

---

Anticipated acquisition by Robert Wiseman Dairies Plc of Peninsula Milk Processors Limited and Newlands Farm (Milk Link) Limited

The OFT's decision on reference under section 33(1) given on 17 August 2006. Full text of decision published 23 August 2006.

---

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

**PARTIES**

1. Robert Wiseman Dairies PLC (Wiseman) is a procurer, producer and supplier of milk in Great Britain. Its principal dairies are located in Aberdeen, Glasgow, Manchester and Droitwich. Wiseman plans to open a dairy in Bridgwater, Somerset in autumn 2007.
2. Peninsula Milk Processors Limited (Peninsula) is a subsidiary company of Milk Link Limited (Milk Link), a farmer-owned dairy co-operative active mainly in the south west of England. Milk Link procures raw milk, processes it into fresh milk and other dairy products and supplies raw milk to other processors. Peninsula operates a dairy located in Okehampton, Devon which had a turnover of around £16 million last year.
3. Newlands Farm (Milk Link) Limited (Newlands) is also a subsidiary company of Milk Link. It operates a dairy located in Pensilva, Cornwall which had a turnover of around £10 million last year.

**TRANSACTION**

4. Wiseman proposes to acquire Peninsula and Newlands from Milk Link. As a part of the proposed transaction Milk Link will contract with Wiseman to supply some raw milk for the next three years.

5. The merger was notified to the Office of Fair Trading (OFT) by informal submission on 23 June 2006 and the OFT has an administrative deadline of 18 August by which to announce a decision.

## **JURISDICTION**

6. As a result of this transaction Wiseman, Peninsula and Newlands will cease to be distinct. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met in regard to the supply of milk to national multiples in Great Britain and the supply of fresh milk to middle ground customers in the south west of England.
7. 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 single relevant merger situation.

## **RELEVANT MARKET**

8. The parties overlap in the supply of milk to national multiples and the supply of fresh milk to middle ground customers.

### **Product scope**

9. In 2003 the Competition Commission (CC)<sup>1</sup> identified fresh milk as a relevant product market, largely because of demand side considerations.<sup>2</sup> The CC considered this definition to incorporate organic, regional and specially filtered milk, but it did not include non-cows' milk, flavoured milk, sterilized milk or UHT (long life) milk.
10. On the supply side, previous OFT investigations have found that producers of other dairy products (e.g. butter and cheese) cannot easily switch production to fresh milk due to the use of specialized production equipment.<sup>3</sup>

---

<sup>1</sup> Arla Foods amba and Express Dairies plc: A report on the proposed merger, October 2003, Cm 5983.

<sup>2</sup> That is, fresh pasteurised non-flavoured cows' milk, sold as whole, semi-skimmed or skimmed milk.

<sup>3</sup> For example, see Completed acquisition by Dairy Crest Group plc of the dairy business of Midlands Cooperative Society Limited, September 2005; Completed acquisition by First Milk Limited of a 15 per cent stake in Robert Wiseman Dairies plc, 7 April 2005; and Completed acquisition by Dairy Farmers of Britain Limited of Associated Co-operative Creameries Limited, 3 December 2004.

11. In Arla Foods / Express Dairies the CC also considered the range of different categories of customer for fresh milk in order to ascertain whether they formed different markets. It identified three distinct customer segments based on differing volume, processing and distribution requirements. These segments were: national multiples; doorstep customers; and middle ground customers (that is, all customers who are neither national multiples nor doorstep customers). This approach has been adopted by the OFT in previous cases.<sup>4</sup>
12. In the current case, the parties submitted that distinctions between the supply of fresh milk to the middle ground and national multiples should not be drawn because of the constraint that supermarket prices place on middle ground prices, and that the business of many larger middle ground customers is more similar to that of the national multiples (in terms of their relationship and bargaining power with key suppliers) than it is to smaller middle ground customers. These arguments were also put forward to the OFT and CC in previous cases.
13. The CC agreed that boundaries between customer segments were becoming increasingly blurred but it nevertheless considered there was value in distinguishing a group (national supermarkets) that had the most demanding requirements in terms of quality, traceability and assurance of supply, from middle ground customers which tended to set less exacting standards.
14. In the current case the OFT has adopted a cautious approach and considered the supply of fresh milk to middle ground customers and to national multiples separately.

### **Geographic scope**

15. In relation to the supply of fresh milk to national multiples, the CC found in Arla Foods / Express Dairies that the geographic market incorporated all of Great Britain. Among other things this was based on the national buying practices of the national multiples and the potential for major processors to expand their national coverage beyond existing arrangements. The CC excluded Northern Ireland from the relevant geographic market on the basis of transport costs, given the high-volume, low-value nature of the product. The parties in the current case did not disagree with this view.

---

<sup>4</sup> For example, Anticipated acquisition by Robert Wiseman Dairies plc of the fresh milk business of Scottish Milk Dairies Limited, 19 October 2005.

