

# Completed acquisition by Hain Frozen Foods UK Limited of Orchard House Foods Limited

## Decision on acceptance of undertakings in lieu of reference

**ME/6585/16**

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 22 September 2016. Full text of the decision published on 29 September 2016.

**Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.**

### Introduction

1. On 21 December 2015, Hain Frozen Foods UK Limited (**Hain**) acquired Orchard House Foods Limited (**Orchard**) (the **Merger**). Hain and Orchard are together referred to as the **Parties**.
2. On 17 May 2016, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On 24 May 2016, Hain offered undertakings in lieu of reference (the **Proposed Undertakings**) to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to Hain on 1 June 2016, pursuant to section 73A(2)(b) of the Act, that it considered that there were reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it was considering Hain's offer (the **UILs Notice**).

4. The text of the SLC Decision and the UILs Notice are available on the CMA webpage.<sup>1</sup>
5. Hain has offered to divest its business and assets in the manufacture and supply of own-label freshly squeezed fruit juice (**FSFJ**) to retail and food service customers, as well as the business and assets of Hain's other activities, including its branded FSFJ (but not the 'Johnson's Juice'), own-label non-carbonated citrus drinks and own-label smoothies (the **Divestment Business**), including manufacturing assets, key staff, know-how and customer contracts, as a going concern, as set out in more detail in the text of the notice of consultation (**Notice of Consultation**) in Annex 1 below.<sup>2</sup>
6. Hain has also offered to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer, before the CMA finally accepts the UILs. Hain has proposed Multiple Marketing Limited (**MM**) as the upfront buyer.
7. On 18 August 2016, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA issued the Notice of Consultation on the Proposed Undertakings.
8. For the reasons set out in the Notice of Consultation, the CMA considered that the Proposed Undertakings and the purchase of the Divestment Business by MM were, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable. The CMA gave notice that it proposed to accept the Proposed Undertakings. The CMA stated that it would have regard to any representations made in response to the Notice of Consultation and may make modifications to the Proposed Undertakings as a result.<sup>3</sup>
9. The CMA received information during the consultation period that the owner of MM also holds a 50% share in Fruitapeel (Juice) Limited (**Fruitapeel**).<sup>4</sup> On a cautious basis, the CMA therefore considered MM and Fruitapeel (**MM / Fruitapeel**) to be under common control and to be treated as part of the same enterprise for the purposes of the CMA's review of the suitability of MM as a purchaser of the Divestment Business.

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<sup>1</sup> See [Hain Frozen Foods / Orchard House merger inquiry](#).

<sup>2</sup> The full consultation text was published on [Hain Frozen Foods / Orchard House merger inquiry](#).

<sup>3</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance \(OFT1122\)](#), December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), January 2014, Annex D).

<sup>4</sup> Fruitapeel is active in the wholesale supply of own-label and branded freshly squeezed fruit juice to food service customers in the UK.

10. In light of this new information, on 20 September 2016 the CMA issued an invitation to comment inviting views from any interested party on this new information, as set out in more detail in the text of the invitation to comment in Annex 2 below.<sup>5</sup> One third party expressed concerns in relation to the link between MM and Fruitapeel and believed that this could lead to competition concerns. All other third parties which responded were not concerned about the fact that MM and Fruitapeel are under common control, nor did they raise competition concerns.

### **The competition concerns identified in the SLC Decision**

11. The Proposed Undertakings must resolve the competition concerns identified in the SLC Decision in a clear-cut manner. Accordingly, the CMA's SLC finding is set out in this section.
12. Pre-Merger, Hain and Orchard overlapped in the wholesale supply of own-label FSFJ and own-label prepared fruit to retail and food service customers. Hain was also active in the supply of branded FSFJ to retail and food service customers. The CMA found no evidence of Orchard having plans to start supplying branded FSFJ products or that Hain perceived a threat of entry from Orchard.
13. The CMA assessed the impact of the Merger on the wholesale supply of own-label FSFJ to retail and food service customers (both separately and together) and own-label prepared fruit to retail and food service customers (both separately and together) on a national basis.<sup>6</sup> In the SLC Decision, the CMA did not find a realistic prospect of an SLC in relation to the wholesale supply of prepared fruit or the wholesale supply of branded FSFJ.
14. The CMA found that the Merger involved the two largest wholesale suppliers of own-label FSFJ in the UK, with a combined share of supply of [90-100]% in the wholesale supply of own-label FSFJ on the basis of value of sales to retail and food service customers (taken together). Specifically:
  - (a) in relation to retail customers, the Parties have a combined share of supply of [90–100]% (with a [40–50]% increment); and

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<sup>5</sup> The full text of an invitation to comment was published on [Hain Frozen Foods / Orchard House merger inquiry](#).

