



## **M/05/73 ABF/Ethnic Food Business**

### **Determination of the Competition Authority 21 December 2005**

#### **Proposed Acquisition by Associated British Foods plc of the Ethnic Food Business**

##### **Introduction**

1. On 21 November 2005, the Competition Authority, in accordance with Section 18 (1) of the Competition Act, 2002 ("the Act") was notified, on a mandatory basis, of a proposal whereby Associated British Foods plc ("ABF"), through ABF Grain Products Limited ("ABF Grain") and A.B.F. Holdings Limited ("A.B.F. Holdings") would acquire the entire issued share capital of B.E. International Foods Limited ("BEIF") and certain assets and liabilities of the UK Ethnic Food Business ("Ethnic Foods") from HP Foods Limited and HP Foods Holdings Limited ("HP"). BEIF and Ethnic Foods are hereinafter referred to collectively as "the Ethnic Food Business".

##### **The Parties**

2. ABF, the acquirer, is an international food, ingredients and retail group operating both manufacturing and distribution activities across Europe, North America, Asia, Australia and New Zealand. Its business is organised in four segments: (a) grocery; (b) primary foods and agriculture; (c) ingredients; and (d) retail.
3. A.B.F. Holdings is 100% owned by ABF Investments plc which, in turn, is 99% owned by ABF. ABF Grain is a wholly-owned subsidiary of Sunblest Bakeries Limited which in turn is a wholly-owned subsidiary of ABF Holdings.
4. ABF's activities in the State are carried out through various businesses it has established in the State or through sales made into the State from its businesses established elsewhere. These businesses operate in several sectors such as sugar, agri-business and retail clothing.
5. ABF is also active in the manufacturer, distribution and sale of ethnic food products and accompaniments, the sale of which is effected through two of ABF's subsidiaries: (a) G Costa and Company Limited ("Costa") and (b) Westmill Foods ("Westmill"). Costa focuses mainly on the sale of sauces while Westmill primarily sells rice, flour and noodles in Ireland and one sauce product, Ken Hom. In addition to Costa and Westmill, ABF has also recently purchased Pride Oils which produces edible oils. Pride Oils will be integrated into Westmill.
6. All of Costa's and Westmill's products which are destined for the retail channel sold in/into Ireland are distributed by third-party distributors.



7. An overview of the branded and non-branded ethnic food products and accompaniments sold by ABF in the State is set out in Table 1 below.

**Table 1: Overview ABF's Ethnic Food Products/Accompaniments**

BRAND/NON-BRAND(COMPANY)	ETHNIC SPECIFICITY	PRODUCT RANGE - SELECTED
Blue Dragon (COSTA)	Thai/ Vietnamese	<ul style="list-style-type: none"> <li>• Curry sauces</li> <li>• Curry pastes</li> <li>• Bamboo shoots</li> <li>• Coconut milk</li> <li>• Stir-fry sauces</li> </ul>
Condiments (COSTA)	Not applicable	<ul style="list-style-type: none"> <li>• Tabasco</li> <li>• French's Mustard</li> </ul>
Ken Hom (Westmill)	Not specific	<ul style="list-style-type: none"> <li>• Sauce</li> </ul>
Pride Oils	Not specific	<ul style="list-style-type: none"> <li>• Edible oils</li> </ul>
Tolly Boy	Not specific	<ul style="list-style-type: none"> <li>• Rice</li> </ul>
Asli Atta	Indian	<ul style="list-style-type: none"> <li>• Chappati flour</li> </ul>
Lucky Boat	Not specific	<ul style="list-style-type: none"> <li>• Noodles</li> </ul>

8. In the year ended 18 September 2005, ABF had a world-wide turnover of Stg£5,200 million (approximately €7,556 million) and a turnover in the State of less than €300 million)<sup>1</sup>.
9. The Ethnic Food Business, the target, comprises, *inter alia*, the business of:
- (a) marketing, sales and distribution of several ethnic branded food products in any channel (as set out in more detail in Table 2 below);
  - (b) packaging of Rajah products;
  - (c) distribution of Danone's Amoy branded ethnic food products in the ethnic channel; and
  - (d) the distribution of certain ethnic food products sourced from third parties.

**Table 2 Overview of Ethnic Food Business Branded Product Range**

BRAND	ETHNIC SPECIFICITY	PRODUCT RANGE - SELECTED
Rajah	Indian	<ul style="list-style-type: none"> <li>• Whole and ground spices</li> <li>• Pastes</li> <li>• Herbs</li> <li>• Seasonings</li> <li>• Accompaniments</li> </ul>
Green Dragon	Thai (premium)	<ul style="list-style-type: none"> <li>• Rice</li> <li>• Flour</li> <li>• Potato starch</li> </ul>
Lotus	Not specific	<ul style="list-style-type: none"> <li>• Bamboo products</li> <li>• Food colorants</li> </ul>
Cathay	Not specific	<ul style="list-style-type: none"> <li>• Foil</li> </ul>

<sup>1</sup> Of this revenue less than €400 million was earned by Penny's, the retail clothing arm of ABF in the State.



