that no substantial lessening of competition issues arise on any basis, however, the OFT does not consider it necessary to conclude on product market definition.

### **Geographic market**

The production of cut flowers

13. The parties opine that the relevant geographic scope of the production of cut flowers is worldwide, as flowers can be grown in most locations globally either in natural or artificial environments and customers do not appear to distinguish flowers by their source of origin. Evidence provided to the OFT (including third party opinion) corroborates the international scope of flower production<sup>6</sup> and on that basis the effect of the merger on competition has been analysed globally. However, the OFT does not consider it necessary to conclude on the exact geographic market for cut flower production as the competition analysis is unchanged whatever definition is used.

The wholesale supply of cut flowers

14. The parties consider that, taking into account low transport costs and customer preference for a local intermediary presence, the geographic scope for the wholesale supply of cut flowers is at least as wide as Northern Europe, and possibly as wide as the EU. Evidence provided to the

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<sup>5</sup> That is, a distinction can be made between wholesale supply to multiple retailers and supply to smaller retailers, plus a distinction can be made between wholesale supply and supply via flower auctions.

<sup>6</sup> For example, the parties referred the OFT to a CBI Market Study, 'The Cut Flowers and Foliage Market in the EU' (October 2006), which states that of the total EU flowers and foliage imports in 2004, approximately one fifth originated from outside the EU.

OFT, including third party responses, support this view. However, the OFT does not believe it is necessary to conclude on the exact geographic market for wholesale flower supply as the competition analysis is unchanged even at the narrowest (UK-wide) level considered below.

## **HORIZONTAL ISSUES**

### **Market shares**

#### The production of cut flowers

15. The merging parties overlap in the production of flowers in Africa, where they both own dedicated flower farms. Post-acquisition, the parties estimate that they will have a combined share of less than one per cent (increment negligible) in the global production of cut flowers.
16. Taking into account the small impact of the merger at the global level and as the parties do not overlap in flower production anywhere in Europe, including the UK, the OFT does not believe that the merger will result in a substantial lessening of competition in the UK.

#### The wholesale supply of cut flowers

17. The merging parties overlap in the wholesale supply of cut flowers in the EU. While Flamingo's activities are predominantly UK-based, Finlays is active in marketing and distributing flowers in Continental Europe through its wholly-owned German subsidiary, Omniflora Blumen Center GmbH (Omniflora).
18. Post-acquisition, the parties estimate that they will have a combined share of less than five per cent (increment less than one per cent) in the wholesale supply of flowers in the EU.<sup>7</sup> [ ] Further, where the supply of fair-trade flowers is considered separately, they estimate that Finlays' share is between 35-40 per cent but submit that Flamingo does not supply fair-trade flowers wholesale in the EU and, therefore, there is no increment resulting from the merger.

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<sup>7</sup> The parties' estimates based on value for 2005.

19. In relation to the wholesale supply of flowers in the UK, the parties estimate that Flamingo has a share of between 10 to 15 per cent. However, they submit that there is no overlap resulting from the merger (and, therefore, no increment) as Finlays does not make any direct flower sales in the UK. Instead, all flowers grown by Finlays in Kenya for import into the UK are sold FOB<sup>8</sup> at Nairobi airport [ ] to a third party wholesaler – World Flowers Limited (World Flowers) - a company which is unconnected to, and acts independently of, JS&S.<sup>9</sup> The parties estimate that this supply volume accounts for less than one per cent of total retail sales of cut flowers in the UK (and also less than one per cent of total retail sales of cut flowers to UK multiples).
20. The merging parties can be construed as potential competitors, as Finlays could be considered well placed to enter UK wholesale supply (on its own or through Omniflora), and this constraint on Flamingo's activities would be lost through the merger. However, even if it was,<sup>10</sup> post-transaction there will continue to be strong competition from other flower suppliers active in the UK and Europe (for example, Intergreen, Florimex, Nocton and Winchester). This indicates that the loss of the parties as potential competitors resulting from the merger would not give rise to substantial lessening of competition concerns.
21. In summary, whether examined at a European or UK level, shares of supply are low and the increment is negligible or there is no overlap. None of the third parties contacted by the OFT considered that the parties are close competitors for wholesale flower supply. Further, the presence of other large flower suppliers at the wholesale level should act as a constraining factor in the event of a price rise or a reduction in service by the merged entity.

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<sup>8</sup> This means 'free on board', whereby the seller pays for transportation of the goods to the named point of debarkation, plus loading costs, after which the buyer assumes the risk.