<sup>6</sup> As set out in the SLC Decision, information from third parties was mixed on whether retail and food service customers should be considered together. Some customers indicated that the requirements of retail and food service customers differ in terms of labelling (with food service customers preferring branded rather than own-label products, as opposed to retail customers who prefer own-label products) and packaging formats (with some food service customers preferring larger 'bulk' formats). Competitors also indicated that retailers tended to care more about quality, while food service customers were more focused on price. On a cautious basis, the CMA considered the impact of the Merger on retail and food service customers both separately and together.

- (b) in relation to food service customers, the Parties have a combined share supply of [90–100]% (with a [0–5]% increment).
15. The CMA identified some other suppliers that competed to some extent with the Parties in relation to the supply of own-label FSFJ to food service/retail customers, including Fruitapeel, Fruityline and Sundance, although for the reasons set out in the SLC Decision it found that none individually had sufficient scale to constrain the Parties.
16. In the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the wholesale supply of own-label FSFJ to retail and food service customers (both separately and together) in the UK.

## **The Proposed Undertakings**

17. Hain currently operates the Divestment Business from the site at Headcorn, Biddenden Road, Ashford, Kent, TN27 9LW (**Headcorn site**), which is a freehold property owned by the Hain group. Hain currently produces both branded and own-label FSFJ, as well as smoothies and ingredients, at the Headcorn site.
18. The Divestment Business includes:
- (a) the freehold interest to the property and the fixed assets (plant and machinery) located at the Headcorn site (excluding those assets used in connection with Hain's ingredients business);
  - (b) the lease to the warehouse facility at the Headcorn site used in connection with the Divestment Business;
  - (c) finished goods relating to the Divestment Business;
  - (d) certain raw materials (consisting primarily of fruit and packaging items) located primarily at the Headcorn site and at the warehouse;
  - (e) the unregistered trademarks owned by Hain and used in connection with its branded FSFJ business (excluding the 'Johnson's Juice' brand);
  - (f) customer contracts, to the extent they relate exclusively to the Divestment Business;
  - (g) customer credit and other records to the extent they relate exclusively to the Divestment Business; and

- (h) certain supply contracts relating exclusively to the Divestment Business.<sup>7</sup>
19. In addition to the sale of the Divestment Business, Hain has entered into two manufacturing agreements with the proposed purchaser.
- (a) The first is an agreement whereby the proposed purchaser will continue to manufacture Hain's ingredients products on a contractual basis for an agreed period on the site of the Divestment Business according to contractual requirements.
- (b) The second is an agreement whereby the proposed purchaser will continue to manufacture the Hain's 'Johnson's Juice' branded FSFJ and 'New Covent Garden' branded smoothies for an agreed limited period on the site of, and using the equipment of, the Divestment Business according to contractual requirements.
20. The CMA notes that ingredients products and branded FSFJ may share inputs with own-label FSFJ. Therefore, in order to prevent Hain from acquiring information about the proposed purchaser's input costs in markets in which Hain and the proposed purchaser compete, these manufacturing agreements were subject to CMA approval. These agreements include sufficient safeguards to satisfy the CMA that they will not lead to the transfer of competitively sensitive information between Hain and the proposed purchaser for this limited period.
21. Finally, Hain has offered, under a transitional services agreement, to provide certain central functions or services for an agreed (short-term) period following completion of the disposal of the Divestment Business to the proposed purchaser to enable a smooth transition of the Divestment Business.
22. Table 1 below shows how the market structure in relation to the wholesale supply of own-label FSFJ will change as a result of the Proposed Undertakings.

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<sup>7</sup> The text of the Proposed Undertakings is available on the CMA [webpage](#).

