



## **DETERMINATION OF MERGER NOTIFICATION M/06/098 – PREMIER FOODS/RHM**

---

### **Section 21 of the Competition Act 2002**

#### **Proposed acquisition by Premier Foods plc of RHM plc**

**Dated 9/02/07**

---

### **Introduction**

1. On 28 December 2006, the Competition Authority (“the Authority”) in accordance with section 18(1) of the Competition Act, 2002, (“the Act”) was notified on a mandatory basis of a proposal whereby, Premier Foods plc (“Premier”) would acquire sole control of RHM plc (“RHM”).

### **The Undertakings Involved**

2. Premier, the acquirer, is active in Ireland, the UK, and Continental Europe in the production and sale of a variety of grocery products. Premier’s stock is publicly traded on the London Stock Exchange and its shareholding is widely dispersed. In Ireland, Premier’s products are sold under various brands including the *Campbell’s*, *Erin* and *McDonnells* brands. The *Erin* brand (which accounts for the greatest share of Premier’s retail sales) features product lines including instant soups, dry sauces, simmer soup, marrowfat peas, gravies, and casseroles. The *McDonnells* brand includes curry sauce, simmer soup, and pot-noodle products. The *Campbell’s* brand includes condensed soups and *Souppulls*, *Cup-a-Soup*, meatballs and stews. In Ireland, Premier also sells its *Oxo* products (both *Oxo* stock cubes and gravy) and operates a manufacturing facility in Thurles where the *Erin* brand is produced.
3. In the year ending 31 December 2005, Premier reported turnover of STG£790 million (approximately, €1,236 million), of which c. €[ ] million was generated from sales to customers located in the State. In addition, Premier now recognises STG£263 million (approximately, €412 million) in turnover generated by the UK and Irish operations of the Campbell Soup Company<sup>1</sup> of which c. STG£[ ] million (approximately, €[ ] million) was generated from sales to customers in the State.
4. RHM, the target, is also active in Ireland, the UK, and Continental Europe in the production and sale of a variety of grocery products. In Ireland, RHM’s principal brands are *Sharwoods* (cooking sauces and accompaniments), *Paxo* (stuffing mixes), *Saxa* (salt), *McDougalls* (flour, baking mixes and yeast), *Mr Kipling*, *Cadbury Cakes*, *Gateaux* (cakes), *Bisto* (gravy makers) and *Atora* (suet). RHM has no manufacturing facility in the State and imports all its products (with the exception of *Gateaux* cakes and *Saxa* salt, which are manufactured under contract in the

---

<sup>1</sup> Premier acquired the Campbell Soup Company in August 2006. This was not a notifiable transaction under the Act.

State).<sup>2</sup> In Ireland, RHM also distributes a number of third-party branded products, including *Baxters*, *Capri Sun*, *Ocean Spray*, *Discovery*, *Sacla*, *Popz*, *Percol*, *Arte Olivia*, *Flat Bread Company*, and *Garners*.

5. In the year ending 29 April 2006, RHM reported turnover of STG£1,559 million (approximately, €2,439 million), of which €[ ] million was generated from sales to customers in the State.

### **Rationale for the Proposed Transaction**

6. The undertakings involved submitted that the proposed transaction represents a combination of largely complementary product lines. The proposed transaction will allow Premier to further develop its relationships with the major UK food retailers in order to deliver better products, greater innovation and higher service levels. The proposed transaction is also expected to achieve substantial cost savings and synergies for Premier through rationalisation of administrative functions and procurement benefits.

### **The Authority's Investigation**

7. During the course of its Phase 1 investigation, the Authority distributed questionnaires to six customers<sup>3</sup> and nine competitors<sup>4</sup> of the undertaking involved.<sup>5</sup> The Authority received replies from four [...] out of the six customers.<sup>6</sup> Collectively, these four customers account for c. 80% of purchase and sale of the relevant products from the undertakings involved in the State. Only three [...] out of the nine competitors replied to the Authority's questionnaire.<sup>7</sup> Nevertheless, these three are regarded as the main competitors of the undertakings involved for purposes of this Determination.
8. The Authority's Phase I investigation revealed that, in the State, the activities of the undertakings involved mainly overlap in three product markets:
  - (a) sauces;
  - (b) soups; and
  - (c) gravies.
9. Premier submitted proposals under section 20(3) designed to address competition concerns raised by the proposed transaction in the gravy market. The proposals were market tested and certain amendments were made. The proposals as amended form the basis of the Authority's Determination that the proposed transaction will not lead to a substantial lessening of competition in markets for goods and services in the State.

---

<sup>2</sup> To a limited extent, RHM's UK preserves (including jams and marmalade), sold under the Robertson's brand, Robertson's Golden Shred and Frank Cooper's brands, are also available in Ireland. RHM's Irish sales of these products are minimal, however, and RHM estimates that its share of the sweet spreads product category is less than 10%.

<sup>3</sup> [...].

<sup>4</sup> [...].

<sup>5</sup> The responses to these questionnaires will be referred to below as market enquiries.

