

**DETERMINATION OF MERGER NOTIFICATION M/06/027 –
TETRA LAVAL/ CARLISLE**

Section 21 of the Competition Act 2002

Proposed acquisition by Tetra Laval of Carlisle Process Systems

Dated 11/08/06

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SECTION ONE: INTRODUCTION

Notification

- 1.1 On 10 May 2006, 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 the Tetra Laval Group ("Tetra Laval"), through its subsidiary Tetra Laval Holdings BV would acquire the entire issued share capital and sole control of the process systems business segment of the Carlisle Group ("Carlisle") namely, Carlisle Process Systems Ltd. (UK), Carlisle Process Systems BV (the Netherlands), Damrow A/S (Denmark) and Carlisle Process Systems Inc (collectively "CPS").
- 1.2 Tetra Laval, the acquirer, is a privately held group of companies. It operates in three industry groups through Tetra Pak, DeLaval and the Sidel Group:
- Tetra Pak produces and markets processing equipment and operates packaging and distribution systems for food in carton packaging material;
 - DeLaval produces and markets equipment and systems for milk production and animal husbandry; and,
 - The Sidel group produces and markets packaging equipment and systems, in particular stretch blow moulding machinery, barrier technology as well as filling machines for plastic and glass bottles as well as for cans.
- 1.3 CPS, the target, is a division of Carlisle. Carlisle Companies Incorporated, a United States company listed on the New York Stock Exchange, is the ultimate parent company of Carlisle.
- 1.4 Carlisle consists of several manufacturing companies which service several industries such as construction, food service, roofing and process systems. CPS, the target, is primarily active in process systems manufacturing.
- 1.5 The proposed transaction concerns the acquisition by the acquirer of the process systems businesses of CPS only¹, in particular:
- The design, manufacture, assembly, installation and automation of liquid food (mainly cheese) processing systems under the "Sherping", "Wincanton" and "Damrow" brand names; and

¹ CPS is also active in pharmaceutical and trailer/truck manufacturing businesses. These business activities will not be transferred with the CPS businesses which are the target of the proposed acquisition.

- The design and supply of evaporation and spray drying systems to food, pharmaceutical and chemical industries.

- 1.6 The rationale for the proposed transaction according to the acquirer is to enhance the acquirer's position in the US market for cheese equipment where it has limited activities and to establish its powder business (evaporation and drying) in the US where the acquirer is not active.
- 1.7 The target is also active in several other areas: custom fabrication which incorporates the design and manufacture and supply of stainless steel constructions for third party customers. [...].
- 1.8 Following the notification of the proposed transaction to the Competition Authority on 10 May 2006, the Competition Authority undertook its preliminary investigation ("Phase 1") and its full investigation ("Phase 2") in accordance with the relevant provisions of the Act. An overview of the main procedural steps taken by the Competition Authority during Phase 1 and Phase 2 are set out below:

Phase 1 – Preliminary investigation

- 11/05/06: The proposed transaction was advertised for a period of ten calendar days;
- 22/05/06: Third party submissions were received;
- 25/05/06: First informal request for information made to the undertakings involved;
- 30/05/06: Reply to first informal information request from the undertakings involved returned to and received by the Competition Authority;
- 30/05/06: Second informal information request made to the undertakings involved;
- 07/06/06: Reply to second informal request from the undertakings involved returned to and received by the Competition Authority; and,
- 09/06/06: Determination of the Competition Authority to move to full investigation.

Phase 2 – Full Investigation

- 09/06/06: Undertakings involved and third parties informed of move to full investigation;
- 09/06/06: Move to full investigation advertised by the Competition Authority. Third party submissions sought by 14 July, 2006;
- 16/06/06: Formal request for information issued to the undertakings involved under Section 20(2) of the Act;
- 30/06/06: Replies to formal request for information from the undertakings involved returned to the Competition Authority;
- 30/06/06: Investigation questionnaires issued to third parties;
- 14/07/06: Deadline for submission of responses by third parties addressed by investigation questionnaires;
- 18/07/06: Third party replies to questionnaires received; and,
- 11/08/06: Determination of the Competition Authority to clear the proposed transaction unconditionally.

Phase 1 – Preliminary Investigation

- 1.9 On the basis of the notification made by the undertakings involved, the Competition Authority was notified of only one overlap in their respective activities in the State: the supply and sale of heat exchangers to customers in the State.
- 1.10 Heat exchangers fall into the category of 'general purpose liquid food processing equipment' ("general purpose equipment"). During its preliminary investigation, the Competition Authority found that:
- There are a large number of suppliers of heat exchangers in the European Economic Area ("EEA") from which customers source their heat exchangers;
 - Post-merger, the combined market-share of the undertakings involved with respect to the supply of heat exchangers in the EEA would not increase by more than 1% and would remain low; and,
 - Barriers to entry into the manufacturing of heat exchangers are low.
- 1.11 In respect of the overlapping activities of the undertakings involved in the supply of heat exchangers to customers in the State, the Competition

Authority's preliminary conclusion was that no substantial lessening of competition would arise as a result of the proposed transaction.

- 1.12 During Phase 1, however, the Competition Authority identified several other areas, not identified in the notification submitted to the Competition Authority on 10 May 2006, in which the activities of the undertakings involved overlap in the State. The undertakings involved identified overlaps on the basis of order intake rather bids made.
- 1.13 In addition to supplying heat exchangers to customers in the State, it appeared that the undertakings involved may also have competed with each other for the supply of 'limited purpose liquid food processing equipment' ("limited purpose equipment"). The type of limited purpose food equipment involved is used in the processing of cheddar cheese.
- 1.14 Following: (i) its submissions from third parties in this regard; (ii) several informal requests for information to the undertakings involved; and, (iii) preliminary interviews with third party cheese processors in the State, the Competition Authority concluded that the overlapping activities of the undertakings involved concerned an additional three distinct products: cheese vats, cheddaring machines and block formers².
- 1.15 In response to the Competition Authority's several informal requests for information concerning the acquirer's and the target's activities in the supply of cheese vats, cheddaring machines and block formers to customers in the State, the undertakings involved submitted, *inter alia*, the following information:
- On the basis of order intake data for the period 2000-2005, only the acquirer was active in the supply of limited purpose equipment for cheese processing to customers in the State;
 - On the basis of order intake data for the same period, the target had not supplied customers in the State with limited purpose equipment for cheese processing; and,
 - Drawing from the order intake data for the period 2000-2005 for both the acquirer and target, no overlap existed in respect of the supply of limited purpose equipment for cheese processing as only the acquirer was active in the State in this regard.
- 1.16 The Competition Authority's preliminary investigation, however, did not arrive at the same conclusion. The Competition Authority found that while overlap in the activities of the undertakings involved may not have existed in the supply of limited purpose equipment for cheese processing *on the basis of order intake*, both the target and the acquirer actively compete against each other for the supply of limited purpose equipment for cheese processing through bidding for supply contracts.

² Also known as 'cheese towers'.

- 1.17 In other words, the Competition Authority found that both the acquirer and the target have and currently bid on a formal and/or informal basis for the limited purpose equipment supply needs of cheese processors in the State. The Competition Authority's preliminary conclusions were supported by third party submissions and interviews.
- 1.18 Due to: (i) the identification of additional overlapping areas of activity at a late stage in Phase 1; (ii) the inability to carry out a satisfactory investigation of these overlapping areas of activity due to the time constraints in Phase 1; and, (iii) the expression of competition concerns in respect of these overlapping areas by third parties, the Competition Authority determined to carry out a full investigation in accordance with Section 22 of the Act.

