

***Case No IV/M.1598 -
HICKS, MUSE, TATE
& FURST
INVESTMENT
PARTNERS /
HILLSDOWN
HOLDINGS***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 30/07/1999

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.07.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sirs,

Subject: Case No IV/M.1598-HICKS, MUSE, TATE & FURST INVESTMENT PARTNERS / HILLSDOWN HOLDINGS

Notification of 5 July 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 5 July 1999 the Commission received a notification of a concentration pursuant to Article 4 of the Council Regulation (EEC) N°4064/89 as amended¹ by which Hicks, Muse, Tate & Furst Investment Partners C.V. acquires within the meaning of Article 3(1)(b) of the Council Regulation control over Hillstown Holdings plc.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Hillstown Holding plc. ("Hillstown") is a UK public company active in: food supplying (canned goods; preserves; dried hot beverages; biscuits; potatoes and poultry products); wine & spirits and furniture supplying.
4. Hicks, Muse, Tate & Furst Investment Partners, C.V. ("HMTF Investment Partners") is a Dutch limited company within the group of investment funds controlled by Mr. Thomas O. Hicks in the US. In Europe this group is active in different activities such as : production and sale of automotive information and related software; children's leisure

¹ Concil Regulation (EEC) n° 4064/89, OJ L 395, of 30.12.1989; OJ L 257 of 21.09.1990, pag 13; amended by Council Regulation (EEC) n°1310/97, OJ L180, of 9.7.1997.

and outdoor activity products; canned food; wire products mainly for automotive applications, computer communications and industrial equipment; horticultural seeds and printed circuit boards for a wide range of automotive devices.

5. The operation concerns the acquisition of sole control over the whole of the issued share capital of Hillsdown by HMTF Investment Partners, C.V by way of an agreed public bid announced on 1 June 1999.
6. The operation will be executed through three newly created companies , all fully owned subsidiaries of HMTF Investment Partners and therefore controlled by Mr. Thomas O. Hicks through different entities. The three acquiring companies are: Hines Ltd., Mc Kinney Ltd. and Crescent Acquisition Ltd. All of the ordinary shares of Hillsdown will be held by Hines Ltd and Mc Kinney Ltd while preference shares will be held by Crescent Acquisition Ltd.

II. CONCENTRATION

7. The notified operation constitutes an acquisition of sole control and thus a concentration within Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² ([...] for HMTF Investment Partners and [...] for Hillsdown). Each of them have a Community-wide turnover in excess of EUR 250 million ([...] for HMTF Investment Partners and [...] for Hillsdown) but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

9. The only economic sector where the parties activities potentially overlap is that of canned food and in particular a limited range of canned meats that the HMTF group sells in Europe, namely corned beef and tuna fish, which could be associated with the range of “ready-to-eat” meat dishes sold by Hillsdown in the UK.

The relevant product market.

10. The notifying party considers that canned tuna competes with a range of canned seafood such as canned salmon, mackerel, sardines etc...In the same way canned

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

corned beef might compete with a range of other cold meats such as canned hams, canned chicken, turkey flake, and paté spreads.

11. It is also submitted that “ready-to-eat” canned meals produced by Hillsdown are not in direct competition either with canned tuna or with canned corned beef for a number of reasons, in particular the following: (i) “ready-to-eat “ dishes constitute a meal in themselves and are consumed as such without having to add any particular ingredient to transform it into a meal, while tuna or corned beef have traditionally been considered as products which need additional ingredients and preparation before consumption in order to form a meal by themselves.(ii) In supermarkets and other retail outlets normally canned cold meats and canned tuna are displayed separately and in different shelves from those of “ready to eat” canned meat dishes. (iii) They also argue that the distinction between “ready to eat “ meat dishes and specific canned meat products is commonly made in the food industry
12. However in this case it is not necessary to further delineate these markets as neither in the narrowest possible approach nor in a wider approach any competition problem seems to arise from this operation and therefore the product market definition can be left open.

The relevant geographic market

13. The only country in which Hillsdown sells its canned “ready-to-eat “ meals is the UK. In previous Commission decisions ³ it has been considered that the geographic scope of the market for canned food products may be national in view of the different prices and consumer preferences. Accordingly if the scope of geographic market to be considered in the present case had to be national the relevant geographic market would be the UK.
14. However in the present case it is not necessary to define this market as in the narrowest possible approach no competition concern seems to arise from this concentration and therefore the geographic market definition can be left open.

Assessment

15. There is no overlap between the parties’ different lines of products as above examined. As for the canned tuna fish market HMTF share in the UK is [less than 10%]. If a wider geographic market were to be considered their market share at EU level should also be [less than 10%]. Hillsdown does not produce nor sells canned seafood
16. As for canned corned beef HMTF only sells this product in Europe in the UK and its market share is less than [less than 10%] of total UK market for cold canned meats. Hillsdown does not produce nor sells canned corned beef.
17. In case that a wider product market had to be considered, that is including together the three products (canned tuna, canned corned beef and “ready-to-eat” canned meat dishes) the parties’ combined market share would be [less than 10%] of total UK sales.

³ See for example Commission’s decision in case IV/M.277-Del Monte/Royal Foods/Anglo American

18. In view of the foregoing it appears that the notified operation does not give rise to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of it.

V. CONCLUSION

19. For the above reasons, the Commission decides not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,