EN

Case No COMP/M.3658 - ORKLA / CHIPS

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(2) NON-OPPOSITION
Date: 03/03/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.03.2005

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLES 6(1)(b) & 6(2)
DECISION

To the notifying party :

Dear Sir/Madam,

Subject: **Case No COMP/M.3658 ORKLA/CHIPS**
Notification of 13 January 2005 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 13 January 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("the Merger Regulation") by which Orkla ASA ("Orkla", Norway) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Chips Abp ("Chips", Finland) by way of public bid announced on 5 January 2005.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and, following submission by the parties of undertakings designed to eliminate competition concerns identified by the Commission, in accordance with Article 6 (2) of the Merger Regulation, does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

1 OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. **Orkla** is a group mainly active in branded consumer goods, including food products, detergents, personal care products and household textile. In addition, it has activities in media, chemicals and financial investments. Orkla achieved a turnover of € 3,723 million world-wide in 2003, out of which more of 75% related to sales in the Nordic countries[2].

4. **Chips** is a company active in the production and sales of snacks and food products mainly in the Nordic countries. Its world-wide turnover in 2003 was € 298 million and the Snacks business accounted for approximately 80% of Chips' total sales.

II. THE OPERATION AND THE CONCENTRATION

5. The notified concentration is the acquisition of sole control of Chips by Orkla. On 8 November 2004, Orkla and Chips signed an agreement pursuant to which Orkla shall launch a public tender offer for all the outstanding shares in Chips. The tender offer commenced on 5 January 2005. The Offer Period may in its entirety be three months at the most. If, however, there are particular obstacles to the completion of the Tender Offer, such as pending merger control proceedings, Orkla may extend the Offer Period until such obstacles have been removed.

6. Orkla currently owns 22.8% of the share capital and 18.3% of the voting rights in Chips. Shareholders representing approximately 47.9% of the share capital and 61.9% of the voting rights in Chips (including Orkla) have undertaken to accept the public tender offer. If successful, the transaction will confer to Orkla sole control over Chips. Therefore the transaction constitutes a concentration under the Merger Regulation.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2.5 billion[3] (Orkla € 3,723 million and Chips € 298 million). In each of, Finland, Sweden and Denmark the combined aggregate turnover of Orkla and Chips exceeds € 100 million and the aggregate turnover of each of the two undertakings concerned is more than € 25 million in each of these countries. Each of Orkla and Chips have a Community-wide turnover in excess of EUR 100 million (Orkla € […] million and Chips € […] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension in the meaning of Article 1(3) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

8. With this transaction, Orkla will acquire control of the Nordic region's leading snacks company, Chips, which is the snacks market leader in Sweden, Denmark and Finland and

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2 Namely Denmark, Sweden, Finland, Norway and Iceland.

3 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

ranks second in Norway. While salted snacks account for 80% of Chips' turnover, the transaction will not affect this market for the reasons set out below. It is only on other food product markets, which only represent a small part of Chips' activities, that competition concerns were raised.

A. The relevant product markets

9. In its past decisions in the food sector[4], the Commission distinguished the production and sale of food products dedicated to the retail sector from the production and sale of food products dedicated to the food service sector[5]. This distinction has been confirmed by all the respondents to the market investigation for the three product categories concerned by the transaction, the frozen ready meals, the frozen potato products and herrings, Baltic herrings and anchovies. The main arguments put forward by third parties to distinguish sales to the retail sector from sales to the food service sector are that the customers and their needs are different (retailers for the retail sector and wholesalers or end users for the food service sector), as well as the packaging, the size, the quality, and the prices of the products.

Snacks/salted biscuits

10. One of the first objectives of the market investigation was to find out whether the salted biscuits produced by Orkla were competing with the snacks manufactured by Chips. The market investigation has confirmed the parties' submission that these two products constitute different product markets in the Nordic countries where the snacks and salted biscuits are not consumed in the same way and at the same occasions and are not sold on the same shelves in the retail shops. Therefore it can be concluded that there is no overlap between the parties' activities in snacks and salted biscuits. These markets will thus not be further examined in this decision.