Phase 2 - Full Investigation

- 1.19 As part of the Phase 2 full investigation and due to the lack of both general information about and bidding data for the supply of limited purpose equipment for cheese processing in the State, the Competition Authority made a very detailed formal request for information to the undertakings involved. The undertakings involved complied with the Competition Authority's formal request for information made on 16 June 2006 and the information requested was received by the Competition Authority on 30 June 2006.
- 1.20 The undertakings involved exercised the opportunity afforded to them by the Competition Authority to request refinement and clarification of the formal request for information made. Given that the Competition Authority had been provided with sufficient levels of information about one area of overlap – heat exchangers – the Competition Authority acceded to the requests of the undertakings involved to refine the scope of application of the formal request for information to three core areas³ agreed upon by the Competition Authority and the undertakings involved⁴.
- 1.21 As a result of the refinement and clarification, the formal request for information was limited to the following areas of overlap:
- Cheese vats;
 - Cheddaring machines; and,
 - Block formers.

Investigation of the Proposed Transaction by the Office of Fair Trading

- 1.22 During the course of the Competition Authority's preliminary investigation, it was contacted by the Office of Fair Trading ("OFT") in the United Kingdom. The OFT, in addition to several other jurisdictions worldwide, was also notified of the proposed transaction.

³ The Authority, however, reserved the right to broaden the scope of the request for information, in the event that additional areas of overlap were found to exist in respect of the activities of the undertakings involved in the State.

⁴ For the sake of completeness, however, details in respect of heat exchangers resulting from the Authority's investigation of the proposed transaction have been included.

- 1.23 In order for both the Competition Authority and the OFT to discuss the respective investigations into the same proposed transaction, waivers from confidentiality were requested from the undertakings involved and were granted by the acquirer and the target on 15 June 2006.
- 1.24 The decision of the OFT, dated 20 July 2006, will be discussed below in Section 4 of the Determination.

SECTION TWO: CHEDDAR CHEESE PRODUCTION: EQUIPMENT, MANUFACTURERS, SUPPLIERS AND CUSTOMERS – WORLDWIDE AND THE STATE

Introduction

2.1 This section describes the relevant product and geographic markets for the purposes of the Competition Authority's analysis. The undertakings involved are active, *inter alia*, in the development, manufacture, supply and distribution of various types of equipment used in liquid food processing. The equipment that is the subject of the Competition Authority's investigation is limited in purpose and used specifically in cheese making. This section provides an overview of cheese processing equipment and processing methods, manufacturers and suppliers of cheese processing equipment generally and in the State and an overview of cheese processing in the State.

Cheese Production Equipment

2.2 The type of cheese production for which the overlapping products of cheese vats, cheddaring machines and block formers collectively is used can be characterised as large-scale, industrial cheese production and in particular, the production of cheddar cheese⁵.

2.3 For ease of reference, there are two types of equipment that may be used in the production of cheese: general purpose equipment and limited purpose equipment.

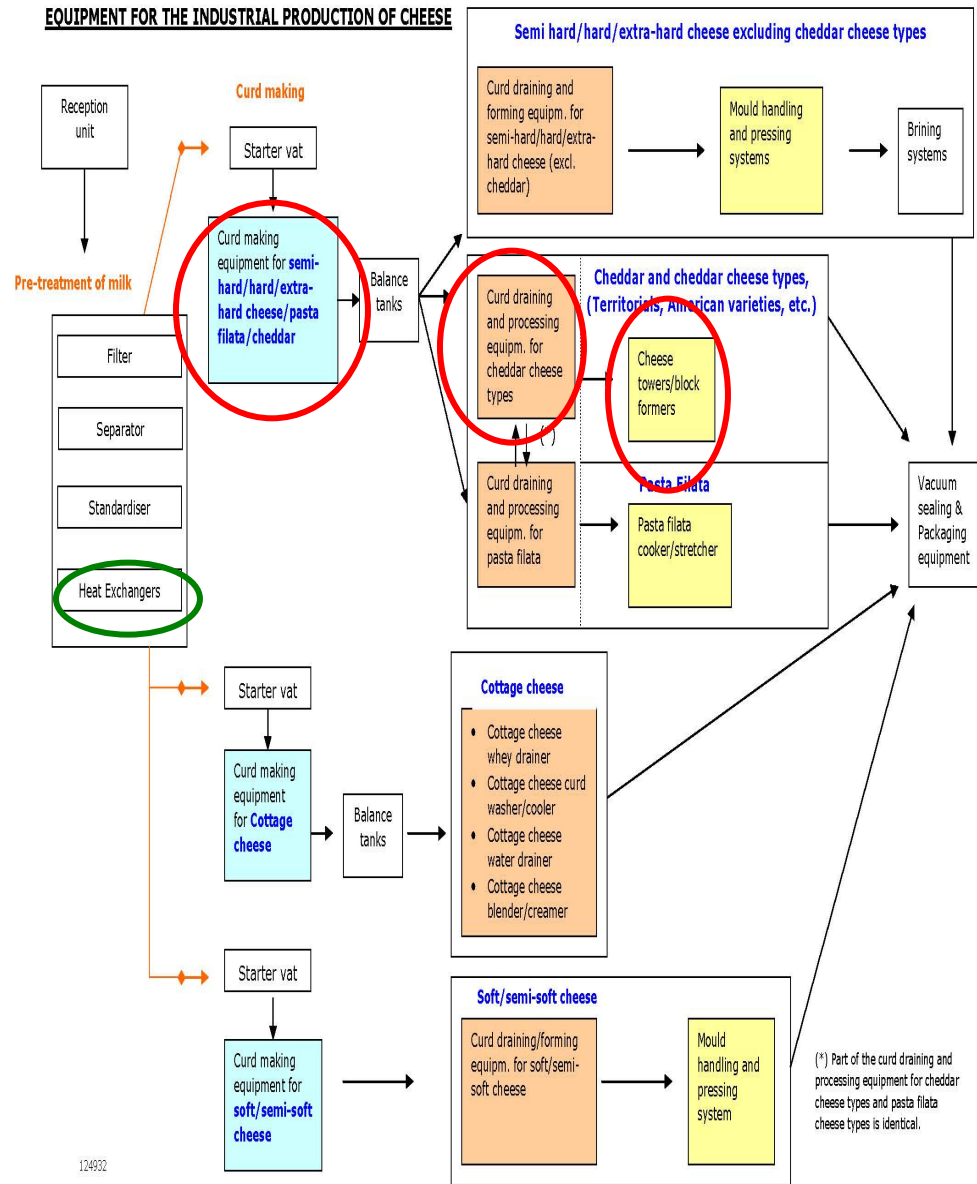
2.4 General purpose equipment used in liquid food processing describes equipment which does not have a specific use or, in other words, can be used for a variety of purposes like heat exchangers. Other examples of general purpose equipment include homogenisers, mixing tanks and separators.

2.5 Figure 1 below provides an overview of cheese production and the equipment required to produce cheese at each stage of production. The use of general purpose equipment such as heat exchangers and the stage of its use is identified with a green circle.

2.6 Limited purpose equipment, on the other hand, describes equipment which can be used only for a specific or limited application. In the context of the proposed merger, cheese vats, cheddaring machines and block formers – all limited purpose equipment – are used specifically for cheese processing and in some cases only in respect of cheddar cheese processing.

⁵ The investigation did not review the activities of cheese producers/processors working within 'cottage industries' or processing 'homemade cheeses'.

