

EN

***Case No COMP/M.5975 -
LION CAPITAL /
PICARD GROUPE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/09/2010

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EUROPEAN COMMISSION

Brussels, 30.09.2010

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5975 - Lion Capital / Picard Groupe
Notification of 27 August 2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 27 August 2010, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) 139/2004² ("the Merger Regulation") by which undertaking Lion Capital LLP ("Lion Capital", United Kingdom) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Picard Groupe SA ("Picard", France) by way of purchase of securities.

I. THE PARTIES

2. **Lion Capital** is a private equity investment manager with a focus on investments in companies that are engaged in the production and/or sale of consumer-branded goods. One of its portfolio companies, **Findus** Group ("Findus", UK) is active in the market of manufacture and supply of frozen food to retailers.
3. **Picard** is active in the retail distribution of frozen food through its own distribution network of specialized shops operating under the Picard brand.

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 24, 29.1.2004 p. 1.

II. THE OPERATION

4. The proposed operation concerns the acquisition by Lion Capital of 100% of the share capital in Picard Groupe SA and its respective subsidiaries (Picard Surgeles, Picard I Surgelatti and OBO 6) by way of purchase of shares, warrants and convertible bonds. Thus, as a result of the transaction, Lion Capital will acquire sole control over Picard.
5. It results from the above that 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 for 2009 of more than EUR 5 000 million³ (Lion Capital: EUR [...], Picard: EUR [...]). Each of them has EU-wide turnover for 2009 in excess of EUR 250 million (Lion Capital: EUR [...], Picard: EUR [...]). Only one of these companies, i.e. Picard achieved more than two-thirds of their EU-wide turnover within one and the same Member State (France).
7. The concentration therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

8. The activities of Lion Capital and Picard do not overlap horizontally but they are vertically related. Findus, one of the Lion Capital's portfolio companies, is active on the market for the manufacture and supply of frozen food products in the EEA while Picard is active on the market for retail distribution of frozen food via specialized retailers in France.
9. As the result of the above, the proposed transaction leads to vertically affected markets of supply of frozen food and of retail distribution of frozen food via specialized retailers in France.

A. Relevant market

1. Manufacture and supply of frozen food to the retail sector

Product market

10. In previous decisions the Commission considered a distinction between the production and sale of food products dedicated to the retail sector and the production and sale of food products dedicated to the food service sector.⁴ Since Findus and Picard are only active in the retail segment, such a distinction is not further discussed in what follows.
11. As regards the retail sector, in the past, the Commission considered a further division of ready-made foods into e.g.: (i) frozen food, (ii) chilled food and (iii) fresh food.⁵

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p.1).

⁴ Case COMP/M.3658 – Orkla/Chips of 03.03.2005.; Case COMP/M.2302 – Heinz/CSM of 23.02.2001.; Case COMP/M.1990 – Unilever/Bestfoods of 28.09.2000.

⁵ See e.g. case COMP/M. 4216 CVC/Bocchi/De Weide Blik of 30.05.2006 or decision M.1740 Heinz/United Biscuits Frozen and Chilled Foods of 6.12.1999.

12. In Case M.3658 *Orkla/Chips*⁶ the Commission considered a possible segmentation of frozen food into: (i) frozen pizzas, (ii) potato-based frozen food dishes and (iii) frozen fish without closing the market definition.
13. In addition to the previously considered segment, the parties proposed to segment along their business lines – manufacture and supply of: (i) frozen starters, (ii) frozen ready meals, (iii) frozen vegetables and (iv) frozen sea products.
14. A majority of respondents to the market investigation confirmed the above segmentations of the wide market of frozen food. Some respondents additionally pointed to a possible sub-segment of frozen fish (within the frozen sea products) and pointed to meat products as being a relevant segment within the frozen food market. However, as Findus is not active in frozen meat products⁷, this segment is not further discussed.
15. In the past the Commission also indicated,⁸ that retailer- and supplier-branded products may belong to the same market as there is a tendency for the customers to switch from one group of the products to another; but left the question ultimately open.
16. The majority of the respondents to the market investigation confirmed that retailer branded products have a significant presence in the retail sector accounting for around 50 % across the different segments. In particular all responding retailers viewed their own brands in direct competition with supplier brands as they have similar quality, packaging and product range.
17. For the purpose of this transaction the market definition can however be left open since the transaction does not lead to any competition concerns irrespective of the product market definition.

