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*Case No IV/M.232 -
PEPSICO / GENERAL
MILLS*

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

Article 6(1)(b) NON-OPPOSITION
Date: 05.08.1992

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MERGER PROCEDURE
ARTICLE 6(1)b DECISION

PUBLIC VERSION

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To the notifying party

Subject: Case No. IV/M232 - PepsiCo/General Mills
Notification of 13.7.1992 pursuant to Article 4 of
Council Regulation No. 4064/89.

1. On 13.7.1992, the Commission received a notification of a proposed concentration whereby the undertakings General Mills, Inc. and PepsiCo, Inc. will transfer respectively all and parts of their European snack foods business to a newly created company (NewCo).
 2. After examination of the notification, the Commission has concluded that the notified concentration falls within the scope of Council Regulation No. 4064/89 (the Merger Regulation), and does not raise serious doubts as to its compatibility with the common market.
- I. THE PARTIES AND THE OPERATION
3. PepsiCo is a US-based company active in the manufacture and distribution of soft drinks and snack foods and in the sector of convenience and family-style restaurants.
 4. General Mills is a US-based company engaged in restaurants and consumer foods, including snack foods.

5. General Mills will transfer to NewCo all of its European snack foods business, which consists of operations in Belgium, Holland and France. PepsiCo will transfer to NewCo its snack foods businesses in Spain, Portugal and Greece, retaining its European snack foods operations in the UK and Italy. PepsiCo will hold 59,5% of the equity interest of NewCo, the remaining 40,5% will be granted to General Mills in exchange for the transfer of its European business.

II. COMMUNITY DIMENSION

6. The operation has a Community dimension. The worldwide turnover of PepsiCo and General Mills amounts in their last financial year to Ecu 15,826 million and ECU 5,638 million. General Mills' European snack foods operations which will be transferred to NewCo amount to Ecu 252,4 million.

The aggregate Community-wide turnover of PepsiCo and the snack foods business of General Mills is 1,113 and 250,3 million respectively. They do not achieve more than two-thirds of their Community-wide turnover within one and the same Member State.

III. CONCENTRATION

7. Following completion of the transaction, PepsiCo will hold 59,5% of the equity interest of NewCo and the balance will be held by General Mills. PepsiCo will have the overall responsibility for NewCo's day-to-day management and will have the right to appoint a majority (4 out of 7 members) of the Supervisory Board. Decisions by the Board will be taken by simple majority, except for acquisitions or divestitures involving an affiliate of the parties where the purchase of sale price exceeds 5% of NewCo's net asset base, and a special provision allowing General Mills to monitor the value of, and expected earnings from, its investment. Thus, NewCo will be solely controlled by PepsiCo, General Mills retaining only special rights in order to protect its investment in NewCo.
8. The notified operation therefore constitutes a concentration within the meaning of Article 3 of the Merger Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

Relevant product market

9. NewCo will be engaged in the manufacture and distribution of snack foods. The value of this overall market within the Community was in 1991 around 20,900 million ECU. The parties state that the relevant product market is that of "macro snacks", which can be further classified into four main market segments:
 - a) Savoury snacks, i.e. potato chips/crisps, extruded and corn-based products, nuts and salty biscuits;
 - b) Sweet biscuits;
 - c) Sugar confectionery and gum;
 - d) Chocolate;

10. Savoury snacks comprises the only market segment where both parents are active and is by value and volume by far the most important snack foods segment for the parties concerned. There is a high degree of substitutability between the different savoury snacks products. They are in general purchased for consumption in the same setting and eating occasions, and are further comparable in terms of price.
11. In this case, the precise delimitation of the relevant product market need not be specified because even on the basis of the narrowest conceivable market definition, e.g. a separate market for crisps, the operation does not raise serious doubts.

Geographic reference market

12. There are some indications that the relevant geographic markets for snack foods could be considered to be national. According to the parties, the snack foods business is organised and operates at national level and is directed toward largely national markets. This is indicated by the significant differences in competitors' prices and market shares from one national market to another. Further, each national "macro snack" market tends to have unique taste preferences and thus there is very little cross-border brand penetration.
13. It can however, be left open whether the relevant geographic market is each Member State or the Community as a whole because even on the basis of national geographic markets the proposed operation does not raise serious doubts as to its compatibility with the common market.

Competition assessment

14. The concentration will create the biggest manufacturer for snack foods products in Europe. However, the horizontal effects of the operation are limited. PepsiCo and General Mills do not compete over the full range of snack foods. Only General Mills manufactures sweet biscuits, and its sales are limited to the French market. PepsiCo has very limited sweet biscuits sales in Italy which result from purchases made from a third party. As regards chocolate and sugar confectionery, only PepsiCo is active, with limited production and sales within the Community. Both parties are engaged in the savoury snacks market, but there exists a product overlap only as regards potato chips, crisps and extruded products.
15. In addition, both parties are active in different geographical areas of the Community. If the relevant geographical market is considered as being national, there is no overlap between the operations of PepsiCo and General Mills. If it is considered as Community-wide there is an overlap, but the market share of the parties is low (about 7% on the overall snack foods market and less than 20% on each of the individual product markets). Furthermore, the proposed concentration does not involve any vertical or conglomerate links which would adversely affect competition in the Community. The concentration will

therefore not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it.

V. ANCILLARY RESTRAINTS

16. The non-competition obligations entered into between the parties can be regarded as directly related and necessary to the implementation of the concentration and is therefore ancillary within the meaning of the Regulation.

VI. FINAL ASSESSMENT

17. For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1) (b) of Council Regulation No. 4064/89.

For the Commission,