16. For supply to middle ground customers the parties argued that evidence supporting a national frame of reference is the increased distance over which fresh milk can be transported, and the ease with which a dairy can enter a new area by opening a distribution depot. They point out that Wiseman currently supplies its customers located in south west England from its dairy in Droitwich in the Midlands.
17. In Arla Foods / Express Dairies the CC found that while the geographic market may be quite broad for some middle ground customers (particularly those with centralised procurement), this was not the case for all middle ground customers. It rejected the argument that there is a chain of substitution linking each region with its neighbours, and concluded that it was not appropriate to adopt a broad geographic market definition for middle ground customers.
18. In the current case, third parties with centrally-negotiated supply contracts confirmed that they use a range of local and national suppliers to meet their supply needs. In contrast, competitors operating small dairies confirmed that they operate on a local basis.
19. The OFT adopted a geographic scope of Great Britain for the supply of fresh milk to national multiples in this case. The OFT has not found it necessary in this case to conclude on the precise geographic scope for the supply of fresh milk to middle ground customers since it does not affect the outcome of the competition assessment.

## **HORIZONTAL ISSUES**

### **Shares of supply**

20. Wiseman's share of supply of fresh milk to national multiples in Great Britain is estimated to be around 35 per cent.<sup>5</sup> Wiseman is one of the three major UK suppliers of fresh milk to national multiples (the others being Dairy Crest and Arla). However, the increment arising as a result of the proposed transaction is less than [0-5] per cent. Therefore, the supply of fresh milk to national multiples is not considered any further.
21. Likewise, for Great Britain the increment arising from the proposed merger for the supply of fresh milk to middle ground customers is less than [0-5] per cent and is therefore not considered any further on this geographic basis.

22. On a regional basis, the parties provided share of supply (by volume) data for middle ground customers using two regional definitions.<sup>6</sup> Based on these, the parties have a combined share of supply almost [20-30] per cent (increment about [5-15] per cent) in South West England, and [15-25] per cent (increment around [0-10] per cent) in Wales, West and Westward.
23. These estimates do not include estimated production from Wiseman's proposed new dairy at Bridgwater, due to open in 2007. However, although this may increase Wiseman's share significantly no third parties were concerned that it would do so.
24. The parties estimated that one competitor has a 30–40 per cent share of supply of fresh milk to the middle ground customers in South West England and told the OFT that there are five other significant competitors active in the region. Third parties confirmed this.
25. Additionally, the parties argued that smaller middle ground customers have a number of other indirect supply options, including wholesalers and 'cash and carry' outlets. In Arla Foods / Express Dairies the CC found that wholesalers play an important role in facilitating milk from smaller dairies reaching the marketplace.
26. Third parties confirmed to the OFT that the larger middle ground customers source from a range of national and local suppliers. The majority of competitors who responded also confirmed that there is significant spare capacity among processors, and that opportunities for expansion of supply are actively sought.
27. Furthermore, information on customer switching given to the OFT by the parties show that Wiseman and Milk Link may not be particularly close competitors. For example, of more than [60-70] middle ground customers lost by Wiseman (from its Taunton and Bristol depots) in the past year, only [1-10] were lost directly to Milk Link. Similarly, Wiseman has gained very few of Milk Link's middle ground customers over the same period.

### **Barriers to entry and expansion**

28. The parties argued that barriers to entry and expansion to the supply of fresh milk to middle ground customers are low. One third party competitor

---

<sup>5</sup> Mintel, Milk and Cream, March 2006.

<sup>6</sup> One was the ONS definition of 'South West England' and the other was the AC Nielsen definition of 'Wales, West and Westward' (which follows the CC's methodology in Arla Foods / Express Dairies).

commented to the OFT that it is relatively easy to expand capacity by increasing shift patterns or adding processing lines (volumes permitting). Another third party told the OFT that there is already spare capacity in the region.

29. The CC (in Arla Foods / Express Dairies) likewise considered barriers to entry to the supply of fresh milk to middle ground customers to be low.

### **VERTICAL ISSUES**

30. A vertical relationship arises in this case by virtue of the agreement for Milk Link to supply Wiseman with a certain proportion of Wiseman's raw milk requirements in the South West. This is expected to assure continuity of supply to the transferring dairies, and also to establish local supply contracts in preparation for the opening of Wiseman's new dairy in 2007.
31. However, the proposed merger does not create a common ownership in the vertical relationship. Further, the OFT does not believe that the proposed merger will create or enhance the level of market power (in the supply or procurement of raw milk, or in the supply of fresh milk) to such an extent that the merged entity could foreclose markets or raise rivals' costs.

### **THIRD PARTY VIEWS**

32. No customers expressed substantive concerns about the merger. Likewise, very few concerns were raised by competitors. One was concerned about the loss of competition generally in the south west of England as a result of the proposed transaction. Another competitor was concerned about its access to raw milk (from Milk Link) as it understood that Wiseman pays a premium for raw milk relative to other buyers and therefore would reduce the incentive for suppliers to supply the competitor. These concerns have been addressed in the competition assessment, above.

### **ASSESSMENT**

33. The merger does not raise any competition issues in regard to the supply of fresh milk to national multiples in Great Britain. In regard to the supply of fresh milk to middle ground customers, the increment resulting from the proposed transaction is small on regional (however measured) and Great Britain wide bases, and the loss of competition between Wiseman and Milk Link is not substantial. Furthermore, the OFT considers that the remaining competitors will be able to offer competition and choice post merger. The vertical relationship in this case does not give rise to competition concerns.

34. The OFT therefore does not believe that it is or may be the case that the creation of the relevant merger situation may be expected to result in a substantial lessening of competition within any markets in the UK.

**DECISION**

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