Figure 1
Cheese Production Equipment and Processes



Source: Based on information supplied by Tetra Laval and Carlisle Process Systems

Limited Purpose Equipment

Cheese Vats

- 2.7 Cheese vats are used in the first phase of cheese processing: curd making. Cheese vats are large stainless steel containers and are only used for cheese-making, i.e. no other purpose.

Cheddaring Machines

- 2.8 Cheddaring machines are used in the second stage of cheese making but specifically for cheddar processing. The curd for cheddar is drained and processed by matting, fusing, salting and chipping using cheddaring machines. The average price for a cheddaring machine, based on estimates provided to the Competition Authority, is between €1 million - €2.5 million.
- 2.9 It has been submitted to the Competition Authority by the undertakings involved and by third parties that the life-cycle of a cheddaring machine is approximately 10-15 years. Cheddaring machines cannot be used for the production of types of semi-hard cheeses other than cheddar.

Block Formers

- 2.10 Block Formers are used in the final stages of cheddar cheese production to press the processed cheddar curd into blocks, giving cheddar cheese its distinctive shape. Block formers are similar to large towers and are highly automated, requiring very little if any manual labour operation. They have replaced older, more labour-intensive methods of forming cheddar cheese such as table presses. They cannot be used for the processing of other cheese types including other semi-hard cheeses other than cheddar.
- 2.11 It has been submitted to the Competition Authority by several cheddar cheese producers in the State, and by several manufacturers and suppliers of block formers, that large-scale production of cheddar cheese is impossible without a block former. The Competition Authority has been provided with cost estimates for block formers of between €100,000 - €250,000 per unit.
- 2.12 Like cheddaring machines, block formers have a long life-cycle. The Competition Authority accepts, on the basis of evidence provided to it, that the life cycle of a block former is approximately 15-25 years.

Intellectual Property Right Protection

- 2.13 From its investigation, the Competition Authority has found that equipment falling into the limited purpose equipment segment, and in particular, cheddaring machines and block formers, is the subject of many intellectual property rights. Most brands of block former and cheddaring machine are the subject of both patent and trademark rights, although some of the more established brand names, such as the CPS Wincanton brand may be out of patent but still carry extant trademark rights.
- 2.14 Intellectual property infringement has been fiercely litigated in the past⁶ by limited purpose equipment manufacturers and/or rightsholders and the protection of intellectual property has, according to third-party submissions, acted as a disincentive to potential entry into block former manufacture. The impact of intellectual property rights in respect of limited purpose equipment will be discussed in more detail below.

Manufacturers and Suppliers of Cheese Equipment

- 2.15 For each of the overlapping products identified the Competition Authority compiled a list of all manufacturers and suppliers worldwide. It should be noted that a firm can be either a manufacturer or a supplier or in some cases carry out both roles.
- 2.16 Manufacturers of cheese equipment can be understood as those companies and/or entities which manufacture their own branded equipment and do not include sub-contracted engineering companies which manufacture on behalf of a principal company which owns the brand in question. Manufacturers may sell/supply their equipment directly to cheese producers, or may nominate exclusive/non-exclusive distributors to supply their equipment to customers or may sell their equipment to suppliers directly. Manufacturers may also sell their equipment to systems integrators.
- 2.17 Systems integrators are companies which offer a specialised service to cheese producers providing them with a complete system of equipment or with individual components. The system offered by the systems integrator, may be comprised of the systems integrator's own manufactured equipment and/or other pieces of equipment from other manufacturers. An example of a company, which provides a system integration service in the State, is APV, which manufactures its own cheese vats and cheddaring machines but sources block formers from third-party block former manufacturers such as the acquirer and/or the target.
- 2.18 Suppliers, which include systems integrators, can be understood as companies and/or other entities which do not manufacture the equipment themselves but which buy the equipment for re-selling purposes. Suppliers may sell the equipment to customers directly or to systems integrators.

⁶ Litigation initiated by Tetra Laval against CPS for patent infringement in the 1970s

2.19 The results of the Competition Authority's investigation in this respect are set out in Table 1 below. The sources of data and information relied on by the Competition Authority in this regard are drawn from the information provided to the Competition Authority from the undertakings involved, submissions made by cheese producers in the State, competitors of the undertakings involved and various hard-copy and electronic industry academic and professional journals, magazines and articles.

Table 1 Manufacturers and Suppliers of General and Limited Purpose Products, Worldwide and in the State, 2006				
	General Purpose Equipment	Limited Purpose Equipment		
	Heat Exchangers	Cheese Vats	Cheddaring Machines	Block Formers
Manufacturers World-wide	Tetra Laval, CPS, GEA, APV, Alfa Laval Schmidt Bretten/API, Sondex SWEF, Iwai	Tetra Laval CPS Stoelting APV	Tetra Laval CPS Stoelting APV	Tetra Laval CPS Stoelting
Manufacturers in Ireland	None	None	None	None
Suppliers World-wide	A & B Process Systems, AES APV , APV an Invensys Company, Advance Fittings Corp, Alfa Laval Inc, Allied Associates, Baltimore Aircoil Co, Bassett Mechanical, Brink's LLC, Bryan Boilers, C & R Refrigeration Inc , CPS- Evaporation & Drying Systems, Chester-Jensen Co Inc , Connell International Co Div of The Connell Co, Custom Fabricating & Repair Inc, Dairy Engineering Co, Darlington Dairy Supply, Eaton Equipment, Ecolab Food & Beverage Engineering, Eischen Enterprises, Enerquip Inc G C Evans Sales & Mfg Co Inc, Evaporator Dryer Technologies Inc, Excel-A-Tec Inc, Feldmeier Equipment Inc, Girton Mfg Co Inc, Haas Mandomix BV Heartland Stainless Inc, Heritage Equipment , Howe Corp (D)	APV CPS Wincanton CPS Scherping Tetra Laval A&B process Brinks LLC Connell Int'l Doryl SA Dovex SS Eischen HPG Heritage IME Koss Kusel Lincoln Paul Mueller Stoelting RD Smith Shambuaugh United Dairies Ullmers/ Woolwich	APV Tetra Laval Stoelting CPS Others	APV CPS Wincanton CPS Damrow CPS Scherping Tetra Pak AR Arena Customer Fabricating Doryl SA HPG Industries Ivarsons Reiser relco JCS Controls Johnson Industrial Koss Industrial Ullmers Dairy United Dairy Viking Machine design Woolwich Stoelting
Suppliers into Ireland	All manufacturers above supply EEA-wide	Tetra Laval APV CPS	Tetra Laval APV CPS	Tetra Laval APV CPS
Source: http://www.cheesemarketnews.com and replies to Competition Authority customer and competitor questionnaires and the submission of undertakings involved				

2.20 In respect of cheese vats, Table 1 provides that there are many suppliers worldwide and at least three suppliers of cheese vats in the State: Tetra Laval (the acquirer), CPS (the target), and APV. There are more suppliers of cheese vats than of any other overlapping product.

- 2.21 The Competition Authority found that there are at least four manufacturers of cheddaring machines worldwide of which three - Tetra Laval, CPS, and APV - supply in the State.
- 2.22 In respect of block formers, the Competition Authority found that there are only three manufacturers of block formers worldwide - Tetra Laval, CPS and Stoelting - of which only Tetra Laval currently supplies into the State. APV, a systems integrator, supplies block formers made by CPS, Tetra Laval and Stoelting to customers in the State.
- 2.23 Typically, customers needing limited purpose equipment, either in the form of a "full-line" offering or individual limited purpose equipment offerings, go out to tender seeking bids from a variety of manufacturers, suppliers and/or systems integrators.
- 2.24 Given the life cycle of limited purpose equipment and the relatively small market size in Ireland, in particular for cheddaring machines and block formers, contracts for the supply of such equipment are infrequent.
- 2.25 Block formers, cheddaring machines and cheese vats may be and are sourced by customers in the State from manufacturers and suppliers outside of the State. Analysis of data provided to the Competition Authority, which is discussed in more detail in Section 4 below, shows that customers in the State have sourced from Tetra Laval and third parties such as APV which are based in the EEA.

