

***Case No COMP/M.1920 -
NABISCO / UNITED
BISCUITS***

Only the English text is available and authentic.

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

Article 6(2) NON-OPPOSITION
Date: 05/05/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.05.2000
SG (2000) D/103526

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M.1920 - Nabisco/United Biscuits

Notification of 22.03.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 22.03.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Nabisco Group Holdings Corporation ("Nabisco") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of United Biscuits (Holdings) plc ("UB") and The Horizon Biscuit Company Ltd. ("Horizon") by way of a public bid originally announced on 17th December 1999 and by way of purchase of shares.
2. In the course of the proceedings, the parties submitted an undertaking in accordance with Article 6(2) of the Merger Regulation. On 13 April 2000, the parties entered in a commitment to sign and complete an agreement modifying the operation so that Horizon will not be transferred to the acquisition vehicle Finalrealm and will remain under the control of HMTF, which latter will sell its entire shareholding in Finalrealm to PAI, Cinven and DBCP and will therefore no longer be a participant in the transaction. This agreement has been signed on 17 April 2000 and completed on 25 April 2000. In the light of this undertaking the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 as amended and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.
3. On 18 April 2000, the United Kingdom authorities submitted a request that the case be referred to them with a view to the application of national competition law, in accordance with Article 9 of the Merger Regulation, on the grounds that the concentration threatened to create or to strengthen a dominant position as a result of

which effective competition would be significantly impeded in the market for biscuits in the UK. After examining this request, the Commission concluded that the conditions laid down in the Merger Regulation for referral under Article 9 were met because the concentration threatened to create a dominant position as a result of which effective competition would be significantly impeded on the market for biscuits in the United Kingdom, which presents all the characteristics of a distinct market. The Commission has nevertheless decided that it shall deal with the case itself in order to maintain effective competition on the market concerned in accordance with Art.9. 3 a). Because the modifications proposed by the parties had been completed on 25 April 2000 and therefore solved all competition concerns raised by the operation as notified a referral of the case to the United Kingdom would no longer be justified.

I. THE PARTIES

4. **Nabisco** is a US company, active in the production and sale of a wide variety of food products, including biscuits and crackers. **UB** is a U.K. company engaged in the production and sale of a variety of sweet and savoury biscuits, cakes, and snack foods, and has major biscuit brands like McVities, and Carr's. **Horizon** is a U.K. company engaged in the production of biscuits, originally demerged from Cadbury Schweppes in 1986, and controlled by a U.S. investment company Hicks, Muse, Tate and Furst ("HMTF"). HMTF, PAI Management SAS ("PAI"), Cinven Limited ("Cinven"), and Deutsche Bank Capital Partners ("DBCP") are also involved in the concentration as minority non-controlling shareholders.

II. THE OPERATION

5. The notified concentration is an acquisition of sole control of UB and Horizon by Nabisco, to be effected by means of a public offer for all of UB's share capital and by the transfer of Horizon to Nabisco's control. The newly acquired entity 'Finalrealm' would include Nabisco's biscuit interests in Europe as well as UB and Horizon. PAI, Cinven, HMTF and DBCP are all minority shareholders in Finalrealm. Nabisco would have sole control of Finalrealm, and thereby UB, Horizon and Nabisco's European biscuit interests, because only Nabisco would have veto rights over decisions regarding the appointment of senior management and adoption of the business plan and budget.

III. CONCENTRATION

6. The operation is a concentration in the sense of Article 3(1)(b) of the Merger Regulation since Nabisco will acquire sole control over UB and Horizon.

IV. COMMUNITY DIMENSION

7. Nabisco, UB and Horizon had a combined aggregate world-wide turnover in excess of EUR 5,000 million in 1999 (Nabisco, EUR 7,756.1 million; UB, EUR 2,500 million ; Horizon, EUR 281 million). Each of them had a Community-wide turnover in excess of EUR 250 million in 1999 (Nabisco, EUR [...] million ; UB, EUR [...] million ; Horizon, EUR, [...] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Therefore the operation has a Community dimension. The operation does not qualify for co-operation with the EFTA surveillance Authority pursuant to the EEA Agreement.

