



EUROPEAN COMMISSION
Competition DG

Policy and Strategy
Antitrust and Mergers – Policy and Scrutiny

OPINION

of the ADVISORY COMMITTEE on MERGERS

given at its meeting of 5 December 2008

regarding a draft decision relating to

CASE COMP/M.5046 - FRIESLAND FOODS/ CAMPINA

Rapporteur: SWEDEN

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of the Council Regulation No 139/2004.
2. The Advisory Committee agrees with the Commission that the notified operation has a community dimension within the meaning of the Council Regulation No 139/2004.
3. The Advisory Committee agrees with the Commission that, for the purpose of assessing the present operation, the definitions of the relevant **product markets** are:
 - a) Procurement of raw milk separated into procurement of conventional raw milk and procurement of organic raw milk.
 - b) Fresh basic dairy products separated into fresh milk, fresh buttermilk and plain yoghurt.
 - c) Long-life basic dairy products.
 - d) Organic fresh basic dairy products.
 - e) Dutch type cheese to specialized cheese wholesalers and to modern types of retail, respectively.
 - f) Dairy bulk butter separated into basic butter, fractionated butter oil and non-fractionated butter oil and dairy packet butter separated into sales to the Out of Home (OOH) and the retail segments.
 - g) Value-added yoghurts and quarks sold to the OOH segment.
 - h) Branded non-health fresh flavoured dairy drinks, separated into sales to the OOH and the retail segments.
 - i) Long Life flavoured dairy drinks separated into long-life chocolate-flavoured dairy drinks and long-life fruit-flavoured dairy drinks.
 - j) Fresh custard and porridge separated into sales to the OOH and the retail segments.
 - k) Dairy liquid cream separated into sales to the Out of Home, industrial and the retail segments.
 - l) Spray cream separated into dairy and non-dairy spray cream and into sales to the OOH and the retail segments.

-
- m) Coffee milk separated into sales to the OOH and the retail segments and coffee cream separated into sales to the OOH and the retail segments.
 - n) Spray dried emulsions separated into creamers, foamers and toppings.
 - o) Food grade lactose.
 - p) Pharma grade lactose separated into pharmaceutical lactose and Dry Powder Inhalation (DPI) lactose.
4. The Advisory Committee agrees with the Commission that, for the purpose of assessing the present operation, the definitions of the relevant **geographic markets** are:
- a) National (the Netherlands) for all markets in procurement of raw milk.
 - b) National (the Netherlands) for all markets of fresh basic dairy products.
 - c) Wider than national (including Belgium, Germany and the Netherlands) for long-life basic dairy products.
 - d) National (the Netherlands) for organic fresh basic dairy products.
 - e) National (the Netherlands) for all markets of Dutch type cheese (except rindless cheese).
 - f) EEA-wide for all markets of bulk butter and wider than national (including at least Belgium, Germany and the Netherlands) for all markets of packet butter.
 - g) National (the Netherlands) for value-added yoghurts and quarks sold to the OOH segment.
 - h) National (the Netherlands) for all markets of branded non-health fresh flavoured dairy drinks.
 - i) National (the Netherlands and Belgium) or alternatively wider than national (including Belgium, Germany and the Netherlands) for all markets of long life flavoured dairy drinks.
 - j) National (the Netherlands) for all markets of fresh custard and porridge.
 - k) Wider than national (including at least Belgium, Germany and the Netherlands) for all markets of liquid cream.
 - l) Wider than national (including at least Belgium, Germany and the Netherlands) for all markets of spray cream.
 - m) Wider than national (including Belgium, Germany and the Netherlands) for all markets of coffee milk and coffee cream.
 - n) EEA-wide for all markets of spray dried emulsions.
 - o) EEA-wide or worldwide for food grade lactose.
 - p) EEA-wide or worldwide for all markets of Pharma grade lactose.
5. The Advisory Committee agrees with the Commission that the proposed concentration is likely to result in a **significant impediment to effective competition** in the common market or in a substantial part of it on the following markets:
- a) Procurement of conventional raw milk in the Netherlands.