<sup>9</sup> [ ]

<sup>10</sup> The parties submit that Finlays is not a realistic potential competitor to Flamingo in the UK primarily due to its limited capacity and lack of suitable infrastructure. For example, Finlays cites substantial costs involved in establishing a physical infrastructure in the UK and the lack of any purchasing power with airfreight providers. [ ]

## VERTICAL ISSUES

22. The relationship of Finlays as a supplier of World Flowers is affected by the merger and this could result in access by World Flowers to Finlays' flowers – in particular, fair-trade flowers – being restricted (following the termination of their [ ] UK supply agreement).<sup>11</sup>
23. In considering whether a merger could have vertical foreclosure effects, the OFT assesses both the ability and the incentive of the parties to adopt a foreclosure strategy as created or strengthened by the merger. In this case, Finlays submits that its supply of cut flowers to World Flowers represents a small proportion [ ] of the latter's total requirements for flowers supply into the UK.<sup>12</sup> The OFT believes that World Flowers could replace, if necessary, the total volume of flowers (including fair-trade flowers) currently supplied by Finlays from other sources with relative ease. Alternative source options include expansion of self-supply as World Flowers is itself a flower grower (in addition to being a wholesale distributor)<sup>13</sup> and purchasing from the Netherlands auctions. In addition, evidence gathered by the OFT suggests that an expansion in sourcing from World Flowers' existing (including fair-trade accredited) partner outgrowers and suppliers,<sup>14</sup> together with the possibility of switching to other worldwide flower (including fair-trade) producers, are credible alternative strategies.
24. In conclusion, on the basis of the evidence it has gathered during the course of its investigation, the OFT does not believe that the merged entity has the ability – that is, a sufficient degree of market power - to foreclose World Flowers (and, therefore, it has not been necessary for the OFT to consider the merger's impact on incentive for foreclose).

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<sup>11</sup> [ ]

<sup>12</sup> Finlays states that this totals approximately [ ] million total stems, and [ ] million fair-trade stems, per annum. The OFT was unable to confirm these figures, or what proportion of total UK business they account, with World Flower as it did not respond to the OFT's enquiries. However, the OFT has not been provided with any evidence from other third parties to suggest that this is incorrect.

<sup>13</sup> World Flowers' parent company, Oserian Development Company, owns and manages a flower farm in Kenya producing 380 million stems per annum.

<sup>14</sup> World Flowers' website states that it has established tradition relationships with 'the world's largest and most technically advanced flower growers amounting to over 50 farms worldwide'. This includes at least six farms in East Africa which have achieved fair-trade accreditation.



### **THIRD PARTY VIEWS**

25. Third parties were unconcerned by this transaction, save one retail multiple customer which commented that its occasional supply arrangements for Finlays' fair-trade flowers through a wholesaler other than World Flowers could be affected by the merger. As the parties confirmed that Finlays' supply arrangement with World Flowers [ ], this was not considered further.

### **ASSESSMENT**

26. The merging parties overlap in the production and the wholesale supply of cut flowers, in relation to which the impact of this transaction has been considered.
27. The parties both grow flowers in Africa but not in Europe (including the UK). If the production of cut flowers is considered to be global, their combined share of supply is estimated by the parties to be less than one per cent (increment negligible). Therefore, the OFT does not believe that the merger will result in a substantial lessening of competition in the UK as related to flower production.
28. The parties also overlap in the wholesale supply of cut flowers in Europe, in relation to which the merged entity will have a share of supply of less than five per cent (increment less than one per cent). [ ] The parties do not overlap in the wholesale supply of fair-trade flowers in Europe.
29. In the UK, Finlays (and its parent group, JS&S) make no direct sales of flowers. Rather, it sells flowers produced in Kenya – including fair-trade accredited flowers - destined for the UK to an unrelated third party wholesaler (World Flowers). This is estimated by the parties to account for less than one per cent of total UK retail sales of cut flowers. While Finlays and Flamingo could be considered to be potential competitors in the UK wholesale of flowers, the OFT considers that there exist alternative suppliers in Europe and the UK which will provide a competitive constraint on the merged entity. In addition, the existence of European flower auctions (most notably in the Netherlands) can also be considered as viable alternative sources of supply for customers to diminish any actual or potential loss in competition resulting from the merger.

30. A vertical concern has been considered that the merger may result in a restriction of the existing supply of cut flowers – in particular, fair-trade accredited flowers - by Finlays to World Flowers following the expiry of their [ ] UK supply agreement. In considering whether Finlays could undertake such a foreclosure strategy, the OFT was informed by the parties that this supply was not a substantial proportion of World Flowers' total UK requirement. In any event, the OFT believes that it would be possible for World Flowers to replace any lost supply through a number of alternative existing and new channels and suppliers. Therefore, the OFT believes that the loss of any competitive constraint on the vertical level as a result of the transaction will not be significant.
31. In conclusion, taken in conjunction with a general lack of third party concerns, the OFT does not consider that the transaction gives rise to any substantial lessening of competition concerns at any level. 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**

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