

COMMISSION DECISION of 15/09/1993 declaring a concentration to be compatible with the common market (Case No IV/M. 362 - NESTLE / ITALGEL) according to Council Regulation (EEC) No 4064/89

(Only the English text is authentic).

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## PUBLIC VERSION

### MERGER DECISION

#### ARTICLE 6(1)B DECISION

Registered with advice of delivery

To the notifying party

Dear Sirs,

Subject : Case No IV/M.362 - Nestlé/Italgel

Notification of 13.08.1993 pursuant to Article 4 of Council Regulation No 4064/89

1. The above mentioned notification concerns an agreement signed on 6 August 1993 whereby Nestlé, S.A. (Nestlé) will acquire the majority of the share capital and voting rights of Finanziaria Italgel (Italgel Holding). Currently, 62.1 % of the stock of Italgel Holding is owned by Istituto per la Ricostruzione Industriale S.p.A. Once Italgel Holding's shares have been listed on the Stock Exchange and the Commission has approved the acquisition, Nestlé shall launch a public bid on the 37.9 % of the publicly held shares of Italgel Holding.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation N\* 4.64/89 and does not raise serious doubts as to its compatibility with the common market.

## I. THE PARTIES

3. Nestlé is the ultimate parent company of the Nestlé group of companies. The Nestlé group manufactures and sells food products throughout the world. Nestlé is also engaged in research and development and in some non-food activities.

4. Italgel Holding has been newly created with the sole purpose of divesting the two operating companies Italgel S.p.A. (Italgel) and Gruppo Dolciario Italiano S.p.A.K (GDI). Italgel manufactures and distributes ice-cream and frozen foods. Ice-cream sales account for approx. 62 % of its total sales. GDI manufactures and distributes seasonal cakes and confectionery products. Italgel Holding is mainly active in Italy.

## II. CONCENTRATION WITH COMMUNITY DIMENSION

5. The proposed acquisition by Nestlé of 62.1 % of Italgel Holding constitutes a concentration within the meaning of Article 3.1 (b) of the Merger Regulation. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5.000 million ECU. Both Nestlé and Italgel Holding have a Community-wide turnover in excess of 250 million ECU but 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

#### Relevant product markets

6. The proposed concentration concerns the four businesses in which Italgel Holding is active - ice-cream, frozen food, seasonal cakes, chocolate and confectionery products.

7. The ice-cream sector comprises industrial and artisanal ice-cream. Industrial ice-cream is usually broken down into impulse, take-home and catering ice-cream. In most Member States its share of total ice-cream sales exceeds 80 %. Artisanal production only accounts for a small percentage of the total ice-cream production in most Member States (UK: 5 %, France: 9 %, Portugal: 5 %, Germany: 21%). In Italy however, such production accounts for over 50 % of the total ice-cream sales and exceeds industrial ice cream production by almost 2 mio. litres.

8. The frozenfood sector comprises vegetables, potatoes, meat, fish, snacks, meals and other frozen products.

9. Seasonal cakes belong to a broader market of cakes, sweets, and related chocolate products among which the consumer has the choice when buying such products for specific seasonal festivities. The three major products manufactured by GDI are: Panettone and Pandoro, traditional Christmas confections in Italy, and Colomba, the most traditional Easter confection in Italy.

10. Confectionery products could be subdivided further in chocolate and sugar confectionery products. Chocolate products could be broken down into different segments such as chocolate countlines, boxed chocolate, seasonal chocolate items and chocolate tablets.

11. 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 definition, the operation does not raise serious doubts as to its compatibility with the common market.

#### Geographic reference market

12. The geographic reference markets for ice-cream are still predominantly national. Transnational trade is relatively small (under 10 % of total consumption). At present, ice-cream markets are subject to legislation at national level. While legislation differs significantly among countries, it tends to cover the same four areas: product definition, labelling, air expansion coefficient and product contents. Consumer profiles, seasonality, habits of consumption and channels of distribution, the relative importance of the artisanal sector and the internal segmentation (impulse, take-home and catering) differ between countries. Brand fidelity plays an important role in the market. The above mentioned features are particularly significant in the case of Italy.