Frozen ready meals

11. The parties submit that the frozen ready meals market should include all frozen meals such as meat-, fish-, pasta- and vegetable-based ready meals, pizza, soups, crepes and other frozen ready meals.

12. In the case *COMP/M.1740 Heinz/United Biscuits Frozen and chilled foods*, the Commission had considered, while leaving the exact definition open, the possible existence of a separate market for frozen pizzas. The Commission had in the same decision assessed an overall market including producer and retailer (private label) branded products and recognized that chilled foods exercise some competitive constraint on frozen food. The market investigation in this case has confirmed that chilled foods should not be included in the same market as frozen ready meals, even though they may exercise some competitive constraint. Chilled foods are generally priced at a significantly higher price point than comparable frozen foods.

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4 Cases COMP/M.2302 Heinz/CSM, COMP/M.1990 Unilever/Bestfoods and COMP/M.1802 Unilever/Amora-Maille.

5 The food service sector includes supply to out-of-home eating (hotels, restaurants…) and institutional catering (factory and office canteens, hospital, schools…).

13. The market investigation has provided some support for a conclusion that frozen pizzas supplied to the retail sector could constitute a separate relevant product market in Finland. In particular market respondents pointed out elements differentiating the pizzas from other ready meals such as product characteristics and price. This is consistent with data included in the notification, according to which prices of the two main types of frozen ready meals sold in Finland, namely pizzas and pytt i panna (a Nordic speciality)[6], differ by approximately 40%. Respondents to the market investigation have also generally confirmed that, in case of a 5 to 10% increase of the price for a pizza product, consumers would switch to other producer or retailer branded pizza rather that to other ready meals. Despite its investigation, the Commission is at this stage not in a position to conclude whether there is a separate relevant market for frozen pizzas supplied to the retail sector in Finland. However in order to remove the serious doubts resulting from the proposed transaction on a possible market for frozen pizzas supplied to the retail sector in Finland, the parties have submitted undertakings to the Commission pursuant to Article 6 (2) of the Merger Regulation (see below). As these undertakings are sufficient to eliminate aforementioned serious doubts, it is not necessary to enter into an in depth market investigation through initiating proceedings in the meaning of Article 6 (1) (c) of the Merger Regulation. It can also be left open whether producer and retailer branded products belong to the same or to separate product markets for the purposes of this decision as this would not change the competitive assessment.

Frozen potato products

14. The parties submit that this category includes all side dishes based on potatoes, such as French fries, potato wedges, potato burgers, potato gratin, etc. Furthermore, producer and retailer branded products, according to the parties, should be included in the same market. These arguments put forward by the parties were confirmed by the market investigation, which showed in particular that frozen potato products are close to commodity products for which price is a more important competitive factor than brand which is not much considered in the consumers' choice. These conclusions are only relevant for the purposes of this case as the consumption habits for frozen potato products appear to vary between Member States and these findings may, therefore, not be applicable to other national markets.

Seafood - herring, Baltic herring and anchovy

15. The parties submit that the seafood products can generally be divided into four main segments: fresh fish, frozen fish, processed fish and other seafood products. The parties' activities overlap with one of the processed fish segments, namely the sale of herring, Baltic herring and anchovy. Therefore, the parties propose to assess the herring, Baltic herring and anchovy segment as a separate market. The market investigation confirmed that the relevant market for seafood in the Nordic region is unlikely to be narrower than the market definition proposed by the parties. Whether, to the contrary, a wider product market definition, comprising additional types of seafood products applies, can be left open, as the parties' combined market share would be lower in such a wider market and the transaction does not raise any competition concerns even under the narrower market definition proposed by the parties. These conclusions are only relevant for the purposes of

[6] The sales of frozen pizzas and frozen pytt i panna accounted for nearly 75% of the total frozen ready meals market in Finland in 2003.

this case as the consumption habits for seafood appear to vary between Member States and these findings may, therefore, not be applicable to other national markets.

