EN

Case No IV/M.289 - PEPSICO / KAS

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 21.12.1992

Also available in the CELEX database
Document No 392M0289

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

COMMISSION
OF THE EUROPEAN
COMMUNITIES

Brussels, 21.12.1992

MERGER PROCEDURE
ARTICLE 6 (1) b DECISION

PUBLIC VERSION

Registered with advice of delivery

To the notifying party

Dear Sirs,

Subject: Case No. IV/M.289 - PepsiCo/KAS
Notification of 25.11.1992 pursuant to Article 4 of Council Regulation No. 4064/89

1. The agreement

On 25 November the Commission was notified of an agreement whereby PepsiCo Inc. (PepsiCo), through its Spanish subsidiary Pepsi-Cola de España (PdE), intends to acquire 100% of the shares of KAS S.A. (Kas) and 70% of the shares of Knorr-Elorza S.A. (KESA). 100% of the shares of KAS and 70% of the shares of KESA are owned by the Corporacion de Alimentacion y Bebidas S.A. (CAB), a subsidiary of Banco Bilbao-Vizcaya S.A. (BBV).

2. The parties

2.1 PepsiCo is a US multinational corporation whose international business is soft drinks, snack foods and restaurants. In Spain, PepsiCo's soft drinks operations are conducted through PdE, a wholly owned subsidiary of Pepsi Cola International, and through KESA, a licensed independent bottler and distributor of carbonated soft drinks and other beverages in which PepsiCo currently holds a 30% interest. PepsiCo intends to acquire the remaining 70% of KESA shares pursuant to the proposed transaction. PepsiCo also distributes its soft drink products in Spain on a more limited basis through several other independent bottlers.

2.2 KAS and KESA together comprise the Soft Drinks Division of the Corporacion de Alimentacion y Bebidas S.A. (Food and Drinks Corporation). KAS is a manufacturer of carbonated soft drink concentrates and non-carbonated fruit juice products which are marketed in Spain exclusively through KESA. KESA is a bottler and distributor of carbonated soft drinks. KAS soft drinks and juices are marketed exclusively in Spain and Portugal. KESA's operations are limited to Spain.

2.3 CAB is a wholly owned subsidiary of BBV, whose principal assets include shareholdings in KESA, KAS and Bodegas y Bebidas. CAB was formed in 1989 to hold the equity of KAS and KESA, which previously had formed a single undertaking.

2.4 Banco Bilbao-Vizcaya is one of the largest publicly held banks in Spain.

3. Community dimension

3.1 The concentration has a Community dimension. PepsiCo's total worldwide turnover in 1991 was 15,826 billion ECU and the combined aggregate worldwide turnover of the parties to the concentration (PepsiCo, KAS and KESA) was approximately 16,423 billion ECU.

3.2 PepsiCo's aggregate Community-wide turnover in 1991 was 1.1 billion ECU. The Community-wide turnover of KAS and KESA in 1991 was 121 million ECU and 374 million ECU, respectively, for an aggregate total of 495 million ECU. While each of KAS and KESA achieved more than two-thirds of its turnover in Spain, PepsiCo did not achieve more than two-thirds of its Community-wide turnover in Spain, and the "two-thirds" exclusion contained in Article 1 of the Merger Regulation therefore does not apply. Under Article 5(2) of Council Regulation (EEC) 4064/89, PepsiCo's acquisition of KAS and KESA are treated as one and the same concentration.

4. Concentration

The notified operation gives rise to a concentration within the meaning of the Merger Regulation. PepsiCo will be acquiring control of KAS and KESA through the acquisition of 100% of the shares of KAS and the remaining 70% of the shares of KESA that it does not currently hold. As a result of these acquisitions, PepsiCo will acquire control of both KAS and KESA.

5. Compatibility with the common market

5.1 Relevant product markets

5.1.1 KAS and KESA are engaged in the manufacture, distribution and sale of soft drink products in Spain and Portugal. Their specific soft drink product offerings comprise carbonated soft drinks and fruit juices. PepsiCo's carbonated soft drink products are marketed in Spain and Portugal primarily under the "Pepsi-Cola" and "7 Up" brand names. KESA acts as PepsiCo's primary bottler and distributor in Spain. In Portugal, KAS and PepsiCo each market their carbonated soft drink products through separate bottler/distributors.

5.1.2 Carbonated soft drinks comprise the only business where both parties are active in Spain and Portugal. Even if:

- carbonated soft drinks are to a large extent comparable in terms of price;
- all types and flavours of carbonated soft drinks are sold to consumers through the same types of distribution outlets, compete for shelf space at the retail level, and are sometimes positioned to compete as a product group;
- there is a certain degree of product-substitutability in the manufacture of different types and flavours of carbonated soft drinks;

it seems to be more appropriate to distinguish the product market by reference to specific flavour groupings (colas, lemon-lime, orange, tonics, bitters). In fact, each carbonated soft drink is usually perceived by customers as being different from other products. People who are used to drinking cola drinks do not usually drink lemon-lime drinks and vice versa. In addition, some drinks are mainly purchased by one class of customer (eg orange flavoured drinks are mainly sold to children who usually do not drink cola products. The same is true for tonics and bitters.).