**Table 1 Total revenues (£) from the supply of own-label FSFJ (2015)**

	Hain	Orchard	Divestment Business	Others
Pre-Merger	[10,000,000-20,000,000]	[10,000,000-20,000,000]	0	[0-400,000]
Post-Merger	[30,000,000-40,000,000]	0	0	[0-400,000]
Post-Divestment	[10,000,000-20,000,000]	0	[10,000,000-20,000,000]	[0-400,000]

Source: Parties' and third parties' responses to the CMA's merger investigation

23. In light of the above, the CMA believed that the Proposed Undertakings were appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and formed as comprehensive a solution to these concerns as was reasonable and practicable.

### The proposed purchaser

24. Hain has proposed MM as the upfront buyer.
25. The CMA's starting position is to seek an outcome that restores competition to the level that would have prevailed absent the merger (ie the pre-merger competition level), thereby comprehensively remedying an SLC.<sup>8</sup>
26. Specifically, the merging parties must satisfy the CMA that the following purchaser approval criteria are met:<sup>9</sup>
- (a) the acquisition by the proposed purchaser remedies, mitigates or prevents the SLC concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it;
  - (b) the proposed purchaser is independent of and unconnected to the merging parties (which will generally include an absence of financial,

<sup>8</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*, paragraph 5.11.

<sup>9</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*, paragraph 5.26.

ownership, management and personal links between the merging parties and the proposed purchaser);

- (c) the proposed purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the relevant business as part of a viable and active business in competition with the merged party and other competitors in the relevant market;
- (d) the proposed purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
- (e) the acquisition by the proposed purchaser does not itself create a realistic prospect of a SLC within any market or markets in the UK.

27. For the reasons set out in the UILs Notice, the CMA believed that the acquisition of the Divestment Business by MM would satisfy the above purchaser approval criteria.
28. Given the information received during the course of the consultation regarding Fruitapeel (see paragraph 9), the CMA assessed whether this information could change its previous assessment of MM as a suitable purchaser, and in particular whether, in light of this new information, the acquisition of the Divestment Business by MM still remedies, mitigates or prevents the SLC concerned or any adverse effect which has or may have resulted from it. The CMA also assessed, whether, in light of this new information, the acquisition of the Divestment Business by MM does not itself create a realistic prospect of a SLC within any market or markets in the UK.

*Acquisition by MM remedies, mitigates or prevents the SLC concerned*

29. The CMA believes that acquisition of the Divestment Business by MM will enable it to compete effectively in the supply of own-label FSFJ to retail and food service customers (both separately and together) in the UK and therefore will replace the competitive constraint that would otherwise be lost following the Merger.
30. In relation to the supply to retail customers, the CMA found that MM is not currently active in the supply of FSFJ, but has good existing relationships with retailers and it can therefore be expected to grow its business.<sup>10</sup> The CMA

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<sup>10</sup> Fruitapeel is not active in the supply of own-label FSFJ to retail customers.

believes that the Proposed Undertakings, together with the acquisition of the Divestment Business by MM, will enable MM to compete effectively with Hain for retail customers. To the extent that MM seeks to and is able to build on Fruitapeel's experience of supplying own-label FSFJ to food service customers, this will further enable MM to compete vigorously against Hain and other suppliers in the market.

31. In relation to the supply to food service customers, for the same reasons as above, the CMA believes that the acquisition by MM of the Divestment Business will enable MM to compete vigorously against Hain and other suppliers in the market. The scale of the Divestment Business will also lead to MM becoming a much larger player in the food service sector after the divestment than Orchard was pre-Merger.
32. The CMA therefore believes that the Proposed Undertakings and the acquisition of the Divestment Business by MM remedies, mitigates or prevents the SLC in relation to the supply of own-label freshly squeezed fruit juice to retail and food service customers (both separately and together) in the UK.

*Divestment will not create a realistic prospect of an SLC in any market or markets*

33. As set out in the CMA's guidance,<sup>11</sup> the CMA must also consider whether the acquisition of the Divestment Business by the proposed purchaser would itself give rise to a realistic prospect of an SLC in any market or markets in the UK. In making its assessment of whether a purchaser fulfils these requirements, the CMA will carefully examine the information provided to it by the merging parties (and potential purchasers) and will carry out a proportionate amount of analysis and investigation, potentially including consulting informally with targeted market participants where this would be informative. However, this does not mean that the CMA will carry out a detailed investigation of the type carried out for its SLC assessment in reaching a decision for the purposes of its purchaser approval process.<sup>12</sup>
34. As set out above (see paragraph 9), the acquisition by MM of the Divestment Business will bring those businesses and Fruitapeel under common control. The CMA therefore considered whether the potential loss of Fruitapeel as an independent competitor could give rise to competition concerns.