		<ul style="list-style-type: none"><li>• Plastic food containers (as used by Chinese/Indian Take-aways)</li></ul>
Dynasty Brand	Not specific	<ul style="list-style-type: none"><li>• Rice</li><li>• Bamboo Products</li></ul>
Maharajah	Not specific	<ul style="list-style-type: none"><li>• Canned mango products</li></ul>

10. Approximately [ ] of the Ethnic Food Business' world-wide turnover, as set out in para. 12 below, derives from sales of its branded products. The remaining [ ] of world-wide turnover derives from the Ethnic Business' sales of its other branded and non-branded products and from distribution agreements in place.
11. All of the Ethnic Food Business' products which are sold in/into Ireland are distributed by third-party distributors.
12. In the most recent financial year, the Ethnic Food Business had a world-wide turnover of approximately Stg£50 million (approximately.€72.8 million) of which less than €10 million derived from sales of its products to its customers based in the State during 2004.

### **The Transaction<sup>2</sup>**

13. The transaction involves the acquisition of the entire issued share capital of BEIF and the acquisition of certain assets and liabilities of Ethnic Foods by ABF from HP.
14. In addition and pursuant to the transaction, ABF will be appointed as a distributor for certain HP products in the wholesale ethnic channel.
15. The transaction will allow ABF to expand its ethnic food business and will facilitate supply chain and sales synergies for ABF.

### **Competitive Analysis**

17. In the Authority's Determination in M/05/033 H.J. Heinz Company/HP Foods Limited<sup>3</sup> ("Heinz/HP Determination"), having taken into account the European Commission's decision, *inter alia*, in *Comp/M.1990-Unilever/Bestfoods*, the Authority distinguished between two sectors of production and sale of food products, namely, the production and sale of food products to the retail sector and the production and sale of food products to the food service sector. The food services sector consists of supply to out-of-home eating and institutional catering. Food service distribution channels have important features which distinguish them from the retail channels and which thus give rise to separate markets. These

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<sup>2</sup> In August 2005, HP was acquired by Heinz, a transaction which was also notified in the United Kingdom and referred to the Competition Commission. Pending the completion of the review by the Competition Commission of the Heinz/HP transaction, HP may not sell the Ethnic Food Business to ABF. The Ethnic Food Business, has therefore not been integrated into Heinz' business and is currently held separately from Heinz' business until the Competition Commission completes its review of the HP/ Heinz transaction. The Authority has concluded that its Determination in the current notified transaction is not affected by the proceedings of the Competition Commission in the United Kingdom.

<sup>3</sup> Available from the Authority's website at [http://www.tca.ie/mergers/determinations/m\\_05\\_033\\_p1d.pdf](http://www.tca.ie/mergers/determinations/m_05_033_p1d.pdf), para 10.



distinctions include a service dimension, separate sales forces, different price structures, different pack sizes and different health and safety regimes.

18. The parties have submitted that this distinction between the retail sector and the food service sector applies in Ireland. The Authority found in the Heinz/HP Determination that there are separate product markets for food retailing and food service. In this regard, the Authority's investigation of the notified transaction has focused on the food retailing sector.
19. The Parties' activities in the food retailing sector in the State overlap, to a limited degree, in respect of several product sub-divisions, namely:
  - Dry carbohydrates (poppadums, rice and noodles);
  - Food oils;
  - Flour; and
  - Ingredients for cooking ethnic food and condiments (including sauces) for cooking ethnic food.

#### ***Dry Carbohydrates***

20. In respect of dry carbohydrates, the Authority has concluded that the overlap in the Parties' activities is minimal. In the year ended 18 September 2004, ABF, through Westmill, sold approximately [ ] of dry carbohydrates in the State. Figures provided by the Parties show that ABF's rice sales, account for approximately [ ] of all rice sales in the State. No figures were available in respect of noodle sales in the State. The Ethnic Food Business sells poppadums in the State. In 2004, the Ethnic Food Business' sales of poppadums amounted to [ ]. The Ethnic Food Business does not sell rice or noodles in the State. Other companies providing rice products include, but are not limited to S&B Herba, Boost/Uncle Bens, Veetee Rice Ltd and Tilda Ltd.

#### ***Food Oil***

21. Both Parties sell food oils in the State. ABF, through Costa, sells a sesame oil and through Pride Oils, various edible oil products, which accounted for [ ] and [ ], respectively, in sales in the State in 2004. The Ethnic Food Business sells a sesame oil product under its Amoy brand, sales of which in the State amounted to [ ] in 2004. The Parties face competition from food oil competitors such as Pura Foods Products Ltd.