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

8. The area of overlap among the parties in Europe is the production and sale of biscuits (and, in particular sweet biscuits). The parties contend that there is one single distinct product market for biscuits, although there exist several sub-segments (sweet, chocolate-covered, etc.), and that there is some substitutability with other items, such as savoury snacks. The market investigation has confirmed that biscuits constitute a separate relevant product market, albeit one subject to the constraining influence of snacks, confectioneries, cakes and breads. In addition, the question of defining narrower boundaries in the biscuit market can be left open since the information provided by the parties with respect to all biscuits, sweet biscuits, sweet other than chocolate-coated biscuits, chocolate-coated biscuits, and savoury biscuits has shown that the position of the parties would be similar even on the narrowest assessment of product segments. Similarly, the question of the substitutability of producer brands biscuits and retailer labels biscuits on the downstream market (final consumer level) and on the upstream market (production level) can be left open since irrespective of the definition chosen the competitive assessment would remain identical.

B. Relevant geographic markets

9. The parties presented the market shares at a national level, which would be consistent with previous Commission decisions in the food sector, in view of nation-wide consumer tastes, preferences and purchasing habits (e.g. COMP/M.1740 - Heinz/United Biscuits Frozen and Chilled Food, decision of 06.12.1999).
10. The parties believe that transportation and other costs do not figure to any material extent in biscuit trade among EEA States. They believe that some own-label biscuits sold by the UK retailers are sourced from Continental suppliers. The investigation has shown that this is sometimes also the case for producer brand biscuit. When some producers don't have any production facilities in some countries, their products can be imported from the country of production but they will always be distributed through a local distributor who has contacts with the trade. This is for example the case in Sweden and Norway. Concerning Finland, products are exported to Finland and sold directly to the trade through national buying groups.
11. Furthermore, preferences relating to the texture, taste and appearance of biscuits still constitute a barrier even if some innovative products may be traded between countries (Bahlsen and Delacre have for example introduced their Continental-style biscuits and Dutch butter cookies to UK consumers).
12. The Article 11 replies generally supported the national dimension of the geographic market because of different national biscuits producers, national consumer tastes and national distribution channels. The markets for biscuits affected by the concentration will thus be regarded as national.