Suppliers of Limited Purpose Equipment in the State

- 2.26 The Competition Authority's investigation found that there are relatively few sources of limited purpose equipment supply for cheddar cheese producers in the State. Of those suppliers identified by the Competition Authority - see Table 2 below - none have manufacturing facilities in the State.

Table 2 Suppliers of Limited Purpose Equipment, the State, 1991-2006			
Equipment ⇒	Cheese Vats	Cheddaring Machines	Block Formers
Suppliers Into Ireland	Tetra Laval APV CPS	Tetra Laval APV CPS	Tetra Laval APV CPS
Source: http://www.cheesemarketnews.com and replies to Competition Authority customer and competitor questionnaires and the submission of undertakings involved			

Tetra Laval

- 2.27 Tetra Laval, the acquirer, has no manufacturing facilities in the State but supplies customers in the State from its manufacturing plants outside the State. It does however, have a sales/after-sales office in the State.
- 2.28 Tetra Laval manufactures and supplies its own cheese vats, cheddaring machines and block formers under its own brand names, e.g. Alfomatic. It outsources the manufacture of its block formers to an engineering firm in New Zealand.
- 2.29 The acquirer supplies directly and indirectly through distributors to customers. It also supplies other suppliers, including systems integrators such as APV, in particular with block formers.
- 2.30 In respect of supplies of block formers to system integrators, the Competition Authority understands that Tetra Laval and other manufacturers of block formers do not know the ultimate destination of the block former(s) ordered by systems integrators.
- 2.31 Tetra Laval and other manufacturers cannot identify the ultimate destination of the block former sold to a systems integrator by virtue of customisation requirements, as the undertakings involved have submitted to the Competition Authority, and third-parties agree, that generally, no customisation is carried out by the manufacturer. Block formers are manufactured and bought 'as is'. Block formers and other limited purpose equipment are generally installed by customers and not by their suppliers.

CPS

- 2.32 CPS, the target, does not have a physical presence in the State but supplies customers in the State from its manufacturing plant in the United Kingdom.
- 2.33 CPS manufactures and supplies several brands of cheese vats, cheddaring machines and block formers, most commonly supplied under the Wincanton, Scherping and Damrow brands.
- 2.34 Wincanton is the most popular of the brands and, according to third-party evidence, is considered the market-leader or the preferred option by customers in respect of block formers in the State.
- 2.35 Scherping models of block former have never been supplied outside the United States and CPS has had limited orders of Damrow in the European Union.
- 2.36 Like Tetra Laval and other suppliers of limited purpose equipment, CPS also supplies systems integrators with block formers.

APV

- 2.37 APV is a manufacturer of, *inter alia*, cheese vats and cheddaring machines. It does *not* manufacture its own block former and sources block

formers from CPS, Stoelting⁷ or Tetra Laval in order to supply its customers' block former requirements⁸. APV has a sales office/after-sales office in the State.

Customers in the State

- 2.38 Relatively few cheddar cheese processors ("customers") in the State carry out cheddar cheese processing of a scale requiring the type of limited purpose equipment offered by the undertakings involved.
- 2.39 The Competition Authority identified less than ten customers, all of which can be characterised as large dairies/dairy cooperatives using large-scale equipment such as cheddaring machines and block formers in their production processes.
- 2.40 The Competition Authority did not receive any voluntary submissions from customers during either its preliminary investigation or during the full investigation. The Competition Authority did, however, contact each customer identified and questionnaires were sent to all customers requiring detailed answers on their activities⁹.
- 2.41 The Competition Authority's findings, based on customer evidence alone¹⁰ reveal, importantly, a general lack of concern on the customers' part about the proposed transaction. Only one customer identified a possible concern about the impact of the proposed merger on its business, noting that the merger would lead to a reduction in credible bidders for the supply of block formers. This concern is considered below. Several customers identified benefits associated with the proposed transaction.
- 2.42 Customer evidence details a historical relationship between the customers and the acquirer. However, customer evidence also shows switching between the acquirer and another supplier, APV. Customers do not appear to switch to CPS although CPS' equipment is installed in many of the customers' sites, usually through APV.
- 2.43 The Competition Authority understands that customers have a preference for a supplier that can offer a full-line of limited purpose equipment even though in many cases, contracts for the supply of full-line requirements are rare. Customers have also indicated a preference for local presence of

⁷ Stoelting, is a US-based company that manufactures cheese vats, cheddaring machines and block formers. It has no base of operations in the State. It has limited orders and/sales in the European Union but has supplied in the island of Ireland in the past, either directly to customers or through a systems integrator such as APV. See below for further details.

⁸ Supported by submissions of the undertakings involved; submissions of APV; and customer evidence.

⁹ Forty-two per cent of those contacted by the Authority during its preliminary investigation in Phase 1 provided detailed information while less than 40% responded to the Authority's questionnaires in full issued during the Phase 2 investigation. Several customers did not respond at all to the Authority's initial investigative contact and/or to the questionnaires issued by the Authority.

¹⁰ Customer evidence collectively refers to interviews with customers during the preliminary investigation and follow-up interviews and questionnaires during the full investigation.

their preferred supplier, although, in the event of a price increase, customers indicated that they would consider looking to outside the EEA¹¹.

- 2.44 Customer evidence shows the importance of several bidders in the market for the supply of their limited purpose equipment requirements, with several customers noting that it is sufficient to have two bidders in order to provide leverage against price increases. Bidding data is analysed in Section 4 below.

Product Market

- 2.45 On the basis of the Competition Authority's investigation and the evidence provided to the Competition Authority, there appear to be separate product markets for each of block formers, cheddaring machines and cheese vats.
- 2.46 Each piece of limited purpose equipment, described above, is designed for a specific function and/or application in the processing of cheese. Block formers and cheddaring machines, in particular, are used solely in the processing of cheddar cheese and cannot be substituted with equipment used for the processing of other semi-hard/hard cheeses given the unique quality and characteristics of cheddar cheese.
- 2.47 It does not appear likely that manufacturers of other curd-draining and processing limited purpose equipment¹² or of curd forming/pressing limited purpose equipment¹³ could begin producing cheddaring machines in a timely fashion or with ease. The Competition Authority also understands from a third party submission that there may be reluctance on the part of other manufacturers to enter into production of new cheddaring machines and, in particular, block formers given the level of intellectual property afforded to the design of cheddaring machines currently manufactured.
- 2.48 With respect to cheese vats, however, the Competition Authority understands that cheese vats may be used in the processing of other types of semi-hard/hard cheese other than cheddar cheese. However, similar to the conclusions arrived at by the Competition Authority with respect to cheddaring machines and block formers, there does not appear to be a substitutable product for cheese vats and, further, it does not appear likely that manufacturers of other types of equipment that might be adapted for curd draining and processing could easily begin production of cheese vats.
- 2.49 The Competition Authority has thus concluded that block formers, cheese vats and cheddaring machines each constitute a separate relevant product market.

¹¹ In this regard, some customers noted that they would go to the worldwide market for supply of limited purpose equipment in order to obtain a bid that would act as leverage against an unattractive bid submitted by their current supplier.

¹² In the case of cheddar this is a cheddaring machine

¹³ In the case of cheddar this is a block former.