B. The relevant geographic markets

16. In past decisions in the food sector[7], the Commission has consistently considered the relevant geographic market definition for food products to be national. The parties consider that it should be considered as broader than national, probably EEA wide for the following reasons: trend towards international brands, same customers in the different Member States and cross-borders trade.

17. The market investigation has, to the contrary, confirmed that the markets are still national, notably for the following factors: national sales channels, national distribution and logistics, different brands and national sales contracts. Even if some of Orkla's and Chips' brands are used in more than one of the Nordic countries, it appears from the market investigation that brand reputation in the relevant sector must be built up on a country-by-country basis. Thus, a brand premium created in one Member State has virtually no effect on the brand's sales in any other Member State. The logistics of frozen food supply, requiring a continuous refrigeration chain, would complicate any attempt to arbitrage price differences between national markets. Therefore, at this stage and in line with previous Commission decisions in the food sector, it appears that the relevant geographic markets for the food products under investigation are probably national in scope.

C. Assessment

Frozen ready meals

18. In Finland, Orkla supplies its ready meals products to the retail sector under the brands *Felix* and *Grandiosa* and Chips under the *Oolannin* and *Billy's* brands.

19. In Finland, the combined entity will be the largest player in a tentative frozen ready meals market to the retail trade sector (including producer and retailer branded products) with a market share of [25-35]% (Orkla, [15-25]%; Chips, [10-20]%). The main competitors include Dr. Oetker ([10-20]%), Lännen Tehtaat ([5-15]%) and Findus ([0-10]%) and other competitors supplying non-branded products or marketing their products under their retail brands, such as Kesko ([0-10]%) and Inex Partners ([0-10]%). After the concentration, the HHI index would be of 1875 on the frozen ready meals market with an increase of [500-600]. If only the producer branded frozen ready meals are considered, the combined share increases to approximately [35-45]%.

20. The parties' combined market shares are even higher on a possible market for frozen pizzas in Finland, where it amounts to [40-50]% (for producer and retailer branded products and respectively for Orkla, [30-40]% and Chips, [10-20]%)), or even [50-60]% (Orkla, [40-50]%; Chips, [10-20]%) for producer branded products only. The main competitor is Dr. Oetker ([25-35]%), and other competitors include Lännen Tehtaat[8] ([0-

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7 E.g. case COMP/M.1990 Unilever/Bestfoods or case COMP/M.2817 Barilla/BPL/Kamps.

8 Lännen Tehtaat is active on the frozen pizza market with its "Apetit" brand, which has not been identified as a strong brand during the market investigation. This is also reflected in the price information included in the notification, where its price is even under the average price of private label pizzas.

10]%) and retailers, such as Kesko ([0-10]%) and Inex Partners ([0-10]%). After the concentration, the HHI index would be of 3461 on the frozen pizza market with an increase of [900-1000].

21. Over the last four years, the parties' market shares have decreased[9] while their main competitor, Dr. Oetker, has benefited of this and increased its market share (from [10-20]% in 2001 to [25-35]% in 2004). Nevertheless if this development shows that before the transaction there was a good level of competition, there can be no guarantee that a similar level of inter-brand competition would be maintained when the number of significant competitors is reduced from three to two. It may in that context be noted that the parties and Dr Oetker have supplied between 75-80% of all frozen pizzas in Finland over the last four years, while there has been no significant new entry.

22. Such market shares and concentration levels indicate serious doubts as to the transaction's compatibility with the Common market. The existence of serious doubts is further confirmed by the fact that the proposed concentration would bring together two out of three of the brands that are generally considered as "must stock brands" by Finnish retailers. Dr. Oetker's "Ristorante" would be the only remaining such brand not in the hands of the merging parties. Compared to some other food products, e.g. frozen potatoes (see below), it is worth stressing that the private label share is small for frozen pizzas (about 10%) and has been stable during the last four years. The parties argue that the retail sector is highly concentrated, the top two retail groups accounting for approximately 70% of the retail food market and that, therefore, there is significant buying power. However the low share of private labels provides an indication that the relative buyer power of retailers, put forward by the parties, is quite low for frozen pizzas and some competitors and customers have expressed concerns on the possible negative impact of the concentration on the competition. The market investigation has also shown that the barriers to successfully introduce a new brand on the Finnish frozen pizzas market are high in terms of financial investment and time needed, especially when considering the relatively limited size of the market.

