

*Case No COMP/M.2072 -  
PHILLIP MORRIS /  
NABISCO*

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: 16/10/2000

*Also available in the CELEX database  
Document No 300M2072*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.10.2000  
SG(2000)D/107578

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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. 2072 Philip Morris /Nabisco**

Your notification of 14.09.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 14.09.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Merger Regulation") by which Philip Morris Companies Inc. ("Philip Morris") acquire within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Nabisco Holdings Corp. ("Nabisco").
2. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation as amended 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 AND THEIR ACTIVITIES**

3. **Philip Morris** is a U.S. holding company whose four principal wholly owned subsidiaries, Philip Morris Incorporated, Philip Morris International Inc., Kraft Foods, Inc., and Miller Brewing Company, are engaged in the manufacture and sale of various consumer products worldwide. Another wholly owned subsidiary, Philip Morris Capital Corporation, is engaged in various financing and investment activities.
4. Through its wholly owned subsidiaries, Kraft Foods, Inc. and Kraft Foods International, Inc. (together, "Kraft"), Philip Morris manufactures and sells various consumer food products. Kraft's primary businesses worldwide and in Europe involve

the manufacture and sale of coffee, confectionery, cheese, dry grocery, and salty snack products. Philip Morris's principal consumer food products include the following: (i) for coffee products: *Jacobs*; *Carte Noire*; *Gevalia*; *Jacques Vabre*; *Kenco*; *Maxwell House*; and *Hag*; (ii) for confectionery products: *Côte d'Or*; *Freia*; *Marabou*; *Milka*; *Suchard*; *Terry's*; and *Toblerone*; (iii) for cheese and grocery: *Kraft*; *Philadelphia*; *Sotilette*; *Dairylea*; *El Caserio*; *Invernizzi*; *Miracoli*; *Bird's*; *Kaba*; *O'Boy*; *Reis-Fit*; and *Estrella*; and (iv) for beer: *Miller*.

5. **Nabisco** is a U.S. corporation organized under the laws of the State of Delaware that is active worldwide in the manufacture and sale of various consumer products. Nabisco's primary business worldwide involves the manufacture and sale of biscuits. Earlier this year, Nabisco acquired control over United Biscuits (Case COMP/M.1920, *Nabisco/United Biscuits*). On July 10, 2000, Nabisco transferred its European subsidiaries (which carry, inter alia, the *Oreo*, *Ritz*, *Chips Ahoy!*, and *Royal* brands) to United Biscuits. As a result, Nabisco's activities in the food industry in the EEA are now limited to its interest in the joint venture that owns United Biscuits. United Biscuits's brands include the following: *McVities Digestive*, *Homewheat*, *Go-Ahead!*, *BN*, *Delacre Assortments*, *McVities Jaffa Cakes*, *Penguin*, *Delichoc*, *Verkade*, *Sultana*, *San Francisco*, *Shuttles*, *Cafe Noir*, *Hula Hoops*, *Skips*.

## **II. THE OPERATION**

6. Philip Morris and Nabisco signed an Agreement and Plan of Merger (the "Merger Agreement") on June 25, 2000. The transaction involves the proposed acquisition by Philip Morris of sole control of Nabisco within the meaning of Article 3(1) of Council Regulation 4064/89. Pursuant to the Merger Agreement, Philip Morris will combine Nabisco's operations with those of Kraft Foods, Inc. ("Kraft"), its wholly owned foods subsidiary. Nabisco will emerge as the surviving corporation and become a wholly owned subsidiary of Philip Morris.

## **III. CONCENTRATION**

7. Philip Morris will acquire sole control of Nabisco. The transaction is therefore a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

8. Philip Morris and Nabisco have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>1</sup> (Philip Morris : EUR [...] million and Nabisco : EUR [...] million). They have a Community-wide turnover in excess of EUR 250 million (Philip Morris: EUR [...] million and Nabisco: EUR [...] million). None of them achieves more than two-thirds of its aggregate Community-wide turnover in one and the same Member State. The notified operation therefore has a Community dimension.

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<sup>1</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.