Geographic Market

- 2.50 There are no manufacturing plants in the State or on the island of Ireland manufacturing block formers, cheddaring machines or cheese vats. All limited purpose equipment used in the processing of cheddar cheese in particular is imported.
- 2.51 Customers have indicated a willingness to look outside the European Union for supply sources, in the event of price increases from their current suppliers of limited purpose equipment.
- 2.52 At the same time, however, customers also indicated a preference for after-sales service from their limited purpose equipment provider to be local. Reputation and reliability were also identified by customers as important considerations when choosing potential suppliers of limited purpose equipment.
- 2.53 On the basis of this evidence it is not entirely clear whether the geographic market should be confined to the State, the island of Ireland or at least EEA wide. However, the Competition Authority does not need to come to a definitive conclusion. In the analysis conducted in this Determination the focus of attention is the State, but with consideration to any competitive constraints that may be imposed by undertakings in other geographically areas.

Conclusion

- 2.54 In sum despite the fact that there are quite narrowly defined product markets, with possibly very wide geographical markets, there are only a limited number of firms that supply the relevant products into the State.

SECTION THREE: COMPETITION IN THE SUPPLY OF LIMITED PURPOSE EQUIPMENT IN THE STATE

Introduction

- 3.1 According to the undertakings involved and third-party submissions, competition for supply contracts of limited purpose equipment in the State is generally conducted through competitive tendering. Customers generally invite several potential suppliers to submit bids for the supply of the required equipment.
- 3.2 Customer evidence and the evidence of the undertakings involved and other third-parties indicates that the basis on which a contract for the supply of limited purpose equipment is awarded is quite varied. The Competition Authority has found, in no particular order, that contracts have been awarded on the basis of either one or more of the following:
- price;
 - reputation;
 - historical relationship of customer and supplier;
 - other equipment supplied to the customer by the limited purpose equipment supplier;
 - full-line offering;
 - innovation; or,
 - local presence/ after-sales proximity
- 3.3 In order to assess how competition for the supply of limited purpose equipment currently operates in the State, the Competition Authority requested detailed bidding data from the undertakings involved and from third parties, including customers and third-party suppliers. The Competition Authority also requested detailed order intake information in relation to sales of limited purpose equipment in the State.

Bidding Data Analysis

- 3.4 The Competition Authority requested detailed data and information, concerning bids submitted and contracts won, from the undertakings involved. The data and information provided by the undertakings involved was assessed and tested against the data and information provided to the Competition Authority by third-parties (for example, customers and competitors) contacted by the Competition Authority.
- 3.5 Table 3 sets out the number of bids submitted by each of the manufacturers/suppliers for individual units of limited purpose equipment¹⁴. For the purposes of the data requested, the Competition Authority defined 'bidding' as including formal invitations to bid received, formal offers submitted in writing for supply and informal offers submitted

¹⁴In some situations, customers will want a full-line product offering instead of individual products such as block formers, cheese vats or cheddaring machines. Due to the fact that APV does not have its own-brand block former, it can, in some instances, be understood as a 'systems integrator' using several products: e.g. a predominantly APV line with a block former from Stoelting/CPS/Tetra Laval. The undertakings involved have submitted that APV has in the past used at least two block former manufacturers to complete its full line offering: CPS and Stoelting.

(i.e., not in writing) for supply. It should be further noted that a bid may be for one or more pieces of limited purpose equipment

- 3.6 Given the peculiar demand characteristics of limited purpose equipment, which may be described as 'lumpy', the Competition Authority requested data from the undertakings involved covering the period of 1 January 1996 – 1 July 2006, unless otherwise stated. Some figures provided to the Competition Authority were based on memory.

	Cheese Vats	Cheddaring Machines	Block Formers
Tetra Laval	[...]	[...]	[...]
CPS	[...]	[...]	[...]
APV¹⁵	[...]	[...]	[...]
Source: See text			

- 3.7 Table 3 indicates that of the manufacturers of limited purpose equipment (i.e., Tetra Laval, CPS and APV), only the undertakings involved and APV submit bids to customers in the State. Stoelting, according to its own submission and the submissions of several customers, does not bid for supply contracts in the State.
- 3.8 The Competition Authority understands that customers in the State have a preference for at least two suppliers in order to facilitate price negotiation. Several customers have noted that two bidders are sufficient and the presence of three bidders is not essential.
- 3.9 Many of the customers are currently customers of Tetra Laval, the acquirer, and purchase other general purpose and limited purpose equipment from Tetra Laval. The remaining customers are customers of APV.
- 3.10 Some customers have submitted that while APV, Tetra Laval and CPS all bid for supply contracts, many customers do not want to change from their incumbent supplier¹⁶ and that bids submitted by other suppliers may be used to reduce the price of the bid made by the incumbent supplier.
- 3.11 On the other hand, other customers have stated that given their price sensitivity, a bid from a supplier other than their own incumbent supplier would be accepted if it was considerably less.

¹⁵ Although data in respect of bidding was requested from APV, at the time of this Determination, no written submission concerning data was received. Figures supplied in respect of APV in Table 3 are provided by submissions of the undertakings involved and have been accepted by APV in subsequent oral communication and endorsed by several customers with whom the Competition Authority made contact.

¹⁶ Although evidence of switching between suppliers, in particular between Tetra Laval and APV, has been found by the Authority.

3.12 Furthermore, customers have noted that their choice of supplier is not always based on price and that quality, reputation and reliability is more important given the capital outlay and the expectancy of a long life-cycle of the equipment.

Order Intake Analysis

3.13 Table 4 sets out the number of units of each overlapping product sold (by order intake) by each of the manufacturers/suppliers identified in the State. It should be noted that one bid (the unit of measurement in Table 3) may be for more than one piece of limited purpose equipment (the unit of measurement in Table 4). The two tables also cover different periods of time.

3.14 The Competition Authority requested data from the undertakings involved for the period 1 January 1981 to 1 July 2006, unless otherwise stated. Some figures provided to the Competition Authority are based on memory only for the period 1 January 1981 to 1 January 1988. The undertakings involved submitted to the Competition Authority that no documents were available for a period greater than 10 years.

Table 4			
Outcome of Bids for Limited Purpose Cheese Equipment, State, 1981-2006			
	Limited Purpose Equipment		
	Cheese Vats (number)	Cheddaring Machines (number)	Block Formers (number)
Tetra Laval	[...]	[...]	[...]
CPS	[...] (all [...] sold in 1982 no other sales)	[...]	[...] (all [...] sold in 1995 – no other sales)
APV	At least [...]	At least [...]	at least [...] in Northern Ireland in 1992 and some in the State ¹⁷
Source: The Competition Authority			

3.15 Table 4 reveals that while Tetra Laval, CPS and APV have been supplying customers in the State since 1981, since 1995 only Tetra Laval and APV have been supplying customers in the State. Further Tetra Laval, based on the outcome of bids, is the market leader in cheese vats and block formers, but not cheddaring machines, where APV is the market leader.

3.16 CPS has not supplied customers in the State directly since 1995. CPS equipment has, however, been supplied indirectly to customers in the State through APV, a systems integrator.

¹⁷ At the time of writing of this Determination, information requested by the Competition Authority from APV had not been provided. Sources for the data relevant to APV, as contained in Table 4, were provided by estimates contained in submissions by the undertakings involved, third party submissions generally and through discussions with APV.

- 3.17 On the basis of the information provided, the Competition Authority concluded that Tetra Laval and APV are direct competitors in the supply of limited purpose equipment based on order intake data. Neither CPS (nor Stoelting) are viewed by customers or by Tetra Laval's internal documentation as actual competitors.