23. For these reasons, it can be concluded that the proposed concentration raises serious doubts as to its compatibility with the common market since it may significantly impede effective competition in the Common market or in a substantial part thereof by the creation of a single dominant position of the merged entity in a Finnish market for frozen pizzas supplied to the retail trade sector.

24. As regards the alternative market definition for all frozen ready meals[10], the market investigation indicates that frozen ready meals are differentiated products as customers attach significant importance both to specific recipes and to brands. While, as stated above, the parties' combined positions in a tentative market for frozen pizzas raises serious doubts as to the transaction's compatibility with the Common market, it should be noted that competition concerns also arise in the wider market for frozen ready meals (whether or not defined to include both producer and retailer branded products). Under the assumption of a market including all frozen ready meals, the market investigation

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9 In 2004, the combined market share of the parties is about [40-50]%.

10 In Finland, frozen pizzas represent 58% of the total sales of frozen ready meals and the parties achieve [75-85]% of their frozen ready meals sales in pizzas.

indicates that the transaction would combine close substitutes. The competitive impact is therefore likely to be stronger than one would expect from looking at the [25-35]% or [35-45]% market shares alone.

25. In that regard, the market investigation indicates that the parties' brands (*Felix* and *Billy's*) are among the closest competitors in a tentative market for frozen ready meals, both in terms of brand positioning ("Nordic quality brands") and recipe (pizza versus different types of frozen ready meals, such as fish, meat, Pytt i panna, pasta or wok meals). Also on this basis, private labels would represent less than 20% of a total frozen ready meals market and their share of the market has also been stable in the last three years. Careful investigation of substitution patterns and other empirical data could therefore indeed have confirmed that the transaction might have impeded competition by the reduction of the number of significant competing branded products. Given, however, that the undertaking submitted by the notifying party, by eliminating the serious doubts on a possible market for frozen pizzas supplied to the retail sector in Finland, will also eliminate any concerns on the wider market for all frozen ready meals, this existence of the serious doubts can be left open for purposes of the present decision.

Frozen potato products

26. On the market for the sale of frozen potato products (including producer and retailer branded products) to the retail sector, the parties will achieve a combined market share of [50-60]% (Orkla, [40-50]%; Chips, [5-15]%) in Sweden. Orkla sells its products under the *Felix* brand and Chips under the *Topp* brand. The main competitors are two retail companies ICA ([10-20]%) and Coop Nordic Sverige ([5-15]%). These two competitors supply only private labels products and the parties' brands are the only significant suppliers active on this market, as the presence of other companies supplying branded frozen potato products is rather marginal (Findus, [0-10]% and Mc Cain, [0-10]%).

27. Contrary to frozen ready meals, the market investigation indicates that frozen potato products are comparatively weakly differentiated products. While Felix enjoys significant brand recognition and is considered by some customers (retail chains) as a "must-have" brand, Topp is generally seen as a weak brand barely distinguishable from private labels. Accordingly, Orkla in its internal documents […]. By contrast, there appear to be no barriers for supermarkets to expand the market share of their private labels as the raw materials are essentially commodities, which are mostly imported from other EEA countries (notably the Netherlands). Hence, the addition of Chips' [5-15]% market share to Orkla's existing market position does not materially change the structure of the Swedish frozen potato market, where the market investigation indicates that the power of the only strong brand, Felix, is constrained principally by private-labels.