C. Assessment

13. The operation as notified generates a strong position for the new entity in Finland, Norway, Sweden on both downstream and upstream levels and in the U.K. in the upstream market considering the overlaps between U.B's. and Horizon's respective activities.
14. On the downstream level (final consumer), where the parties' market share corresponds to their producer branded biscuits sales divided by the total sales of both producer-branded and retailer-branded biscuits (the sales of retailer-branded biscuits being attributed to the retailer by the final consumer rather than to the producer of such biscuits), the highest combined market share resulting from the transaction, which combined the biscuit businesses of Nabisco, UB and Horizon, is [45-55]% in **Finland** ; however the increment is minimal, i.e. U.B. [45-55]% and Horizon [0-10]%. The main competitors are Kantolan (10-20%), Tasanko (10-20%) and the retailer labels (20-30%). In **Norway**, the highest combined market share resulting from the transaction, which combines the biscuit businesses of UB and Horizon, is [35-45]%, with U.B. [30-40]% and Horizon [0-10]%. The main competitors are Saetre (30-40%), Kavli (0-10%) and the retailer labels (10-20%). In **Sweden**, the highest combined market share resulting from the transaction, which combines the biscuit businesses of UB and Horizon, is [45-55]%, with U.B. [45-55]% and Horizon [0-10]%. The main competitors are Bahlsen (0-10%), Danone (0-10%) and retailer labels (0-10%). In the biggest market, the **U.K.**, combined shares are [25-35]% (U.B. [20-30]%, Horizon [0-10]%). The main competitors are Northern (0-10%), Nestlé (0-10%), Danone (0-10%), Burton's (0-10%), Mars (0-10%) and retailer label (40-50%).
15. On the upstream level (production level), the parties' market share corresponds to the sale made by both the producer branded and retailer label biscuits they produce divided by the total sales of both producer-branded and retailer-branded biscuits. On this basis, the highest combined market share resulting from the transaction, which combines the biscuit businesses of Nabisco, UB and Horizon, is [55-65]% in **Finland**; however the increment is minimal, i.e. U.B. [50-60]% and Horizon [0-10]%. The main competitors are Kantolan (10-20%), Tasanko (10-20%) and the retailer labels (10-20%). In **Norway**, the highest combined market share resulting from the transaction, which combines the biscuit businesses of UB and Horizon, is [40-50]%, with U.B. [35-45]% and Horizon [0-10]%. The main competitors are Saetre (40-50%), Kavli (0-10%) and the retailer labels (0-10%). In **Sweden**, the highest combined market share resulting from the transaction, which combines the biscuit businesses of UB and Horizon, is [45-55]%, with U.B. [45-55]% and Horizon [0-10]%. The main competitors are Goteborgs (30-40%), Bahlsen (0-10%), Danone (0-10%) and the retailer labels (0-10%). In the biggest market, the **U.K.**, combined shares is [35-45]% (U.B. [25-35]%, Horizon [5-15]%). The main competitors would be Northern (10-20%), Nestlé (0-10%), Danone (0-10%), Burton's (0-10%), Mars (0-10%) and the retailer label (10-20%). The market investigation has also shown that in the UK some competition concerns could also arise from the fact that the new entity would combine a strong position (around [35-45]%) in a market (or a market segment) for producer brands biscuits as share of producer brands biscuits and a strong position (around [40-50]%) in a market (or a market segment) for retailer brands biscuits as share of retailer brands biscuits.
16. Accordingly, the strong position of the new entity combined to the way market shares are distributed in the aforementioned geographical markets for biscuits, irrespective of

the product market definition chosen, and the low market shares of competitors in the above markets would result in the creation of a dominant position by the parties in those markets.

VI. MODIFICATIONS TO THE PROPOSED OPERATION

17. On 13 April 2000, the parties entered in a commitment to sign and complete an agreement modifying the operation so that Horizon will not be acquired by the Finalrealm consortium and will remain under the control of HMTF, which latter will sell its entire shareholding in Finalrealm to PAI, Cinven and DBCP and will therefore no longer be a participant in the transaction. This agreement has been signed on 17 April 2000 and completed on 25 April 2000. The full text of this undertaking is annexed and forms an integral part of this decision.
18. In the light of this undertaking the Commission has concluded that the notified operation as amended does not raise serious doubts as to its compatibility with the common market in Finland, Norway, Sweden and the United Kingdom any more. Since Horizon won't be acquired by the Finalrealm consortium and Nabisco is not active in Finland, Norway, Sweden and the United Kingdom, there will indeed be no overlap between the parties in these countries.
19. The only country where, even after the proposed modification of the operation, there is an overlap between the parties is Spain, the only country where Nabisco is really active for biscuits since it has three production facilities there. Nabisco is a global food products conglomerate but currently has only a very limited presence in Community biscuit supply.
20. Irrespective of the product market definition chosen concerning the substitutability of producer brands and retailer labels biscuits (market for producer brands biscuits as share of all biscuits, market for all biscuits as share of all biscuits, market for producer brands biscuits as share of producer brands biscuits or market for retailer labels biscuits as share of retailer labels biscuits), the competitive assessment in the market for biscuits would remain identical. The new entity will hold in Spain an aggregated market share between [20-30]% depending on the above mentioned market definition chosen and will face a number of competitors with strong market shares like Cuetara (market share between [15-25]%), Siro (market share between [0-20]%), Horizon (market share between [0-15]%), Gullon (market share of [0-10]% corresponding to producer brand biscuits only), General (market share of [0-10]% corresponding to producer brand biscuits only).
21. On the basis of the foregoing, and in particular in view of the large number of competitors on the Spanish market, the Commission concludes that the operation does not create or strengthen a dominant position in any of the above geographic markets.

