Anticipated acquisition by R&R Ice Cream Plc of Fredericks Dairies Limited

ME/6020/13

The OFT's decision on reference under section 33(1) given on 1 July 2013. Full text of decision published 11 July 2013.

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

PARTIES

1. **R&R Ice Cream plc** (**R&R**) is an ice cream manufacturer headquartered in the United Kingdom (**UK**), with 11 manufacturing facilities across Europe. R&R manufactures a range of ice cream products, such as tubs, cones, sticks, ice lollies and ice cream desserts. It produces these products under its own brands, licensed brands and retailer own label brands. Oaktree Capital Management, L.P. is currently a majority shareholder and sole controller of R&R.[1]

2. **Fredericks Dairies Limited** (**Fredericks**) is an ice cream manufacturer headquartered in the UK, with very limited activities outside the UK. Fredericks also manufactures a range of ice cream products under its own brands, licensed brands and retailer own label brands. In the year ending 31 August 2012, Fredericks achieved a total turnover of approximately £[ ] million, of which approximately £[ ] million was generated in the UK.

TRANSACTION

3. On 8 April 2013, R&R and the ultimate owners of Fredericks (Mr Frank Anthony Frederick and Mr Philip Matthew Frederick) entered into a sale and purchase agreement relating to the entire issued share capital of Fredericks Holdings (Guernsey) Limited, the top holding company of Fredericks

[1] On 26 April 2013 Oaktree agreed to sell the R&R business to PAI Partners. The transaction was cleared by the European Commission on 24 June 2013.

(**Transaction**). The consideration payable for the shares is £[ ] million, to be paid in cash on completion of the Transaction. The Transaction is conditional upon clearance being obtained from the Office of Fair Trading (**OFT**).

4. The Transaction was notified to the OFT on 3 May 2013 and the administrative deadline is 2 July 2013.

JURISDICTION

5. As a result of the Transaction, R&R and Fredericks will cease to be distinct because R&R will acquire the entire issued share capital of Fredericks' top holding company.

6. The parties overlap in the supply of ice cream products in the UK. The parties have a combined share of supply of [30-40] per cent in retail take home ice cream.[2] The OFT considers that the share of supply test in section 23 of the Enterprise Act 2002 (**Act**) is therefore met.

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 relevant merger situation.

FRAME OF REFERENCE

8. The OFT considers that market definition is a useful tool, but not an end in itself. Market definition provides a framework for assessing the competitive effects of the merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of a merger in a mechanistic way, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.[3]

9. The parties overlap in the supply of ice cream products in the UK. They supply ice cream products both to large retailers (for example, the large

[2] Source: AC Nielsen Scan Track Data, 52 weeks to 5/1/13.
[3] *Merger Assessment Guidelines, A joint publication of the Competition Commission and the Office of Fair Trading*, OFT1254, September 2010, paragraph 5.2.2.

supermarkets) and wholesalers (who supply ice cream to small retailers including convenience stores, confectioners, tobacconists, newsagents, garage forecourts, restaurants and other food industry providers, as well as specific entertainment places or leisure centres).

Product scope

10. The OFT considered whether the supply of ice cream products should be segmented by sales channel, point of consumption, branded and own label, format of ice cream, and type of customer.

Segmentation by sales channel

11. The OFT considered whether a distinction should be drawn between the supply of ice cream products to the food service (catering) sector, the retail sector and the leisure sector (which involves the supply of ice cream through entertainment venues such as theme parks, leisure centres, tourist attractions, beach stands and cinemas).[4]

12. The parties submitted that the supply of ice cream to these distribution channels may form separate markets.

13. The OFT has previously assessed mergers in the food industry by drawing a distinction between channels of distribution.[5] The OFT has found no compelling reason to depart from previous practice, and has therefore considered the impact of the current Transaction on each of the catering sector, the retail sector and the leisure sector.

Segmentation by point of consumption

14. The OFT considered whether, within the retail segment, the supply of ice cream for immediate consumption (referred to as 'impulse' ice cream) should be distinguished from the supply of ice cream for later consumption (referred to as 'take home' ice cream).

[4] The European Commission distinguished between such sales channels in Case COMP/M.2640 - *Nestlé / Schöller*, 25 February 2002.

[5] *Completed Acquisition by Nakano UK Holding Limited of the vinegar and pickles in vinegar businesses of Premier Foods Group Limited*, OFT, 26 September 2012, and *Anticipated acquisition by HJ Heinz of HP Foods Group,* OFT, dated 26 October 2005.