Seafood - herring, Baltic herring and anchovy

28. Although the notified transaction leads to a high combined market share of [55-65]% with significant overlap on the market for the sale of herring, Baltic herring and anchovy to the food service sector in Finland (Orkla, [25-35]%; Chips, [25-35]%), the market investigation has not provided results that are indicative of serious doubts on this market. Instead, it has confirmed that the transaction is unlikely to impede effective competition.

29. This conclusion is motivated by the fact that the supply of herring, Baltic herring and anchovy to the food service sector constitutes only a small fraction of the total sale of seafood products in Finland. In 2003, the parties' sales in this market were of [less than €

1 million] for Orkla and of € [less than € 1 million] for Chips. This compares to the total retail sector sales of € 27 million in 2003. Although Orkla owns the famous Nordic seafood brand "Abba", Chips' sales in these markets are essentially in unbranded products. Chips sales relate almost entirely to the food service sector, while its retail market share is below [0-5]%. By contrast, all of the remaining suppliers of herring, Baltic herring and anchovy to the food service sector (Boyfood, Kesko Food, Fram Foods and Tuko Logistics) are also active in the retail market. Boyfood ([15-25]% market share, equivalent to € […] sales), Kesko ([5-15]%, € […]) and another supplier, Inex Partners ([5-15]%, € […]) have significant market shares in the retail market. Hence, these competitors would only need to divert a small fraction of their retail sales to the food service market in order to achieve sales at levels equivalent to those of either of the parties. Should this happen, it would clearly greatly affect the above mentioned market shares. Contrary to the retail sector, the food service sector is unsensitive to brands for these products. For this reason, there appear to be little, if any, barriers for retail market suppliers to either increase their total production or divert a percentage of their sales to the food service market in response to any theoretical price increase.

30. The parties' market shares in the supply of herring, Baltic herring and anchovy to the food service sector can therefore not be regarded to equate to any market power. Any attempt by the parties to increase prices would be very likely to fail, given the presence of several competitors, each of whom achieves several times the sales of Chips in the same products, albeit in the neighbouring market for the supply of the same products to the retail sector.

V. MODIFICATIONS TO THE PROPOSED OPERATION

31. Despite its investigation, the Commission is at this stage not in a position to conclude whether there is a separate relevant market for frozen pizzas in Finland. In order to remove the serious doubts resulting from the proposed transaction on a possible market for frozen pizzas supplied to the retail sector in Finland, the parties have however submitted undertakings to the Commission pursuant to Article 6 (2) of the Merger Regulation. As these undertakings are sufficient to eliminate aforementioned serious doubts (see below), it is not necessary to enter into an indepth market investigation through initiating proceedings in the meaning of Article 6 (1) (c) of the Merger Regulation. The detailed text of these undertakings is annexed to this decision. The full text of the annexed undertakings forms an integral part of this decision.

32. In order to address the competition concerns raised by the Commission, Orkla proposes to terminate the contract by which Chips currently distributes pizzas in Finland under the brand Billy's, which belongs to the Swedish Gunnar Dafgard company[11]. Dafgard, for its part, has confirmed to the Commission its agreement to replace Chips as its distributor in Finland. Orkla and Dafgard are direct competitors in other Member States, notably in Sweden. The undertaking will, thus, eliminate entirely the overlap between the parties' sales in frozen pizzas in Finland, while maintaining the Dafgard brands as an independent competitive force on the market.

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[11] Apart from pizzas, Chips is also distributing under the same agreement meatballs to the retail trade sector and steaks to the food service sector. However these sales to the retail sector are very limited as they amounted to € [less than € 500,000] in 2003 (compared to [less than € 5 million] for the pizzas).

33. The Commission considers that the undertakings are sufficient to eliminate its serious doubts as to the compatibility of the transaction with the common market. The undertakings were supported by third parties in their replies to the Commission's market test.

34. In order to ensure that Orkla complies with these undertakings, the Commission attaches conditions and obligations to this decision. The undertakings set out in section B of the commitments annexed to the present decision constitute conditions, since only by fulfilling them may the structural change on the relevant markets be achieved. The other undertakings constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended.