Geographic market

18. In previous decisions the Commission considered that the market for the manufacture and supply of frozen food products is at least national in scope due to the existence of the national sales channels, the national distribution and logistics, the different brands and national sales contracts⁹, but left the market definition open. The Parties agreed with the findings of the Commission and provided market share under a narrowest geographic market definition, i.e. manufacturing and supply of frozen food on a national basis.
19. The majority of customers and competitors in the market investigation indicated that the market for frozen food is still national in scope due to different consumption habits across Member States, organization of sales and difference of sanitary requirements.
20. However, for the purpose of this decision the geographic market definition can be left open since the transaction would not lead to any competition concerns irrespective of the geographic market definition.

⁶ Case COMP/M.3658 *Orkla/Chips* of 3.03.2005.

⁷ Findus is supplying a number frozen ready meals containing meat as an ingredient, however it does not offer frozen meat.

⁸ Case COMP/M.1740 - Heinz/United Biscuits Frozen and chilled foods of 6.12.1999.

⁹ Case COMP/M.1740 - Heinz/United Biscuits Frozen and chilled foods of 6.12.1999.

2. Retail distribution of frozen food

Product market

21. In the past the Commission considered the existence of a market for retail distribution of alimentary products which aims to satisfy the current needs of customers.¹⁰ Such a market would consist of small shops, super and hyper markets as well as hard discounters, to be distinguished from the market of: (i) detail commerce which does not aim at sale of alimentary products and (ii) specialist shops selling alimentary products or non-alimentary products.
22. Although the Parties subscribe to the Commission's previous analysis, they also provided a more refined segmentation. While the Parties argued that the market for the retail distribution of frozen food encompasses the sale of any frozen food products direct to end customers, via all possible channels, they alternatively proposed a possible segmentation of the market for retail distribution of frozen food in France into retail distribution of frozen food through: (i) multiple grocers, (ii) specialized retailers and (iii) hard discounters.
23. Regarding the retail distribution of frozen food through (i) multiple grocers, this possible segment encompasses the general retail distribution of frozen food across all food segments by hyper- and supermarket stores, convenience stores and small village shops.
24. The retail distribution of frozen food through (ii) specialized retailers encompasses shops which solely sell a wide variety of frozen food products and are perceived by customers as "cold chain experts".
25. The retail distribution of frozen food through (iii) hard discounters is, according to the Parties, characterized by a competitive price of the products, low number of in-store lines and a limited number of frozen food lines.
26. Only a few respondents to the market investigation agree to such a detailed segmentation. A majority rather indicated that the three above segments belong to the same market because their customers compare prices across the different retail formats and therefore the retailers' pricing policy has to take into account what competitors in other channels are doing.
27. The exact market definition can however be left open for the purpose of this case since the transaction will not lead to competition concerns under any alternative market definition.

Geographic market

28. The Commission in the past concluded that the distribution of alimentary goods to end customers is the geographic area in which the companies actively sell their goods. However, when analysing the procurement market for alimentary goods, i.e. the market on which retailers purchase goods for the distribution to end customers, the Commission also pointed out that it is probably national in scope due to a number of factors like publicity, national preferences, cooperation with suppliers, launching of new products and promotion

¹⁰ See e.g. case COMP/M.2115 Carrefour/GB of 28.09.2000 or case COMP/M.5047 Rewe/Adeg of 23.06.2008.

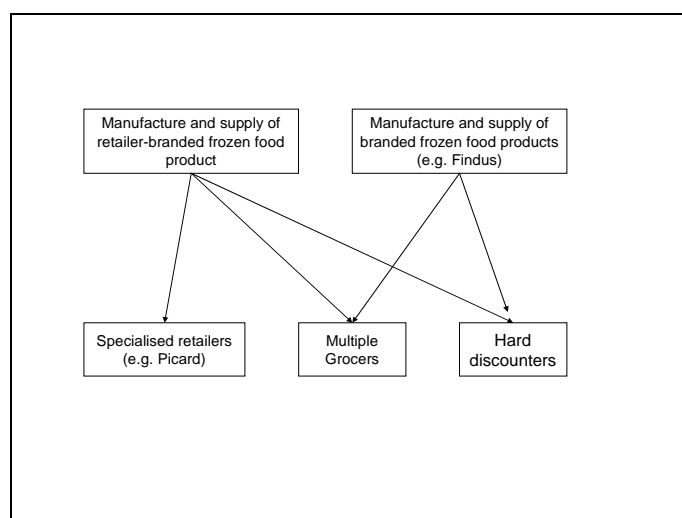
activities. In any event the Commission left in previous decisions the exact geographic market definition open.¹¹

29. In this case the Parties submit that a number of factors support a national procurement market for retail of frozen food. In particular, national distribution network of retailers, customers' preferences, the presence of retailers active in frozen food sector in the whole country and not only in its part and carrying of procurement on a national level.
30. This view of the procurement market was basically confirmed by most respondents to the market investigation, which pointed out that, irrespective of the location of the supplier, the price and supply negotiations are conducted on the national basis.
31. For the purpose of this transaction the exact geographic market definition can be left open because even on the narrowest geographic market definition, i.e. national, the proposed transaction will not result in any competition concerns.

