



EUROPEAN COMMISSION

DG Competition

***Case M.7434 -
MÜLLER UK &
IRELAND / DAIRY
CREST DAIRY
OPERATIONS***

Only the English text is available and authentic.

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

Article 4(4)

Date: 20/03/2015



EUROPEAN COMMISSION

Brussels, 20 March 2015
C(2015) 2081 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To Competition and Markets Authority

Dear Sirs,

**Subject: Case M.7434 – Müller UK & Ireland/Dairy Crest dairy operations
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to the United Kingdom and Article 57 of the Agreement on the European Economic Area².**

Date of filing: 13.02.2015

Legal deadline for response of Member States: 06.03.2015

Legal deadline for the Commission decision under Article 4(4): 20.03.2015

¹ 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.

² OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

I. INTRODUCTION

1. On 13 February 2015, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of the United Kingdom.
2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 13 February 2015.
4. By fax of 3 March 2015 the Competition and Markets Authority as the competent authority of the United Kingdom informed the Commission that the United-Kingdom agrees with the proposed referral.

II. THE PARTIES

5. The **Müller group** is active in the food services industry in Europe and, since 2012, in the United States. The majority of Müller Group's turnover is achieved through its activities in the dairy sector. Müller UK & Ireland Group LLP processes milk to produce yoghurts, dairy desserts, packaged bulk fresh cream, bulk butter and buttermilk as well as a very small amount of flavoured milk sold in Scotland. Müller has 19 sites in the UK and employs almost 6,000 people across four business units: Müller Dairy, Müller Wiseman Dairies, Müller Minsterley and TM Telford.
6. **Dairy Crest Group plc** is a British dairy products company listed on the London stock exchange. The group processes and delivers around 1.3 billion litres of British milk per annum to customers ranging from major retailers, public institutions, businesses, wholesalers, hotels/restaurants and caterers to residential customers. Dairy Crest manufactures and sells flavoured milk (Frijj and other private label products) as well as packaged cream, bulk cream, bulk butter, milk powders and buttermilk. Dairy Crest also produces cheese and spreads which will not be included in the transaction with Müller. Dairy Crest's main activities are centred in the South and East of England.

III. THE OPERATION AND CONCENTRATION

7. The transaction in question ("The Transaction") is to be [...] by way of an asset purchase agreement. Müller UK & Ireland Group will acquire sole control over the dairies operations of Dairy Crest Group. Müller and Dairy Crest will also enter into a number of transitional supply arrangements to enable the separation of the target business from the rest of the Dairy Crest business and to ensure continuity of butter supply for the operations being retained by Dairy Crest. The transaction is therefore a concentration within the meaning of Article 3(1) (b) of the EC Merger regulation.

IV. EU DIMENSION

8. The concentration has a community dimension within the meaning of Article 1(2) of the EC Merger regulation. The parties achieved in the last financial year together a world-wide turnover in excess of €5,000 million: for the year 2013, Müller Group's global turnover was of €[...] million. In the same year, Dairy Crest's global dairies operations recorded a turnover of €1,120 million. Each of the parties achieved an EEA-wide turnover in excess of €250 million (with an EEA-wide turnover of €[...] million for Müller group and of €[...] billion for Dairy Crest) and only Dairy Crest achieves more than two thirds of its turnover within one member state (with a turnover of €[...] million in the United-Kingdom).

V. ASSESSMENT

A. Relevant product markets

9. In accordance with article 206(1) and 207 of Regulation (EU) 1308/2013 of 17 December 2013 establishing a common organisation of the markets in agricultural products, four product markets can be identified and considered as affected: the sourcing of raw milk, the supply of fresh liquid milk, packaged cream and flavoured milk³. Non-affected markets include bulk butter, bulk cream, skimmed milk powder and buttermilk.

1. Sourcing of raw milk

10. The Commission has considered the sourcing of raw milk as a relevant product market in past cases. However, while in *Arla Foods/Express Dairies* the Commission considered that there was a single market for the sourcing of raw milk, in the more recent case *Friesland Foods/Campina*, the Commission concluded that the sourcing of raw milk should be split in two separate markets: (i) the sourcing of conventional milk; and (ii) the sourcing of organic milk⁴. The exact definition of the relevant product market can be left open as it would not in any case affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.
11. As regards the relevant geographic market, the Commission has in past decisions considered that the market for the sourcing of raw milk is not wider than national in scope.⁵ In *M.6611 Arla Foods/Milk Link*, the Commission noted that: "*The market investigation indicates that there is a tendency on the part of some major competitors to source milk from specific regions of the United Kingdom. However, a majority of the competitors do not pay different prices according to the region*".⁶ Furthermore, in previous cases the UK Office of Fair Trading ("OFT") assessed the sourcing of raw milk on the basis of Great Britain (i.e. the UK excluding Northern Ireland) as the relevant geographic frame of reference, considering that a 100 mile radius (around 160 km) was a viable range for delivery of raw milk to processors.⁷ In practice, the costs associated with the transport of raw milk and the need to insulate it in tanks