15. The Competition Commission (**CC**) and the European Commission have previously concluded that impulse ice cream should be distinguished from take home ice cream.[6] The majority of third party customers told the OFT that end-consumers do not switch between impulse and take home ice cream. This is partly because, on the whole, impulse products tend to be purchased in single units, whereas take home products tend to be purchased in larger quantities as they are stored in the home for consumption over an extended period of time.

16. For the purposes of the current assessment, the OFT does not consider it necessary to come to a firm conclusion as to the precise product scope given that, on the evidence presented to it, no competition concerns arise on any possible frame of reference. On a cautious basis, the OFT has assessed the current Transaction on the basis of the supply of impulse and take home ice cream products separately.

Segmentation by branded and own label ice cream

17. Both parties supply ice cream products under their own brands, licensed brands and retailer 'own label' brands. The OFT has therefore considered whether, within the retail take home segment, the supply of branded ice cream should be distinguished from the supply of own label ice cream. Although the OFT has previously considered whether to segment the market in this way, it has not concluded.[7]

18. The parties submitted that branded and own label ice cream should be assessed as part of the same product market because:

    i. retailers frequently sell their own label products alongside branded products, with similar names, packaging, labelling, colouring and flavouring
    ii. own label quality in ice cream has developed significantly since the OFT's previous decision in 2006, so that consumers are able to

[6] *The supply of impulse ice cream: A report on the supply in the UK of ice cream purchased for immediate consumption,* Competition Commission, Cm4510, January 2000, paragraph. 2.24, and European Commission, Case COMP/M.2640 - *Nestlé/Schöller*, 25 February 2002.
[7] *Anticipated acquisition by Ruby Acquisitions Limited (Oaktree Capital Management) of Richmond Foods plc*, OFT, 29 June 2006. 22. The European Commission has considered a separate upstream product market for the manufacture of own label ice cream, but noted that both branded and own label products compete at the end-customer level (see Case COMP/M.2640 - Nestlé/Schöller, 25 February 2002).

substitute between own label products and their branded equivalents across the spectrum of ice cream types and qualities

iii. Retailers are starting to create their own ice cream brands,[8] so that consumers will not always know whether they are purchasing a branded or own label product

iv. the headline price difference is illusory given that approximately 65 per cent of branded products are sold on promotion, compared with approximately 19 per cent of own label products sold on promotion,[9] and

v. there is a significant degree of customer switching between branded products and own label products.[10]

19. The majority of third party customers told the OFT that end-consumers do regularly switch between branded and own label ice cream products.

20. For the purposes of the current assessment, the OFT does not consider it necessary to come to a firm conclusion as to the precise product scope given that, on the evidence presented to it, no competition concerns arise on any possible frame of reference. On a cautious basis, the OFT has assessed the current Transaction on the basis of the supply of branded and own label ice cream products separately.

Segmentation by format of ice cream

21. The OFT has also considered whether, within the retail take home sector, the supply of different formats of ice cream (for example, tubs, cones, sticks and bars) should be distinguished from each other.

22. The parties submitted that no such distinction should be made because the production process and ingredients for all types of ice cream are essentially

[8] For example, Tesco's has created its own ice cream brand, 'Chokablok'.
[9] Source: AC Nielsen Scan Track Grocery Mults, 52 weeks to 5/1/13.
[10] For example, when [ ] ran a half-price offer on standard [ ] in July 2012, the sales data indicates that [25-35] per cent of the switching from other ice cream products came from own label products (source: Kantar World Panel Data, 52 weeks to 5/8/12 compared to the previous year). The parties also provided a report prepared by RBB Economics showing sales data which indicates significant switching from own label products when [ ] was on promotion at various retailers. With regard to branded products constraining own label products, when [ ] lowered the price of its own label cone range [by 10-20 per cent] in 2011, its sales increased by approximately [ ] million packs. The parties submitted that the sales data indicates that switching from other products accounted for [20-30] per cent of these increased sales, of which approximately [40-50] per cent came from branded products.

the same, and end-consumers regularly switch between different formats of ice cream (as set out in further detail below).

23. For the purposes of the current assessment, the OFT does not consider it necessary to come to a firm conclusion as to the precise product scope given that, on the evidence presented to it, no competition concerns arise on any possible frame of reference. The OFT has assessed the current Transaction on the basis of the supply of all formats of ice cream, but has considered specialisations in types of format where relevant below.

