

***Case No COMP/M.2084 -  
CSM / EUROPEAN  
BAKERY SUPPLIES  
BUSINESS (UNILEVER)***

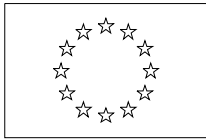
Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 28/09/2000

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

Brussels, 28.09.2000  
SG(2000)D/107148

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2084 – CSM / EUROPEAN BAKERY SUPPLIES BUSINESS (UNILEVER)**

Notification of 28.08.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 28.08.2000 the Commission received a notification of a proposed concentration by which CSM proposes to acquire sole control of part of Unilever, namely its European Bakery Supplies Business.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that the concentration does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

**I. THE PARTIES**

3. **CSM N.V.** (“CSM”) is active in the development, production, sale and distribution of sugar, bakery ingredients, food products, confectionery and lactic acid. It is listed on the Amsterdam Stock Exchanges.
4. **European Bakery Supplies Business** (“EBSB”) produces bakery supplies, including bread and pastry/confectionery ingredients and bakery products such as frozen dough, and pre- and par-baked products. It is currently part of the Unilever group which is incorporated both in the Netherlands and in UK. Unilever’s principal businesses are in the foods, home care and professional cleaning and personal care categories.

## **II. THE OPERATION**

5. The proposed transaction involves the acquisition of part of the business of Unilever, namely the companies and assets forming EBSB. CSM intends to acquire assets in Austria, Denmark, France, Finland, Germany, Italy, Portugal, Spain, Sweden, Switzerland and the UK, and to acquire the share capital of companies incorporated in Austria, France, Italy, the Netherlands, Portugal and Sweden.

## **III. CONCENTRATION**

6. CSM will acquire sole control of EBSB. The transaction is therefore 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 2.5 billion<sup>1</sup> [CSM EUR 2,199.4 million; EBSB EUR [...]]. In each of at least three Member States, the combined aggregate turnover of the undertakings concerned is more than EUR 100 million [...]. The aggregate turnover of each of CSM and EBSB exceeds EUR 25 million in each of at least three Member States [...] has a Community-wide turnover in excess of EUR 100 million [CSM EUR [...]; EBSB EUR [...]], 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 in accordance with Article 1(3) of the Merger Regulation.

## **V. RELEVANT MARKETS**

8. The parties submit that the relevant product market is that for convenience bakery supplies. Within this, it is possible that there may exist separate relevant markets for bakery ingredients and for semi-finished bakery products. Bakery ingredients would include improvers (blends of enzymes and emulsifiers), mixes (flour plus improvers), fillings, coatings, toppings and flavourings. Semi-finished bakery products would include frozen dough and batter, par-baked frozen products and fully-baked, thaw and serve products.
9. Both CSM and EBSB are active in the market for convenience bakery supplies. If narrower markets are considered, then it would only be necessary to consider the market for bakery ingredients since CSM is not active in semi-finished bakery products.
10. In terms of the geographic market, the parties submit that the market is widening from its traditionally national base and is becoming increasingly European. If European-wide, there would be no affected markets; if national, the only affected market(s) would be in Germany.

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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.

11. For the purposes of this decision it is not necessary to decide upon the precise boundaries of either the relevant product or the relevant geographic market definitions since, however defined, no competition concerns arise.

## **VI. COMPETITIVE ASSESSMENT**

12. On the wider product market definition of convenience bakery supplies, the parties' combined market shares would be below 15% in Europe overall, and below 15% in all the countries where they overlap except Germany, where their combined market share would be [10-20]% by volume (EBSB [5-15]%; CSM [0-10]%).
13. On the narrower market definition of bakery ingredients, the parties' combined market share would again be less than 15% in all countries except in Germany where they would be [10-20]% by volume. In this market in Germany, the merged entity will continue to face competition from its competitors, which have the following market shares: Ireks ([5-15]%), Jung ([0-10]%), Abel & Schäfer ([5-15]%), and Braun ([0-10]%). In addition, barriers to entry appear to be low.

## **VII. ANCILLARY RESTRAINTS**

14. The parties have requested that two agreements be treated as ancillary restrictions directly related and necessary to the implementation of the concentration.
15. First, Clause 24(A)(i) of the Business and Share Sale and Purchase ("S&P") Agreement imposes a non-compete obligation on Unilever, providing that Unilever shall not, for [...] following completion of the proposed transaction, compete in Europe with any part of EBSB as conducted immediately prior to completion.
16. Second, Clause 24(A)(ii) and (iii) of the S&P Agreement imposes non-solicitation obligations on Unilever. The former prevents Unilever, for a period of [...], from inducing any supplier of EBSB to breach any supply contract with CSM in relation to EBSB. The latter prohibits, for a period of [...], Unilever from soliciting any senior employee of CSM without CSM's prior written consent (except where the employee has received notice terminating his employment or has responded to a public recruitment advertisement).
17. The Commission regards these restrictions ancillary provided that their duration is limited to three years.

## **VIII. CONCLUSION**

18. 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,

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