



Case M1252J

Proposed Acquisition by  
Kraft Foods  
of assets and rights related to Cadbury-branded biscuits

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Decision

**Document No: CICRA 16/43**

**Date: 12 October 2016**

**Jersey Competition Regulatory Authority**  
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## Summary

1. Kraft Foods Cesko Holdings BV (**Kraft**), a wholly-owned subsidiary of Mondelez International Inc. (**Mondelez**) proposes to acquire 100% of the share capital of Speedy Assetco Limited (**Speedy**) which will hold the rights to manufacture and sell a portfolio of Cadbury's-branded biscuits, together with related rights and assets from Burton's Foods Limited (**Burton's**). The transaction has been notified to the Jersey Competition Regulatory Authority (**JCRA**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **Law**).
2. The JCRA has determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approves the acquisition.

## The Notified Transaction

3. On 16 September 2016, pursuant to Article 21 of the Law, the JCRA received an application for approval from Kraft for its proposed acquisition of 100% of the share capital of Speedy which will hold the rights to manufacture and sell a portfolio of Cadbury-branded biscuits currently held by Burton's.
4. The JCRA registered the application on its website on 16 September 2016, with a deadline for comments of 30 September. No submissions were received.

## The Parties

5. The purchaser is Kraft, registered at Wilhelminakanaal Zuid 110, 4903 RA Oosterhout in the Netherlands, and the Purchaser Guarantor, Kraft Foods Schweiz Holding GMBH, is registered at Lindbergh-Allee 1, CH-8152 Glattpark, Switzerland (register of commerce number CH-020.3.000.864-2). Kraft and the Purchaser Guarantor are both wholly-owned subsidiaries of Mondelez. Mondelez is a listed company, whose shares are traded on the NASDAQ stock exchange. Mondelez is incorporated in the Commonwealth of Virginia, USA, with principal offices at Three Parkway North, Deerfield, Illinois 60015, USA.
6. Mondelez is a global snack company with a product offering including biscuits, chocolate, candy, cheese and grocery, beverages and gum. The company's biscuit portfolio includes retail biscuit brands Oreo, Ritz, TUC and belVita.
7. The seller is Burton's registered in England and Wales with company number 02086754 at Charter Court, 74-78 Victoria Street, St Albans, Hertfordshire, AL1 3XH. The Seller Guarantor, Frontier Topco, is incorporated in Jersey with number 114351 at 44 Esplanade, St Helier, JE4 9WG. The ultimate parent entity of Burton's is the Ontario Teachers' Pension Plan.

8. Burton's produces a range of sweet and savoury biscuits across its four UK-based manufacturing sites.

### **Requirement for JCRA approval**

9. Under Article 2(1)(b) of the Law, a merger occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking.
10. On completion of the notified transaction, Kraft will acquire 100% of the shares in, and as a result direct control over, Speedy. This transaction therefore constitutes a merger as defined by the Law.
11. According to Article 20(1) of the Law, a person must not execute certain mergers or acquisitions except with and in accordance with the approval of the JCRA. Article 4 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 provides that if one or more of the parties to a proposed merger or acquisition has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from person in Jersey, then that merger must be notified to the JCRA under Article 20(1) of the Law.
12. The parties do not have specific data regarding their respective shares of supply in Jersey, however using UK retail share data as the best available guide, Mondelez may have a share of the supply of cream cheese in Jersey at retail level in Jersey of between X% and X% by value, and X% and X% by volume based on UK market shares. Burton's is not active in the market for the supply of cream cheese in Jersey.
13. On the basis of the information submitted by the parties, and as there is no reason to expect that the market share in Jersey is significantly different to the UK, the JCRA has concluded that Mondelez has a share of the supply of cream cheese to Jersey exceeding 40%. The notified transaction therefore requires the approval of the JCRA prior to its execution.

### **Market Definition**

14. Although Mondelez has a share of X% of sales of cream cheese ultimately consumed in Jersey<sup>1</sup>, Burton's is not active in the cheese market. The market is referred to only in the context of the threshold for conglomerate mergers and therefore for the purpose of this decision, the JCRA does not consider it necessary to define the product market more precisely as the assessment of this transaction does not depend on this definition.

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<sup>1</sup> Based on UK retail share data, Mondelez may have a share of the supply of cream cheese in Jersey at retail level of approximately X% (including private label brands **PLB**) / X% (excluding PLBs) by value, and X% (including PLBs) / X% (excluding PLBs) by volume.

15. The only product in which both Mondelez and Burton's are both active is sweet biscuits<sup>2</sup>. Neither party sells sweet biscuits directly into Jersey. Mondelez offers its product portfolio to certain UK-based buyer groups whose members operate in Jersey as well as supermarkets, and Burton's sells to retailers and wholesalers based in the UK and Ireland. The onward sales to end-retailers in Jersey are beyond the control or oversight of either party.
16. For the purpose of this Decision there is no need to define a relevant market any further than 'sweet biscuits' as, for the reasons outlined below, the proposed merger would not result in a substantial lessening of competition irrespective of the definition of the relevant market.

### **Effect on Competition**

17. Pursuant to Article 22(2) of the Law, the JCRA must determine if the proposed acquisition would substantially lessen competition in Jersey or any part of it.
18. Conglomerate mergers are mergers between firms that are in a relationship which is neither horizontal (as competitors in the same relevant market) nor vertical (as suppliers or customers). The focus of control of these types of merger focuses on mergers between companies that are active in closely related markets (e.g. mergers involving suppliers of complementary products or products that belong to the same product range). In certain circumstances, there may be harm to competition as a result of a conglomerate merger.
19. The main concern in the context of conglomerate mergers is that of foreclosure; that is the ability and incentive to use a strong market position from one market to another by means of tying, bundling, or other exclusionary practices.
20. There is no reason to consider the cream cheese and sweet biscuits produced by Mondelez and Burton's to be closely related, or that there is any associated risk of foreclosure. The transaction will not therefore lead to any substantial lessening of competition in Jersey.

### **Third party views**

21. No third party concerns were raised in respect of this transaction.

### **Conclusion**

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<sup>2</sup> The European Commission has previously considered food products, and found that savoury snack food products do not compete with sweet snack products. See Commission Decision M2275 PepsiCo/Quaker

22. Based on the preceding analysis, the JCRA concludes that the acquisition will not substantially lessen competition in Jersey or any part of Jersey, and therefore approves the proposed acquisition under Article 22(1) of the Law.

**12 October 2016**

**By Order of the JCRA Board**