#### ***Flour***

22. In 2004, ABF sold approximately [ ] of flour in the State with Westmill selling approximately [ ] of flour in the State. In 2004, the Ethnic Foods Business, under its Green Dragon brand, derived [ ] from flour sales in the State. Both ABF and the Ethnic Food Business compete with and face strong competition from larger flour sales entities such as Odlums and Andrews (who hold an estimated 70% (collectively) share of flour market in the State) for the sale of flour in the State.

#### ***Ingredients for cooking ethnic food and condiments (including sauces) for cooking ethnic food***



23. The Parties' activities mainly overlap in the sale of ethnic food products in the State, in particular, ingredients (including sauces) for cooking ethnic food and condiments for cooking ethnic food.
24. ABF, through Costa, sells a variety of products which include sauces, pastes, coconut milk and bamboo shoots mainly for use in the preparation of Thai or Vietnamese meals through its brand Blue Dragon in the State. During the financial year ended 18 September 2005, ABF had total sales of [ ] for its Blue Dragon products. These sales figures include rice and noodle sales, sold under the Blue Dragon brand. Other condiments, such as mustard and Tabasco (sold under ABF brand names) sold in the State in the same period earned ABF less than [ ], while sales of Ken Hom sauce (through Westmill and Pride Oils) in the State amounted to [ ] in 2005.
25. The Ethnic Food Business sells mango chutney, herbs, spices and seasonings (Rajah Brand), MSG for food flavouring (Lotus Brand) and food colouring in the State with sales of [ ], [ ], [ ] and [ ] respectively in the State during 2004.
26. Both Parties face competition from a large number of manufacturers and/or suppliers of ingredients (including sauces) for cooking ethnic food and condiments for cooking ethnic food which include but are not limited to, Lee Kum Kee, Kikkoman, Patak, Sharwoods, WT Foods, Kwan Yick, Seewoo and SOP International.
27. The Authority has concluded that further consideration of ethnic foods, in particular, ingredients (including sauces) for cooking ethnic food and condiments for cooking ethnic food, as a separate or distinct sub-division of the food retail product market is not necessitated given:<sup>4</sup>
  - (a) the minimal overlap of the Parties' activities in the State in the sale of such products; and
  - (b) the number of competing products/ suppliers of ingredients (including sauces) for cooking ethnic food and condiments for cooking ethnic food that are present post-merger.
28. The Authority has concluded that no competition concerns arise post-merger in respect of the Parties' overlapping activities in the food retail sector specifically in respect of dry carbohydrates, food oils, flour and ingredients for cooking ethnic food and condiments (including sauces) for cooking ethnic food. The notified transaction, therefore, does not give rise to competition concerns and will not lead to a substantial lessening of competition.

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<sup>4</sup> In its Heinz/HP Determination, having taken into account the European Commission's decision in *Comp/M.1802- Unilever/Amora-Maille*, the Authority accepted that the sauces and condiments sub-division of the food retail sector consisted of 11 separate product markets. Further, in *Unilever/Bestfoods* it was confirmed that ketchup and other cold sauces were separate product markets. In relation to other cold sauces, the European Commission stated that "Other cold sauces are used to add flavour to a prepared dish. They include mayonnaise-based sauces ("béarnaise", "tartare", "cocktail") and "exotic" or "ethnic" sauces with a non mayonnaise base (Tabasco, salsa, guacamole). Neither the Authority in its Heinz/HP Determination nor the European Commission in either *Unilever/Bestfoods/ Unilver/Amora-Maille*, however, discussed whether ethnic foods, in particular, ingredients (including sauces) for cooking ethnic food and condiments for cooking ethnic food, formed a separate or distinct sub-division of the food retail product market.



### **Ancillary Restraints**

33. Under the terms of the agreement entered into by the Parties, a non-compete clause is placed on HP for a period of three years post-completion of the transaction.
34. The non-compete restricts HP from carrying out or being engaged in any competing business (excluding sauces), which is a business involving the manufacture, distribution and/or sale of products which compete with the Ethnic Food Business and applies in several territories including in the State.
35. The Parties have submitted that the non-compete, both from a temporal and geographic perspective, is necessitated by virtue of the fact that (a) ABF has made a substantial investment in acquiring the Ethnic Food Business and (b) HP, as a multi-national food company with significant presence, is a trusted and highly recognised household name.
36. The Authority does not consider the ancillary restraint imposed on HP to be unduly restrictive and has concluded that the duration and scope of the ancillary restraint are necessary in order to protect ABF's business equity in the Ethnic Food Business.



**The Competition Authority**  
An tÚdarás Iomaíochta

## **Determination**

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by Associated British Foods plc will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

**For the Competition Authority**

**Edward P. Henneberry**  
**Member of the Competition Authority**