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Case No COMP/M.2275 - PEPSICO / QUAKER

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 27/03/2001

Also available in the CELEX database
Document No 301M2275

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.03.2001

SG (2001) D/287180

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

Subject: Case No COMP/M.2275 – PEPSICO/QUAKER
Notification of 26.02.2001 pursuant to Article 4 of Council Regulation No 4064/89[1]

1. On 26.02.2001, 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 the undertaking PepsiCo Incorporated (PepsiCo) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking The Quaker Oats Company (Quaker).

2. After examination of the notification, 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

3. PepsiCo is a US company whose businesses consist of Frito-Lay Incorporated, a manufacturer and distributor of savoury snack products, Pepsi-Cola Company, a soft drink company which primarily produces and sells soft drink concentrate to its independent authorized bottlers, and Tropicana Products Incorporated, which produces, sells and distributes branded juices in many countries. In Europe, PepsiCo sells principally carbonated soft drinks (CSD's), fruit juices and savoury snack foods. Its main

1 OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

brands include Lays and Ruffles, Doritos, Cheetos, Pepsi-Cola, Seven Up and Tropicana Pure Premium. Pepsico currently neither produces nor sells any sports drink in Europe.

4. Quaker is a US-based company active in the worldwide manufacture and marketing of packaged food products and beverages. In Europe, Quaker sells a sports beverage called "Gatorade", sweet cereal bars, rice cakes, breakfast cereals (hot and cold), pancake mixes and syrups, value added pasta and rice side dishes.

II. THE OPERATION

5. The proposed concentration concerns the acquisition by PepsiCo Incorporated (PepsiCo) of The Quaker Oats Company (Quaker). The parties state that the merger aims to increase PepsiCo's product offering of non-carbonated soft drinks through the integration of Quaker's sports drink.

III. CONCENTRATION

6. Under the terms of the Merger Agreement, Merger Sub, a direct wholly-owned subsidiary of PepsiCo, will merge with Quaker, and Quaker will be the surviving corporate entity, owned and controlled solely by PepsiCo. The transaction, involving the acquisition of Quaker by PepsiCo, is thus a concentration within the meaning of Article 3(1) (b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. For the financial year ended 1999, the combined aggregate worldwide turnover of the undertakings concerned exceeded EUR 5 000 million. The aggregate Community-wide turnover of each party exceeded EUR 250 million [PepsiCo […]; Quaker […]]. They do not achieve more than two-thirds of their turnover in one and the same Member State. The operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

A. <u>Relevant product markets</u>

8. As regards beverages, Pepsico sells carbonated soft drinks and fruit juices while Quaker sells a non-carbonated sports/energy drink called "Gatorade". As regards food products, Pepsico sells principally savoury snack products, as well as limited sales of sweet cereal bars in Portugal, while Quaker sells a variety of food products including sweet snack products.

9. As regards beverages, it is hypothetically possible that sports/energy drinks might compete with carbonated soft drinks and/or fruit juices. However, in the present case it is not necessary to decide whether, for the purposes of defining the product market, a distinction ought to be drawn between these product categories, since under neither alternative would the operation give rise to competition concerns.

10. As regards food products, it is clear that, in view of a variety of demand-side considerations, savoury snack food products do not compete with sweet snack products or rice cakes. Savoury snacks tend to be salted, whereas sweet cereal bars and rice cakes tend to be non-salted or sugared. The nutritional content of the product types is also very different. As a result, they tend to be consumed on different occasions, and often by different categories of consumers. While it is conceivable that sweet cereal bars are, in

terms of product market definition, distinct from sweet snack products generally, it is not necessary to decide this in the present context since, in any case, the operation does not give rise to competition concerns.

11. As the Commission has traditionally analysed markets for food and beverages in terms of a segmentation by distribution channel, an analysis was also made of the parties' sales through different distribution channels. In previous decisions[2], the Commission considered food retailing and food service as separate markets on the basis of their differing features (service dimension, separate sale forces, different price structures, different pack sizes, and different health and safety regimes). The food service sector comprises supply to out-of-home eating establishments (e.g. hotels, restaurants, fast food and pizzeria outlets, sandwich shops) and to institutional catering (factory and office canteens, hospitals, schools, etc.).

12. The supply to both out-of-home eating and institutional catering can also be made through vending (also known as automatic retailing). Vending refers to the sale of products and services at an unattended point of sale, through a machine operated by introducing coins, bank notes, payment cards, tokens or other means of cashless payment.

13. In the present case, it is not necessary, however, to reach a conclusion on the exact delineation of markets in terms of distribution channels because, on the basis of any of the alternative market definitions considered, the operation gives rise to no competition concerns.

B. Relevant geographic market

14. In previous decisions[3], the Commission has taken note of arguments pleading for a widening in the scope of food/drink service and food/drink retail sectors in the EEA beyond national boundaries, owing to increasing cross-border concentration in both sectors, and in the light of the introduction of the Euro. However, market tests in previous cases have confirmed that consumer taste varies between Member States. Furthermore, distribution still tends to be organised on a national basis, and negotiations between suppliers and clients still tend to be conducted on a national level. It can thus be concluded that food/drink service and food/drink markets remain predominantly national.

15. In this case, it is in any event not necessary to reach a conclusion as to whether the relevant geographic market/s should be considered to be wider than national in scope, since the notified concentration does not give rise to serious doubts as to its compatibility with the Common Market, irrespective of the geographic definition chosen.

C. Assessment

16. As regards beverages, and on the basis of a hypothetical product market definition encompassing "carbonated soft drinks and energy drinks", the highest combined market

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[2] Case M. 1802 Unilever/Amora-Maille ; case M.1990 Unilever/Bestfoods ; case M.2302 Heinz/CSM

[3] Case M. 1802 Unilever/Amora-Maille ; case M.1990 Unilever/Bestfoods

shares for the parties[4] (all channels of distribution taken together) would be [10%-20%] in Spain, [10%-20%] in Greece and [0%-10%] in Italy (the country where Quaker's "Gatorade" has by far the greatest sales). On the basis of a hypothetical product market definition encompassing “fruit juices and energy drinks”, the highest combined market shares for the parties (all channels of distribution taken together) would be [0%-10%] in Greece. On the basis of a hypothetical product market definition encompassing “carbonated soft drinks, fruit juices and energy drinks”, the combined market shares would be no higher than for the two hypothetical product market definitions just discussed, in any country. Thus, if all distribution channels were taken together, the concentration would not lead to the creation or strengthening of a dominant position. The same conclusion would apply if one were to distinguish between the various distribution channels.

17. Moreover, if carbonated soft drinks, fruit juices and sports/energy drinks were to be considered as belonging to separate product markets, no possible range effect can be anticipated, in view of Pepsico's low market shares for the various categories of beverages, and in the absence of any other indications pleading for such a possible range effect.

18. As regards sweet snack products, the only overlap between the parties' activities is with regard to the sale of sweet cereal bars in Portugal. However, as the sales of Quaker (Euro […]) on this hypothetical market would add only a very small increment to the sales of PepsiCo, this overlap can be regarded as insignificant, irrespective of the precise market definition chosen.

19. The operation would therefore not create or strengthen a dominant position on any market, as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

VI. CONCLUSION

20. 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 and Article 57 of the EEA Agreement.

For the Commission
(signed)

Mario MONTI
Member of the Commission

[4] Only the five countries in which Quaker's "Gatorade" is sold in quantities of any significance are examined: Austria, Germany, Greece, Italy and Spain.