

***Case No COMP/M.2302 -
HEINZ / CSM***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/02/2001

*Also available in the CELEX database
Document No 301M2302*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.02.2001
SG(2000)D/286404

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No COMP/M. 2302 – HEINZ/CSM

Notification of 25.01.2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 25.01.2001, 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 H.J. Heinz Company (“**Heinz**”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of HAK BV (“**HAK**”), Honig Merkartikelen BV (“**Honig**”), Koninklijke De Ruijter BV (“**KDR**”), Pagnier BV (“**Pagnier**”), Venianco NV (“**Venianco**”) and the Anco food business assets and liabilities of CSM Belgium NV (“**Anco**”). The companies are jointly referred to as “**CFD**” (previously “**Cherokee**”) and are currently controlled by **CSM NV** (CSM).
2. After examination, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) 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

I. THE PARTIES

3. **Heinz** is a US global food products company. Its principal retailing products include ketchup, condiment and sauces, soups, beans and pasta meals, infant food, frozen and chilled foods, seafood, pet-food. Its food service business supplies a range of products, including sauces and condiments, jellies and marmalades to food wholesalers and caterers.
4. **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. Honig, HAK and KDR on the one hand and Anco on the other hand

are its operating units respectively in the Netherlands and in Belgium. CFD's principal products sold on the retail market are dry soups, savoury mixes and dry sauces, pasta (under the Honig brand), breakfast cereals (under the Brinta brand), baking products (under the Honig, Baukje and Anco brands), dessert products (under the Bourbon, John Moir and Saroma brands), non-perishable vegetables in glass jars (under the HAK brand) sweet bread toppings (under the KDR and Venz brands) and cordials and still fruit drinks (under the Roosvicee and Karvan Cevitam brands). On the food services market CFD manufactures soups, sauces, non-perishable vegetables and fruit and pasta (under the Foodmark brand).

II. THE OPERATION

5. The proposed concentration is an acquisition of all issued shares in the capital of the companies jointly referred to as CFD.

III. CONCENTRATION

6. Heinz will acquire sole control of CFD. 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 5 billion¹. Each of Heinz and CFD have a Community-wide turnover in excess of EUR 250 million [Heinz: ..., CFD:]. CFD achieves more than two-thirds of its aggregate Community-wide turnover in the Netherlands but Heinz does not. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

8. The parties' activities overlap in two different sectors in the Netherlands and Belgium : (i) the production and sale of food products dedicated to the retail sector; and (ii) the production and sale of food products dedicated to the catering sector (food service sector).

A. Relevant product markets

9. The food service sector comprises supply to the out-of-home eating (e.g. hotels, restaurants, fast food and pizzeria outlets, sandwich shops) and institutional catering (factory and office canteens, hospitals, schools, etc.) sectors. Even if, as claimed by the parties, many products or product varieties for the food service market are considered only as "derivatives" from the same products of the retail products, the food service distribution channels have important features which distinguish them from the retail channels and which thus give rise to separate markets. These distinctions include a service dimension, separate sales forces, different price structures, different pack sizes, and different health and safety regimes.

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, 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.

10. Moreover, the products supplied may themselves be different where necessary to address the distinct needs of food service customers. Sauce products, for example, when used within the food sector may need to be capable of being kept warm for extended periods of time in large containers without adverse effects on taste, whereas this is unlikely to be the case for products within the retail sector which tend to be heated and served quickly in small quantities.
11. These features have been recognised in the previous decisions of the Commission² as giving rise to separate product markets for food retailing and food service.

1. The retail sector

12. In the retail sector, the parties have overlapping activities in three different product categories : (i) non-perishable vegetables in cans and glass; (ii) bread toppings in single and larger portions.
13. Regarding non-perishable vegetables in cans and glass, the precise product market definition, and notably the questions to know whether the vegetables in glass and the vegetables in cans and whether any individual type of vegetables in glass and/or in cans belong to one and same market can be left open for the purpose of the present assessment since no competition concerns arise, whatever market definition is sustained.
14. Regarding bread toppings, there is no Commission precedent on how bread toppings should be defined, regarding the question of taste as well as the question of packaging. Regarding the first aspect (taste), the parties consider that there are three ways of defining the relevant markets for bread toppings. The first one would be to define markets corresponding to each of the original products (jam, chocolate paste, apple syrup, honey and chocolate sprinkles). The second would be to make a distinction between sweet and savoury bread toppings. The third one would occur between spreadable and non spreadable bread toppings. Regarding the second aspect (packaging), the parties point out that single-service portions in the retail sector meet competition from the “regular” retail size portions bread toppings. They consider single-service portions bread toppings merely a size variant, offering the consumer a wider variety of sizes (“family”, “regular” and “single”).
15. Regarding the “taste” aspect, the market test showed that even if some players considered that all bread toppings compete for the same consumption occasion, others considered that the definition of relevant markets had to split the whole category between sweet and savoury tastes. Indeed, those players considered that a theoretical small but permanent price increase of sweet bread toppings will not result in a increase of the demand for savoury bread toppings. No players have argued that it would be relevant to distinguish between spreadable and non spreadable products. Finally, all players have rejected the possibility of there being distinct product markets for each specific taste of bread toppings.
16. Regarding the “packaging” aspect, the market test showed that single service portions of bread toppings had been introduced very recently on the retailing market and could be considered as substitutes for products in bigger volumes. Manufacturers can easily switch from single service portions to bigger volumes and vice versa. Some consumers might use

² Case M. 1802 Unilever/Amora-Maille ; M. 1990 Unilever/Bestfoods

the different volumes at different moments in time (for instance : small portions used during holidays) but a significant proportion of consumers might use both types.