<sup>6</sup> A fifth customer, [...], a buying group for smaller retailers, declined to reply to the questionnaire on grounds that it had no concerns.

<sup>7</sup> [...] declined to reply to the questionnaire on grounds that they are not active in the relevant product categories.

10. The undertakings involved also notified the UK Office of Fair Trading ("Oft") of the proposed transaction. In order for the Competition Authority and the OFT to discuss their respective investigations into the proposed transaction, confidentiality waivers were requested from the undertakings involved. These were granted on 5 January 2007. The OFT unconditionally cleared the proposed transaction on 5 February 2007.

## **Analysis**

### ***Relevant Product Markets***

11. Both Premier Foods and RHM are UK public companies that are active in the manufacture, distribution and sale of a variety of food products in the UK and Ireland.

12. In their submissions to the Authority, the undertakings involved cited the European Commission ("the Commission") decision in *Unilever/BestFoods*,<sup>8</sup> in which the Commission distinguished, in the sauces category, between wet and dried sauces (as well as wet pasta sauces and other wet sauces) and, in the soups category, between ambient wet soups, regular dry soups, and instant dry soups. Similarly, in the UK, the OFT has distinguished between ambient and fresh chilled cooking sauces.<sup>9</sup>

13. The Authority while recognising previous decisions on the relevant market has decided, in defining the relevant market for the purpose of this Determination, to apply the SSNIP test to the market facts in the State. That is, whether a hypothetical monopolist could profitably raise price by 5-10% for each of prepared gravies, prepared soups and sauces product categories in the State. Evidence from the Authority's market enquiries (i.e., response to questionnaires distributed to customers and competitors) showed that customers consider each of these product categories to be in a separate market.<sup>10</sup>

14. Accordingly, the Authority has identified three relevant product markets for purposes of assessing the impact on competition resulting from this proposed transaction:

- the sauces market;
- the soups market; and,
- the gravies market.

There is some further discussion below concerning market definition with respect to the gravies market.

---

<sup>8</sup> See decision of the Commission, Case No. COMP/M.1990 *Unilever/Bestfoods* of 28 September, 2000 ("*Unilever/Bestfoods*").

<sup>9</sup> See decision of the OFT, *Bakkavor Group Hf/Geest plc*, 28 April 2005. From a consumer perspective, the primary differences between ambient wet soups and fresh soups relate to (i) shelf life; (ii) ease of use (e.g., ambient soups generally require some mixing with water while fresh soups do not); and (iii) perceived freshness and healthiness (e.g., chilled fresh sauces generally have fewer preservatives and are regarded as "better for you" than wet sauces that are stored at ambient temperatures).

<sup>10</sup> For purposes of this Determination, the Authority does not consider it necessary to distinguish between the products in the sauces categories and in the soups categories, as the proposed transaction does not raise concerns in these markets.

### ***Relevant Geographic Market***

15. Consistent with past decisions of the Authority and the Commission, the undertakings involved submitted that the relevant geographic market for purposes of analysing this transaction is the State. The Authority recognises that this approach is consistent with: (i) its past decisions; (ii) decisions of the Commission; and, (iii) its market enquiries.

### ***Competitive Concerns***

#### *Market Structure*

16. The Authority's Merger Guidelines set market concentration thresholds using the HHI to enable the Authority to screen mergers that are likely to raise competition concerns.<sup>11</sup>
17. The proposed transaction will result in post-merger HHI greater than 1800 and a change in HHI greater than 100 in each of the gravy mixes and soups product markets thus placing them in the Zone C category. The Merger Guidelines state that "Zone C mergers occur in already highly concentrated markets and will more usually be those that raise competitive concerns" (para 3.10).
18. The proposed transaction will result in a post-merger HHI less than 1800 and a change in HHI greater than 100 in the sauces market which places it in Zone B. The Merger Guidelines state that Zone B mergers "may raise significant competition concerns." (ibid).
19. Having established that the proposed transaction may raise competition concerns in the identified markets, the Authority now considers, through an assessment of the competitive effects of the merger, whether the proposed transaction will result in a substantial lessening of competition through unilateral or coordinated conduct post merger.
20. The competitive situation in each of these three markets is discussed below.

#### *Sauces Market*

21. The undertakings involved submitted that Premier currently supplies only dried sauces, under the *Erin* and *McDonnells* brands, while RHM supplies only wet sauces. Further, the share of the sauces category accounted for by each of the undertakings involved is limited.
22. Table 1 below shows that the proposed transaction will result in the merged entity accounting for [10-20]% in a relatively moderately concentrated market. Masterfoods is the market leader in this market accounting for [25-35]% of retail sales of sauces in the State, followed by Unilever with [20-25]%.

---

<sup>11</sup> Competition Authority, *Notice in Respect of Guidelines for Merger Analysis*, Decision No. N/02/004, 16 December 2002 ("Merger Guidelines").