VI. CONCLUSION

35. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement, subject to the condition of full compliance with section B of the commitments annexed to the present decision and to the obligation of full compliance with the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) and 6(2) of Council Regulation (EC) No 139/2004.

For the Commission

Neelie KROES
Member of the Commission
signed

By hand and by fax: 00 32 2 296 4301

European Commission

DG Competition

Rue Joseph II 70 Jozef-II straat

B-1000 BRUSSELS

10 February 2005

Case M. 3658 – Orkla/Chips

COMMITMENTS TO THE EUROPEAN COMMISSION

On 13 January 2005, Orkla ASA ("**Orkla**") submitted a Form CO notification on a proposed concentration between Orkla and Chips Abp (the "**Parties**").

Pursuant to Article 6(2), of Council Regulation (EEC) No. 139/2004 (the "**Merger Regulation**"), Orkla hereby provides the following commitments (hereinafter the "**Commitments**") in order to enable the European Commission (hereinafter the "**Commission**") to declare the acquisition by Orkla of Chips Abp compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (hereinafter the "**Decision**").

These Commitments shall take effect upon the date of adoption of the Decision.

Any term used in this text shall be interpreted in the light of the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 802/2004.

SECTION A. DEFINITIONS

For the purpose of the Commitments, the following terms shall have the following meaning:

Chips: Chips Abp, a company incorporated under the laws of Finland with its registered office at Strandgatan 6, AX-22100 Mariehamn, Finland.

Decision: decision whereby the Commission declares the acquisition by Orkla of Chips compatible with the common market and the EEA Agreement pursuant to Article 6(1)(b) of the Merger Regulation.

Distribution Agreement: cooperation agreement concluded between Chips and Gunnar Dafgård on 25 June 1998 under which Chips distributes in Finland the following products manufactured by Gunnar Dafgård: pizza slices (under the brand name Billy's) and meatballs (under the brand name Oolannin) to the Retail Trade sector and steaks (unbranded) to the Food Service sector.

Distributorship: the distribution by Chips in Finland of pizza slices, meatballs and steaks manufactured by Gunnar Dafgård.

Effective Date: two weeks following the adoption of the Decision.

Felix Abba: Felix Abba Oy Ab, a company incorporated under the laws of Finland with its registered office at PB 683, 20361 Åbo, Finland.

Gunnar Dafgård: Gunnar Dafgård AB, a company incorporated under the laws of Sweden with its registered office at 533 81 Källby, Sweden.

Hold Separate Manager: the person appointed by Orkla to manage the Distributorship should the Commission deem this necessary.

Monitoring Trustee: a natural or legal person who has the duty to monitor Orkla's compliance with the conditions and obligations attached to the Decision, should the Commission deem this necessary.

Notice period: The notice period of [ ] months provided for in the Distribution Agreement and which starts running on the Effective Date as defined above.

Orkla: Orkla ASA, a company incorporated under the laws of Norway with its registered office at Karenslyst allé 6, P.O. Box 423 Skøyen, 0213 Oslo, Norway.

Parties: Orkla and Chips.

Products: the pizza slices, meatballs and steaks manufactured by Gunnar Dafgård and distributed by Chips in Finland.

Termination: the date on which the Distributorship is discontinued.

SECTION B. THE COMMITMENT

Commitment to terminate Distribution Agreement

1. Orkla commits to terminate the Distributorship within the Notice period.

2. Should Gunnar Dafgård prefer to discontinue the Distributorship prior to the expiration of the Notice period, Orkla commits to agree to a premature termination of the Distribution Agreement.

3. Orkla shall be deemed to have complied with this commitment if Termination takes place by the end of the Notice period.