## V. COMPETITIVE ASSESSMENT

### A. Relevant product markets

9. The activities of the notifying parties overlap in the following countries and product categories: (i) chocolate confectionery in the Netherlands; (ii) sugar confectionery in Germany; (iii) powdered chocolate & malted drinks in Spain; (iv) powdered desserts in the United Kingdom; and (v) nuts in Finland. It is only in the chocolate confectionery category in the Netherlands that the parties have combined market shares exceeding 15% and a significant competitive overlap.
10. Within the chocolate confectionery category, various product segments are often distinguished. AC Nielsen, for example, reports data for chocolate bites (such as M&Ms), chocolate tablets (e.g. Milka), candybars/countlines (e.g. Mars), pralines (e.g. Ferrero Rocher), novelties (e.g. Kinder Surprise Egg) and seasonal items (e.g. for the Christmas and "Sinterklaas" periods in December). The industry database GFK and the Dutch sectoral organization CBL (Centraal Bureau Levensmiddelen) use segment definitions which are broadly similar.
11. The notifying parties consider that none of these subdivisions of the chocolate confectionery category are meaningful to a competitive assessment of the transaction. In fact, the parties submit there are good reasons to doubt whether chocolate confectionery constitutes a relevant product market at all. In this respect, they indicate that chocolate confectionery competes to varying degrees with sugar confectionery and savory snacks. Consumers choose from all snacks available at the retail outlet to satisfy their desire for an "indulgence" or a "treat", either for instant consumption or to take home for later use. If at all necessary, the parties consider that the narrowest distinction that could be drawn within the chocolate confectionery category for the purpose of market definition is between products purchased with the intention of personal consumption by the individual or family (the "Consumption" segment: small bites, tablets, countlines) and products purchased as a gift or to share with others (the "Gifting / Social Sharing" segment: pralines, novelties, seasonals)<sup>2</sup>.
12. It follows from the market investigation that, in any event, the relevant product market is not wider than that for chocolate confectionery. A number of respondents (in particular, competitors) indicate that a narrow segmentation of the chocolate confectionary market is appropriate. The most commonly indicated segmentations are the segment definitions used by GFK and CBL (Centraal Bureau Levensmiddelen), similar to those mentioned above. The distinction between the "Consumption" segment and the "Gifting / Social Sharing" segment is generally considered as insufficiently precise. In particular, it has been noted that the personal consumption, sharing and gift

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<sup>2</sup> The parties summarise the key differences between these two segments as follows. First, products for Gifting/Social Sharing are predominantly purchased around the main gifting seasons (Christmas, Easter, Valentine's Day, Mother's Day, *etc.*), while products for Consumption are bought throughout the year (albeit with a drop in sales during the summer months). Second, Gifting/Social Sharing products tend to have larger pack-sizes than Consumption products. Third, Gifting/Social Sharing products typically have a wider variety of shapes and a wider assortment of flavors within a single selling unit than Consumption products. Fourth, Gifting/Social Sharing products tend to be more expensive (approximately EUR 7.7 per kilo) than Consumption products (approximately EUR 6 - 6.5 per kilo). Finally, Gifting/Social Sharing products have different and more expensive packaging (typically in boxes) than Consumption products (which are typically individually packaged in flow-packs or aluminium and paper-wraps).

purposes for confectionary are not product or brand specific. For this reason, many players in industry and retail use the above mentioned narrower segmentations. By contrast, four of the largest supermarket organizations in the Netherlands indicate that a narrow segmentation is not necessary and support the parties in their claim that the narrowest distinction that could be drawn, for the purpose of market definition, is that between the "Consumption" segment and the "Gifting / Social Sharing" segment.