B. Competitive assessment

32. The proposed transaction does not result in any horizontal overlap. However, a vertical relation exists since Findus is active on the upstream market of the manufacture and supply of branded frozen food products, while Picard is active on the downstream market retail distribution of frozen food in France where it only sells frozen food products under its own brand. These products are mainly produced by retailer-branded frozen food suppliers.
33. Therefore, as explained in the picture below, Findus is not a supplier of Picard:

Figure 1: Vertical relationships in frozen food segment – France.



34. However, depending on the definition of the relevant product market on the upstream and downstream markets, vertical relationships could arise if either both private label and branded goods were to belong to the same market or all retail formats were considered to form one market.

¹¹ See e.g. case COMP/M.5047 Rewe/Adeg of 23.06.2008.

1. Manufacture and supply of frozen food to the retail sector

35. Findus is active in the market of manufacture and supply of frozen food to retailers. Findus supplies branded products mainly to multiple grocers.¹²
36. On the market for manufacture and supply of frozen food to all retailers in France Findus' market share by value would amount to [0-5]%. Findus practically does not supply hard discounters and/or specialized frozen food retailers. Findus' market share on the segment of supply of frozen food to multiple grocers amounts to around [5-10]% in France¹³, other competitors with a similar market share are Nestle, McCain and Marie, private label suppliers account for more than [50-60]% of the supply.¹⁴ On a branded segment its market share would be [10-20]% in value terms.

Table 1: Market shares manufacture and supply of frozen food to multiple grocers – France – 2009 – Source: Form CO

	Total market	Supplier-branded only
Findus	[5-10] %	[10-20] %
Nestle	[5-10] %	[10-20] %
Mc Cain	[0-5] %	[10-20] %
Marie	[0-5] %	[5-10] %
Iglo	[0-5] %	[0-5] %
Bonduelle	[0-5] %	[0-5] %
Other supplier brands	[20-30] %	[40-50] %
Retailer branded (private labels)	[50-60] %	-

37. If relevant segments as proposed by the Parties were taken into account, the market shares of Findus on the market for manufacture and supply of frozen food to multiple grocers would be the following (in value): frozen ready meals: [5-10]% ([10-20]% on

¹² The Parties claim that Findus has *de minimis* sales of frozen food to Tourpargel, one of Picard's competitors; but these amount to maximum [...]% of its total sales to retailers in France. The same amount ([...])% of sales Findus achieves with the hard discounters.

¹³ The market shares for Findus and competitors are on value for 2009. The volume market shares do not differ significantly.

¹⁴ Market shares based on value.

the branded segment)¹⁵, frozen vegetables [5-10]% ([20-30]% on the branded segment)¹⁶ and frozen sea products [10-20]% ([30-40]% on the branded segment).

38. Competitors (Nestle, Mc Cain, Marie, Weight Watchers, Iglo, Bonduelle) with market shares comparable to Findus exist for each of the possible segments and sub-segments presented above.
39. During the market investigation some respondents argued that Findus is particularly strong in the sub-segment of frozen fish in France. The Parties provided that on this possible sub-segment of manufacture and supply of frozen fish all retail formats the market share of Findus amounts to [10-20]% based on value, while private labels account for [60-70]%. Iglo has a [0-5]% market share, Pescanova supplies [0-5]% of the market and other branded suppliers hold [10-20]%. If only manufacture and supply of frozen food from branded manufacturers were taken into account, the market share would be higher: Findus achieves [30-40]% followed by Iglo ([10-20]%) and Pescanova ([5-10]%). A fringe of smaller competitors supplies [40-50]% of the branded frozen fish in France.¹⁷

2. Retail distribution of frozen food

40. Picard is active in the retail distribution of frozen food in France. Picard has a market share of [10-20]% in the overall market of retail of frozen food in France.¹⁸ Its main competitors in this market are: Leclerc ([10-20]%), Carrefour ([5-10]%) and Intermarché ([5-10]%).
41. On a narrower segment, the retail distribution through specialized frozen food retailers, Picard has a [50-60]% market share. In such a potential market, Picard is facing competitors such as Tourpargel ([10-20]%), Thiriet ([10-20]%) and Maximo ([10-20]%).