Conclusion

- 3.18 On the basis of the Competition Authority's investigation and statistical evidence from customers, competitors and the undertakings involved, the Competition Authority arrived at the following interim conclusions regarding the operation of markets in the State for the overlapping products identified:

Pre-merger

- Tetra Laval and APV compete in the State for the supply of overlapping products, a fact supported by customer evidence and internal documentation of the undertakings involved.
- CPS may compete in bidding for supply contracts for limited purpose equipment but has not won a contract on foot of a bid submitted since 1995 in the State. CPS does not supply the overlapping products directly to customers in the State.
- CPS' equipment used by customers in the State is supplied by systems integrators to customers in the State and, in particular, its block formers are bought for re-sale purposes by APV, which does not manufacture its own block former.
- Customers have a preference for a single supplier of all their limited purpose equipment needs, in other words, a supplier that has a full-line offering.

Post-merger

- There are currently four manufacturers of cheese vats of which two also supply cheese vats to customers in the State - Tetra Laval and APV. Post-merger, there will be no change in the number of firms that manufacture and supply cheese vats to customers in the State, the merged entity and APV. No complaints or concerns were either received from or identified by customers or other interested third parties in this respect.
- There are currently four manufactures of cheddaring machines of which two also supply cheddaring machines to customers in the State, Tetra Laval and APV. Post-merger, there will be no change in the number of firms that manufacture and supply cheddaring machines to customers in the State, the merged entity and APV. No complaints or concerns were either received from or identified by customers or other interested third parties in this respect.
- There are currently three manufacturers of block formers of which only one, Tetra Laval, supplies customers in the State. APV, a systems integrator, supplies block formers to customers in the State sourced

from all three manufacturers of block formers. Post-merger concerns have been expressed to the Competition Authority by customers and other interested parties that while by both the merged entity and APV will continue to supply block formers into the State, the overwhelming reliance of APV on CPS for its block formers will give rise to competition concerns relating to the viability of APV as a supplier of block formers.

3.19 Table 5 below summarises the information and evidence collected by the Competition Authority and outlined above in its interim conclusions with respect to the provision of the overlapping products currently and post merger.

Table 5 Overview of Activities in Overlapping Product Markets Pre and Post-merger			
ACTIVITY	PRODUCT	PRE MERGER	POST MERGER
Manufacturers worldwide	Block Formers	Tetra Laval CPS Stoelting	Tetra Laval Stoelting
	Cheddaring Machines	Tetra Laval CPS APV Stoelting	Tetra Laval APV Stoelting
	Cheese Vats	Tetra Laval CPS APV Stoelting	Tetra Laval APV Stoelting
Bidding in the State	Block Formers	Tetra Laval CPS APV	Tetra Laval (APV)
	Cheddaring Machines	Tetra Laval CPS APV	Tetra Laval APV
	Cheese Vats	Tetra Laval CPS APV	Tetra Laval APV
Supplying in the State	Block Formers	Tetra Laval APV	Tetra Laval (APV)
	Cheddaring Machines	Tetra Laval APV	Tetra Laval APV
	Cheese Vats	Tetra Laval APV	Tetra Laval APV
Source: The Competition Authority			

3.20 The changes that will occur post-merger, other things being equal, are shaded in Table 5 above. The table demonstrates that post-merger, customers in the State will have:

- two *bidders* and two *suppliers* instead of three bidders and two suppliers for cheddaring machines and cheese vats; and,
- one *bidder* and *supplier* and one possible *bidder* and *supplier* (i.e., APV) instead of three bidders and two suppliers of block formers. This reflects the competition concern set out in paragraph 3.18 above concerning block formers.

3.21 On the basis of the Competition Authority's preliminary analysis in this respect, the Competition Authority concluded to narrow the focus of its investigation and analysis to those concerns identified above in relation to block formers.

SECTION FOUR: COMPETITION CONCERNS

Introduction

- 4.1 The Competition Authority identified four areas of product overlap in the activities of the undertakings involved: heat exchangers, cheese vats, cheddaring machines and block formers. On the basis of the conclusions drawn by the Competition Authority in Section 3, the only potential competition concern based on customer evidence and third party submissions that arises as a result of the proposed transaction is in relation to block formers.
- 4.2 One customer interviewed by the Competition Authority was concerned that, post-merger, there will be only one source of supply for block formers for customers in the State¹⁸.
- 4.3 This was considered problematic in that block formers are an essential element in cheddar cheese production. The lack of a second source of block former supply, post-merger, would inhibit or eliminate the customer's ability to negotiate on price.
- 4.4 A third-party submission identified a concern in connection with a systems integrator's ability to source block formers, post-merger, at a competitive price. The third-party stated that there are only two viable sources of block former supply: Tetra Laval and CPS. This particular view of the third party was later contradicted by the same third party in discussions with the Competition Authority when it stated that it had previously and currently uses block formers from another block former manufacturer, Stoelting. The Competition Authority accepts therefore that there are three sources of block former from which systems integrators and/or direct customers can source: Tetra Laval, CPS and Stoelting.
- 4.5 A further but connected concern raised by the third party concerned is the inability to source competitively-priced block formers would have a detrimental impact on the ability of a systems integrator to compete with the undertakings involved and other suppliers of limited purpose equipment with respect to full-line customer requirements. Specifically, the third-party submission identified a 'margin-squeeze' or 'raising rivals costs' competition concern in this regard.

Competition Concerns in the Block Former Market

- 4.6 In the State, the Competition Authority's investigation indicates that there appears to be only two credible suppliers of full-line cheese processing equipment: Tetra Laval and APV¹⁹.
- 4.7 APV does not manufacture its own block former and must source a block former from a block former manufacturer. According to APV's submission

¹⁸ The customer in question did not indicate whether it was aware of or would use Stoelting as an alternative supplier of block former.

¹⁹ While not all business in the State is conducted on a full-line basis, it is important to note that customers prefer a one-supply-source solution.

to the Competition Authority, CPS supplies APV with this essential input. Therefore, post-merger, APV will be dependent on its nearest rival for supply of an essential input in order to be able to compete with the merged entity. As a consequence the merged entity could in theory raise the price of the essential block former input to APV and thus raising the costs of APV associated with the supply of limited purpose equipment to customers in the State. This could, result in APV becoming less competitive and, consequently, less attractive to customers in the State.

- 4.8 Customers have also indicated that a second bidder in the market is preferable²⁰ and that a second full-line source (i.e. a third party capable of supplying all of their needs is important) is also preferable.
- 4.9 Therefore, in order that customers in the State have a credible second bidder for the supply of their full-line and/or individual units of limited purpose equipment and that APV continues to remain a credible alternative, access to the block former input appears to be necessary.
- 4.10 The question the Competition Authority had to consider was whether or not the proposed transaction would give rise to the concerns outlined above.
- 4.11 Contrary to APV's initial submissions to the Competition Authority, the Competition Authority found that undertakings involved were not the only source of block former supply for APV. In fact, APV itself submitted to the Competition Authority that it had sourced from Stoelting occasionally in the past. APV also submitted that access to block former supply was not on the basis of exclusive contracts [...] and that it was not aware of other systems integrators who had exclusive contracts in this regard.
- 4.12 Customer evidence has shown that while customers in the State are more aware of and familiar with the CPS block former, especially the Wincanton block former, there appears to be no technical reasons prohibiting the use of a block former sourced from either Tetra Laval or Stoelting. One source (not a customer) identified potential difficulties in using a Stoelting block former as it is manufactured for the US cheddar cheese production market. However, evidence on the use by APV of Stoelting block formers is inconsistent with the viewpoint.
- 4.13 On the basis of the above investigation in relation to block formers, the Competition Authority concluded that post-merger, systems integrators and/or suppliers will not suffer from the elimination of their only source of supply of block former (i.e., CPS) other than Tetra Laval. Evidence provided reveals that Stoelting is a tested, viable and credible source of supply of block former for systems integrators such as APV.