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<sup>11</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraph 5.26.

<sup>12</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraph 5.27.



35. In relation to Fruitapeel's presence on the market pre-Merger, and as discussed earlier (see paragraph 15), the CMA found in its SLC Decision that Fruitapeel, in common with Fruityline and Sundance, were small players that did not have sufficient scale to constrain the Parties pre-Merger. Whilst Fruitapeel was not active in the supply of own-label FSFJ to retail customers,<sup>13</sup> it had a small share of supply of [0-5]% to food service customers.
36. As part of its consultation on the Proposed Undertakings, the CMA contacted food service customers. The vast majority did not raise concerns as to the potential loss of Fruitapeel as an independent supplier of own-label FSFJ. Further, they also believed that the distinction that the CMA had drawn in its SLC Decision between branded and own-label FSFJ was not important to them, such that suppliers of branded FSFJ (including Fruityline and Sundance, as well as Hain with its 'Johnson's Juice' brand) would continue to constrain suppliers of own-label FSFJ following the acquisition of the Divestment Business by MM.
37. In light of the above, the CMA believes, on a clear-cut basis, that the acquisition by MM of the Divestment Business would not itself give rise to a realistic prospect of an SLC as a result of the loss of Fruitapeel as an independent supplier of own-label FSFJ. To the contrary, the CMA believes that the UILs will instead preserve competition in the market by creating a strong player with the ability and incentive to compete with Hain and other suppliers.

## Decision

38. For the reasons set out above, the CMA considers that the Proposed Undertakings provided by Hain are as comprehensive a solution as is reasonable and practicable and remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the Proposed Undertakings offered by Hain pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
39. The undertakings, which have been signed by Hain and will be published on the CMA webpages,<sup>14</sup> will come into effect from the date of this decision.

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<sup>13</sup> The CMA found some evidence of Fruitapeel tendering for contracts with retail customers although to date it had not won any contracts.

<sup>14</sup> See [Hain Frozen Food / Orchard House Foods merger inquiry](#).

**Sheldon Mills**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**22 September 2016**

## Annex 1

### Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on the proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/6585/16

#### Introduction

1. On 21 December 2015, Hain Frozen Foods UK Limited (**Hain**) acquired Orchard House Foods Limited (**Orchard**) (the **Merger**). Hain and Orchard are together referred to as the **Parties**.
2. On 17 May 2016, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the UK (the **SLC Decision**).
3. On 24 May 2016, Hain offered undertakings in lieu (**UILs**) of reference to the CMA for the purposes of section 73(2) of the Act.
4. The CMA gave notice to Hain on 1 June 2016, pursuant to section 73A(2)(b) of the Act, that it considered that there were reasonable grounds for believing that the undertakings offered (the **UILs Notice**), or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering Hain's offer. A copy of that decision is available on the CMA's webpage.<sup>1</sup> As set out in the SLC Decision, the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Merger for a phase 2 investigation.
5. The text of the SLC Decision is available on the CMA webpage.<sup>2</sup>

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<sup>1</sup> See [Hain Frozen Foods / Orchard House Foods merger inquiry](#).

<sup>2</sup> Ibid.