**Table 1**  
**Market Shares (measured in retail sales), Pre & Post Merger, Sauces**  
**Market, the State, 2006**

<b>Undertaking</b>	<b>Brand</b>	<b>Pre-merger Market Share (%)</b>	<b>Post-merger Market Share (%)</b>	<b>Pre-Merger HHI</b>	<b>Post Merger HHI</b>
<b>RHM</b>	<i>Bisto, Discovery, Lime &amp; Lemon, Sharwoods</i>	[0-10]		[ ]	
<b>Premier</b>		[10-20]		[ ]	
	<i>Homepride</i>	[0-5]			
	<i>Erin</i>	[0-10]			
	<i>McDonells</i>	[0-5]			
	<i>Loyds Grossman</i>	[0-10]			
<b>Premier/RHM: the Merged Entity</b>	<i>Bisto, McDonnells, Discovery, Campbells, Erin, Lloyds Grossman</i>		[10-20]		[ ]
<b>Masterfoods</b>	<i>Dolmio, Uncle Bens</i>	[25-35]	[25-35]	[ ]	[ ]
<b>Unilever</b>	<i>Knorr/Raju</i>	[20-25]	[20-25]	[ ]	[ ]
<b>Shwartz</b>	<i>Shwartz</i>	[0-10]	[0-10]	[ ]	[ ]
<b>Total</b>		100.00	100.00	1647	1779
Change in HHI= 132 = Zone B					

Note: Figures may not add due to rounding.  
Source: AC Nielson.

23. The Authority considers that the proposed transaction will not lead to competition concerns in the sauces market as:

- there will remain sufficient and strong brands to act as competitors to the merged entity. Masterfoods owns the *Dolmio* and *Uncle Bens* brands that account for over 30% of sales of sauces, while Unilever, owns the *Knorr* brand which accounts for around 21% of sales of sauces in Ireland; and,
- the accretion in market share from the proposed transaction is only [0-10]%.<sup>12</sup>

#### Soups Market

24. The undertakings involved submitted that there is no direct overlap in their activities in the soups market. Premier is directly active in the soups market where it owns a number of brands including *Erin* and *Campbell's*. RHM does not own a soup brand but distributes a third party brand, namely, *Baxters*. There is [ ] between *Baxters* and RHM in Ireland and this arrangement could be terminated on reasonable notice. The Authority's investigation revealed that RHM is responsible for setting and negotiating the wholesale price of *Baxter's* soups to retailers in the State. The undertakings involved submitted that if *Baxters* were to seek to terminate their arrangement, due to the proposed transaction, [ ].

<sup>12</sup> The proposed divestiture of the *Erin* sauces business will have the effect of reducing the accretion resulting from the proposed transaction to only [0-10]%.

**Table 2  
Market Shares (measured in retail sales), Pre & Post Merger, Soups  
Market<sup>13</sup>, the State, 2006.**

Undertaking	Brand	Pre-merger Market Share	Post-merger Market Share	Pre-Merger HHI	Post Merger HHI
RHM	<i>Baxters</i>	[0-10]		[ ]	
Premier		[20-30]		[ ]	
	<i>Campbells</i>	[10-20]			
	<i>Erin</i>	[10-20]			
	<i>McDonells</i>	[0-5]			
	<i>Loyds Grossman</i>	[0-5]			
<b>Premier/RHM: the Merged Entity</b>	<i>Baxters, Campbells, Erin, Lloyds Grossman</i>		[25-35]		[ ]
Unilever	<i>Knorr/Carb Options</i>	[25-30]	[25-30]	[ ]	[ ]
Glanbia	<i>Avonmore</i>	[20-25]	[20-25]	[ ]	[ ]
All Own-Label	<i>PB</i>	[0-10]	[0-10]	[ ]	[ ]
HJ Heinz	<i>Heinz</i>	[0-5]	[0-5]	[ ]	[ ]
<b>Total</b>		100.00	100.00	2041	2353
Change in HHI= 312 = Zone C					

Note: Figures may not add due to rounding.

Source: AC Nielson

25. Table 2, above, shows that the soups market is already highly concentrated with the three largest suppliers (Premier, Unilever and Glanbia) accounting for at least 75% of retail sale of soups. The proposed transaction will lead to a change in HHI of 312 with the merged entity becoming the market leader in soups with a share of [25-35]% of the market (i.e., if the merged entity were to continue to distribute the Baxters brand), followed by Unilever with [25-30]% and Glanbia with [20-25]%.

26. However, going forward, Table 2 is likely to overstate the importance of the merged entity in terms of market share. The Authority understands that under the terms of the acquisition of Campbells by Premier, [ ]. Although Premier is currently promoting the *Erin* brand [ ].<sup>14</sup>

27. The Authority's investigation of the soups market revealed that:<sup>15</sup>

- 79% of consumers purchase soup at some time of which 51% purchase it at least once per week and 91% purchase at least once per month;

<sup>13</sup>Canned/packet and fresh soups

<sup>14</sup> This evidence suggests that post merger that the *Erin* brand will be heavily promoted thus reducing the possibility of co-ordinated effects. This conclusion concerning co-ordinated effects is supported by the fact that the degree of symmetry of market shares of the three leading suppliers in the soups market likely to increase. Pre-merger the ratio of the leading firm's market share to the third firm is [ ] or 1.33, post-merger it is [ ] or 1.52. (See Table 2 for details).