C. Analysis

1. Introduction

42. The notifying party submits that input or customer foreclosure, while theoretically possible, will not occur post-transaction because the current business models of Findus and Picard differ significantly and make a vertical integration impossible: Findus is a supplier of branded goods and active solely with its Findus brand in frozen food. It is not supplying its products under a retailer brand. Picard is using almost entirely its own brand in the supply of frozen food to final customers; both companies have wide brand recognition in the market, which they would not like to damage.

¹⁵ In line with the Commission precedents the following possible sub-segments have been distinguished by Findus in this sub-segment: (frozen pizzas, where its market share would not exceed [0-5]% (sale to multiple grocers) and frozen quiche, tarts and tourtes where its market share would not exceed [0-5]% (sale to multiple grocers).

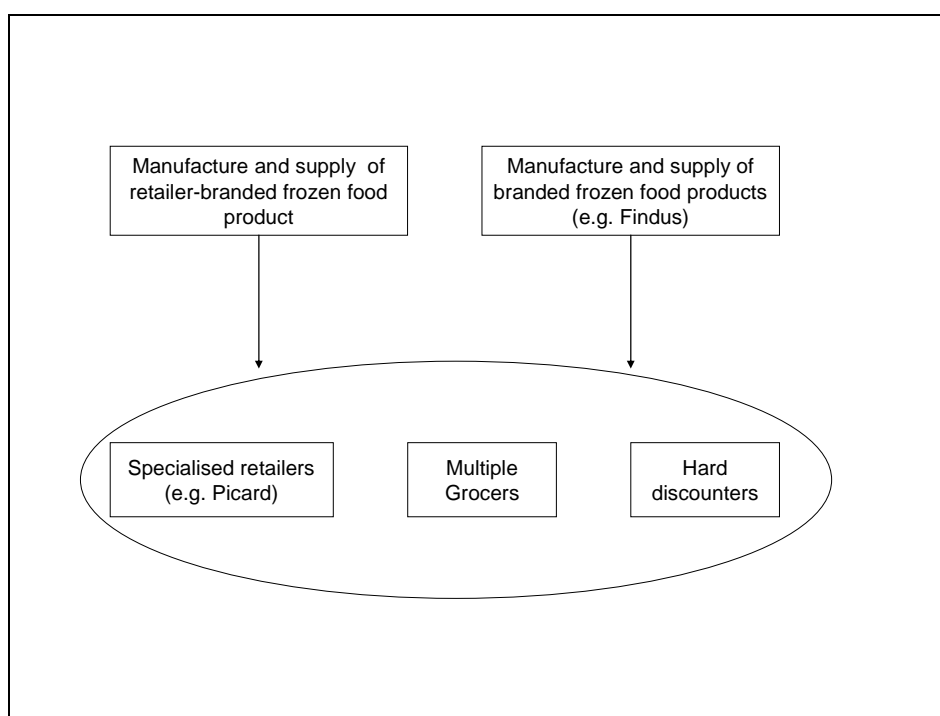
¹⁶ In line with the Commission's precedents the following possible sub-segments have been distinguished by the Parties within this segment: sub-segment of frozen potatoes where Findus' market share would amount to [10-20]% (to multiple grocers) and sub-segment of other vegetables, where it would achieve the market share of [0-5]% (sale to multiple grocers).

¹⁷ Among those smaller suppliers are companies like Marine Harvest, Aurelmar (belonging to Gelazur group) or Costa.

¹⁸ Market shares based on value for Picard and its competitors.

43. Indeed, a majority of respondents in the market investigation considered it as very unlikely that Findus would supply its products to Picard because both companies adopted different commercial strategies and it is therefore not likely that Findus would abandon its brand and start to produce retailer branded-products. According to respondents it is neither probable that Picard would start to offer Findus-branded products on its shelves as competing to Picard-branded products.
44. In spite of these general considerations, the Commission has analysed the vertically affected markets which would arise, if one were to consider that the manufacture and supply of frozen sea products (with a further sub-segmentation into frozen fish) form a separate market.¹⁹

Figure 2: Vertical relationship in frozen food with no segmentation in the retail market.



45. According to the Commission's guidelines on the assessment of non-horizontal mergers²⁰, a merger is said to result in foreclosure where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and incentive to compete.

