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*Case No IV/M.277 -
DEL MONTE / ROYAL
FOODS / ANGLO
AMERICAN*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 09.12.1992

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Brussels, 9.12.1992

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

PUBLIC VERSION

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M277 - Del Monte/Royal Foods/Anglo American
Notification of 9.11.1992 pursuant to Article 4 of Council Regulation No.
4064/89

1. On 9th November 1992 Royal Foods Ltd. ("Royfood") and Anglo American Corporation of South Africa Ltd. ("AAC") notified jointly an agreement concerning the acquisition of joint control of Del Monte Foods International Ltd. ("DMFI").
2. The notified operation consists in the acquisition by a subsidiary of Royfood of the entire issued share capital of DMFI. Royfood's ultimate parents are the Imerman family investment consortium (ISC) and an investment consortium controlled by AAC, which will provide most of the finance needed to purchase DMFI in exchange for an equity stake in Royfood.
3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 (the Regulation) and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

4. Royfood is a South African company engaged in the canning and export of deciduous fruits, the export of frozen vegetables, and the manufacture and marketing of culinary dry mix products and other foodstuffs in South Africa (other companies within Royhold are involved in pharmaceuticals and speciality chemicals, the sales of which are confined to South Africa).
5. AAC is a South African investment holding company with interests in mining, industry, and property.

6. DMFI is a U.K.-based company engaged in the production and marketing of canned fruits, fruit-based beverages, dry food mixes, and other miscellaneous food products.

II. CONCENTRATION

a) Joint control

7. After the agreement between ISC and AAC is implemented, DMFI will be wholly owned by a Royfood's subsidiary (Juliet Holdings S.A., or another subsidiary to be nominated by Royfood).
8. The corporate structure by which ISC and AAC will acquire joint control of DMFI may be summarized as follows: ISC and AAC will each own 30% of Royal Group Holdings Limited (Royhold). A pool of the voting rights attached to those shares ensure that AAC and ISC will jointly exercise their respective voting rights. In the event of disagreement between them, both ISC and AAC must reject the proposal in question.
9. Royhold in turn will hold 51% of Royco, while ISC will separately hold a 0.3% interest which must be exercised in the same way as Royhold exercises its votes in Royco. ISC and AAC, therefore, will control an absolute majority of the shares in Royco.
10. Royco will hold 44% of Royfood, with AAC having a direct holding of between 6% and 11% which must be exercised in the same way as Royco exercises its votes in Royfood. The balance of the shares in Royfood will be widely held amongst some 800 shareholders. Accordingly, Royco will control Royfood, and Royfood will acquire 100% of DMFI.
11. Non-voting pool shares held by ISC and AAC in Royhold or any other Royal Group company which are not within the voting pool and thus not subject to the voting pool arrangements referred to above must be used to vote in favour of any resolution supported by ISC and AAC through the voting pool, thus ensuring continued joint control.
12. To reinforce the joint control established at the shareholders' level, ISC and AAC are each entitled to appoint equal numbers of directors of Royhold, Royco and of each of the Royal Group's operating subsidiaries and associates to represent ISC and AAC respectively. In the event of third party directors being appointed, such appointment will require the approval of the relevant board but the total number of third party directors must be less than the aggregate number of AAC and ISC directors. The Royhold board will consider and approve the strategic plan and the annual budget as formulated by the management of Royhold.

b) Concentrative joint venture

13. DMFI, a previously independent company, will continue to perform on a lasting basis all the functions of an autonomous economic entity.
14. (i) ISC will continue to play a leading role in the management of the Royal Group of companies, now including DMFI, and will have the main responsibility for its market behaviour and day-to-day management. SAPCO, a subsidiary of Royfood,

cans and exports to DMFI some []¹⁾ of its production of deciduous fruits, representing about []²⁾ of DMFI's requirements, under a long-term supply agreement (SAPCO was purchased by Royfood from DMFI in 1991, and hence the proposed concentration will result in the SAPCO and DMFI businesses coming together again into one group).

15. (ii) AAC, essentially an investment holding company, is introducing substantial new shareholder funds into the Royal Group in order to finance the acquisition of DMFI. AAC is basically a financial investor in the newly constituted group.
16. AAC has certain financial interests in canned deciduous fruit (DMFI's main activity) and fruit concentrates (a neighbouring market of fruit juices). AAC has a financial interest in the production in South Africa of canned deciduous fruit and fruit concentrate, through a 50% interest in Amfarms []³⁾, whose subsidiary RFF is active in these sectors. Some of these products are exported by RFF to EC Member States. In addition these activities are so marginal with reference to both EC markets and AAC overall activities that it does not seem reasonable that they could be regarded as having potential for coordination with the activities of DMFI in the EC.
17. As far as canned deciduous fruits are concerned, RFF exports constitute less than []⁴⁾ of the total EC market. Even in smaller segments, RFF exports amount at most to only about []⁵⁾ (eg []⁶⁾. As far as fruit concentrates (an upstream input for fruit juices) are concerned, RFF has not exported any of its production of orange concentrate to the EC since 1990, when its estimated share of total EC imports was []⁷⁾, and its exports of apple concentrate to the EC represented []⁸⁾ of total imports in 1992.
18. Not only are RFF's exports of canned deciduous fruit, concentrates and other foodstuffs to the EC marginal with respect to EC markets, but also RFF's activities constitute a minute part of AAC's overall business activities. RFF's total 1991 turnover amounted to only []⁹⁾, or about []¹⁰⁾ of AAC's total turnover. Little more than half of RFF's sales are exported, and the export sales value of AAC's interest in RFF via its stake in Amfarms may be estimated at about []¹¹⁾ of AAC's total turnover.