<sup>15</sup> The market research cited below is based on consumer surveys supplied by the undertakings involved.

- nearly 8 in 10 buyers use soup at least once per week;
- customers carefully plan their purchases and almost all know in advance which brand they are going to buy. 43% of buyers are definite about which brand they will buy while a further 38% usually know which brand they will buy;
- brand awareness is extremely high:
  - in packet soups 99% of buyers have heard of Knorr with 93% having tried it. The corresponding figures for *Erin* are 96% and 84% and for *McDonnells* are 90% and 42%;
  - in tinned soups 94% of buyers have heard of *Campbells* with 86% having tried it;
  - the corresponding figures for Baxters are 89% and 53% and for Heinz are 88% and 50%; and,
  - in terms of spontaneous brand awareness, Unilever's *Knorr* is the leading brand in the soups market, followed by *Campbells* and *McDonnells*; and,
- with one exception, retailers have submitted that the merger will not lead to competition concerns in the soups market as there are sufficient competitors in this market.

28. In light of the above, the Authority considers that the proposed transaction will not lead to competition concerns in the soups markets as:

- there will remain sufficient and strong brand competitors to the merged entity;
- the merged entity is unlikely to use the *Campbells* brand in the soups market beyond 2008 which may have the effect of reducing the merged entity's share of the market; and,
- the accretion resulting from the proposed transaction is only [0-10]%, which depends on whether the merged entity continues to distribute the *Baxter* brand in the State.

#### Gravies Market

29. The undertakings involved argued that the most relevant product category for assessing the proposed transaction is the meat extracts category consisting of gravy mixes and stock cubes. The undertakings involved cite a number of reasons to support their argument that the relevant market is the meat extract category:

- in *Unilever/Bestfoods*, the Commission expressly assessed the impact of the transaction on the Irish market "... on the basis of a market for all bouillons and gravies"<sup>16</sup>;
- in *Heinz/HP*, the Authority, considered that "add-in seasonings such as those produced by *Oxo*, *Bisto*, *Schwartz*" were expressly

---

<sup>16</sup> *Unilever/Bestfoods*, para. 119. This contrasts with the Commission's approach in the same decision to the UK market, where the Commission found unique national tastes and uses for meat extracts. In respect of the UK market, the Commission stated that its "... market investigation indicated that in the UK, bouillon should be divided into stocks on one hand, and gravies on the other," para 120.

considered to compete with other “add-in” ingredients and seasonings (including stocks, as well as, products such as Worcestershire sauce)<sup>17</sup>;

- industry commentators, such as AC Neilson, generally treat gravies and stock together as “meat extracts” or “bouillon”; and,
- the production of dried gravies and stocks involve the same, basic production equipment and processes.

30. The Authority’s market enquiries found that while there appears to be supply side substitutability between gravy mixes and stock cubes, there is no demand side substitutability. Consumers will not switch from gravies to stock cubes as a result of a 5-10% rise in the price of gravies. Rather, consumers will switch between the various brands in the gravies product category.<sup>18</sup>

31. According to the submissions of the undertakings involved:<sup>19</sup>

- [ ]% of consumers purchase gravy mixes at some time of which [ ]% purchase it at least once per week and [ ]% purchase at least once per month;
- [ ] in 10 buyers use gravies at least once per week;
- customers carefully plan their purchases and almost all know in advance which brand they are going to buy. [ ]% of buyers are definite about which brand they will buy while a further [ ]% usually know which brand they will buy; and,
- brand awareness is extremely high – [ ]% of buyers have heard of *Bisto* with [ ]% having tried it. The corresponding figures for *Erin Gravy Rich* are [ ]% and [ ]% and for *Oxo* are [ ]% and [ ]%, respectively.

32. Therefore, the Authority considers that there is a separate well defined market for gravies.

33. Table 3, below, shows that RHM’s *Bisto* brand is the market leader in the gravies market with [50-60]%, followed by Premier’s *Erin* brand with [10-20]%. The proposed transaction will result in the combined *Bisto/Erin* brands accounting for over [70-80]% of the gravy market with its nearest competitor accounting for only [0-10]% of the market. The proposed transaction will lead to a substantial change in the structure of the market with a change in HHI of 2425.

---

<sup>17</sup> Authority determination M/05/033, *Heinz/HP Foods*, 11 August 2005, para. 38.

<sup>18</sup> Indeed in a usage and attitude study submitted by the acquirer gravy mixes and stock cubes are treated as separate market segments from the demand side.

<sup>19</sup> The market research cited below is based on consumer surveys supplied by the undertakings involved.



