

***Case No COMP/M.4293 -
NORDIC CAPITAL
FUND VI / ICA MENY***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 08/09/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.09.2006

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No. COMP/M.4293 – NORDIC CAPITAL FUND VI / ICA MENY
Notification of 3 August 2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

I. INTRODUCTION

1. On 3 August 2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (“Merger Regulation”) by which Nordic Capital Fund VI (Jersey) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over the whole of ICA Meny AB (“ICA Meny”, Sweden), which is currently ultimately controlled by ICA AB (Sweden), by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the Common Market and the EEA Agreement.

II. THE PARTIES AND THE OPERATION

3. **Nordic Capital** is a leading private equity fund in the Nordic region i.e. Denmark, Norway, Sweden, Finland and Iceland. Nordic Capital Fund VI, which is going to carry out the notified concentration [...] ² [...] ³. The portfolio companies of these funds

¹ OJ L 24, 29.01.04, p.1

² Case M.4254 – Nordic Capital Fund VI/Dangaard, Commission decision of 03.07.06.

are active in diverse areas, mainly in Northern Europe. Nordic Capital [...] has, amongst others, joint control over Leaf International BV (“Leaf”, The Netherlands), a sugar confectionery manufacturer and supplier of ICA Meny.

4. **ICA Meny** is currently a wholly-owned subsidiary of ICA Detalj AB (Sweden) and part of the ICA Group. The ICA Group manages approximately 2300 own and retailer owned stores in Sweden and Norway and is jointly controlled by Hakon Invest AB and Royal Ahold. ICA Meny is active in the wholesale of a broad range of daily consumer goods and some restaurant equipment to hotel chains, restaurants and institutional caterers as well as a range of convenience stores and other retail outlets.

Wholesale to the retail outlets of ICA AB has traditionally and for internal purposes been handled by ICA AB, not by ICA Meny. The notified transaction will result in a total separation of ICA Meny from ICA AB. The sales and purchase agreement foresees a transitional period to ensure continuity of business and supply for ICA Meny. Agreements on transitional issues end after a period of [1-3] years at the latest.

5. The operation consists of the acquisition by Nordic Capital Fund VI of all of the issued and outstanding shares of ICA Meny from ICA Detalj. As a result of this transaction Nordic Capital Fund VI will acquire sole control within the meaning of Article 3(1)(b) of the Merger Regulation over ICA Meny.

III. COMMUNITY DIMENSION

6. The transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation⁴. The parties have a combined aggregate worldwide turnover in excess of EUR 5,000 million (Nordic Capital EUR [...], ICA Meny EUR [...]), and each has a Community-wide turnover in excess of EUR 250 million (Nordic Capital EUR [...], ICA Meny EUR [...]).⁵ While ICA Meny achieves almost 100 % of its Community-wide turnover in Sweden, Nordic Capital does not achieve more than two thirds of its Community-wide turnover in one and the same Member State.

IV. RELEVANT MARKETS

A. Relevant product markets

7. Given that none of Nordic Capital Funds III-VI controls or otherwise owns stakes in any company that is active on the same relevant markets as ICA Meny there is no horizontal overlap between the parties. A vertical relationship results from the fact that ICA Meny procures sugar confectionery from Leaf which is jointly controlled by Nordic Capital Fund V and CVC Capital Partners.

³ Nordic Capital Funds I and II have been terminated and exist no more.

⁴ 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).

⁵ Not included is the turnover of Dangaard Telecom Holding A/S, the latest acquisition by Nordic Capital Fund VI, Case M.4254 – Nordic Capital Fund VI/Dangaard, Commission decision of 03.07.06.