1) A major part

2) Less than half

3) Deleted for publication. AAC has a further indirect investment in Amfarms

4) A small percentage

5) Less than 5%

6) Deleted for publication

7) A small percentage

8) Less than 5%

9) A small amount

10) A small percentage

11) A small percentage

19. (iii) As far as dry food mixes are concerned, none of those produced by companies in which AAC has an interest, nor those produced by Royfood, are sold in the EC due to regulatory and tariff barriers.
20. Both Royfood (through its "Donald Cook" subsidiary) and AAC, through Amfarms, export frozen broccoli to the E.C. Royfoods total exports of this product ([]¹²) metric tonnes annually) are sold to []¹³, and represent []¹⁴ and []¹⁵ respectively of those countries' imports of frozen vegetables. Amfarms' annual exports of frozen broccoli amount to less than []¹⁶ ([]¹⁷ metric tonnes in 1991).
21. In view of the considerations presented above, the proposed transaction does not have as its object or effect the coordination of the competitive behaviour of undertakings which remain independent.

III. COMMUNITY DIMENSION

22. The enterprises concerned have a combined aggregate worldwide turnover in excess of 5.000 million ECU. Both AAC and DMFI have Community-wide turnover in excess of 250 million ECU, but do not achieve more than two-thirds of this turnover in one and the same Member State. Thus the operation has a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

Relevant product markets

23. (i) Canned deciduous fruit

The main fruits which make up the canned deciduous fruit sector in the EC are apricots, peaches, pears, mandarins, and fruit cocktail. It is not easy to determine the actual or potential degree of substitutability in this sector, either between different canned fruits or between canned and fresh or frozen products (storage and convenience as well as taste will be relevant).

24. There is some demand-side evidence in the form of consumer preferences that would suggest that each canned fruit constitutes a separate market; an examination of "per capita" consumption within a single Member State reveals substantial differences between quantities of different fruits consumed (thus the "most popular/least popular" ratio is 3:1 in the U.K., 11:1 in the Netherlands). However, the exact product market definition may be left open, since even on the narrowest possible definition, no dominant position is created or reinforced (see below).

¹²⁾ A small amount

¹³⁾ Two Member States

¹⁴⁾ A small percentage

¹⁵⁾ A small percentage

¹⁶⁾ A small amount

¹⁷⁾ A small amount

(ii) Fruit-based beverages

25. Pure fruit juices are the second main activity of DMFI. They are made from fruit concentrates, whereas so-called "nectars", or mixtures of juice, water and sugar, are made from fruit pulp. These differences and different consumption patterns (eg in the U.K. the consumption of pure juice is approximately five times bigger than that of nectars), indicate separate product markets for fruit juices and nectars. In any case since there exists no horizontal overlap between the parties, there exists no affected market.

Relevant geographic markets

26. (i) Canned deciduous fruit

The EC would seem to be a distinct market in view of an external tariff of 20-24%, EC-wide regulatory controls on labelling and quality, and substantial FEOGA measures (which in 1991 constituted 15% of DMFI's operating profit). There are indications that there may be separate national markets within the EC, in view of different prices (eg substantially higher prices in Italy) and consumer preferences (in the U.K., Belgium and Netherlands annual per capita consumption of canned fruits is over 2 kgs, in Germany, France and Denmark about 1 kg, but much lower in other Member States). The exact geographic market definition may be left open, since even on the narrowest possible definition no dominant position is created or reinforced (see below).

27. (ii) Fruit-based beverages

Fruit-based beverages seem to constitute national markets, in view of high bulk/high transport costs, and of different demand patterns between Member States (the juice/nectar consumption ratio is 5:1 in the U.K., 1:2 in Italy). The exact geographic market definition may be left open, since there is no horizontal overlap and the vertical links are marginal (see paragraph 17).

Assessment

28. As far as canned deciduous fruit is concerned, Royfood's only involvement in EC markets is via SAPCO's long-term supply agreement with DMFI (see above, section III(b)). This existing supply relationship will be integrated into the new group. DMFI purchases about half of its canned fruit requirements from other suppliers. DMFI's competitors in the canned fruit sector in the EC obtain supplies from a large number of different companies, and so the consolidation of the vertical link between SAPCO and DMFI does not give rise to concern about foreclosure effects.
29. Taking into account the considerations put forward in paragraphs 15 to 18, any horizontal overlap between AAC and DMFI may be disregarded.
30. The significant financial resources of AAC may be used to invest in DMFI's production and marketing operations. Nevertheless, taking into account that DMFI faces significant competition in each Member State from a number of different companies, this competitive situation should limit the possible conglomerate effects

of the combination of AAC's financial resources with the activities of the Royal Group and DMFI in the Common Market.

31. Therefore, the concentration will 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.

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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,