



DETERMINATION OF MERGER NOTIFICATION M/13/012 -

R&R/Fredericks

Section 21 of the Competition Act 2002

Proposed acquisition by R&R Ice Cream plc of Fredericks Dairies Limited.

Dated 8 May 2013

Introduction

1. On 15 April 2013, in accordance with section 18(1)(a) of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed acquisition whereby R&R Ice Cream plc ("R&R"), through its subsidiary R&R Ice Cream UK Limited ("R&R UK"), would acquire Frederick Dairies Ltd ("FD") by acquiring sole control of Frederick Holdings (Guernsey) Ltd ("FHG").

The Undertakings Involved

The Purchaser

2. R&R, the Purchaser, is an ice cream manufacturer which has its headquarters in the UK. R&R UK, which would acquire FHG, is wholly owned by Richmond Foods Ltd, which is wholly owned by Ruby Acquisitions Ltd., which in turn is wholly owned by the Purchaser.
3. R&R is solely controlled by Oaktree Capital Management (Oaktree)¹. Oaktree does not control any other companies involved in the manufacture of ice cream.
4. In the financial year ending 31 December 2012, R&R's worldwide turnover was approximately €[...] million. For the same period its turnover in the State was approximately €[...] million.
5. R&R manufactures and sells both take home and impulse ice cream through retailers, the food services industry and the leisure segment of the ice cream sector. According to the parties its primary focus is on the take home segment.
6. R&R produces a range of different of ice cream products under (i) its own brands; (ii) licensed brands from third parties such as Nestle and Ribena; and (iii) the own label brands of retailers such as Tesco, Asda, Aldi, Carrefour and Coop.
7. See Table 1 for the products produced by R&R.

¹ Oaktree holds 81% of the common equity of R&R, with the remainder held by the management of R&R.

Take Home		Impulse	
Brand	Sub-Brand	Brand	Sub-Brand
Nestlé	After Eight	Disney	Mickey
	FAB	Nestlé	Lion Bar
	Lion Bar		Rolo
	Munchies		Rowntree Fruit Pastilles
	Rolo		Smarties
	Rowntree Fruit Pastilles		
	Smarties		
Ribena (GSK)	-		
Yoo Moo	-		
Thorntons	-		

The Target

8. The Target, FD, is also an ice cream manufacturer which has its headquarters in the UK. FD is wholly owned by Frederick Holdings Ltd which is in turn wholly owned by FHG. Mr Frank Anthony Frederick and Mr Philip Matthew Frederick each hold 50% of FHG.
9. FD's activities are primarily undertaken in the UK with very little activity carried out elsewhere. For the financial year ending 31 August 2012 FD's worldwide turnover was approximately €[...] million and its turnover in the State amounted to approximately €[...] million.
10. FD manufactures and sells both take home and impulse ice cream through retailers, the food services industry and the leisure segment of the ice cream sector. It describes itself as "the UK's largest British independent ice cream manufacturer."²
11. FD's primary business is the manufacture and sale of licensed products for firms such as Cadbury (Kraft), Britvic, Del Monte, Nichols (Vimto) and Tangerine (Barrat). To a limited extent, FD also engages in selling its own branded products, including "Antonio Federici", and retailer own brand ice cream.

Products produced and sold by FD are illustrated in Table 2.

Take Home		Impulse	
Brand	Sub-Brand	Brand	Sub-Brand
Barratt's	Refreshers	Cadbury	Creme Egg
Cadbury	Buttons		Crunchie Blast
	Caramel		Dairy Milk
	Creme Egg		Double Decker
	Crunchie		Flake
	Crunchie Blast		Nuts about Caramel
	Dairy Milk		Wispa

² See <http://www.fredericksdairies.com/>

	Flake	Del Monte	100% Juice
	Fruit & Nut	Robinson's	Fruit Shoot
	Nuts about Caramel	The Natural Confectionery Company	Ice Squirts
Del Monte	100% Juice		
	Fruitini		
	Smoothie		
R Whites			
Robinson's	Fruit Shoot		

Rationale for the Acquisition

12. The Purchaser states that its reason for the acquisition is:

"First, the Purchaser is keen to acquire the benefit of the exclusive license for the manufacture of Cadbury products in the UK, which is currently held by the Target. ... Secondly, the Purchaser is of the view [...]."