2. Input foreclosure

46. Input foreclosure arises where post-merger the merged entity would be likely to restrict access to the products that it would have otherwise supplied absent the merger, thereby

¹⁹ If one would consider the downstream market for retail of frozen food as segmented between different types of retailers, there would be no vertically affected market since Findus is not active on this market. Thus, even if Findus were to exclusively supply Picard post-transaction, the supply chain of Picard's competitors would remain fully intact.

²⁰ Guidelines on the assessment of non-horizontal mergers under Council Regulation on the control of concentrations between undertakings, OJ C 265, 18 October 2008, p.6 ("Non-horizontal merger guidelines"), paragraph 29.

raising the downstream competitors costs by making it harder for them to find suppliers of the input under similar prices and conditions as absent the merger.

47. When assessing the likelihood of such an anticompetitive input foreclosure scenario, the Commission examines whether the merged entity would have the (i) ability post-merger to foreclose access to inputs, whether it would have the (ii) incentive to do so, and moreover, whether a foreclosure strategy would have a (iii) significant detrimental effect in the downstream market of retail of frozen food. When assessing effects, the Commission also takes into account the efficiencies resulting from the merger.
48. According to the market investigation and the data submitted by the Parties the merged entity will not have the ability to engage in input foreclosure. First of all, the market shares of the merged entity will be relatively low in the upstream market of manufacture and supply of branded products being above [20-30]% only in the segment of frozen sea products ([30-40]%). Within this segment several competitors like Iglo ([5-10]% market share), Pescanova ([0-5]%) as well as several smaller manufacturers accounting for [50-60]% of the segment provide alternatives to Findus. Moreover, retailer-brands play an important role in this segment as they account for more than [50-60]% of the entire supply and represent a credible alternative to branded goods. This has been confirmed in the market investigation, where retailers indicated that private label and branded goods compete for the same customer.
49. The only possible segment where Findus would have a higher market share is the manufacture and supply of branded frozen fish with [30-40]%. Two retailers indicated in the market investigation that Findus could re-direct its supply of frozen fish to Picard after the transaction, but did not expect any price increase from such a change in supply.
50. Indeed, even on the narrow sub-segment of branded frozen fish other competitors with the possibility to expand such as Iglo and Pescanova compete with Findus. Some retailers confirmed that they have a multiple-sourcing strategy in place. Moreover, respondents argued that even if Findus were to supply only Picard, this would only happen in the medium term allowing current customers of Findus to look for branded alternatives or to expand the presence of their own private label, a close competitor to supplier brands in the frozen fish segment.
51. The merged entity will not have the incentive to foreclose, since Picard would not be able to absorb all the supply of Findus: In 2009 Picard sold in total [...] [less frozen fish in France than Findus delivered] to retailers in France. Consequently the redirection of sales by Findus to Picard would limit the Findus' access to the overall French market.
52. Therefore, on the basis of the above it has to be concluded that the merged entity would not have the ability or incentive to engage in input foreclosure post-merger.

2. Customer foreclosure:

53. According to the Commission guidelines the customer foreclosure might occur when a supplier integrates with an important customer in the downstream market and because of this downstream presence the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market.

54. Picard has a limited presence on the overall downstream market ([10-20]% on the overall market for retail of the frozen food market)²¹ therefore its ability to foreclose the competitors of Findus upstream is very low; since Picard does not have sufficient market power to foreclose upstream producers, which could re-direct their supply to other customers within France. Indeed, suppliers of frozen food confirmed in the market investigation that they would be able to find new customers in case they were to lose a current one within a few months.
55. What is more, Picard would not have the incentive to foreclose Findus' competitors since it sources a much wider variety of products than is offered by Findus, which is currently not supplying specialised retailers. While Findus focuses its production mainly in frozen vegetables, sea products and ready meals, Picard offers (and therefore sources from its contract manufacturers) also categories of frozen food such as ice-creams, frozen meat, frozen desserts and frozen fruits where Findus is not active.
56. None of the respondents to the market investigation raised the customer foreclosure as a possible scenario. Therefore it can be concluded that the merged entity would not have the ability or incentive to engage in customer foreclosure post-merger.
57. Based on the above assessment, it seems unlikely that input or customer foreclosure would occur as a result of the proposed transaction.

V. CONCLUSION

58. 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 European Commission,

(signed)

Joaquín ALMUNIA
Vice-President of the European
Commission

²¹ Although Picard's market share in the specialized frozen food retailer segment is [50-60]%; the Parties submit that the products offered in the different retail segments are supplied by the same set of branded and contract manufacturers, which use the same size, packaging, design and product types. Thus, these different customers compete against each other on the procurement market of frozen food. This assessment was widely confirmed in the market investigation.