17. Therefore, a relevant market including all sizes of bread toppings packaging will be considered for the purpose of the present assessment of the retail sector. Concerning the “taste” aspect, it is excluded that each taste of bread toppings constitutes distinct product markets. Nevertheless, the precise market definition for bread toppings can otherwise be left open for the purpose of the present assessment since no competition concerns arise, whatever market definition is sustained.

2. The food service sector

18. In the food service sector, the parties have overlapping activities in only one product category : bread toppings. The main part (3/4) of their activities on the food service sector concerns the sales of single serving portions of bread toppings but they also supply bread toppings in large size to the food service sector.
19. The parties point out that single-serving portions bread toppings in the food service market meet also with considerable competition from “normal” size portions bread toppings. They consider that caterers may purchase “normal” or “retail” size portions and serve bread toppings in little cups or saucers to create smaller, more individual serving portions
20. The parties also consider that no overall market for all tastes of single-serving portions exists in the food service sector since it would imply that single-serving portions of coffee creamer, salt, sugar, jam and chocolate sprinkle would all be part of the same market. The parties state that the market single-serving portions are derivatives from the market for the original products. They state that if a caterer cannot buy jam he will not consider buying peanut butter, honey or chocolate sprinkles instead. Nevertheless, the parties admit that the same distinctions afore-mentioned for the retail sector between sweet and savoury on the one hand, and spreadable and non-spreadable on the other hand, could also apply to the food service sector.
21. The precise market definition for bread toppings in the food sector can be left open for the purpose of the present assessment since no competition concerns arise, whatever market definition is sustained.

C. Competitive assessment

1. The retail sector

22. Regarding non-perishable vegetables in cans and glass, CFD sells only preserved vegetables in glass and Heinz sells its baked beans only in cans. Therefore if vegetables in glass on the one hand and vegetables in cans on the other constitute separate relevant product markets, there is no overlap between Heinz and CFD. If vegetables in glass and vegetables in cans both belong to the one and same relevant market, the overlap is due to the sales of Heinz baked beans in the Netherlands, which constitute a negligible increase ([0-5]%) of the [35-45]% market share of CFD on this market. If there were separate product markets for any individual type of vegetables in glass and in cans, there would not be any overlap between the activities of the parties, since Heinz only sells baked beans whereas CFD only produces non-baked vegetables.

23. In conclusion, the operation does not raise any competition concerns on the market(s) for non-perishable vegetables in the retail sector in the Netherlands, irrespective of the market definition chosen.
24. Regarding bread toppings, CFD is present on the category for bread toppings in spread through its chocolate paste. Heinz is present through its sandwich spread and its single-serving portions (mostly jam). CFD is present on the category for bread toppings in non spread through its chocolate, fruit and sugar sprinkles (also sold in single portions only in the Netherlands). The only geographical affected market is the Netherlands.
25. On a hypothetical market for sweet bread toppings in the Netherlands, the market share of the parties will be below [20-30]% and the addition of market shares is [0-5] % (CSM's market share: [20-30]% and Heinz's market share: [0-5] %). The parties would face several strong competitors like Kraft Foods International, Unilever, Nestlé (market share around [5-15] % respectively) and Hero (market share around [0-10] %). On a hypothetical market for savoury bread toppings, CFD is not active and there will thus be no overlap. Following a market definition where bread toppings are split up between spread and non-spread, the market share will be below [10-20]% on a market for spread bread toppings. On a market for non-spread bread toppings, Heinz is not active and there will thus be no overlap. On an overall market for all bread toppings, the market share of the parties stays below [20-30]% and the addition of market shares is below [0-10]% (CSM's market share : [15-25]% and Heinz's market share: [0-5]%). Several strong competitors are also active on the market like Kraft, Unilever, Nestlé, Andros/Bonne Maman (respective market share around [5-15]%), Hero (market share around [0-10]%) and several own label brands (market share around [20-30]%).
26. In conclusion, the operation does not raise any competition concerns on the market for bread toppings in the retail sector in the Netherlands, irrespective of the market definition chosen.

2. The food service sector

27. Heinz produces jams, chocolate paste, apple syrup and honey in single-serving portions for the food service market. CFD produces chocolate sprinkles in single-serving portions. The only geographical affected market is the Netherlands.
28. Following a market definition where relevant markets for bread toppings single-serving portions correspond to each of the original products (jam, chocolate paste, apple syrup, honey and chocolate sprinkles), there would be no overlap between the parties activities. This would also be the case in a market for spreadable, in a market for non-spreadable and in a market for savoury single-serving bread toppings.
29. Following a market definition where bread toppings single-serving portions are split up between sweet and savoury, an overlap would occur in a market for sweet bread toppings single-serving portions in the Netherlands. The parties' combined share would be around [30-40]% ([15-25]% for Heinz and [10-20]% for CFD). The new entity would face strong competition from Van Oordt (around [20-30]%), Hero (around [5-20]%), Andros/Bonne-Maman ([5-15]%), Ferrero (around [0-10]%) and own label brands (around [10-20]%).
30. In a market for all sizes of bread toppings (normal and single-serving portions), the combined position of the parties would be [10-20]% (Heinz [5-15]% and CSM [0-10]%). The parties would face several strong competitors like Hero (market share

around [20-30]%), Geurts (market share around [5-15]%), Unilever (market share around [0-15]%) as well as several others like Gouda's Glorie/Van Dijk, Andros/Bonne Maman, Oetker/Langnese, Ferrero, All Crump, Peeters and Rousseau with respective market share below 5%. Following a market definition where all sizes of bread toppings are split up between sweet and savoury, no overlap would occur.

31. In conclusion, the operation does not raise any competition concerns on a market for bread toppings in the food service in the Netherlands irrespective of the market definition chosen.

VI. CONCLUSION

32. 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,

Signed : Mario MONTI
Member of the Commission