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Case No IV/M.0010 - CONAGRA / IDEA

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION
OF THE EUROPEAN
COMMUNITIES

Brussels 30.05.1991

MERGER PROCEDURE
ARTICLE 6 (1) b DECISION

PUBLIC VERSION

Registered with advice of delivery

To: Notifying parties

Dear Sirs,

Subject: Case No. IV/M010 - CONAGRA/IDEA
Notification of 25.4.1991 pursuant to Article 4 of Council Regulation No. 4064/89

1. The above notification deals with the proposed acquisition by CONAGRA FRANCE S.A. of a 20% share in a French 'société anonyme' IDEA INDUSTRIE S.A. with rights to subscribe to additional shares up to a total of 50%.

2. After full examination of the notification, the Commission has come to the conclusion that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

THE PARTIES AND THE AGREEMENT

3. CONAGRA FRANCE S.A. is a newly created French holding company which is wholly owned by Conagra International Inc., a US company incorporated in the state of Delaware.

Conagra International Inc. is engaged, through subsidiaries and affiliates, in the trading of agricultural commodities and foodstuffs worldwide and in the operation of food processing and distribution businesses within the European Community. Conagra International Inc. is a wholly-owned subsidiary of Conagra Inc., a US company incorporated in the state of Delaware.

Conagra Inc. is a diversified family of companies operating in areas ranging from the supply of products to farmers for crop production to convenience foods for consumers.

4. IDEA INDUSTRIE S.A. is a French company whose main activities consist in the slaughtering and transformation of fresh meat (beef, veal and pork) and the processing of cooked pork products exclusively in France. IDEA INDUSTRIE is controlled by Idea Finance S.A. which is a non-operational holding company created with the sole objective of controlling IDEA INDUSTRIE S.A. These two companies were created in 1988 when a group of employees, with the support of outside investors, purchased, in a management buy-out, the meat business of the French company Promodes.

5. The agreement between CONAGRA and IDEA, allows on the one hand CONAGRA to be present in the French meat market and on the other hand provides IDEA with a strong partner with up-to-date techniques and expertise in this field. It will be completed in three phases:

(i) IDEA INDUSTRIE S.A. will merge with its controlling parent Idea Finance S.A. in order to form a new company yet to be created and hereinafter designated "INDUSTRIE". This operation was required by CONAGRA in order to simplify the structure of the shareholding of IDEA INDUSTRIE;

(ii) INDUSTRIE will raise its share capital and this capital increase will be entirely subscribed and paid in cash by CONAGRA which will thereby acquire 20% of INDUSTRIE's capital bearing 26% of the voting rights on the board of directors. As part of the deal, CONAGRA will also get the rights to subscribe to additional shares up to a total of 50% at any time before the end of 1994. INDUSTRIE's other shareholders will renounce their pre-emptive rights to the CONAGRA's profit;

(iii) a holding company for grouping and representing the interests of former shareholders in Idea Finance and Idea Industrie (hereinafter designated the "HOLDING") will be created under the legal form of a French 'société anonyme'. The HOLDING will represent 74% of the voting rights on INDUSTRIE's board of directors and will be entitled to elect five out of seven members, the remaining two members being appointed by CONAGRA.

6. The shareholders' agreement between CONAGRA and the HOLDING states that a majority of 75% of the votes of the INDUSTRIE board will be required for the following actions:

(i) the acquisition of shares, in any form whatsoever, particularly the acquisition of companies or ongoing business concerns or partnership agreements or joint ventures;

(ii) the issuance of shares, convertible bonds, subscription rights or the issuance of any other securities creating rights to shares;

(iii) the reduction of capital through the re-purchase of shares or otherwise;

(iv) the approval of annual budgets and strategic plans as well as the approval of significant deviations from the approved budget or strategic plans;

(v) an investment greater than 1.5 million francs not provided for in the approved budget or strategic plans;

(vi) the launching of new products entailing development and introduction costs of more than 1.5 million francs;

(vii) the hiring of senior executives and the establishment of the level of their salaries to the extent that the post or the remuneration were not previously approved in the annual budget or strategic plans;

(viii) the decision regarding the distribution of dividends other than priority dividends.