Segmentation by type of customer

24. The OFT has also considered whether, within the retail take home segment, the supply of ice cream targeted at children should be distinguished from the supply of ice cream targeted at adults.

25. The parties submitted that ice cream which would appeal more to children and ice cream which would appeal more to adults should be assessed as part of the same product market because all brands are bought by all age groups, and there is no such industry categorisation of products. Although the majority of third party customers told the OFT that end-consumers do not tend to switch between ice cream targeted at children and ice cream targeted at adults, there is no industry standard distinction between them.

26. For the purposes of the current assessment, the OFT does not consider it necessary to come to a firm conclusion as to the precise product scope given that, on the evidence presented to it, no competition concerns arise on any possible frame of reference. There is no data available for the OFT to assess the Transaction separately for ice cream targeted at children and ice cream targeted at adults. However, it has taken such a distinction into account where relevant.

Conclusion on product scope

27. As no substantial competition concerns arise on any reasonable frame of reference affected or potentially affected by the Transaction, it was not necessary for the OFT to reach a conclusion on the exact scope of the frame of reference in this respect. On a cautious basis the OFT has assessed the impact of the Transaction on the basis of the following frames of reference:

i. the supply of ice cream to the catering sector

ii. the supply of impulse ice cream to the leisure sector, and

iii. the supply of ice cream to the retail sector, distinguishing between impulse ice cream and take home ice cream (and within take home ice cream, distinguishing between (i) branded and own label ice cream; (ii) format of ice cream (where relevant); and (iii) type of customer (where relevant).

Geographic scope

28. The parties submitted that the geographic frame of reference in this case should be European Economic Area-wide, or in any event manifestly wider than the UK, since significant volumes of ice cream is imported into the UK from continental Europe.[11] The parties estimate that approximately 24 per cent of take home own label ice cream and a large proportion of take home branded ice cream supplied in the UK has been imported.

29. The OFT has previously concluded that the appropriate geographic frame of reference for the supply of ice cream products is at least UK-wide, since the major customers of the parties operate on a national basis.[12]

30. Customers and competitors generally considered the market to be UK wide (with only minor discrepancies in regional tastes or local stocking requirements). Some third parties commented that distribution costs are high for ice cream and that retailers may not be able to import all products. One customer submitted that it was reluctant to purchase imports as a matter of company policy.

31. As no substantial competition concerns arise on any reasonable frame of reference affected by the Transaction, it was not necessary for the OFT to reach a conclusion on the exact scope of the geographic frame of reference in this respect. The OFT has taken a cautious approach and assessed the Transaction on a UK wide basis, but has taken into account the constraint imposed by imports where relevant.

[11] The parties submitted that Unilever, Mars and General Mills all sell products in the UK manufactured in Europe.

[12] *Anticipated acquisition by Ruby Acquisitions Limited (Oaktree Capital Management) of Richmond Foods plc*, OFT, 29 June 2006.

HORIZONTAL ISSUES

32. The OFT has assessed whether there is a realistic prospect that the Transaction will result in unilateral effects in each of the frames of reference set out in paragraph 27 above.

33. The parties are primarily active in the supply of ice cream to the retail sector in the UK (approximately [85-95] per cent of R&R's sales and [90-100] per cent of Fredericks' sales are derived from sales to the retail sector). The parties estimate that their combined share of supply in both the catering sector and the leisure sector would be below [five-10] per cent and [10-20] per cent respectively, with an increment of less than [0-10] per cent. In light of this, and that no third parties raised concerns about these sectors, the OFT does not consider there to be a realistic prospect that the Transaction will result in unilateral effects in the supply of ice cream products to those sectors.

Retail impulse ice cream

Shares of supply

34. The parties provided the OFT with shares of supply for impulse ice cream sold through the retail sector based on AC Nielsen data. Based on these data, R&R and Fredericks had a combined share of supply of approximately [10-20] per cent, with a [0-10] per cent increment (see Table 1 below) for impulse ice cream.

Table 1: Shares of supply of impulse ice cream to the retail sector

	Impulse (per cent, by value)
R&R	[0-10]
Fredericks	[0-10]
Combined	**[10-20]**
Unilever	[70-80]
Mars	[0-10]
Others	[0-10]

Source: The parties, based on AC Nielsen Scan Track Data, 52 weeks to 5/1/13

35. The OFT did not receive any third party concerns relating to the supply of impulse ice cream to the retail sector. In light of this, combined with the parties' relatively low share of supply, the OFT does not consider there to

be a realistic prospect that the Transaction will result in unilateral effects in the supply of retail impulse ice cream products.