**Table 3**  
**Market Shares (measured in retail sales), Pre & Post Merger, Gravies Market, the State, 2006.**

<b>Undertaking</b>	<b>Brand</b>	<b>Pre-merger Market Share</b>	<b>Post-merger Market Share</b>	<b>Pre-Merger HHI</b>	<b>Post Merger HHI</b>
<b>RHM</b>	<i>Bisto</i>	[50-60]		[ ]	
<b>Premier</b>		[15-25]		[ ]	
	<i>Erin</i>	[10-20]			
	<i>Oxo</i>	[0-5]			
<b>Premier/RHM: the Merged Entity</b>	<i>Bisto, Erin &amp; Oxo</i>		[70-85]		[ ]
<b>Unilever</b>	<i>Knorr</i>	[0-10]	[0-10]	[ ]	[ ]
<b>McCormick</b>	<i>Schwartz</i>	[0-10]	[0-10]	[ ]	[ ]
<b>All Own-Label</b>	<i>Private Brand</i>	[0-5]	[0-5]	[ ]	
<b>All Others</b>		[0-5]	[0-5]	[ ]	[ ]
<b>Totals</b>		100.00	100.00	3994.33	6418.80
Change in HHI= 2425 = Zone C					

Note: Figures may not add due to rounding.  
Source: AC Nielson

34. Despite the significant change in the structure of the gravies market resulting from the proposed transaction, the undertakings involved submitted a number of arguments to support the view that the proposed transaction will not lead to a substantial lessening of competition, including:

- the repeal of the Restrictive Practices (Groceries) Order 1987 ("the Groceries Order") has led to a fierce and increasing competition (in particular, on price) between the major retailers. This undermines the ability of the suppliers of groceries products in dictating retail prices;
- there is significant buyer power from the major Irish multiples (Tesco, Dunnes Stores, Musgraves and Superquinn) who together account for 78.9% of Irish sales of groceries, so that even suppliers with sizeable shares are unlikely to have any real influence; and,
- there is ease of entry and expansion from both small and sizeable producers.

35. The Authority's investigation found the following:

- retailers and competitors have not yet fully assessed the impact of the repeal of the Groceries Order on the gravies market. Notwithstanding this, it is not at all clear how the repeal of the Groceries Order will affect the merged entity's ability and incentives to raise price in the gravies market. It can be argued, for example, that in circumstances where there is increased competition at the retail level price rises by suppliers are more likely to be passed on to consumers;

- retailers submitted that the merger would lead to competition concerns in the gravies market as the transaction will create a 'dominant' supplier. Both retailers and competitors of the merged entity submitted that there are no substitutes for gravy products and consumers will only switch between the various brands in the gravies market and will not stop buying gravy products as a result of a 5-10% price increase. In other words, retailers, in particular, are aware that consumers are unlikely to switch in sufficient numbers to make a 5-10% rise in price for gravies unprofitable and thus are likely to be in a position to pass on any increase in price charged by the suppliers;
- Table 3, above, shows that new entry whether in the form of own label or new branded gravy products have not impacted on the current structure of the gravies market. Own or private labels usually marketed by the leading retailers such as Tesco, Dunnes Stores and Superquinn, account for less than 2% of the market. This contrasts sharply with the UK where the market share of private label is closer to 30% by volume and has been increasing.<sup>20</sup> Also unlike, the UK market, there is strong brand awareness in the State where *Bisto* and *Erin* are the must have brands;<sup>21</sup> and,
- [.....]. The data show that the market shares of players in the gravies market have remained stable. The share of private label in the State remained stable. There is no evidence to suggest that private label will over the next two years be sufficient to provide vigorous competition to the merged entity. Hence although it may be the case that private label entry is easy in the sense that large retailers can readily source gravy products, strong brand preferences lead to the conclusion that such entry would not be sufficient to constrain the merged entity from raising price.

36. In light of the above, the Authority considers that the proposed transaction will lead to competition concerns in the gravies market post merger in that the merged entity will have the incentive and ability to raise price unilaterally.

### **Proposals Submitted by Premier**

37. On 25 January 2007, the Premier submitted the following proposals to address the competition concerns raised in the gravies market:

- Proposal 1: "Premier is prepared to offer a comprehensive divestment commitment going beyond the category of concern particularly identified (namely prepared gravies) to include all meal enhancers *Erin* brand (consisting of gravies, pour-over sauces, and casserole mixes)". This excludes the *Erin* soups product;

Or

---

<sup>20</sup> Based on information supplied to the Authority by the acquirer dated 27 January 2007.

<sup>21</sup> It should be noted that the *Erin* brand is not present in the UK market.

- Proposal 2: “if the disposal of the *Erin* meal enhancers business is considered an insufficient remedy, Premier is ultimately prepared to offer to divest the entire *Erin* business.”

Further details of each proposal was sought from Premier in order to enable the Authority make an assessment as to whether the proposals are sufficient in addressing the competition concern raised by the proposed transaction in the gravy market. On 2 February 2007, the undertakings involved submitted more detailed proposals (see below for details).

