

***Case No COMP/M.2011 -
DELTA SELECTIONS /
ARLA FOODS HELLAS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/08/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.08.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sirs,

Subject: Case No COMP/M.2011 - Arla Foods Hellas S.A./Delta Selections S.A.

Notification of 19.07.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 19 July 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as amended by Council Regulation (EEC) No 1310/97 ("Merger Regulation"), by which the undertakings Arla Foods Hellas S.A. (Greece), subsidiary of the Danish company Arla Foods a.m.b.a. (Arla), and Delta Selections (Greece) (with its subsidiary Vigla S.A.) subsidiary of Delta Holding (Delta) which belongs to the Greek Delta Group, enter into a full merger by purchasing shares in a new company constituting a joint-venture (NewCo).
2. After examination of the notification, the Commission has concluded 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 and the functioning of the EEA Agreement.

I. THE PARTIES

3. Arla Foods Hellas S.A. is active only in Greece in the markets for sale and distribution of cheese, butter and cream. The parent company Arla is present in all standard dairy product markets in Denmark, Sweden and to some extent the UK and in the yellow fats, cheese and ingredients markets in most EEA countries and some third countries.
4. Delta Selections S.A. is a holding company. Its subsidiary Vigla S.A. is active in the market for production and sale of cheeses in Greece. The parent company Delta Group is present in several standard dairy product markets in Greece only, while it has certain activities in some Balkan countries.

II. THE OPERATION

5. NewCo will be a joint venture in which Delta Holding will have a 40% participation and Arla Foods a 60% participation. Vigla will be 100% owned by NewCo. Arla will inject all the activities of Arla Food Hellas in Newco.

III. CONCENTRATION

Joint Control

6. NewCo is to be managed by a Board of Directors consisting of five members: two nominees of Delta and three nominees of Arla. In general, board decisions are taken by simple majority vote. However, certain issues which include, adoption of important strategic decisions, adoption of business plans and annual budget for NewCo, require a majority vote of four out of five directors present or represented. In view of the above and of the fact that the whole set-up of the NewCo appears to be a joint contribution with the aim that NewCo shall be jointly managed, it may be concluded that NewCo will be jointly controlled by its parent companies.

Full function joint venture

7. NewCo is established on a lasting basis, with separate management, own employees and production facilities. NewCo will have its own distribution system, i.e. the existing distribution of Arla Food Hellas S.A., primarily concentrating the distribution to the high-end market, and will also develop its own distribution system to other customer segments in the market. NewCo has entered into several agreements with its parents namely with regard to distribution and supply of products and licences of trademarks (cf. section on ancillary restraints). These agreements will be on an arm's length basis, while one of the key elements in them is that NewCo will act independently on normal commercial terms vis-à-vis its parents. As it follows for the joint venture agreement the parents cannot compete with NewCo on the relevant markets. In the light of the above, NewCo is a full-function joint venture.
8. It should also be noted that only Delta retains activities in upstream and neighbouring markets. Therefore it can be excluded that the parents companies coordinate their activities in relation to Article 2(4) of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5000 million¹ (Arla: € 4 981 million; Delta: € 382 million). The aggregate Community-wide turnover of each of the parties, Arla and Delta, is more than EUR 250 million (Arla: €4 190 million; Delta: €353 million²). Only Delta achieves more than two-thirds of its aggregate Community-wide turnover within one Member State,

¹ 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, p.25). 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.

² Only present in Greece in the European Community.

namely Greece. The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

V. COMPATIBILITY WITH THE COMMON MARKET

Relevant product markets

10. The Parties have identified the following markets in which their activities overlap (although mostly to a minor degree): (i) hard/semi-hard cheese (ii) cheese specialities (iii) cheese spreads. Moreover, NewCo will continue Arla's activities in Greece in the markets for cream and yellow fats.
11. For the purposes of this case it is not necessary to further delineate the relevant product markets as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or in any substantial part of it.

Relevant geographic markets

12. Even taking the narrowest market geographic definition, as proposed by the parties for the market of hard/semi hard cheeses, no competition problems arise in that market. According to the Parties this market is geographically limited to Greece due to Greek consumers' strong preference for Greek cheeses based on Greek raw materials, very low volumes of imports, distribution and sales methods specific to the Greek market
13. In any event, for the purposes of this case it is not necessary to further delineate the relevant geographic markets as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or in any substantial part of it.

Assessment

14. There is only one affected market as a result of the proposed operation, namely the market for hard/semi-hard cheese in Greece. The Parties' combined market share in that market amounts to approximately 16% (1998-99).
15. Consequently the proposed concentration does not create or strengthen a dominant position in the affected market mentioned above, as a result of which effective competition would be significantly impeded.

VI. ANCILLARY RESTRAINTS

16. The parties have notified several agreements which they consider to be ancillary restraints in the sense of the Council Regulation (EEC) No 4064/89 and the Commission's notice regarding restrictions ancillary to concentrations.
17. The Joint Venture agreement provides for a non-compete clause that prevents the parties from engaging in production, marketing, sale or distribution of products in competition with Newco. This clause is limited to Greece and confirms the parents lasting withdrawal from the markets where Newco will operate. In addition, the agreement contains provisions on confidentiality, which are required for the parties to be able to provide Newco with the information necessary to enable Newco to operate in an efficient and commercially viable way.

18. Arla and Newco have entered into a distribution agreement whereby Arla grants Newco the right to distribute certain Arla products in Greece if it is commercially viable for Newco. This agreement only covers the products distributed in Greece by Arla Food Hellas prior to the conclusion of the joint venture agreement and is considered to be an integral part of the operation, since Arla injects the activities of Arla Food Hellas in Newco.
19. In addition two trademark licence agreements exist. One between Newco and each of the parents whereby each of the parents grants Newco the exclusive right to use certain of their trademarks for marketing, distribution etc. of their products in Greece. These restrictions are not unduly restrictive and are to the benefit of Newco, whereby they enable Newco to continue activities previously carried out by the parents and serves to ensure the economic basis for Newco.
20. In sum, all the above-mentioned agreements are considered to be an integral part of the transaction.

VII. CONCLUSION

21. For the reasons explained above, 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 P. BUSQUIN, (Member of
the Commission)