## The undertakings offered

6. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the wholesale supply of own-label freshly squeezed fruit juice to retail and food service customers (separately and together) in the UK.
7. As set out in the UILs Notice and as subsequently modified, to address the SLC identified by the CMA, Hain has offered undertakings to divest its trades and assets in the manufacture and supply of own-label freshly squeezed fruit juice to retail and food service customers, as well as the trades and assets of Hain's other activities, including its branded freshly squeezed fruit juice (but not the Johnson's Juice), own-label carbonated citrus drinks and own-label smoothies (the **Divestment Business**), including manufacturing assets, key staff, know-how and customer contracts, as a going concern. The text of the undertakings is available on the CMA webpage (the **Proposed Undertakings**).<sup>3</sup>
8. Hain currently operates the Divestment Business from the site at Headcorn, Biddenden Road, Ashford, Kent, TN27 9LW (**Headcorn site**), which is a freehold property owned by the Hain group. Hain currently produces both branded and own-label freshly squeezed fruit juice, as well as smoothies and ingredients, at the Headcorn site. The Proposed Undertakings therefore include the Divestment Business's manufacturing assets at the Headcorn site and a freehold interest in the site.
9. Hain has offered to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer, before the CMA finally accepts the Proposed Undertakings. Hain has proposed Multiple Marketing Limited (**MM**) as the potential upfront buyer. This agreement will be conditional on acceptance by the CMA of the Proposed Undertakings, including approval of MM as the buyer of the Divestment Business.
10. In addition to the sale of the Divestment Business, Hain has offered to enter into two manufacturing agreements with the proposed purchaser. The first is an agreement whereby the proposed purchaser will continue to manufacture Hain's ingredients products on a contractual basis for an agreed period on the site of the Divestment Business according to contractual requirements. The second is an agreement whereby the proposed purchaser will continue to manufacture the Hain Johnson's branded freshly squeezed fruit juice and New Covent Garden branded smoothies for an agreed limited period on the site of,

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<sup>3</sup> Ibid.

and using the equipment of, the Divestment Business according to contractual requirements.

11. The CMA notes that ingredients products and branded freshly squeezed fruit juice may share inputs with own-label freshly squeezed fruit juice. Therefore, in order to prevent Hain from acquiring information about the proposed purchaser's input costs in markets in which Hain and the proposed purchaser compete, these manufacturing agreements will be subject to CMA approval. These agreements will include sufficient safeguards to satisfy the CMA that they will not lead to the transfer of competitively sensitive information between HFF and the Proposed Purchaser. The CMA is considering the suitability of several versions of these agreements, including:
  - (a) toll-manufacturing agreements, in which Hain would supply the fruit ingredients (and potentially other ingredients) necessary for the manufacturing of the toll-manufactured products;
  - (b) co-manufacturing agreements with a fixed initial price, which might be subject to certain automatic price adjustments; and
  - (c) co-manufacturing agreements with a price variation mechanism which would operate through an independent auditor.
12. Finally, Hain has offered, under a transitional services agreement, to provide certain central functions or services for an agreed (short-term) period following completion of the disposal of the Divestment Business to the proposed purchaser to enable a smooth transition of the Divestment Business.

## **CMA assessment**

### ***Suitability of the proposed UILs***

13. The CMA currently believes, subject to responses to the consultation required by Schedule 10 of the Act that the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.<sup>4</sup>

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<sup>4</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

14. The Proposed Undertakings remove the Parties' overlap in the wholesale supply of own-label freshly squeezed fruit juice to retail and food service customers in the UK, and will place MM in an equivalent competitive position in the supply of own-label freshly squeezed fruit juice to that of Hain currently. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because the Divestment Business is a viable stand-alone business that is capable of being sold.

***Suitability of the proposed purchaser***

15. In approving a purchaser, the CMA's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. The CMA therefore seeks to ensure that:
- (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it;
  - (b) the proposed purchaser is independent of, and unconnected to, the merging parties;
  - (c) the proposed purchaser has the necessary financial resources, expertise, incentive and intention to maintain and operate the divested business as an effective competitor in the marketplace;
  - (d) the proposed purchaser is reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
  - (e) the acquisition by the proposed purchaser does not itself create an SLC within any market or markets in the UK.<sup>5</sup>
16. MM is based in the UK and has over 30 years of experience in the UK fruit juice industry, initially as an import agent for fruit juice manufacturers in Holland and Belgium, and now as a manufacturer. For its financial year ended 31 December 2014, it generated total revenues of around £43 million. It primarily sells 'From Concentrate' (**FC**) and 'Not From Concentrate' (**NFC**) juices through its own brand 'Sunmagic', which it has supplied for over 25 years, and customers' own-labels. MM also has links to a fruit juice bottling plant in Yaxley (Peterborough), which produces ambient stable bottled fruit juice and juice drinks. MM's sister companies include RM Curtis Limited and

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<sup>5</sup> [OFT1122](#), paragraphs 5.25–5.30.

Eat Natural Limited, which combined supply a portfolio of products targeting healthy living/lifestyles (eg Eat Natural bars and nut and fruit snack packs) to an extensive UK customer base, including both retail and food service customers. It told us that it planned to transfer the distribution and warehousing capabilities of the Divestment Business from Hain to its own existing third-party logistics supplier within a short timeframe.