13. Most of the respondents (supermarkets and competitors) indicate that no distinction needs to be made between branded products and private label products. One competitor specifies that in the commodity category of chocolate tablets, competition of retailer brands is evident because of the lack of strong brand identities of producer brands. The difference is, in fact, hard to tell as Albert Heijn, the largest Dutch retailer, positions Delicata, its chocolate tablet as a distinct brand. However, according to the same respondent, competition of retailer brands is less present in the other categories where the distinction between retailer and producer brands is much more based on image components, radiated to the consumer by means of advertising.
14. Based upon the information provided by the majority of the respondents in the market investigation, it would appear that the possible market definition referred to by the parties, i.e. separate markets for "Consumption" products and "Gifting / Social Sharing" products may be too wide. Demand substitution between the various chocolate confectionary categories (e.g. between chocolate bars and countlines) appears limited. The same holds for the degree of supply side substitution, especially into the branded product segments. However, in the chocolate tablet sector in the Netherlands, it appears that no distinction needs to be made between branded products and private label products. In the context of the present case, the precise definition of the relevant product markets can be left open, since whatever market definition is chosen, the concentration does not lead to the creation or strengthening of a dominant position.

## **B. Relevant geographic markets**

15. The notifying parties and some respondents note that in the chocolate confectionary markets, there is a certain trend towards harmonisation and Europeanisation. According to two respondents (notably the larger supermarket chains), competition between suppliers of chocolate confectionary products today takes place on an international level. In their view, the fact that players (retailers, producers and products) are becoming more and more international is the leading development at the moment.
16. Notwithstanding these observations, the clear majority of the respondents to the market investigation support the conclusion endorsed by the Commission in a number of cases involving the food sector, according to which the markets for consumer foods products are still to be considered national. These respondents point to the following reasons: consumer tastes vary between Member States; there is a considerable degree of divergence in the shares of the relevant suppliers in different Member States; the European-wide brand remains the exception rather than the rule; the majority of supplies continue to be made through retailers which are predominantly or exclusively national in scope and therefore own-brands are available only on a national basis; and negotiations with customers are still conducted on a national basis.
17. In view of the above, it appears that the markets for chocolate confectionary must be considered national in scope.

### C. Assessment

18. Philip Morris' (through its Kraft food business subsidiary) and Nabisco's principal activities are in North America, which accounted for the large majority of each party's 1999 sales (65% in the case of Kraft and 80% in the case of Nabisco).
19. In order to identify the affected markets, Philip Morris has relied primarily on data from Food For Thought, a database which provides a complete overview of all food products across Western Europe. All information is recorded in value terms at retail level, since the multiplicity of packaging formats and consequently of stock keeping units means that unit data are less meaningful. Given that both Philip Morris-Kraft and Nabisco-United Biscuits supply top of the range branded products, value market shares for the parties will tend to be higher than unit market shares in any event.
20. In chocolate confectionery throughout Europe, Kraft is active mainly through its *Milka*, *Toblerone*, and *Côte d'Or* brands, with EEA-wide share of sales of approximately 11%. It has manufacturing facilities in Belgium, Germany, Austria, Switzerland, United Kingdom, France and Sweden, and imports products into the Netherlands (representing EUR 39 million). United Biscuits markets chocolate confectionery exclusively in the Netherlands under the *Verkade* brand, which represents less than 0,1 % of chocolate confectionery sales in the EEA. It manufactures these products in a single plant in Zaandam, the Netherlands. United Biscuits' 1999 revenues from Verkade-branded chocolate confectionery amounted to EUR 19 million. Verkade is primarily a biscuits brand with only about 27 % of total revenue being generated through chocolate confectionery sales.
21. On the basis of an overall market for chocolate confectionery sales in the Netherlands, the combined market share of the parties would be [10-15]% by value (Kraft [5-10]% and United Biscuits [3-8]%). The main competitors would be Mars ([20-25]%), Nestlé ([10-15]%), private labels ([5-10]%), Ferrero ([3-8]%) and Cadbury and Lindt, with lower market shares.
22. On the basis of the market definition suggested by the parties (i.e. "Consumption" segment versus "Gifting/Social Sharing" segment), the combined share of Kraft and United Biscuits was approximately 19% in 1999 (by value) in the segment of chocolate confectionery purchased for personal consumption in the Netherlands. United Biscuits *Verkade* chocolate confectionery products accounted for [5-10]% (by value). The principal competitors in this category in the Netherlands were Mars, with [35-40]% of sales and Nestlé with [15-20]% of sales. Private labels ([5-10]%) and Ferrero ([0-5]%) also compete in this segment. In the Gifting/Social Sharing segment, the notifying parties would only obtain a combined market share of [5-10]%.
23. On the basis of a market definition by type of products (bites, tablets, pralines, countlines, chocolate dragees, seasonals and novelties), the new entity would obtain a combined market share of [40-50] % in a market for chocolate tablets in the Netherlands (Kraft [30-35]% and United Biscuits [15-20]%). Other, national brands such as Baronie and Droste hold a cumulated market share of 23%. The market share for the multinational players in the market for chocolate tablets in the Netherlands is rather modest: Ferrero [0-5]%, Nestlé [0-5]%, Cadbury [0-5]%, Lindt [0-5]%. By contrast, large retailers and discounters hold a cumulated market share of [20-25]% through their private label sales. As indicated in the section on product market definition, this involves the strong *Delicata* brand of Ahold. In the other segments, the