Retail take home ice cream – Branded products

36. The parties are both active in the manufacturing and sale of branded products, including branded products produced under license from the brand owner. R&R's key licensed brands in the UK are Nestlé, Ribena, Disney and Thorntons (as well as some brands which R&R owns, such as Kelly's and YooMoo); and Fredericks' key licensed brands in the UK are Cadbury (Mondēlez), Britvic, Del Monte, Vimto (Nichols) and Barratt (Tangerine).

Shares of supply

37. The parties provided the OFT with shares of supply for branded take home ice cream sold through the retail sector based on AC Nielsen data. Based on these data, R&R and Fredericks had a combined share of supply of approximately [20-30] per cent, with a [0-10] per cent increment (see Table 2 below) for retail branded take home ice cream.

Table 2: Shares of supply of branded take home ice cream to the retail sector

	Branded retail take home (per cent, by value)
R&R	[10-20]
Fredericks	[0-10]
Combined	**[20-30]**
Unilever	[50-60]
General Mills	[0-10]
Mars	[0-10]
Mackies	[0-10]
Others	[0-10]

Source: The parties, based on AC Nielsen Scan Track Data, 52 weeks to 5/1/13

38. Unilever is the market leader with the brands Magnum, Ben & Jerry's, Cornetto, and Carte D'Or. Unilever owns six out of the top 10 best selling brands and accounts for 77 per cent of sales in that list.[13]

[13] Source: AC Nielsen Scan Track Data, Take Home and Impulse Combined, 52 weeks to 2/2/13.

39. Although the parties' combined share of supply is relatively low, in view of the fact that the OFT received some concerns relating to branded products, and the fact that the products are differentiated, the OFT considered it appropriate to further assess the closeness of competition between the branded products supplied by the parties.

Closeness of competition

40. The parties submitted that the Nestlé branded ice cream products supplied by R&R under licence are not close competitors to the Cadbury branded ice cream products supplied by Fredericks under licence. Rather, the parties submitted that for the main Cadbury products, the closest respective competitor products by a large margin are Unilever products, and the same is true for the Nestlé products.

41. The parties submitted that the majority of the sales for the Cadbury brand relate to cones (Flake '99), chocolate sticks (Cadbury Dairy Milk) and chocolate bars (Crunchie), and accordingly Cadbury's main competitor brands are Unilever's Cornetto and Magnum, as well as Mars. Further, they submitted that the majority of the Nestlé branded products relate to water-based iced refreshment brands, such as Fruit Pastilles, whose main competing brands are Unilever's Twister and Calippo and, various tubs of ice cream, such as Nestlé Potz, whose main competing brands are General Mills' Häagen Dazs and Unilever's Ben & Jerry's.

42. Some third parties told the OFT that they consider the parties to compete closely in some brands (for example, R&R's Fruit Pastille competes closely with Fredericks' Fruitini/Refresher lollies, and R&R's Smarties Cone competes closely with Fredericks' Flake). One third party was concerned that the parties both supply handheld products targeted at children at the lower price range (while Unilever's alternative products are generally more expensive).

43. The OFT therefore considered whether the parties together supply a high share of retail branded take home ice cream targeted at children, as appeared to be the case from an initial assessment of the parties' branded products. R&R receives AC Nielsen data on a monthly basis, split into 13 market segments, including a category labelled 'Kids treat' (although there is no such industry standard segmentation. On this basis, the parties

combined market shares in Kids treat were [60-70] per cent[14] (with a [10-20] per cent increment).

44. The parties submitted that the underlying products and technology involved in ice cream products targeted at children and adults is the same and therefore should not be considered separately. The parties also submitted data on sales during a Tesco 'buy-one-get-one-free' promotion on R&R's Fab in June 2012. The results show that, of the products that lost sales in the four weeks during the promotion, Unilever's Magnum sticks lost the most.[15] The parties submitted that this is evidence of consumer switching between products targeted at children and adults.

45. The majority of third party customers stated that, although they recognise the distinction between adult and child branded products, there is no industry standard distinction and most of the parties' key branded products primarily compete with brands of Unilever (including Calippo and Twister). Customers were generally supportive of the Transaction as regards branded products because it would bring together the complementary skills of R&R and Fredericks and provide a credible competitor to Unilever.