### **Market Testing of the Proposals**

38. Over the period 6 to 8 February 2007, the Authority market tested Proposal 1 and 2 in order to establish whether either is appropriate, proportionate and effective in addressing the competition concern raised by the proposed transaction in the gravies market. A market testing questionnaire was completed by six prospective purchasers of the divestment business.<sup>22</sup>
39. There was a general consensus from the prospective buyers that Proposal 1 is appropriate in addressing the competition concerns in the gravies market. However, serious doubts were raised about its effectiveness and practical implementation, including:
- the splitting of the *Erin* brand between meal enhancers and soups creates a disincentive for potential purchasers. Potential purchasers noted that a divergence of interest between different owners of the brand could lead to conflict and damage to the value of the brand. This may detrimentally affect the brand quality, which needs to be maintained and improved; and,
  - concerns that the purchaser maybe limited in its ability to extend the brand beyond meal enhancers which may impact the value of the brand.

There was a consensus that these serious doubts would be addressed by Proposal 2.

### **Evaluation of the Proposal to Divest the Entire *Erin* Brand**

40. The Authority considers that Proposal 2 is devoid of the doubts raised by Proposal 1 and it will have the effect of almost restoring the market structure in the gravies market *ante*. The proposed divestment of the *Erin* brand substantially and significantly removes the overlap created by the proposed transaction in the gravies market. It will have the effect of reducing the merged entity’s share of the gravies market from [70-80]% to [50-60]%, which is similar to the situation that prevailed pre merger. This removes the competition concerns raised by the proposed transaction.
41. Furthermore, Proposal 2 includes the option for the prospective buyer to acquire all production facilities and staff associated to the *Erin* brand, if required. This will enable a prospective purchaser (whether an existing

---

<sup>22</sup> Four were suggested by the acquirer, with the Authority adding a further two.

market player or a *de novo* entrant to the gravies market) to provide effective competition to the merged entity.

42. In light of the above, the Authority considers that a divestment of the entire *Erin* brand would be appropriate and effective in assuaging the competition concerns raised in the gravies market. Accordingly, Premier offered the following proposals under section 20(3) of the Act, which are proposals for the purpose of section 20(4) and form the basis of the Authority's Determination. Consequently, in accordance with section 20(3) and section 26(1) and section 26(4) the Proposals have become commitments binding upon Premier:

### **Proposals Offered by Premier to Meet Competition Concerns of the Authority**

#### **A. PROPOSALS**

- 1.1 Premier undertakes, subject to the provisions set out below, to effect the sale of the Divestment Package within [ ] months of the Determination to an independent third party purchaser or purchasers approved by the Authority (whose approval shall not be unreasonably withheld).
- 1.2 Premier recognises that for a prospective purchaser to meet with the Authority's approval pursuant to paragraph 1.1 such purchaser shall be unconnected to and independent of Premier, and able to maintain and develop the relevant Business as an active competitive force. Premier further recognises that for a prospective purchaser to meet with the Authority's approval, that purchaser must be deemed reasonably likely to obtain all authorisations and consents required to effect a transfer of the relevant Business.
- 1.3 Premier shall be deemed to have complied with paragraph 1.1 above if, within a [ ] period from the Determination (or such longer period as may be allowed by the Authority or as may result from the delays referred to in paragraph 1.5 below), it has entered into a binding letter of intent or a binding contract for the sale of all elements of the Divestment Package (subject to due diligence, regulatory consents and any other conditions not within the control of Premier or the purchaser) provided that such sale is completed within a [ ] period from the date of the relevant letter of intent or contract (or such longer period as may be allowed by the Authority).
- 1.4 Premier shall:
  - (i) promptly inform the Authority in writing, with a fully documented and reasoned proposal, of any prospective purchaser who indicates a serious desire to purchase the relevant Business and to whom Premier is seriously considering the sale of the said Business, enabling the Authority to verify the suitability of the prospective purchaser; and
  - (ii) when the parties have entered into a binding letter of intent or a binding contract for the sale of the relevant Business, submit a full documented and reasoned proposal enabling the Authority to verify that the conditions laid down in these commitments are fulfilled and that there has been no material change in the status of the purchaser not reasonably foreseeable at the time the Authority

assessed that purchaser's suitability subject to the Authority agreeing to keep confidential all such information received.

- 1.5 The Authority shall communicate in writing its approval or non-approval of a prospective purchaser within ten days of receipt of a report identifying a prospective purchaser in accordance with paragraph 1.4(i) and a binding agreement and accompanying proposal in accordance with paragraph 1.4(ii). In each case, failure of the Authority to communicate its approval or non-approval within ten days shall delay the running of the [ ] period established in paragraph 1.3 until the Authority communicates its approval or non-approval. However, if the Authority does not communicate its approval or non-approval within 30 days of receipt as aforesaid, such approval shall be deemed to have been given unconditionally. In the case of a plurality of offers from prospective purchasers to whom the Authority does not object, Premier shall be free to accept any offer or to select the offer it considers best.