parties would either have no activities (bites, countlines), no overlap (pralines, novelties) or low market shares (seasonal items; [3-8]%).

24. On the supply side, competition in the Netherlands chocolate confectionery sector is driven by both the well-resourced multinational players (Ferrero, Nestlé, Mars, Cadbury and Lindt) and a large number of national players with some international activities (Baronie de Heer, Droste, Rademaker, Frey, Wiha and Pervasco). Though not a true global player, Baronie de Heer is one of the largest manufacturers and exporters of chocolate products in Western Europe. The company has production plants in the Netherlands and Belgium, in which it produces a large variety of chocolate products. Its strong points are its production capacity and flexibility. Rademaker, an independent operating subsidiary of the Koraal Holding BV, is specialized in the development, manufacture and sale of chocolate consumer products and has more than 130 years of experience. Its production facilities in Amsterdam are among the most modern in the industry. Both Baronie and Rademaker have excess capacity available for the production of chocolate tablets.
25. Despite their currently modest presence in chocolate tablets, multinational competitors like Mars, Nestlé and Ferrero have the know-how, the brands, the manufacturing capability, the financial strength and the proven ability to launch new products. Considering their strong market shares in closely connected markets as bites (Mars [60-65]%; Nestlé [30-35]%) and bars (Mars [55-60]%; Nestlé [25-30]%) and the average 50% rate of capacity utilization in the overall chocolate confectionery industry, their ability to access the tablets' market will exercise a constraint on the new entity's competitive behaviour in chocolate tablets (as well as in total chocolate confectionery) in the Netherlands.

On the demand side, the main customer categories are supermarket chains (Ahold, Laurus, Superunie, Trade Service Nederland), discounters (Aldi, Lekkerland and Sligro) cash and carry outlets (Makro and Sligro) and convenience outlets (e.g. petrol companies' stations, cafetaria, etc.). All of these categories are in a position to exercise sufficient bargaining power for these types of products. Large retailers account for nearly [50-60] % of chocolate confectionery purchases in the Netherlands, of which Laurus accounts for approximately [27-30]%, Ahold for [25-30]%, TSN [20-30]% and Superunie for [10-15]%. Since the success of a chocolate confectionery manufacturer's products depends largely on access to shelf-space, retailers can exercise strong buying power. This observation is corroborated by the results of the market investigation. In addition, about one-third of chocolate confectionery purchases is the result of "impulse" purchases at convenience outlets. Also these players are often large entities (petrol distribution networks) or at least sufficiently autonomous given that "impulse" customers will not refrain from purchasing chocolate confectionery if one particular item or brand is not available at the outlet.

26. Finally, neither party is active in any market upstream or downstream from a market in which the other party competes.
27. In the light of above elements, the operation will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in any market for chocolate confectionery products in the Netherlands.

## **VII. CONCLUSION**

28. 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 pursuant to Article 6(1)(b) of Council Regulation (EEC) No. 4064/89 and Article 57 of the EEA Agreement.

For the Commission,

**Mario MONTI,**  
**Member of the Commission.**