James Lambert, chief executive officer of the Purchaser, has been quoted as saying that the acquisition would help R&R compete with Unilever—adding [*"The European ice cream sector will end up with two major businesses – Unilever and us. Nobody else is making money out of ice cream."*].³

Third Party Submissions

13. No submission was received.

Competitive Analysis

Horizontal Overlap

14. The area of horizontal overlap between the parties concerns the manufacture, distribution and sale of ice cream products. Both parties are active in the sale of ice cream products in the retail sector. [...]. Both parties do participate in the leisure sector (entertainment centres and leisure centres), but only indirectly through sales to one or more intermediaries, and the turnover involved, especially for FD, is very modest. Consequently the analysis below focuses on the overlap between the parties in the retail sector, which is the largest and most important distribution channel in the State.

Geographic Market

15. The parties submit that the geographic market is wider than the State given that both parties are located outside the State and both export ice cream into the State. For the purpose of its review of this notification, while the Authority analysed the transaction on the basis of a national geographic market there was no need to come to a definitive conclusion on the geographic market since the transaction does not give rise to any competition concerns regardless of how the market is defined.

³ See <http://www.foodmanufacture.co.uk/Business-News/R-R-Ice-Cream-scoops-Fredericks-Dairies-for-49M>

Product Market

16. The retail, food services and leisure sectors could be considered as separate product markets for ice cream products. However as noted in paragraph 14 the area of material overlap in the State is confined to the retail sector. Within the retail sector there are two different product segments that could be considered as relevant product markets for this transaction, namely, the market for retail impulse ice cream products (those products intended for immediate consumption) and the market for retail take home ice cream products (those ice cream products which will be consumed at some point in the future). The parties have submitted AC Nielsen data for both of these product market for the state for the period September 2011 to September 2012 – see Table 3 below.

Take Home Ice Cream		Impulse Ice Cream	
Company	% Share by Value	Company	% Share by Value
Unilever Foods	[60-70]	Unilever Foods	[80-90]
General Mills	[0-10]	Mars	[0-10]
R&R (Purchaser)	[0-10]	R&R (Purchaser)	[0-10]
Kraft (Target)	[0-10]	Kraft (Target)	[0-10]
Mars	[0-10]	Dale Farm	[0-10]
Private Label	[10-20]		

Source: AC Nielsen data supplied by the Parties

17. Together the take home and impulse ice cream market in the State in the data collected by AC Nielsen amounted to €[...] million in the period September 2011 to September 2012.⁴ Take home ice cream sales accounted for 55% and impulse ice cream sales for 45%.
18. Fredericks' own brands (Antonio Federici) do not appear by name in the Nielsen data because their market share is too small. However, as noted Fredericks have the exclusive license for the manufacture and distribution of Cadbury brands which are captured above as Kraft.
19. Table 1 shows that post-acquisition R&R would have a combined market share in the order of [0-10]% in the take home market making it the second largest branded competitor after Unilever. For the impulse market the post transaction market share would be [0-10]% - the third largest branded competitor.
20. Both the take home and impulse markets are dominated by Unilever through its brands such as HB, Ben & Jerry's, Carte d'Or and Viennetta in the take home segment and Cornetto, Magnum and Ice Berger in the impulse segment. The position of Unilever as the clear market leader would be unaffected by the merger.
21. Although, by virtue of Unilever's position, the markets are already highly concentrated and the acquisition would increase concentration, the increase in the HHI would be only [...] (take home) and [...] (impulse), which places the acquisition in zone A according to the

⁴ Note: AC Nielsen does not collect data for Dunnes Stores and the independent convenience stores, and the above numbers exclude the food service and leisure sectors. The parties estimate that ice cream sales in the State, at retail prices, total approximately €160 million.

Merger Guidelines.⁵ According to the Guidelines, acquisitions in zone A “are less likely to have adverse competitive effects.”

22. The table also shows that R&R would continue to face significant post-acquisition competition in both markets which would constrain its behaviour. In the take home market, Unilever, General Mills (Haagen Dazs) and own label offerings would be significant competitors and in the impulse market Unilever and Mars (Mars Bar, Maltesers, Galaxy, Snickers and Twix ice cream bars) would remain as the strongest competitors. It is also noteworthy that many of the brands under which R&R would make and sell ice cream are licensed by third party brand owners, with R&R having only such rights as are provided by specific contracts.
23. As part of its investigation, the Authority checked with several of each party’s most important customers (which include the large multiples). None expressed any concern about the proposed acquisition.
24. In the light of the above, the Authority considers that the proposed transaction will not raise competition concerns in any of the possible markets identified.

⁵ The Guidelines are available at http://www.tca.ie/images/uploaded/documents/n_02_004%20Merger%20Analysis%20Guidelines.PDF

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby R&R Ice Cream plc through its subsidiary R&R Ice Cream UK Limited would acquire Fredericks Dairies Ltd through its acquisition of sole control of Fredericks Holdings (Guernsey) Ltd will not be to substantially lessen competition in markets for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Stephen Calkins

Member of the Competition Authority

Director, Mergers Division