17. As regards to independence, MM does not currently have any structural or financial links with Hain or Orchard. In relation to the ingredients' and branded juice co-manufacturing agreements, which form part of the Divestment Business, the CMA does not consider that these would undermine the independence of MM.
18. As regards to financial resources, MM has confirmed to the CMA that it is able to finance the acquisition and had received confirmation from its bank that it had sufficient funds to commit to an acquisition.
19. Given that MM is currently active in the manufacturing and supply of fruit juices and related products, the CMA believes that it is reasonable to expect it to possess already all necessary approvals, licences and consents from any regulatory or other authority.
20. Finally, the CMA considers that the acquisition by MM does not itself create an SLC within any market or markets in the UK.
21. Therefore, subject to responses to this consultation, the CMA currently considers MM to be a suitable purchaser of the Divestment Business.

## **Proposed decision and next steps**

22. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Business by MM are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
23. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the Proposed Undertakings is available on the CMA case page.<sup>6</sup> The Parties will then have to enter into the sales and purchase agreement

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<sup>6</sup> See [Hain Frozen Foods / Orchard House Foods merger inquiry](#).

with MM, conditional only on the CMA's final approval. The final date for a decision is 22 September 2016.

24. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.<sup>7</sup>
25. Representations should be made in writing to the CMA and be addressed to:

Maxwell Harris  
Mergers Group  
Competition and Markets Authority  
Victoria House  
37 Southampton Row  
London  
WC1B 4AD

Email: [maxwell.harris@cma.gsi.gov.uk](mailto:maxwell.harris@cma.gsi.gov.uk)

**Deadline for comments: 2 September 2016**

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<sup>7</sup> Under paragraph 2(4) of Schedule 10 to the Act.



## Annex 2

### Invitation to comment

On 18 August 2016, the Competition and Markets Authority (CMA) opened a public consultation in relation to the undertakings offered by Hain Frozen Foods UK Limited (**Hain**).

The CMA considered that there were reasonable grounds for believing that the undertakings, or a modified version of them, might be accepted by the CMA under the Enterprise Act 2002. These undertakings involved the proposed divestment of Hain's business and assets in the manufacture and supply of own-label freshly squeezed fruit juice to retail and food service customers, as well as other business and assets (the **Divestment Business**), as a going concern, as set out in more detail in the text of the consultation ([Notice of Consultation](#)).

The CMA also considered that the proposed purchaser for the divestment business – Multiple Marketing Limited (**MM**) – might be approved by the CMA. In particular, the CMA believed that the purchase of the Divestment Business by MM was, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form a comprehensive solution to these concerns as is reasonable and practicable.

The CMA received information during the consultation period that the owner of MM also has a 50% shareholding in Fruitapeel (Juice) Limited (**Fruitapeel**). This shareholding means that MM and Fruitapeel may be considered to be under common control for the purposes of the CMA's assessment of MM as purchaser. Therefore, the acquisition by MM of the Divestment Business may result in the Divestment Business and Fruitapeel ceasing to be distinct.

Fruitapeel is not present in the supply of own-label freshly squeezed fruit juice to retail customers but does supply some food service customers and therefore the acquisition would reduce the number of suppliers of own-label freshly squeezed fruit juice to food service customers in the UK.

The CMA is of the provisional view that, notwithstanding the above, the acquisition by MM of the Divestment Business would still meet the purchaser approval criteria; in particular, that it would remedy, mitigate or prevent the SLCs identified and will create a strong player in the supply of own-label freshly squeezed fruit juice.

However, given that this new information was not made available in the Notice of Consultation, and to assist it with this assessment, the CMA invites comments on MM's shareholding in Fruitapeel and views on its possible impact on the

effectiveness of the proposed undertakings (and MM as purchaser), from any interested party.

These comments should be provided by the deadline set out below to:

Case officer name: Karina Kucaidze

Tel no: 0203 738 6730

E-mail: [karina.kucaidze@cma.gsi.gov.uk](mailto:karina.kucaidze@cma.gsi.gov.uk)

Affected sector: Food manufacturing

Case number: ME/6585/16

Expected decision date: 22 September 2016

Deadline for comments: 5pm on 21 September 2016