Entry

- 4.14 One of the possible ways of dealing with the concentration in block former manufacturing as a result of the merger and thus of allaying the concern outlined above is the possibility of entry by other manufacturers into the

²⁰ Though not essential as some customers have pointed out to the Authority.

production of block formers. The Competition Authority requested information from the undertakings involved, customers and from other third parties on potential entry into block former manufacturing.

- 4.15 The undertakings involved submitted that entry into the manufacture of block formers was not expensive and could be provided on a cost-basis of €200,000 as the cost of entry. The undertakings involved also submitted that entry would be possible by large engineering companies, and noted that Tetra Laval itself outsources the manufacture of its block formers to third-party engineering companies. The acquirer submitted that in this regard, it would be possible for engineering companies to either reverse-engineer a block former or to make a block former from the beginning.
- 4.16 The Competition Authority queried why APV itself did not begin to manufacture its own block former, if, as posited by the undertakings involved, entry was relatively inexpensive and possible. This question was especially pertinent given the fact that APV manufacturers much larger and more expensive limited purpose equipment such as cheddaring machines.
- 4.17 APV provided the Competition Authority with two reasons as to why [...] entry into block former manufacturing has not occurred and why, in their opinion, entry by third parties in the future is unlikely: (i) credible threat of intellectual property right infringement litigation; and (ii) lack of economic incentive to enter into the manufacturing of block formers.
- 4.18 In respect of APV's first reason as to why entry is not likely, the Competition Authority accepts that intellectual property rights protect inventions, brands, logos and trademarks and that this may act as a potential barrier to new entrants.
- 4.19 As regards the second reason proffered by APV, the Competition Authority accepts, given the lumpy demand characteristics of block formers, that there may be insufficient economic incentive to enter into production. This would be the case where demand for the block former occurs very infrequently and the number of users of block formers demanded does not significantly increase over time. APV has submitted, and customer evidence supports APV's submission, that demand for block formers is quite irregular and the market for cheddar cheese production does not appear to be growing.
- 4.20 The Competition Authority's investigation found that there had been some new block former manufacturer entrants in the European Union, for example Klarmann in Germany and Villy Rasmussen in Denmark. However, while the Competition Authority did not receive any replies from either, the Competition Authority understands that neither new entrant has manufactured at a level sufficient to meet the needs of customers in the State.
- 4.21 Stoelting is a US-based company which has been manufacturing, amongst other things, limited purpose cheese equipment for several years. While mainly focused on supplying cheese processors in the United States, Stoelting there is some evidenced that it may have supplied cheese

processors on the island of Ireland with block formers at least 14 years ago. It has, however, more also recently supplied systems integrators, which supply cheese processors in the State, with its limited purpose equipment, in particular with block formers²¹. [...].

- 4.22 While Stoelting does not have a sales or service presence in the State, it has supplied into the island of Ireland previously and has informed the Competition Authority that it would if requested try to meet orders placed. The possibility of entry by Stoelting as a competitor to Tetra Laval and the other manufacturers and suppliers of limited purpose equipment for cheddar cheese processing cannot be ruled out definitively, but on the available evidence does not appear likely, particularly if the OFT's remedies package (see below), which will see CPS's Wincanton brand of block former continue to be produced by an undertaking independent of the merged entity, is implemented.

Conclusion

- 4.23 The Competition Authority does not consider that the competition concerns identified as a result of the merger are concerns that would lead to a substantial lessening of competition in any of the identified relevant markets.
- 4.24 While the Competition Authority has demonstrated that the merger naturally gives rise to the removal of a competitor from the bidding markets, customers have indicated that the existence of two bidders in the market is sufficient for their purposes: to facilitate negotiation on price.
- 4.25 The merger also removes an additional independent source of block formers for customers and suppliers such as APV. However, the merger does not eliminate all manufacturers – apart from the undertakings involved - as sources of supply of block formers as the Competition Authority's investigation and analysis has demonstrated. Stoelting remains a tested, viable and credible alternative source of supply to systems integrators such as APV, as evidenced by historical customer purchasing data and the submissions of third party suppliers.

²¹ One third party informed the Competition Authority that it had been supplied with Stoelting limited purpose equipment in the past and that it continues to use Stoelting equipment. The undertakings involved have also submitted data to the Competition Authority which sets out their estimates as to supplies by Stoelting to customers on the island of Ireland and to systems integrators supplying customers in the State. The information provided by the undertakings involved was confirmed by systems integrators supplied by Stoelting.

OFT Investigation

- 4.26 While the Competition Authority was investigating the proposed transaction, the OFT, which had begun its investigation of the same transaction earlier, had arrived at an interim decision²².
- 4.27 The OFT found that the proposed merger would result in a substantial lessening of competition ("SLC") in the market for each of the overlapping products of cheese vats, cheddaring machines and block formers.

Important Distinctions between Limited Purpose Equipment Supply in the State and in the United Kingdom

- 4.28 It is important to note that while the OFT and the Competition Authority were notified of the same proposed transaction and identified the same overlapping product areas, the different conclusions arrived at by the OFT and the Competition Authority following in-depth investigations of the same transaction can be explained on the basis of different market conditions in the United Kingdom and in the State:
- In this regard the Competition Authority notes that unlike in the State, CPS competes directly Tetra Laval in the United Kingdom, in addition to APV, in that it both bids for and supplies cheddar cheese processors in the United Kingdom. In the State, however, the Competition Authority found that while CPS competes with Tetra Laval and APV for supply contracts, it has not supplied customers in the State on foot of a tender since 1995 and does not appear to be viewed as a credible supplier;
 - The market for limited purpose equipment in the State, while having the same lumpy demand characteristics as in the United Kingdom, is much smaller, with less than ten customers; and,
 - Both undertakings involved have manufacturing plants and/or operations located in the United Kingdom, but do not have any in the State. In fact, only Tetra Laval has a permanent sales/after sales force in the State. The target does not have a permanent representation in the State.

Summary of Findings of the OFT Investigation²³

- 4.29 Despite finding that the proposed transaction would substantially lessen competition in the markets for each of the three product markets

²² The OFT's duty under the Enterprise Act 2002 is to clear the merger, or to refer to the merger to the Competition Commission. If the OFT decides to clear the merger conditionally, it may suspend the referral to the Competition Commission temporarily, or as in the case of Tetra Laval/CPS pending the acceptance of undertakings from the parties to the merger. At the time of the Authority's Determination, the OFT had decided to suspend the referral of the completed acquisition to the Competition Commission "because on the information currently available, the OFT is considering whether to accept appropriate undertakings in lieu of reference from Tetra Laval pursuant to section 73 of the Act". See further <http://www.of.gov.uk/Business/Mergers+EA02/Decisions/Undertakings+in+lieu/Tetra.htm>.

²³ A more detailed overview of the OFT's findings and the remedy package reviewed by the OFT is contained in Annex 1 to this Determination.

comprising limited purpose equipment, the OFT concluded that remedies could be applied to the address the competitive concerns.