1. Downstream market(s): wholesale of daily consumer goods

8. The transaction concerns the wholesale of daily consumer goods including food and beverages to various types of customers including hotel chains, restaurants and institutional customers as well as retail outlets and convenience stores. ICA Meny's product range also includes some restaurant equipment which it sells to restaurants and canteens.
9. The notifying party submits that the relevant product market comprises all sources of wholesale supply e.g. general wholesalers, specialised wholesalers and individual producers who supply to all retail demand including retail chains, convenience stores and specialised shops, hotels and restaurants as well as catering companies. For internal use ICA Meny identifies segments for different customers i.e. retail outlets (excluding convenience), convenience stores and Hotel-Restaurant-Café and institutional customers ("HoReCa/institutional").
10. While most participants to the market investigation agreed that the wholesale market comprises all groups of daily consumer goods, some respondents indicated that different groups of customers should be distinguished i.e. wholesale supplying the HoReCa segment should be distinguished from wholesale supplying retail shops and convenience stores.

2. Upstream market(s): sugar confectionery

11. In a previous decision the Commission has considered that the market for confectionery can be further subdivided into separate markets for (i) sugar confectionery and (ii) chocolate confectionery.⁶ However, the Commission left the market definition open.
12. The notifying party submits that the relevant product market is confectionery as a whole including sugar confectionery (i.e. candies prepared by dissolving sugar in water or milk and processing it to different types of sweets as well as pastilles which have more refreshing characteristics) and chocolate confectionery (all types of chocolate snacks), arguing that from a demand-side perspective all kinds of confectionery are substitutable.
13. The broad majority of the respondents to the market investigation confirmed the Commission's previous findings. Only a few competitors suggested that consumers select from the entire range of confectionery products which they would consider substitutable. However, since Leaf is only active in the sugar confectionery segment, this will be the focus of the assessment.

B. Relevant geographical markets

1. Wholesale of daily consumer goods

14. The notifying party submits that the market for the wholesale of daily consumer goods is at least national in scope. While ICA Meny is active in Sweden and Norway via different subsidiaries, most competitors are active in Sweden only.

⁶ Case M.2072 - Philip Morris/Nabisco, Commission decision of 16.10.2000.

15. The majority of respondents to the market investigation agreed that the market is national in scope, although some respondents argued that the market could be broader than national for instance covering Sweden and Norway.

2. *Sugar confectionery*

16. The notifying party submits that the relevant geographic market for confectionery or at least for sugar confectionery is national. This is due to national trademarks, taste and texture preferences as well as differences in price even though there are trends towards an at least Scandinavian market. This is in line with a previous decision⁷ where the Commission considered the market for chocolate confectionery to be national in scope.

17. The notifying party's view was confirmed by the market investigation which pointed out that especially for large international brands the market may be even broader than national.

C. Conclusion on the relevant markets

18. In the present case there is no need to define the relevant product and geographic markets, as, on the basis of all alternative market definitions considered, the proposed concentration will not significantly impede effective competition in the common market or a substantial part of it.

V. ASSESSMENT

19. The only market within the EEA that is affected by the present concentration is the sugar confectionery market in Sweden which is vertically linked to the Swedish market for the wholesale of daily consumer goods. Norway cannot be considered as affected, because Leaf's market share is below 25 % on that market.

20. It should be noted that [60-70]% of ICA Meny's operations relate to the HoReCa/institutional segment. The remaining [30-40]% can be allocated to convenience stores and other small retail outlets, such as petrol station shops, kiosks and fast food outlets. Confectionery represents less than [5-15]% of ICA Meny's turnover and more than [85-95]% of its confectionery turnover is realized via convenience stores (in Sweden even [90-100]%).

1. *Wholesale of daily consumer goods*

21. On the Swedish market for wholesale of daily consumer goods to all types of customers ICA Meny holds a market share of less than [0-5] %⁸. If the market were to be further subdivided into different segments for retail (excluding convenience), convenience and HoReCa/institutional, ICA Meny would hold [0-10]% in the retail segment, [5-15]% in the convenience segment and about [10-20]% in the HoReCa/institutional segment.

⁷ Case M.2072 - Philip Morris/Nabisco, Commission decision of 16.10.2000.

⁸ All market shares refer to 2005 and are expressed in values.