46. In light of the above evidence, the OFT does not consider there to be a realistic prospect that the Transaction will result in unilateral effects in the supply of branded retail ice cream take home products.

Retail take home ice cream – Own label products

47. The parties are both active in the manufacturing and sale of own label products to retailers across the UK. The parties submitted that while R&R focuses primarily on supplying own label ice cream products (approximately [60-70] per cent of its sales by volume), Fredericks focuses primarily on branded ice cream products (and own label products only represent approximately [10-20] per cent of its sales by volume). The parties both supply own label ice cream products to [ ]. These customers represent [ ].

Shares of supply

48. The parties provided the OFT with shares of supply for own label take home ice cream sold through the retail sector based on AC Nielsen data.

[14] Source: AC Nielsen Scan Track Data, 52 weeks to 2/2/13.
[15] Source: AC Nielsen Home Scan four weeks' data to 30/6/12 compared to the previous period.

Based on these data, R&R and Fredericks had a combined share of supply of approximately [50-60] per cent, albeit with a low increment of [0-10] per cent (see Table 3 below) for retail own label take home ice cream.

Table 3: Shares of supply of own label take home ice cream to the retail sector

	Own label retail take home (per cent, by value)
R&R	[50-60]
Fredericks	[0-10]
Combined	[50-60]
YSCO	[10-20]
ICFC	[0-10]
Yeo Valley	[0-10]
Dedert	[0-10]
Stapleton	[0-10]
Others	[0-10]

Source: The parties, based on AC Nielsen Scan Track Data, 52 weeks to 2/2/13.

49. The remaining players in the market have relatively low shares compared to R&R, the market leader. However, the parties submitted that these suppliers are credible competitors to R&R, as evidenced by win/loss data showing that [ ] in the last three years. The parties also submitted that several suppliers have recently entered this market from outside the UK, which are not included in the AC Nielsen data (Alta-west and DMK/Rosen).

50. However, given that the parties' combined share of supply is relatively high, the fact that the OFT received some concerns relating to certain own label products, and the fact that the products are differentiated, the OFT considered it appropriate to further assess the closeness of competition between the own label products supplied by the parties.

Closeness of actual competition

51. The parties submitted that they are not close competitors given their differing business models. R&R focuses on own label ice cream products whereas over [80-90] per cent of Fredericks' sales is in branded ice creams. In addition, Fredericks' own label supply relates almost entirely to bars, and therefore there is almost no overlap between the parties in the supply of own label ice cream tubs, cones and sticks.

52. A minority of third party customers informed the OFT that the parties are the only suppliers of choc ices (bars of ice cream with a thin coating of chocolate) in the UK, although only one third party claimed to be concerned in that respect. While the OFT considers, based on the evidence available to it in this case, that it is likely that the market for choc ices would be too narrow to form an economic product market, it considers that an assessment of the impact of the Transaction on such supply is warranted given the concern it has received.

53. The parties submitted that there are several producers based both in and outside the UK who could supply choc ices to UK customers, and some third party customers believe that they are able to purchase own label choc ices from alternative suppliers. However, the third party suppliers that responded to the OFT stated that they would be unlikely to produce choc ices. One supplier based outside the UK informed the OFT that it is not able to produce choc ices, and would not do so as it is a UK centric product.

54. The parties provided the OFT with sales data showing the impact of a series of price increases in [ ] on [ ] multipack choc ice.[16] Sales of the product fell by [60-70] per cent year-on-year, and sales were gained by ice cream products of various formats, including tubs, ice cream desserts, sticks and cones. This evidence is consistent with the majority of third party views in the OFT's market testing exercise. The OFT found that third parties generally considered that a range of ice cream products impart a competitive constraint on choc ices in the UK.

55. The parties also submitted that there is significant supply-side substitution in choc ices, because many of the processes undertaken, and equipment used, in the manufacture of bars are the same as those used to manufacture ice cream in other formats (including storage, raw ingredients, homogenisation, mixing, freezing and transportation).

56. In conclusion, given the low increment as a result of the Transaction and the constraint on the parties' products from other ice cream products of competing suppliers, the OFT does not believe that the Transaction gives rise to a realistic prospect of a substantial lessening of competition in the supply of retail own label take home ice cream.