-
- b) All markets of fresh basic dairy products in the Netherlands.
 - c) All markets of Dutch type cheese in the Netherlands.
 - d) Value added yoghurts and quarks sold to the OOH segment in the Netherlands.
 - e) All markets of branded non-health fresh flavoured dairy drinks in the Netherlands.
 - f) All markets of long-life dairy drinks in the Netherlands and Belgium or alternatively in a wider region including Belgium, Germany and the Netherlands.
 - g) All markets of fresh custard and porridge in the Netherlands.

6. The Advisory Committee agrees with the Commission that the proposed concentration is not likely to result in a **significant impediment to effective competition** in the common market or in a substantial part of it on the following markets:

- a) Procurement of organic raw milk in the Netherlands.
- b) Long-life basic dairy products.
- c) Organic fresh basic dairy products.
- d) Rindless cheese.
- e) All markets of bulk butter and packet butter.
- f) All markets of liquid cream.
- g) All markets of spray cream.
- h) All markets of coffee milk and coffee cream.
- i) All markets of spray-dried emulsions.
- j) All markets of food grade lactose.
- k) All markets of Pharma grade lactose (including DPI).

7. The Advisory Committee agrees with the Commission that the **commitments** are **sufficient** to remove the significant impediments to competition in the following markets:

- a) Procurement of conventional raw milk in the Netherlands.
- b) All markets of fresh basic dairy products in the Netherlands.
- c) All markets of Dutch type cheese in the Netherlands.
- d) Value added yoghurts and quarks sold to the OOH segment in the Netherlands.
- e) All markets of branded non-health fresh flavoured dairy drinks in the Netherlands.
- f) All markets of long-life dairy drinks in the Netherlands and Belgium or alternatively in a wider region including Belgium, Germany and the Netherlands.
- g) All markets of fresh custard and porridge in the Netherlands.

A minority disagree on 7 (a) and 7 (b).

8. The Advisory Committee agrees with the Commission that, subject to full compliance with the commitments offered by the parties, and considered all

commitments together, the proposed concentration does **not significantly impede effective competition** in the common market or in a substantial part of it.

A minority disagree.

9. The Advisory Committee agrees with the Commission's view that the notified concentration should **be declared compatible** with the Common Market and the EEA Agreement in accordance with Articles 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.

A minority disagree.

10. The Advisory Committee recommends the publication of its Opinion in the Official Journal of the European Union.

<u>BELGIË/BELGIQUE</u>	<u>BULGARIA</u>	<u>ČESKÁ REPUBLIKA</u>	<u>DANMARK</u>	<u>DEUTSCHLAND</u>
Mr Dirk VERTONGEN	Ms Gergana BOYCHEVA		Mrs. Joan FREDERIKSEN	Dr. Charlotte ZAPFE

<u>EESTI</u>	<u>ÉIRE-IRELAND</u>	<u>ELLADA</u>	<u>ESPAÑA</u>	<u>FRANCE</u>
Ms. Külliki LUGENBERG				

<u>ITALIA</u>	<u>KYPROS/KIBRIS</u>	<u>LATVIJA</u>	<u>LIETUVA</u>	<u>LUXEMBOURG</u>
Mr. Fabrizio SBICCA				

<u>MAGYARORSZÁG</u>	<u>MALTA</u>	<u>NEDERLAND</u>	<u>ÖSTERREICH</u>	<u>POLSKA</u>
Ms Orsolya FÜREDI		Mr.R. VAN HUTTEN		

<u>PORTUGAL</u>	<u>ROMANIA</u>	<u>SLOVENIJA</u>	<u>SLOVENSKO</u>	<u>SUOMI-FINLAND</u>
Mr. Alípio CODINHA				Ms Jaana BOËLIUS

<u>SVERIGE</u>	<u>UNITED KINGDOM</u>
Ms Camilla NYROOS	Ms Lucília Falsarella-PEREIRA