## **B. THE BUSINESSES TO BE DIVESTED**

### **2. Erin Business**

- 2.1 Premier undertakes to dispose of the entirety of the Business conducted by it under the Erin brand in the Republic of Ireland (as more particularly described in the Schedule hereto).
- 2.2 Premier undertakes not to seek or accept a licence in respect of any part of the Erin brand except Erin-branded soups.
- 2.3 Premier undertakes that if it attempts to buy the purchaser of the Erin brand, it will inform the Authority prior to doing so and notify any such proposed acquisition in accordance with section 18(3) of the Competition Act if required to do so by the Authority.
- 2.4 Premier undertakes to sell the Business identified in paragraph 2.1 as an ongoing business. Thus, in addition to offering (if requested by the purchaser) appropriate production facilities or appropriate supply agreements, the offer for sale includes (again, if requested by the purchaser) suitable sales and marketing and distribution staff.
- 2.5 For avoidance of doubt, Premier confirms that it will not impose, as a condition of sale of the Business, an obligation on the purchaser to acquire associated production facilities or staff from Premier.

## **C. COMMON PROVISIONS**

### **3. Definitions**

"Authority"	means the Competition Authority;
"Business"	means the Business identified in Part B above and in the Schedule;
"Competition Act"	means the Competition Act 2002;
"Completion"	means the date on which the Scheme of Arrangement becomes effective in accordance with its terms or (if the Proposed Transaction is implemented by way of a take-over offer) the date on which it becomes or is declared

		unconditional in all respects;
"Determination"		means the Determination of the Competition Authority pursuant to section 21(2)(a) of the Competition Act that the Proposed Transaction may be put into effect;
"Divestment Package"		means the Business to be sold by Premier under the terms of these Proposals;
"Hold Separate Manager"		means the person appointed by Premier to undertake the day-to-day management of the Business, under the supervision of the Trustee, pending the disposal of the Business;
"Key Personnel"		means all personnel necessary to maintain the viability and competitiveness of the Business;
"Premier"		means the company known as Premier Foods plc and, where the context admits and requires, the subsidiaries, divisions, groups and affiliates which are directly or indirectly controlled by Premier;
"Proposed Transaction"		means the proposed acquisition by Premier Foods plc of sole control of RHM plc as notified to the Competition Authority on 28 December 2006 pursuant to the Competition Act;
"RHM"		means RHM plc and, where the context admits and requires, the subsidiaries, divisions, groups and affiliates which are directly or indirectly controlled by RHM;
"Scheme of Arrangement"	of	means the Scheme of Arrangement under section 425 of the UK Companies Act 1985 drawn up pursuant an agreement executed by Premier and RHM on 3 December 2006, and unanimously recommended to RHM's shareholders by RHM's Board.

#### **4. Appointment of a Trustee**

- 4.1 Within ten days after the Determination, Premier will propose to the Authority two trustees, who are independent of Premier and RHM ("Proposed Trustees"). The appointment of the Proposed Trustees is subject to approval of the Authority. If the Authority does not reject the Proposed Trustees by notice in writing within ten days of the proposal, the Proposed Trustees shall be deemed to have been approved. If both Proposed Trustees have been approved, then Premier shall, at its own discretion, appoint one of them.
- 4.2 If the Proposed Trustees are rejected, Premier will propose the name of a new trustee ("New Trustee") within ten days of being informed of the rejection. If the Authority does not reject the New Trustee by notice in writing to Premier within ten days of the new proposal, the New Trustee shall be deemed to have been approved.

- 4.3 If the New Trustee is rejected by the Authority, the Authority shall nominate a suitable Trustee ("the Authority Trustee") which Premier will appoint or cause to be appointed.

## **5. Trustee's Mandate**

- 5.1 Within ten days of the date on which the Authority has approved or is deemed to have approved either the Proposed Trustees, the New Trustee or the Authority Trustee, Premier shall enter into a mandate agreement (the "Mandate") with the approved Trustee ("the Trustee"), the terms of which shall have previously been agreed with the Authority which confers on the Trustee all the rights and powers necessary to permit the Trustee to monitor Premier's compliance with the terms of these Proposals and in a manner consistent with the purpose of these Proposals.
- 5.2 The Trustee shall be independent of Premier and RHM, possess the necessary qualifications and experience to carry out its mandate, and shall neither have nor become exposed to a conflict of interest.
- 5.3 Throughout the duration of the Trustee's appointment the Trustee shall:
- (i) provide written reports (the "Trustee Reports") to the Authority on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Trustee has been unable to discharge such duties. The Trustee Reports shall be provided at monthly intervals, commencing one month after the date of the appointment of the Trustee, or at such other times or time periods as the Authority may specify and are notified in writing to Premier. Premier shall receive a non-confidential copy of such Trustee Reports;
  - (ii) monitor and advise the Authority as to the development of the procedure for selecting a purchaser and as to the conduct of the negotiations;
  - (iii) monitor and advise the Authority as to whether prospective purchaser(s) with whom Premier intends to negotiate are likely to satisfy the Authority's requirements as to suitability;
  - (iv) monitor the maintenance of the viability and marketability of the Business and the products to which they relate and ensure that they are managed in the ordinary course of business, pursuant to good business practice.
- 5.4 The Trustee's duties and functions as set out above shall not be extended or varied in any way by Premier, save with the express consent of the Authority. Any instruction or request to the Trustee from Premier which conflicts with the terms of the Mandate and duties and functions as set out above will be considered null and void.
- 5.5 The Authority may, on its own initiative or at the request of the Trustee, give any orders or instructions to the Trustee that are required in order to ensure compliance with the conditions and obligations attached to the Determination.
- 5.6 After [ ] (or such longer period as may be agreed by the Authority or as may result from the delays referred to in paragraph 1.5 of the Proposals