22. If the geographical market would include Norway and Sweden ICA Meny would hold a market share of [0-10]% on the wholesale market. A further subdivision into customer groups leads to market shares of [0-10]% for convenience stores and [10-20]% for the HoReCa/institutional segment.
23. If the Swedish market for wholesale of daily consumer goods were subdivided into different product groups ICA Meny would hold a market share of less than [0-10]% in confectionery. Subdividing this segment further into different segments for retail, convenience and HoReCa/institutional, ICA Meny would have [0-10]% in the retail segment and less than [10-20]% in the convenience segment and in the HoReCa/institutional segment.
24. If the geographical market would include Norway and Sweden ICA Meny would hold a market share of [0-10]% on the wholesale market for confectionery and less than [10-20]% in the convenience and in the HoReCa/institutional segment.

2. *Sugar confectionery*

25. On the Swedish market for sugar confectionery Leaf has a market share of [30-40]%. If this segment were considered as part of an overall confectionery market Leaf's market share would be below [10-20]%.
26. If the geographical market would include Norway and Sweden Leaf's market share would be [20-30]% of the sugar confectionery market. If this segment were considered as part of an overall confectionery market Leaf's market share would be [10-20]%.

3. *Vertical impact of the transaction*

27. As Leaf is a current supplier of ICA Meny there is a vertical relationship between the activities of the parties. According to the notifying party, the transaction is not intended to vertically integrate Leaf and ICA Meny given that Nordic Capital Fund VI is a private equity investor and Leaf is jointly controlled by another private equity investor. Furthermore, the notifying party submits that there are no risks for foreclosure as none of the parties has the market power to foreclose competitors of Leaf from the wholesale market (*customer foreclosure*) or competitors of ICA Meny from access to confectionery products (*input foreclosure*).
28. Considering that a wholesale company must be able to provide a broad range of products and brand names in order to fulfil the needs of the wide variety of its customers⁹ it is unlikely that ICA Meny would decide to purchase all or most of its requirements for sugar confectionery from Leaf (*customer foreclosure*).¹⁰ Even if – as some sugar confectioners suggested during to the market investigation - ICA Meny were to decide to prioritise Leaf due to better conditions this would only have a limited impact on Leaf's competitors. ICA Meny accounts for less than [10-20]% of the overall demand for sugar confectionery in Sweden and with a market share of less than [0-10]% on the overall wholesale market, [0-10]% in the convenience segment and less than [10-20]% in the HoReCa/institutional segment ICA Meny covers only a

⁹ ICA Meny offers over 40.000 products to its customers.

¹⁰ Currently ICA Meny procures only [10-20]% of its confectionery demand from Leaf, [20-30]% from Kraft, [20-30]% from Cloetta Fazer and [0-10]% from Wrigley.

small part of the Swedish wholesale market.¹¹ Moreover it has to be noted that confectionery represents only a small part of the HoReCa/institutional segment where ICA Meny has its business focus.

29. It is also unlikely that the transaction would lead to *input foreclosure*, although some wholesalers responding to the market investigation expressed concerns that Leaf might provide ICA Meny with special conditions. As shown above ICA Meny is not a major player on the wholesale of sugar confectionery in Sweden and represents less than [10-20]% of Leaf's sugar confectionery sales. Therefore, it seems that there is no economic incentive for Leaf to rely exclusively on ICA Meny.

Even if Leaf were to strengthen its relationships to ICA Meny this would not foreclose sugar confectionery supplies to other wholesalers as Leaf (market share [25-35]%) is facing competition from other national and international producers of sugar confectionery such as Wrigley [15-25]%, Cadbury Sweden [10-20]%, Cloetta Fazer [0-10]% and Procter & Gamble [0-10]%. On the overall confectionery market Leaf has a market share of [10-20]% and is facing strong competition from Kraft Foods [20-30]%, Cloetta Fazer [10-20]% and other important players such as Wrigley, Cadbury and Masterfoods. These competitors would be alternative sources of supply for other wholesalers.

30. It follows from the above that the vertical link between the parties resulting from the transaction is unlikely to significantly impede effective competition on the vertically affected markets.

VI. CONCLUSION

31. 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. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
Signed
Neelie KROES
Member of the Commission

¹¹ Market shares including Norway would be even lower (see above).