

***Case No COMP/M.6430 -  
OAKTREE/ PANRICO***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 19/12/2011

***In electronic form on the EUR-Lex website under  
document number 32011M6430***



## EUROPEAN COMMISSION

Brussels, 19/12/2011

C(2011)9909

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

### **To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.6430 – Oaktree/ Panrico  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 16 November 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Oaktree Capital Group Holdings GP, LLC ("Oaktree", United States) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the undertaking Panrico Group ("Panrico", Spain), by way of purchase of shares<sup>2</sup>. Oaktree is referred hereinafter to as the "notifying party".

### **I. THE PARTIES**

2. Oaktree is a global alternative and non-traditional investment manager. Oaktree Group's investments are in a variety of industries including packaging, manufacturing, healthcare, clothing, travel, real estate, exploration and mining, food, telecommunications, media and entertainment.

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> Publication in the Official Journal of the European Union No C 344, 24.11.2011, p.12.

3. Panrico is a company active in the manufacture and wholesale distribution of the following bakery products: bread, pastries and biscuits.

## **II. THE OPERATION AND CONCENTRATION**

4. In the context of a debt restructuring deal, Oaktree [...] (“OCM”) will acquire sole control over the entire business of Panrico<sup>3</sup>. [...]. OCM is [...] ultimately controlled by Oaktree.
5. Therefore, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. EU DIMENSION**

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>4</sup>. Each of them has an EU-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

## **IV. COMPETITIVE ASSESSMENT**

7. Panrico has business operations in Spain and in Portugal, where it is active in the manufacture and wholesale distribution of bread, bread substitutes, preserved pastries and biscuits<sup>5</sup>.
8. One of Oaktree's portfolio companies – Nordenia – produces flexible packaging, technical films and product components for various industrial sectors. Some of the packaging products manufactured by Nordenia can be used in the packaging of bread and bakery products.

### **1. Relevant product markets**

9. In previous decisions, the Commission has made a distinction between the sale of food products to the retail sector and the sale of food products to the foodservice sector (hotel, restaurants, fast-food outlets, sandwich shops, canteens, hospitals, schools, etc).<sup>6</sup>

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<sup>3</sup> OCM currently holds a [...] % stake in [...] the ultimate parent entity of Panrico.

<sup>4</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

<sup>5</sup> Panrico operates under the following brands: Panrico (sliced bread and bread substitutes); Donuts (pastries); Bollycao (pastries); La Bella Easo (pastries); Horno de Oro (pastries); Qé (pastries); and Artiach (biscuits), which includes brands such as Artinata, Chiquilín, Dinosaurs, Filipinos, and Marbú.

<sup>6</sup> Case M.1990 *Unilever/Bestfoods*.

10. In the present case, the exact product market may be left open since no competition concerns would arise under any potential product market definition.

(i) *Bread*

11. The Commission in previous decisions identified bread as a separate relevant product market distinct from other bakery products but left open the possibility to further distinguish between fresh bread and industrial and pre-packaged bread.<sup>7</sup>
12. The notifying party considers that the market for bread can be further segmented into fresh and pre-packaged bread.
13. The question of the precise relevant market definition can ultimately be left open for the purposes of this decision since no competition concerns would arise under any potential product market definition.

(ii) *Cake products*

14. The Commission in its previous decisions<sup>8</sup> considered that cake products<sup>9</sup> constitute a separate product market distinct from other bakery product, but left open the question it is necessary whether to further distinguish between (i) cakes, mini cakes and other pastries produced by craft pastries and industrial producers, and (ii) morning goods, which includes bagels, croissants, scones and similar products that are normally eaten for breakfast. The notifying party submits that cake products constitute a single relevant product market.
15. However, in the present case, the exact product market definition may be left open since no competition concerns would arise under any possible product market definition.

(iii) *Biscuits*

16. The Commission in previous decisions has considered that biscuits constitute a relevant product market distinct from other bakery products<sup>10</sup>. Moreover, the Commission has further considered that sweet and savoury biscuits constitute separate relevant product markets due to the lack of demand side substitutability between these products<sup>11</sup>. While

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<sup>7</sup> Cases M.2817 – *Barilla / BPL / Kamps*; M.5286 – *Lion Capital / Foodvest*.

<sup>8</sup> *Ibid.*

<sup>9</sup> The notifying party uses the term "preserved pastry" as equivalent to the term "cake product" referred to in the Commission's precedents. It only includes cake products manufactured by industrial producers since Panrico is not active in the segment of cake products produced by craft bakers.

<sup>10</sup> Case M.1920 – *Nabisco / United Biscuits*.