5.1.3 Nevertheless, the precise delimitation of the relevant product market need not be resolved in the present case because even on the basis of a narrower set of market definitions, the operation does not raise serious doubts as to its compatibility with the common market.

5.2 It could be argued that the bottling and distribution businesses involved in the present case are to be qualified as another affected market. However, even if carbonated soft drinks bottling and distribution are viewed as a distinct economic market, the proposed transaction still could result in no competitive effects. In fact, PepsiCo has no bottling operations in Spain, the only area in which KESA has a bottling presence. More significantly, however, KESA already bottles exclusively for PepsiCo and KAS and so the transaction can have no structural effects in Spain.

5.3 Geographic reference market

5.3.1 KAS soft drink products are marketed exclusively in Spain and Portugal. Competitive overlap between KAS and PepsiCo carbonated soft drink products is correspondingly limited to these two countries.

5.3.2 It can be left open, however, whether the relevant geographic markets are Spain and Portugal or the Community as a whole since under either analysis, the proposed concentration does not raise serious doubts as to its compatibility with the common market.

6. <u>Competition assessment</u>

6.1 Direct product overlap between PepsiCo and KAS only occurs in the carbonated soft drinks segment of the soft drinks market. In Spain, PepsiCo and KAS have a combined share of 13.2% of the carbonated soft drinks segment. The concentration will produce a combined PepsiCo/KAS share of 19.2% of the Portuguese carbonated soft drink segment.

6.2 Further segmentation of the carbonated soft drink segment by reference to specific product groups of flavourings limits competitive overlap between the parties to the cola and orange flavoured categories in Spain, and to cola and lemon-lime products in Portugal.

6.3 On these narrowly defined markets, the parties' combined market shares are below 25% in the Community as a whole and in Spain and Portugal in each of the cola and orange flavoured segments.

6.3.1 As to the cola segment, the parties' shares in these geographic areas are only 11.5% in the Community as a whole, 11.7% in Spain, and 23.5% in Portugal. Moreover, this market is characterised by intense competition between PepsiCo, Coca-Cola (the market leader) and other cola brands.

6.3.2 In the orange flavoured segment, the parties' combined shares will be below 10% in the Community as a whole. There is no product overlap in this segment in Portugal since PepsiCo does not market any orange flavoured products in Portugal. In Spain, KAS sells 15.8% of the output in the orange flavoured segment, whereas PepsiCo's share is approximately 0.8%. Like the cola market, the orange flavoured market is highly competitive, with Coca-Cola again the market leader by a considerable margin, followed by La Casera.

6.4 There is no competitive overlap in the lemon-lime market in Spain since KAS does not offer a lemon-lime flavoured product in Spain. Both parties do offer a lemon-lime flavoured product in Portugal. Their combined share in Portugal is significant (69%).

6.5 However, the transaction is not expected to create or strengthen a dominant position in Portugal such that effective competition will be significantly impeded therein. KAS has only a marginal presence in lemon-lime products in Portugal (1%), and the transaction will produce only a slight increase in PepsiCo's existing share of sales in that segment (68%). Thus, the competitive conditions on the Portuguese lemon-lime market are not expected to change as a result of the notified operation. Moreover, PepsiCo will also continue to face substantial competition in the Portuguese lemon-lime segment from its international competitive adversary, Coca-Cola.

6.6 Not only does Coca-Cola have a significant presence in the lemon-lime market in Portugal (with a share in that segment of approximately 14%), but it is the firmly established leader in carbonated soft drinks in Portugal as a whole. Coca-Cola is also the market leader by a wide margin in various significant product segments, including colas and certain fruit flavoured carbonated soft drinks. Thus, Coca-Cola's presence is expected to ensure that competitive conditions will continue to exist with respect to all carbonated soft drinks, including the lemon-lime segment.

6.6.1 Pepsico's relatively high market share in the lemon-lime market in Portugal substantially overstates the competitive signficance of the notified acquisition. In fact, lemon-lime drinks are not totally exempt from competition from alternative carbonated products available on the market; moreover, taking into account the existence of a certain degree of supply side substitutability, other carbonated soft drink producers currently active in the Spanish and Portuguese area could enter the lemon-lime market, in this way preventing PepsiCo from impeding effective competition.

Thus, the proposed concentration will not create or strengthen a dominant position in any affected markets in Spain, Portugal or the Community as a whole.

7. Conclusion

For all of the foregoing reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market.

*

*   *

For the above reasons, the Commission has decided not to oppose the notified operation 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