SECTION C. RELATED COMMITMENTS

Preservation of Viability, Marketability and Competitiveness of the Distributorship

4. From the date of the Decision until Termination, Orkla undertakes to preserve the economic viability, marketability and competitiveness of the Distributorship in accordance with the terms of the Distribution Agreement, and shall minimise as far as possible any risk of loss of competitive potential of the Distributorship. In particular Orkla undertakes:

   (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value or management of the Products; and

   (b) to make available sufficient resources for the fulfilment of the terms of the Distribution Agreement, on the basis and continuation of the existing business plans.

Hold-separate obligations of Orkla

5. Upon a request of the Commission, Orkla undertakes to fulfil the obligations in paragraphs 6-7 below:

6. From a date set by the Commission, Orkla shall appoint a Hold Separate Manager who shall be responsible for the management of the Distributorship, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Distributorship independently and in the best interest of Gunnar Dafgård with a view to ensuring the continued economic viability, marketability and competitiveness of the Products and the independence of the Distributorship from the pizza and meatballs businesses of Felix Abba.

7. Orkla shall ensure that the Hold Separate Manager has no involvement in the pizza and meatballs business of Felix Abba and vice versa. Orkla shall also ensure that the Hold Separate Manager does not report to any individual outside the Distributorship.

Reporting

8. Orkla shall submit written reports in English on how the implementation of the Commitments is proceeding no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

SECTION D. TRUSTEE

9. Upon a request of the Commission, Orkla undertakes to fulfil the obligations in paragraphs 10-20 below:

I. Appointment Procedure

10. From a date set by the Commission, Orkla shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. The Monitoring Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, and shall neither have nor become exposed to a conflict of interest. The Monitoring Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by Orkla

11. Orkla shall submit a list of one ore more person(s) whom Orkla proposes to appoint as Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 10 and shall include:

    (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments; and

    (b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

12. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, Orkla shall appoint or cause to be appointed, the individual or institution concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Orkla shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Orkla

13. If all the proposed Monitoring Trustees are rejected, Orkla shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 10 and 11.

Trustee nominated by the Commission

14. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom Orkla shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Monitoring Trustee

15. The Monitoring Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of Orkla, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

16. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee the on-going management of the Distributorship with a view to ensuring its continued economic viability, and marketability competitiveness and monitor compliance by Orkla with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Distributorship, and the keeping separate of the Distributorship from the pizza and meatballs business of Felix Abba, in accordance with paragraphs 6-7 of the Commitments;

(b) (i) in consultation with Orkla, determine all necessary measures to ensure that Orkla does not after a date set by the Commission obtain any business secrets, commercial information, or any other information of a confidential nature relating to the Distributorship, and (ii) decide whether such information may be disclosed to Orkla as the disclosure is reasonably necessary to allow Orkla to terminate the Distributorship or as the disclosure is required by law;

(iii) propose to Orkla such measures as the Monitoring Trustee considers necessary to ensure Orkla's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Products, the holding separate of the Distributorship and the non-disclosure of competitively sensitive information;

(iv) provide to the Commission, sending Orkla a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Distributorship so that the Commission can assess whether it is held in a manner consistent with the Commitments and the progress of the implementation of the Commitments. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Orkla a non-confidential copy at the same time, if it concludes on reasonable grounds that Orkla is failing to comply with these Commitments.

III. Duties and obligations of Orkla

17. Orkla shall provide and shall cause its advisors to provide the Monitoring Trustee with all such cooperation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks.

IV. Replacement, discharge and reappointment of the Monitoring Trustee

18. If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:

(a) the Commission may, after hearing the Monitoring Trustee, require Orkla to replace the Monitoring Trustee; or

(b) Orkla, with the prior approval of the Commission, may replace the Monitoring Trustee.

19. If the Monitoring Trustee is removed according to paragraph 18, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 10-14.

20. Beside the removal according to paragraph 18, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

SECTION E. THE REVIEW CLAUSE

21. The Commission may, where appropriate, in response to a request from Orkla showing good cause:

    (i) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

    Where Orkla seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Orkla be entitled to request an extension within the last month of any period.

    Helsinki, 10 February 2005

    Tapani Manninen

    duly authorised for and on behalf of Orkla