

***Case No COMP/M.2350 -  
CAMPBELL / ECBB  
(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: 02/04/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **02/04/2001**

**SG (2001) D/287259**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2350-Campbell/ECBB (Unilever)**

Notification of 1 March 2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 1 March 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> by which the undertaking Campbell Soup Company (Campbell) acquires within the meaning of Article 3(1)(b) of that Regulation control of a group of businesses referred to as the European Culinary Brands Businesses ("ECBB") presently owned by Unilever N.V. (Unilever) by way of purchase of shares and assets.<sup>2</sup>
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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<sup>1</sup> 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).

<sup>2</sup> The ECBB are divested by Unilever pursuant to the terms of its undertaking to the European Commission of 28 September 2000 in connection with its earlier acquisition of Bestfoods (Case Comp/M. 1990). The present notification concerns the proposed acquisition by Campbell Soup Company ("Campbell") of the ECBB.

## I. THE PARTIES AND THE CONCENTRATION

3. Campbell is a major manufacturer and marketer of high quality branded convenience food products. It is ranked 21<sup>st</sup> among global food and beverage companies. Campbell has three primary business segments: soups and sauces, biscuits and confectionery, and products which are consumed outside home (comprising products distributed to food service and home meal replacement markets).
4. The ECBB are currently owned by Unilever N.V. (Unilever) and comprise, among other products, a range of soups, sauces, bouillon and jams businesses operating in a number of EU Member States under a variety of brands, including Batchelors, Oxo, Blå Band, Heisse Tasse, Royco and Lesieur. Unilever, pursuant to the terms of its undertaking given to the European Commission in connection with its acquisition of Bestfoods, has to divest the ECBB to an independent third competitor.
5. Campbell will acquire a number of business assets and the shares of the Dutch company Royco Voedingmiddelenfabriken B.V., all presently owned by Unilever. As a result of the transaction Campbell will exercise sole control over the ECBB. The proposed operation constitutes a concentration according to Article 3 (1) (b) of the Merger Regulation.

## II. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup> (Campbell: 6,308 MEUR; ECBB: [...] MEUR). Each of Campbell and ECBB have a Community-wide turnover in excess of EUR 250 million (Campbell: [...] MEUR; ECBB: [...] MEUR), 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.

## III. COMPATIBILITY WITH THE COMMON MARKET

### A. *Relevant product and geographic markets*

7. In line with the Commission's approach in the case Comp/M. 1990-Unilever/Bestfoods the parties are active in two different sectors: in the production and sale of food products dedicated to the retail sector and in the production and sale of food products dedicated to the catering sector (food service sector)<sup>4</sup>. Notwithstanding the increasing Europeanisation of the food sector, markets can be considered to be of national dimension, due to different consumer preferences reflected in the product offer of the food manufacturers and given that suppliers and retailers still tend to be organised along national lines. Consequently, negotiations are largely conducted at a national level.

### B. *Assessment*

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<sup>3</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.

<sup>4</sup> See the Commission's decision in case Comp/M. 1990-Unilever/Bestfoods

8. On the basis of the above approach the operation gives rise to overlaps in three distinct markets, where the ECBB and Campbell are both active: the sale of mayonnaise in the French retail market, the sale of “other cold sauces” in the French retail market and the sale of “other cold sauces” in the Portuguese retail market.
9. In the French retail market for mayonnaise the increment in market share resulting from the operation is minimal (below [0-10]%) and there will be no material effect on competition in the market. The ECBB have a market share of [15-25]%. Unilever will remain the market leader with a [35-45]% market share.
10. In the French retail market for “other cold sauces”, Campbell (through its Devos and Lemmens brands) holds a share by value of approximately [0-10]% while the ECBB have [...] sales of less than [0-10]%.  
[ ]
11. In the Portuguese retail market for “other cold sauces”, the ECBB (through their Hellmans brand) have a market share of around [0-10]%. Campbell only started selling such cold sauces in Portugal under its Devos and Lemmens [ ]<sup>5</sup> with sales to date of [ ]. Accordingly, Campbell’s market share in this market is very low.
12. In summary, the proposed operation will neither create nor strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

#### **IV. ANCILLARY RESTRAINTS**

13. The parties have notified a number of transitional agreements in order to ensure the smooth transition of the acquired business to Campbell, none of which restricts competition.
14. In addition, Clause 24 (A) (ii) of the Business and Share Sale and Purchase Agreement provides that within [ ] years from completion of the Agreement, Unilever shall not attempt to solicit senior employees of Campbell without prior written consent. This clause aims at ensuring the full value of the acquired business. It can be considered directly related and necessary to the implementation of the concentration and its scope and duration can be considered as proportionate for these purposes. The non-solicit clause is therefore covered by the present decision pursuant to Article 6(1)(b), paragraph two, of the Merger Regulation.

#### **V. CONCLUSION**

15. 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

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<sup>5</sup> Deleted business secret: quite recently.