- 4.30 In brief, the remedy package offered by Tetra Laval/CPS included a range of licensing arrangements in respect of the Wincanton brand of cheese vats, block formers and cheddaring machines to a third party on an irrevocable basis.
- 4.31 The effect of this remedy package, if accepted by the OFT²⁴, would “replicate the competitive dynamic that pertained pre-merger [in the markets for cheese vats, cheddaring machines and block formers], and that they may be sufficiently clear cut to remedy the concerns identified [by the OFT].”

Competition Authority Analysis

- 4.32 Taking a prospective view of the relevant markets post-merger and after the implementation of the remedy package offered to the OFT, the Competition Authority has found that the concerns identified in Section 3 above and analysed in Section 4, are removed.
- 4.33 The impact of the implementation of the remedy package in the United Kingdom is set out in Table 6 below.
- 4.34 In Table 6, the shaded areas in the column headed “post-merger” indicate the impact of the merger and where competition concerns may have occurred. These were analysed above.
- 4.35 The column headed “Post-OFT” shows the changes in the relevant markets in the State caused by the OFT remedy package. On the acceptance by the OFT of undertakings made by Tetra Laval and CPS and given to the OFT, and the implementation of the remedy package, an alternative supplier of block formers (“NewCo”) will exist in addition to Tetra Laval. It will as pointed out above be able to use the Wincanton brand and know-how.
- 4.36 Whether or not NewCo will bid for supply contracts in the State is not capable of being answered at this stage. There is, however, no reason to exclude the possibility that NewCo will bid in the State.
- 4.37 From the perspective of customers in the State, the OFT remedy package will, on its uptake and implementation, ensure that customers will have, compared to the post-merger alternative a greater choice of offering in respect of block formers. These may be provided through systems integrators such as APV or alternatively through NewCo bidding and supplying directly to customers in the State.
- 4.38 Overall, a prospective view of the relevant markets shows that the effect of the OFT remedy package will be, at the very least, the maintenance of “competitive dynamic that pertained pre-merger” in the State.

²⁴ At the time of this Determination, Tetra Laval had not yet signed up to undertakings to the OFT in respect of the remedy package.

Table 6 Overviews of Activities in Overlapping Markets - Three Different Merger Scenarios				
ACTIVITY	PRODUCT	PRE MERGER	POST MERGER	POST OFT
Manufacturers worldwide	Block Formers	Tetra Laval CPS Stoelting	Tetra Laval Stoelting	Tetra Laval NewCo Stoelting
	Cheddaring Machines	Tetra Laval CPS APV Stoelting	Tetra Laval APV Stoelting	Tetra Laval NewCo APV Stoelting
	Cheese Vats	Tetra Laval CPS APV Stoelting	Tetra Laval APV Stoelting	Tetra Laval NewCo APV Stoelting
Bidding in the State	Block Formers	Tetra Laval CPS APV	Tetra Laval (APV)	Tetra Laval (NewCo) APV
	Cheddaring Machines	Tetra Laval CPS APV	Tetra Laval APV	Tetra Laval (NewCo) APV
	Cheese Vats	Tetra Laval CPS APV	Tetra Laval APV	Tetra Laval (NewCo) APV
Supplying in the State	Block Formers	Tetra Laval APV	Tetra Laval (APV)	Tetra Laval APV (NewCo)
	Cheddaring Machines	Tetra Laval APV	Tetra Laval APV	Tetra Laval APV (NewCo)
	Cheese Vats	Tetra Laval APV	Tetra Laval APV	Tetra Laval APV (NewCo)

Source: The Competition Authority

- 4.39 In the event that the OFT remedy package is not implemented, the Competition Authority does not consider that the concerns identified as a result of the merger are concerns that would lead to a substantial lessening of competition in any of the identified relevant markets.
- 4.40 Post-merger and without the need to take into account the positive impact of the OFT remedy package on the relevant markets of concern in the State, the Competition Authority has concluded that the proposed transaction will not lead to a substantial lessening of competition.

SECTION FIVE: DETERMINATION

5.1 The Competition Authority, in accordance with Section 22(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by The Tetra Laval Group of Carlisle Process Systems 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

Dr. Paul K. Gorecki
Member of the Competition Authority

William Prasifika
Chairman of the Competition Authority
Member of the Competition Authority

Carolyn Galbreath
Member of the Competition Authority

ANNEX ONE: REMEDY PACKAGE OFFERED BY TETRA LAVAL TO THE OFFICE OF FAIR TRADING

A remedy package offered by Tetra Laval/CPS to the OFT²⁵ is set out below:

“74. The parties offered a package of undertakings on a 'without prejudice' basis comprising the following main elements:

- (i) an irrevocable exclusive perpetual licence of all copyrights (including design drawings), design rights, know-how, manuals and confidential information relating to the Wincanton Vat, Wincanton Cheese Machine, Wincanton Salting System 2000, Wincanton Classic 40lb Cheese Tower and Wincanton Curd Distributor (the Products), granting the licensee the right to use these intellectual property rights in the development and manufacture of the Products (and related spare parts) for the marketing, sale and distribution of the products (and related spare parts) in the EEA, and
- (ii) an irrevocable exclusive perpetual licence of all intellectual property rights in and to the name Wincanton and related logo (including similar rights in relation to the names of the Products), granting the licensee the right to use these intellectual property rights in the marketing, sale and distribution of the products (and related spare parts) in the EEA, and
- (iii) [], and
- (iv) transfer of stocks of raw materials and component parts for use in the manufacture of the Products and of spare parts held by the Target, and
- (v) specialised jigs and tools used in the manufacture of the Products at the Target's facility at Sherborne.”

According to the OFT “in assessing whether this package of assets is sufficiently clear cut to address the concerns arising from the merger [in the United Kingdom], we took into consideration the following factors:

- (i) all of the overlap products sold by the target in the UK in the last ten years carried the Wincanton brand. The divestment relates to all of the Wincanton-branded products sold in the UK in this period (not just the overlap products that carry the Wincanton brand); this minimises the risk of confusion as to brand ownership and therefore maximises a purchaser's incentive to develop the brand
- (ii) the licences cover marketing, sale and distribution of the Products in the EEA in perpetuity. The breadth of geographic scope and the indefinite duration of the licences ensure that a purchaser has the possibility of realising a higher return on investment in innovation and marketing than would be the case if the licences were limited to the UK or the British Isles
- (iii) Tetra Laval indicated that a divestment that included the Sherborne manufacturing facility would be disproportionate since only [] per cent of that facility's capacity is used for the manufacture of the overlap products.

²⁵ OFT, 2006, *Anticipated acquisition by Tetra Laval Group of part of Carlisle Process Systems* : The OFT's decision suspending its duty to refer the proposed merger to the Competition Commission under section 33of the Enterprise Act was taken on 20 July 2006. Full text of decision published 2 August 2006 available at <http://www.offt.gov.uk/NR/rdonlyres/5C3C2D1D-3080-4187-8AC1-51FEE36AB800/0/Tetra.pdf>.

In the circumstances of this case we are satisfied that there are a considerable number of engineering companies that have the technical ability and capacity to manufacture the overlap products, provided that they have access to the necessary IPR

- (iv) we tested the scope of the divestment package with one potential purchaser. This party indicated that the proposed divestment package would enable it to compete effectively with the merged entity for the supply of the overlap products to customers in the UK and that it would be able to do so within a short period of time."²⁶

The OFT concluded that "in light of these considerations we are currently of the view that implementation of the proposed undertakings in lieu will replicate the competitive dynamic that pertained pre-merger, and that they may be sufficiently clear cut to remedy the concerns identified, namely the substantial lessening of competition in the supply of the overlap products to customers in the UK." ²⁷

²⁶ *Ibid* Para 75, fn 27.

²⁷ *Ibid* Para 76, fn 27.