³ Under article 206 (1) of Regulation (EU) 1308/2013 of 17 December 2013 establishing a common organisation of the markets in agricultural products, "save as otherwise provided in [the] Regulation, and in accordance with Article 42 TFEU, Articles 101 to 106 TFEU and the implementing provisions thereto shall, subject to Articles 207 to 210 of this Regulation, apply to all agreements, decisions and practices referred to in Article 101(1) and Article 102 TFEU which relate to the production of, or trade in, agricultural products." Furthermore, article 207 of the regulation defines the notion of "relevant product market" and "relevant geographic market" on the markets for the production of, or trade in, agricultural products.

below 5°C degrees mean that the delivery supply radius tends to be no wider than national.

12. The Parties' post-Transaction combined share of demand for raw milk procured directly from farmers in the UK would be of [20-30]%. The Parties currently have market shares exceeding 20% in several regions of the UK ([...]). The transaction will lead to the creation of regional market shares above 20% in 4 areas [...].

2. *Supply of fresh liquid milk*

13. Fresh milk is milk with a standardised fat content, which is pasteurised at 72° Celsius for 15 seconds. Both Parties are active in the sale of fresh liquid milk (milk that has been pasteurized or homogenized) in Great Britain, which is served from a variety of processing dairies and depots throughout the UK.
14. Regarding product market definition, the Commission concluded in *Friesland Foods/Campina* that conventional and organic fresh milk constitute separate product markets, that branded and private label products belong to the same product market and left open the question whether the market should be further segmented according to the distribution channel⁸. In *Lactalis/Parmalat*, the Commission also left open the question whether there could be a health segment within the market for fresh milk⁹.
15. In *Arla Foods/Milk Link*, the Commission left open the question whether further segmentation of the market was necessary. However, in the past, UK authorities have distinguished markets according to three relevant categories of customers for the supply of fresh liquid milk: (a) national multiples, (b) "middle ground customers" and (c) doorstep customers.¹⁰
16. National multiples are mainly composed of large supermarket chains set up in the UK who purchase significant volumes of unbranded fresh liquid milk most often to sell it as their own label product (e.g. Tesco, Asda, Sainsbury's). Middle ground customers are comprised of a broad range of customers that may not generally have the more sophisticated requirements or supply arrangements required by the national multiples but at the same time are more sophisticated than doorstep customers (for instance, large national food service companies and the catering and food outlet channel - catering companies, hotels, restaurants, coffee shops, corner shops -). Doorstep supply

* Should read: effected.

⁴ Case M.3130 – *Arla Foods/Express Dairies*, recitals 9-10; Case M.5046 – *Friesland Food/Campina*, recital 52.

⁵ Case M.5046 – *Friesland Foods/Campina*, recital 80; Case M.5875 – *Lactalis/Puleva Dairy*, recital 46; Case M.6119 – *Arla/Hansa*, recital 35.

⁶ Case M.6611 – *Arla Foods/Milk Link*, recital 12.

⁷ *First Milk/Wiseman*, OFT decision of 7 April 2005, recitals 13-14.

⁸ Case M.5046 – *Friesland Food/Campina*, recital 207.

⁹ Case M.6242 – *Lactalis/Parmalat*, recital 31.

¹⁰ *Arla Foods amba and Express Dairies plc: a report on the proposed merger*, UK Competition Commission report of October 2003, recital 2.41.

consists in delivery to the customer's residence and entails particular distribution requirements.

17. The exact definition of the relevant product market can be left open as it would not in any case affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.
18. The Commission concluded in previous decisions that, as regards the fresh milk market and its possible segments, the geographical scope should be defined as national¹¹.
19. Overall, the shares of supply of fresh liquid milk to national multiples in Great Britain for the year 2014 differed according to the region. In certain regions, Müller and Dairy Crest have a combined market share exceeding 50% (e.g. [...]). Regarding sales to the middle ground, the combined market share of the parties will be of [30-40]% on a national scale and reach up to [50-60]% in the South West. Three other regions will have combined market shares of 40% or above ([...]). As for the market for doorstep customers, the parties submit there will be no geographic overlap of market shares.