7. The shareholders' agreement between CONAGRA and the HOLDING also deals with possible conflict between the parties[1].

8. Finally, according to the above shareholders' agreement, CONAGRA agrees not to create, acquire or merge with any company in France having its main activity in the meat preparation and processing business by means other than through INDUSTRIE[2].

CONCENTRATION

9. The notified operation constitutes a concentration insofaras there is joint control of Industrie by Conagra and the Holding and the operation is of a concentrative nature.

10. Even if it can be reasonably assumed that the ultimate objective of the transaction is for the two parties to be equal partners in Industrie, nevertheless the immediate result of the notified operation will be the acquisition by Conagra of a 20 % shareholding in Industrie, which, according to the underlying agreement, will give it 26 % of the voting rights. This acquisition is therefore the sole subject of this Decision.

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(1) 2nd and 3rd sentences of §7 DELETED - (Business secrets).
(2) 2nd sentence of §8 DELETED - (Business secrets).

11. In examining whether the said shareholding and the attached voting rights in the Industrie Board is sufficient to create a situation of joint control of Industrie by Conagra and the Holding, account must be taken of the actions of Industrie which require a 75 % majority vote of the board, as listed in paragraph 6 hereof. Of particular importance for this appraisal are the conditions set out in paragraph 6(iv) concerning the approval by CONAGRA of INDUSTRIE's annual budget and strategic plans as well as any significant deviation from the approved budget and plans, and also paragraphs 6(v), 6(vi) and 6(vii) dealing respectively with the approval of all investments greater than 1.5 million francs, the launching of new products and the hiring and remuneration of senior executives.

12. Of these factors the approval of the annual budget is especially important since it consists of a quantitative detailed expression of a plan of action summarising the objectives of each department of the organisation (ie sales, production, distribution and finance). Furthermore, all significant deviations from these budgets require the approval of Conagra.

13. The three remaining actions mentioned above are also of particular significance here. In effect, all decisions on substantial investments, diversification of products and the selection of management require Conagra's approval as well.

14. The actions mentioned in paragraphs 11, 12 and 13 above go beyond the usual protection of the minority shareholders' interest in the EC Member States and give CONAGRA the right to jointly exercise, together with the Holding, a decisive influence on INDUSTRIE within the meaning of Article 3(3) of the Regulation. Indeed, Industrie cannot be operated in any meaningful way without Conagra, in particular with regard to its future development and expansion.

15. The concentrative nature of this joint venture flows from the parties' agreement that the joint venture will perform, on a lasting basis, all the functions of an autonomous economic entity and that there will be no risk of co-ordination of competitive behaviour on the French market. CONAGRA has no activities in the market for the slaughter and preparation of fresh meat and processed pork products in France and is committed not to enter these markets by means other than through INDUSTRIE (see para. 8). This last condition is to be viewed as an ancillary restriction which is an integral part of the operation.

COMMUNITY DIMENSION

16. The operation has a Community dimension as the combined aggregate worldwide turnover of CONAGRA and IDEA INDUSTRIE exceeded 13 billion Ecus in 1990. CONAGRA and IDEA each have a turnover greater than 250 million Ecus in the European Community and though IDEA INDUSTRIE has activities in France only, CONAGRA does not realise more than two-thirds of its Community-wide turnover in any one Member State.

COMPATIBILITY WITH THE COMMON MARKET

17. The overall market concerned is the meat market in which the parties distinguish two different product groups:

(i) the slaughter, preparation and preserving of fresh meat (beef, veal and pork), and

(ii) the processing of pork products.

Even if the markets in the present case could be defined in different terms, this would not have a significant effect on the analysis as IDEA INDUSTRIE currently accounts for less than 3% of the total sales of fresh meat and processed pork in France and does not exceed a 5% market share in any category of product taken individually.

CONAGRA is not present in the slaughter and processing of meat markets in France and has only limited activities in two other EC countries. In Portugal, CONAGRA is engaged in selling processed pork locally and this amounts to less than 1% of total Portuguese output. In Spain, CONAGRA is mainly engaged in the slaughter of beef cattle and the manufacture of cooked ham and pork sausages accounting for approximately 2-3% of Spanish sales of these products which are basically consumed locally with the exception of some minor exports of beef carcasses and deboned and frozen cuts to other EC countries.

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For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation No. 4064/89.

For the Commission,