VII. CONCLUSION

22. Accordingly, giving the modification to the operation submitted and completed by the notifying parties during the notification period, 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 6.2 of Council Regulation (EEC) No 4064/89.

For the Commission,

Romano PRODI,
President

Annex

Case No COMP/M.1920 – Nabisco/United Biscuits

Pursuant to Articles 6(1)(b) and 6(2) of Council Regulation (EEC) No. 4064/89 (as amended) (the “Regulation”), Nabisco Group Holdings Corp., PAI Management SAS, Cinven Limited, Hicks, Muse, Tate & Furst and Deutsche Bank Capital Partners (together referred to as “the holders of direct or indirect interests in the Bladeland Group”), hereby give the commitments set out below (the “Commitments”) to the Commission of the European Communities (the “Commission”) in respect of Nabisco’s proposed acquisition of United Biscuits (Holdings) plc (“UB”) and The Horizon Biscuit Company Ltd. (“Horizon”). The Commitments shall take effect on receipt of the Commission’s decision declaring the concentration compatible with the common market pursuant to Articles 6(1)(b) and 6(2) of the Regulation (the “Decision”).

1. The Horizon Biscuit Company Ltd

1.1 The holders of direct or indirect interests in the Bladeland Group will procure that all contractual provisions of the Merger Agreement dated 17 March 2000 among Nabisco International Inc., Bladeland Limited, Deluxestar Limited, Finalrealm Limited and Hilldown Holdings Limited under which Horizon is to be acquired by the Finalrealm consortium will be terminated.

2. Hicks, Muse, Tate & Furst

2.1 The holders of direct or indirect interests in the Bladeland Group will procure that Hicks, Muse, Tate & Furst (“HMTF”) ceases to have any interest, whether direct or indirect, in the Bladeland Group which through its subsidiary Finalrealm Limited intends to acquire all of UB’s issued and to be issued share capital by means of a public offer.

2.2 The commitment referred to in paragraph 2.1 above is to be achieved by the disposal of all HMTF’s direct and indirect interests in the Bladeland Group to some or all of the following undertakings, which are wholly separate from HMTF or any of its subsidiaries and which currently hold direct and indirect interests in the Finalrealm consortium, namely some or all of: Cinven Limited, PAI Management SAS and Deutsche Bank Capital Partners. For the avoidance of doubt, this would not lead to a change of control over Finalrealm.

3. Timing of the commitments

3.1 The holders of direct or indirect interests in the Bladeland Group undertake that the termination of the contractual provisions referred to in paragraph 1.1 hereof will be achieved as soon as practicable and in any event by the time of a decision by the European Commission under Article 6(1)(b) of the Regulation.

3.2 The holders of direct or indirect interests in the Bladeland Group undertake that the disposal of HMTF’s interests, direct and indirect, as referred to in paragraph 2.2 hereof, will be achieved as soon as practicable and in any event within three months from a decision by the European Commission under Article 6(1)(b) of the Regulation.

4. Interim position

4.1 Pending completion of the commitment set out in paragraph 2.1 above, the cessation of HMTF's interests, whether direct or indirect, in the Bladeland Group, the holders of direct or indirect interests in the Bladeland Group procure that:

(a) HMTF will not exercise any rights in relation to the management of the Bladeland Group, including its subsidiary Finalrealm Limited, and UB;

(b) they will ensure that HMTF will not obtain any business secrets, know-how or commercial information of a confidential or proprietary nature relating to the Bladeland Group, including Finalrealm Limited, UB and any businesses controlled by the Bladeland Group, including Finalrealm Limited, and UB, other than as approved by the Commission.

5. General

5.1 Any of the Commitments may be replaced by a commitment of equivalent effect, subject to the prior approval of the Commission.

For and on behalf of:

Nabisco Group Holdings Corp:

PAI Management SAS:

Cinven Limited:

Hicks, Muse, Tate & Furst:

Deutsche Bank Capital Partners: