

***Case No COMP/M.1740 -  
HEINZ / UNITED  
BISCUITS FROZEN  
AND CHILLED FOODS***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 06/12/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.12.1999 \* SG(99) D/9822

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party.

Dear Sirs,

**Subject: Case No COMP/M.1740 – Heinz / United Biscuits Frozen and Chilled Food**

Notification of 3 November 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 3.11.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> (“the Merger Regulation”) by which Heinz Europe Limited (“Heinz”), belonging to the United States company H.J. Heinz Company group acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the UK company United Biscuits Frozen and Chilled Foods Limited (“UBFCF”) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

**I. THE PARTIES**

3. The Heinz group is organised into seven different categories: infant feeding products, sauces, convenience meals, frozen foods, seafood and pet food. The seventh category is Heinz’s foodservice business which supplies a range of products, including sauces and condiments, jellies and marmalades to food wholesalers and caterers.
4. UBFCF is a wholly-owned subsidiary of Ross Young’s Holdings Limited, which is in turn a wholly-owned subsidiary of United Biscuits (Holdings) PLC (“United Biscuits”). UBFCF is the business division of United Biscuits that is engaged in the processing and supply to resellers of frozen and chilled foods. United Biscuits is a publicly quoted

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<sup>1</sup> OJ L 395, 30.12.89 p. 1; corrected version OJ L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No 1310/97, OJ L 180, 9.7.1997, p. 1, corrigendum in OJ L 40, 13.2.1998, p. 17.

company on the London Stock Exchange engaged in food processing activities, supplying to resellers biscuits, snacks and other food products.

## **II. THE OPERATION**

5. The operation will be effected by a Sale and Purchase Agreement between Heinz Company, Heinz, Heinz Ireland, Ross Young's and United Biscuits providing for the sale of the entire issued share capital of UBFCF, and a number of other related agreements relating to the purchase of specified intellectual property rights by Heinz Ireland from United Biscuits.

## **III. CONCENTRATION**

6. The operation thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup> (Heinz EUR 8246 million; UBFCF EUR 359 million). Each of Heinz and UBFCF have a Community-wide turnover in excess of EUR 250 million (Heinz EUR 1949 million; UBFCF EUR 357 million), 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. It does not constitute a co-operation case under the EEA agreement.

## **V. COMPETITIVE ASSESSMENT**

### **A. Relevant product markets**

8. The areas of product overlap between the merging parties are pizzas, desserts, and ready-made meals. All three of these food categories are available in both deep-frozen and fresh-chilled forms. A further distinction for these six combinations can be made between producer branded and retailers' own-label products.
9. UBFCF produces own-branded and retailer labelled frozen pizzas and retailer labelled chilled pizzas; own-branded and retailer labelled frozen desserts and retailer labelled chilled desserts; and own-branded and retailer labelled frozen ready-made meals.
10. Heinz produces own-branded and retailer labelled frozen pizzas; own-branded frozen ready-made meals; and own-branded frozen desserts. Heinz does not produce any chilled products.
11. The parties consider that producer branded and retailer branded products belong to the same product market. In support of this, the parties have referred to the fact that whilst sales of both producer branded and retailer branded products are growing, the consumption of retailer branded products is growing at a quicker rate. Where there was

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<sup>2</sup> 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.

a 80/20 producer/retailer branded ratio in 1991, it has changed to 60/40 ratio in 1999. In addition, there is substantial switching by consumers from producer branded and retailer branded as around  $\frac{3}{4}$  of households buying retailer branded (frozen) products also buy producer branded (frozen) products of that type (and vice versa). The parties have indicated that there are some price differences of 20-25% in retail sales price between standard-priced producer branded and retailer labelled products. However, an important volume of producer branded products is sold on temporary promotions so that quite often one or more producer branded products sell below the retailer branded product.

12. The parties consider that frozen and chilled foods belong to the same market as end-consumers regularly switch between consuming chilled and frozen foods. Heinz refers to a decline of about 7% in sales of one of its frozen producer branded ready-made meals brands and that 20-25% of the decline reflects consumers switching to chilled products. Also around  $\frac{3}{4}$  of households buying frozen seafood also buy chilled seafood products. The parties consider that despite the price differential between both products (chilled products are on average between 20-25% more expensive than frozen products), end-consumers consider the products as being sufficiently substitutable in view of the fact that the consumer profile of the buyers is extremely similar, that multiple retailers sometimes advertise both together and that the labels of chilled products clearly indicate that they can be frozen “for the larder”.
13. With regard to the different kinds of frozen and chilled foods, the parties consider that the only possible markets relate to pizzas, ready-made meals and desserts although it can be argued that there is a considerable degree of demand-side substitutability between different kinds of ‘main-course’ meals.
14. The Commission agrees with the parties that for the products in question, retailer and producer branded products are in the same market and this has been generally confirmed by the market investigation. It also results from the market investigation that chilled foods exercise some competitive strain on frozen food and vice versa. It is, however, not necessary for the purpose of this case to decide that these products belong to the same market as the transaction does not give rise to competition problems on a market for either chilled or frozen products (each of pizzas, ready-made meals and desserts).

#### **B. Relevant geographic markets**

15. The geographic overlap between the parties with the above-mentioned products is limited to the United Kingdom and Ireland.
16. Both UBFCF and Heinz produce own-branded and retailer-branded frozen pizzas in the UK. UBFCF also sells own-branded frozen pizzas in Ireland and retailer-branded chilled pizzas in the UK.
17. Both UBFCF and Heinz sell own-branded frozen ready-made meals in the UK and Ireland. UBFCF sells retailer labelled frozen ready-made meals in the UK.
18. Both UBFCF and Heinz sell own-branded frozen desserts in the UK and Ireland. UBFCF sells retailer-branded frozen and chilled desserts in the UK.

19. The parties consider that the relevant geographic market for the above products is the United Kingdom and the Republic of Ireland in view of the considerable similarities in retail conditions and consumer practice (products produced in Ireland are sold in the UK and vice versa; end-consumer tastes, preferences and purchasing habits are extremely similar; advertising practices are consistent and product launches are about the same time in both countries; prices are consistent).
20. The precise geographic market definition can be left open, since even on the narrowest of market definitions the transaction does not give rise to competition problems. In this respect, the Commission considers that the market is not narrower than the United Kingdom in view of the fact that the producers and retailers are active on the whole of the UK.

### **C. Competitive Assessment**

21. The only market where the parties' own producer brands would have a market share in excess of 25% (parties' estimates) is the Irish market for (producer + retailer branded) frozen ready-made meals where the parties achieve 30% (Heinz 26% + UBFCF 4%). On this market, Heinz has the most important producer brands. However, the merged entity will continue to face competition from the rapidly growing retailer brands (their value increased by 50% over three years) that now account for 30% of the market. In this respect, it is noted that the four largest retailers account for over 60% of groceries sales in Ireland. The competitive strength of the Irish retailers can also be illustrated by the fact that all the chilled ready-made meals are retailer branded and that these sales are larger than the sales of all producer branded frozen ready-made meals. In addition, Bird's Eye has a market share above 10% and another multinational company, Nestlé, is also active on this market (market share above 5%). The transaction will therefore not lead to the creation or strengthening of a dominant position on the Irish frozen ready-made meals market.

## **VI. CONCLUSION**

22. For the above reasons, the Commission has decided 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,

*Signed,*  
**Romano PRODI**