[16] This was based on Nielsen 'Homescan' data which records the behaviour of a sample of approximately 15,000 households who enter their purchases each week onto the Homescan database.

Potential competition

57. The parties submitted that the overlap between them in own label products is essentially confined to bars given that this is the sole own label product that Fredericks has supplied in recent years. However, the OFT notes that [ ]. The parties submitted that [ ].

58. The OFT received a concern from one customer relating to the removal of potential competition from Fredericks. [ ]. However, the OFT was not provided with any other evidence that Fredericks had pre-merger plans of re-entry. Further, [ ]. The parties further submitted that [ ].

59. In light of the above, the OFT did not consider the re-entry of Fredericks in these products to be realistic. In any event, as for the assessment on actual competition, the OFT notes the constraint on the parties' products from other ice cream products of competing suppliers and therefore does not believe that the Transaction gives rise to a realistic prospect of a substantial lessening of competition as a result of the removal of potential competition from Fredericks.

BARRIERS TO ENTRY AND EXPANSION

60. The parties submitted that a new entrant into the supply of ice cream products would require (i) manufacturing facilities; (ii) a listing in grocery stores; and (iii) a significant distribution footprint among retailers. The parties submitted some examples of recent entrants into the UK market, including imports from Poland and Slovenia.

61. Given the competition assessment above, the OFT has not found it necessary to conclude on whether barriers to entry and expansion are low enough to protect against a substantial lessening of competition.

COUNTERVAILING BUYER POWER

62. In assessing buyer power, the OFT considers to what extent the merger is likely to reduce the customer's ability and incentive to exercise buyer power.[17] The parties submitted that, in the retail sector, buyer power is a

[17] *Merger Assessment Guidelines*, A joint publication of the Competition Commission and the Office of Fair Trading, OFT1254, September 2010, paragraph 5.9.4.

key feature of the UK ice cream industry and acts as a significant constraint on manufacturers' pricing decisions.

63. Given the competition assessment above, the OFT has not found it necessary to conclude on whether buyer power is present on the market.

THIRD PARTY VIEWS

64. In this case, the OFT contacted competitors of the parties, retail and wholesale customers of the parties, and the parties' top brand licensors. Of the competitors and licensors that responded, none expressed concerns regarding the Transaction. A minority of retail customers raised concerns. These concerns have been incorporated where relevant in the decision.

ASSESSMENT

65. The parties overlap in the supply of branded and own label ice cream products in the UK. The OFT has assessed the Transaction on the basis of the supply of ice cream to the catering, leisure and retail sectors in the UK. Within the supply of ice cream to the retail sector, the OFT distinguished between impulse and take home ice cream (and within take home ice cream, between (i) branded and own label ice cream; (ii) format of ice cream (where relevant); and (iii) type of customer (where relevant).

66. On the basis of the parties' low combined shares of supply, the OFT did not consider there to be a realistic prospect that the Transaction will result in a substantial lessening of competition in the supply of all ice cream products to the catering and leisure sectors, or impulse ice cream to the retail sector.

67. While the parties do compete on the supply of some branded take home ice cream products to the retail sector, the parties submitted that, for the parties' main branded products, the closest respective competitor products are Unilever products. The evidence provided by the parties, as well as third party submissions, generally confirmed this. On that basis, the OFT did not consider there to be a realistic prospect that the Transaction may result in a substantial lessening of competition in the supply of branded retail take home ice cream.

68. With regard to own label retail take home ice cream products, the OFT considered whether the Transaction may result in a substantial lessening of competition as a result of loss of actual or potential competition. In terms of actual competition, the parties' combined shares of supply are relatively high. However, the parties submitted that R&R focuses primarily on supplying own label products, whereas Fredericks focuses primarily on branded ice cream products, and the overlap only relates to the supply of own label bars. Given that the increment as a result of the Transaction is low and there is a constraint on the parties' products from other ice cream products of competing suppliers, the OFT was able to rule out concerns relating to the removal of actual competition.

69. Moreover, on a very narrow examination of the supply of choc ices the OFT's investigation found that choc ices compete with other ice cream products which will continue to constrain the parties after the Transaction.

70. As regards potential competition, the OFT did not consider there to be sufficient evidence that Fredericks would likely re-enter the market for own label non-bar products. As a result, the OFT did not consider there to be a realistic prospect that the Transaction may result in a substantial lessening of competition in the supply of own label retail take home ice cream, whether through the removal of actual or potential competition.

71. 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

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