<sup>11</sup> Cases M.5644 – *Kraft Foods / Cadbury*; M.4824 – *Kraft / Danone Biscuits*; M.1920 – *Nabisco / United Biscuits*.

sweet biscuits are generally consumed between meals, savoury biscuits are usually consumed in the evening as a snack with or without accompanying food.

17. However, the question of the exact product market definition for biscuits can ultimately be left open for the purpose of this decision since the proposed transaction would not raise any competition concerns even under the narrowest product market definition.

*(iv) Bread substitutes*

18. The Commission in previous decisions has considered that bread substitutes constitute a relevant product market distinct from other bakery products<sup>12</sup>.
19. In the present case, the exact product market definition for bread substitutes may be left open since no competition concerns would arise under any potential product market definition.

*(iv) Flexible packaging*

20. The Commission in previous decisions has considered that flexible packaging for food constitutes a separate relevant product market. The Commission also considered the possibility of a further sub-segmentation based on the type of food although it ultimately left the question open.<sup>13</sup>
21. In the present case, the exact product market definition for flexible packaging may be left open since no competition concerns would arise under any potential product market definition.

## **2. Relevant geographic markets**

22. The Commission in previous decisions has considered that the relevant geographic market for bakery products was national in scope on the basis of different preferences and purchasing habits between Member States<sup>14</sup>.
23. The Commission has previously considered that the geographic scope of the market for flexible packaging for food is EEA-wide<sup>15</sup>.

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<sup>12</sup> Cases M.2817 – *Barilla / BPL / Kamps*; M.5286 – *Lion Capital / Foodvest*.

<sup>13</sup> Cases M.5599 – *Ancor / Alcan*; M.5906 – *One Equity Partners / Constantia*.

<sup>14</sup> Cases M.4824 – *Kraft / Danone Biscuits*; M.2817 – *Barilla / BPL/Kamps*.

<sup>15</sup> Cases M.5599 – *Ancor / Alcan*; M.5906 – *One Equity Partners / Constantia*.

### 3. Competitive assessment

#### Horizontal overlaps

24. The proposed transaction does not lead to horizontal overlaps. According to the notifying party none of Oaktree's portfolio companies operate in any of the product markets in which Panrico is active. The respondents to the market investigation confirmed that according to their knowledge, Oaktree does not have in its portfolio any company active in the same markets as Panrico.

#### Vertical relationships

25. The proposed transaction results in a vertical link between Nordenia's activities in flexible packaging and Panrico's activities in bakery products. Nordenia manufactures a wide range of packaging products, including packaging products for bread, biscuits and cakes. These products could, in principle, be used as inputs by Panrico.
26. At the EEA level, Nordenia market share in the narrower market of supply of flexible packaging for bread, biscuits and cakes is below [0-5]%<sup>16</sup>.
27. With regard to Panrico's market shares in the downstream markets for bakery products<sup>17</sup> as shown in Table 1, the proposed transaction results in a vertically affected market for cake products in Portugal.

**Table 1: Panrico's market share (\*)**

	<b>Spain</b>	<b>Portugal</b>
<b>Pre-packaged bread</b>	[5-10]%	[20-30]%
<b>Cake products</b>	[20-30]%	[20-30]%
<b>Biscuits</b>	[10-20]%	[0-5]%
<b>Bread substitutes</b>	<[0-5]%	<[0-5]%

(\*) Panrico is not active in the fresh bread market

Source: Notifying party best estimates based IRI and Nielsen data

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<sup>16</sup> At EEA level, Nordenia sales were [...] tons out of a total market of [...] tons of packaging products for bread, biscuits and cakes. In Spain, Nordenia has [...]. However, Nordenia's annual sales to [...] represents a mere [0-5]% of the total market.

<sup>17</sup> According to the notifying party, in case the market were to be further split into sales to the retail sector and sales to the foodservice sector, Panrico's market shares would remain below [10-20]% in either pre-packaged bread, preserved pastries or biscuits.

28. The notifying party notes that given the significantly low market share of Nordenia in the upstream market of flexible packaging for bread, biscuits and cakes, post transaction, the merged entity will lack post transaction the ability to engage in a foreclosure strategy.
29. The market investigation did not reveal that any competition concerns would result from the mentioned vertical relationships. In fact, respondents to the market investigation confirmed that the proposed transaction would not lead to any material change in the structure of the market.
30. On the basis of the above, it is concluded that the vertical relations resulting from the proposed transaction would not give rise to any serious doubts with respect to its compatibility with the internal market.

## **V. CONCLUSION**

31. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission  
(signed)  
Joaquín ALMUNIA  
Vice-President*