3. Supply of packaged cream

20. Cream is a by-product of milk processing and the production of fresh dairy products, in particular from the production of skimmed and semi-skimmed fresh liquid milk. Both parties are active in the manufacture and supply of fresh liquid cream to third parties in Great Britain.
21. In *Friesland Foods/Campina*, the Commission distinguished between liquid and spray cream.¹² However, the exact definition of the relevant product market can be left open since it would not in any case affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.
22. As regards the geographical scope, in *Friesland/Campina* the Commission considered whether the geographic market for cream should exceed national boundaries. It concluded that the relevant geographic market extended at least to Belgium, Germany and the Netherlands. However, in *Arla Foods/Milk Link*, the Commission's market investigation later indicated that the geographical market for fresh cream might not be wider than national in scope.¹³ Consistent with *Arla Foods/Milk Link*, the Parties submit that this national market definition is transferrable to Great Britain since imports and exports are limited; the relevant geographic scope to analyse packaged cream would therefore be Great Britain.
23. The parties have a combined share of supply of packaged cream of [30-40]% in Great Britain. The combined shares of supply for fresh packaged cream will exceed 40% in [...] * regions ([...]).

¹¹ Case M.5046 – *Friesland Foods/Campina*, recital 230; Case M.6119 – *Arla/Hansa*.

¹² Case M.5046 – *Friesland Foods/Campina*, recital 1338.

¹³ Case M.6611 – *Arla Foods/Milk Link*, recitals 63-64.

* Should read: two.

4. Supply of flavoured milk

24. Flavoured milk is a sweetened dairy drink mainly consisting of skimmed milk and whole milk as well as artificial or natural flavourings.
25. In *Friesland Food/Campina*, the Commission made a distinction between fresh flavoured dairy drinks and long-life flavoured dairy drinks.¹⁴ However, the Notifying party submits that it is not necessary to reach a view on the precise scope of the product market since it would not in any case affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.
26. As regard the geographical market, the parties submit the market for flavoured milk is EEA-wide. However, it should be noted that the Commission has acknowledged some national brand preferences in the past in *Friesland/Campina*¹⁵ and subsequently referred to them in *Arla/Milk Link*¹⁶.
27. In any case, geographical overlaps will remain limited both in the UK and on an EEA-wide basis. Dairy Crest's flavoured milk is almost entirely sold in the UK whereas Müller has a minimal presence in the country; Dairy Crest has a [30-40]% market share in Great Britain, where Müller has [0-5]% (Müller's flavoured milk is sold mainly in Germany, Poland and in the Czech Republic). Overall, Dairy Crest has a [0-5]% market share in the EEA, and Müller has [5-10]%.

5. Other markets

28. There are other markets where the activities of the Parties overlap, namely bulk cream, bulk butter, skimmed milk powder and buttermilk. While these markets could potentially be viewed as broader than national (EEA-wide or global), the combined market shares of the parties at that broader level for each of these markets do not exceeds 5%. These markets are therefore not affected.

B. Assessment

29. The transaction has a strong UK nexus: the businesses that are being combined are based in the UK and the competition in the main affected product markets (procurement of raw milk, the supply of fresh liquid milk, packaged cream and flavoured milk) takes place on a UK national or regional basis.
30. Accordingly, the UK Competition and Markets Authority (CMA) may be best placed to review the competitive effects of the Transaction in its entirety.

Additional factors

31. In previous cases on concentrations in the dairy sector (e.g. M.3130 *Arla Foods/Express Dairies*), the Commission took the step of referring the matters to the UK authorities. In 2003, the United Kingdom made a referral request of the *Arla*

¹⁴ Case M.5046 – *Friesland Foods/Campina*, recital 978.

¹⁵ Case M.5046 – *Friesland Foods/Campina*, recitals 1023-1024.

¹⁶ Case M.6611 – *Arla Foods/Milk Link*, recital 65.

food/Express Dairies case pursuant to article 9 of the EC Merger regulation. The Commission referred the liquid milk component of that transaction to the United Kingdom. In its decision on the referral the Commission stated that, "*given the national or sub-national scope of the markets affected by the transaction, the competent authorities of the United Kingdom are better placed to carry out a thorough investigation of these markets, and that it is therefore appropriate for the Commission to exercise its discretion under article 9 (3) (b) so as to grant the referral.*" The CMA has therefore previous experience in assessing mergers in that regard.

32. Moreover, the full referral will preserve the one-stop shop principle given that the whole case will be referred to a single authority which increases administrative efficiency¹⁷.

VI. REFERRAL

33. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations¹⁸ (point 17) indicates that, in seeking a referral under Article 4(4), "*the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*", and that "*such indications may be no more than preliminary in nature...*". The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in the United Kingdom and that the requested referral would be consistent with point 20 of the notice.

VII. CONCLUSION

34. For the above reasons, and given that the United-Kingdom has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the United-Kingdom. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Alexander ITALIANER

Director General

¹⁷ Additionally, as regards the markets for production of, or trade in, agricultural products, article 206 of Regulation (EU) 1308/2013 of 17 December 2013 establishing a common organisation of the markets in agricultural products specifically provides that "*in order to ensure the functioning of the internal market and the uniform application of Union competition rules, the Commission and the competition authorities of the Member States shall apply the Union competition rules in close cooperation.*"

¹⁸ OJ C 56, 05.03.2005, p.2.