above) have lapsed from the Determination without Premier having entered into a binding agreement for the disposal of all elements of the Divestment Package, the Trustee shall be given an irrevocable mandate to negotiate and conclude arrangements for the sale of the Business in relation to which a binding agreement remains to be concluded within [ ], at [ ] and upon such terms and conditions as it considers appropriate for an expedient sale, to a viable and independent third party.

- 5.7 If, however, the Trustee is unable to conclude such an arrangement at the end of the [ ] period (or such longer period as may be agreed by the Authority) within which the Trustee is required to conclude arrangements, the Trustee is entitled to enter into arrangements for a further maximum and non-extendable period of [ ] months.

## **6. Miscellaneous**

- 6.1 Premier will provide the Trustee with all reasonable assistance and will procure (so far as it is able) that all relevant third parties provide such assistance required to ensure compliance with these Proposals. Premier will provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible by Premier as the Trustee may require in carrying out its Mandate, and to pay reasonable remuneration for its services.
- 6.2 The Trustee shall have full and complete access to the manager of the Business and any other employees of the Business in order to ensure compliance by Premier with its obligation to maintain the financial and competitive viability of the Business.
- 6.3 Notwithstanding the Trustee's overall responsibility to discharge its functions and in particular notwithstanding the Trustee's position as an independent unrelated third party, the Trustee (who shall undertake in the Mandate to do so) shall have to the extent possible given the nature of its tasks due regard to the commercial interests of Premier.
- 6.4 The Mandate and these Proposals shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated if Premier announces that the Proposed Transaction has been irrevocably abandoned.
- 6.5 The Trustee's and all other relevant third parties' powers of attorney and appointment shall be irrevocable.

## **7. Interim Position**

- 7.1 Following the Determination and pending the sale of the Business, Premier undertakes to hold separate the Business and preserve the economic viability, marketability, and competitiveness of the Business until the date of disposal in accordance with good commercial practice, and to manage the Business in the best interests of the Business. Premier further undertakes to appoint a Hold Separate Manager who shall be responsible for the day-to-day management of the Business, under the supervision of the Trustee. The Hold Separate Manager shall manage the Business independently and in the best interest of the Business with a view to ensuring its continued economic viability, marketability, and competitiveness and its independence from the business retained by Premier.



- 7.2 Premier undertakes not to carry out any act upon its own authority which may reasonably be expected to have a significant adverse impact on the economic value, the management, or the competitiveness of the Business until the date of disposal.
- 7.3 Premier undertakes not to carry out upon its own authority any act which may be of such a nature as to alter the nature or the scope of activity, or the industrial or commercial strategy, or the investment policy of the Business. Sufficient resources shall be made available for the Business to develop until the disposal, based on any approved strategic and (annual) business plans of the Business as adopted in the ordinary course of its business.
- 7.4 Premier also undertakes to take all reasonable steps, including incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Business pending the disposal of the Business. Premier undertakes not to solicit any Key Personnel transferred with the Business for a period of three years after the disposal of the Business.

### **SCHEDULE**

The Business to be divested consists of the entire *Erin* business, including all of Premier's current rights to the *Erin* trademark in the Republic of Ireland.

In particular, the assets to be transferred in a sale will include:

- (i) All brand names and associated trademarks in respect of the *Erin* products;
- (ii) All trade secrets, patents, know-how, recipes, product formulations and specifications, and processing procedures in respect of the *Erin* products;
- (iii) If requested by the purchaser, all inventories of raw materials, packaging, work-in-progress and finished goods in respect of the *Erin* products;
- (iv) If requested by the purchaser, all facilities and other fixed assets necessary to produce the products being transferred;
- (v) If requested by the purchaser, all staff currently employed by the *Erin* business; and
- (vi) If requested by the purchaser, all promotional materials, point-of-sale materials, customer and vendor lists and price lists in respect of the *Erin* business.
- (vii) If requested by the purchaser, any necessary IT systems and support for those systems (subject to Premier obtaining necessary third party consents to the transfer of relevant licences).

## **Determination**

The Competition Authority, in accordance with section 21(2)(a) of the Act, has determined that, in its opinion, the result of the proposed acquisition by Premier Foods plc of RHM 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**

---

Declan Purcell  
Member of the Competition Authority

---

Dr. Paul K. Gorecki  
Member of the Competition Authority

---

William Prasifka  
Chairman of the Competition Authority  
Member of the Competition Authority

---

Dr. Stanley Wong  
Member of the Competition Authority