13. Ice-cream prices and margins also vary from country to country due to differing air coefficients, differences among distribution breakdowns which affect overall prices, differences in sizes and measurements, differences between branded and own label. Newer markets and products sold on impulse market tend to be more expensive.

14. Competitive overlap between Nestlé and Italgel Holding only occurs in Italy for the following relevant products: seasonal cakes and confectionery products. No overlap exists on the ice-cream and frozen foods markets.

15. In the end, it can be left open whether the relevant geographical market for ice-cream and frozen foods, seasonal cakes and confectionery products is wider than Italy since, in any case, the proposed concentration does not raise serious doubts as to its compatibility with the common market.

#### Competition assessment

16. With regard to the ice-cream markets, Italgel is almost exclusively active in Italy and Portugal whereas Nestlé has no ice-cream activities in Italy. Nestlé has an ice-cream business in four Member States with the following market shares: France ( ), Spain ( ), United Kingdom ( ) and Portugal ( )\*. Therefore, the transaction does not lead to combination of market shares in Italy. The combined shares of Nestlé and Italgel in Portugal amounts to \* of total industrial ice-cream sales.

17. In the Italian ice-cream markets, Italgel is the second player after Unilever. According to Nielsen, value-based shares in the industrial ice-cream segment for the year 1992 were as follows: Unilever (Sagit): , Italgel: , Sammontana: , Sanson: . [ deleted. Business secrets ] Between 1990 and 1992, Unilever's share increased by [deleted. Business secrets] while Italgel's decreased by [deleted. Business secrets]. Italy differs from other ice-cream markets due to the predominance of artisanal ice-cream, which accounts for over 50 % of production. This predominance results from the better image in terms of quality which artisanal ice-cream enjoys in the consumer's view and the unusually large role played by the "impulse channel", which is close to 60 % of all consumption. Taking the industrial and artisanal segments together, the volume based shares are estimated to be - Unilever (Sagit): , Italgel: , Sammontana: , Sanson: . [ deleted. Business secrets]

18. The Portuguese industrial ice-cream sector is dominated by Unilever ( market share). Other participants are the new entity ( market share) and the Spanish company Avidesca ( market share).[ deleted. Business secrets] Over the last six years Portugal has been one of the most dynamic markets in terms of production, with growth averaging 9 % per year. Therefore, the transaction is not expected to create or strengthen a dominant position in Portugal such that effective competition will be significantly impeded therein.

19. While in the Community the ice-cream markets are predominantly national for the reasons given above, there are certain features common to the national markets. The concentration of production should be noted. In most markets, output is dominated by three to five companies which together account for at least 70 % of total production. Unilever is by far the most important group operating in the ice-cream sector in the Community and the only one which has a strong presence and brand recognition in every national market. The group's estimated global share of branded ice-cream products amounts to [deleted. Business secrets]. Nestlé is the second player in the ice-cream sector in the Community with a market share of [deleted. Business secrets] and is present in four Member States. In addition to the above, there are a number of new international market entrants (Mars, Haeagen Dazs) and several large national-players with small international operational, among others, Schoeller, the German based producer.

20. The operation would enhance Nestlé's position as number two after Unilever at European Level, since it gives Nestlé access to markets in two further Member States, Italy where it was not previously present and Portugal where it was present only to a limited extent. However, possible parallel anti-competitive behaviour in this sector is highly unlikely having regard to the absence of anti-competitive oligopolistic behaviour at national level, great disparity in market

shares between Nestlé and Unilever, Unilever's brand strength and positioning throughout Europe and the fact that Nestlé will still not be present within the majority of Member States.

21. With regard to the frozen food market, since Italgel is exclusively active in the Italian frozen food business and Nestlé has no frozen food activities in Italy the proposed concentration will not lead to any direct overlap in any Member State. Italgel is second in Italy with market share, after Unilever's .[ deleted. Business secrets] At European level the proposed acquisition will lead to an insignificant increase in Nestlé's position giving access to only one additional national market. No further segmentation analysis is required for the assessment of this case.

22. In the seasonal cakes sector, the added market shares to the GDI will be to reach a total of [deleted. Business secrets] on the narrowest possible product market definition.

23. With regard to the confectionery market, by the acquisition of GDI, Nestlé share in the Italian chocolate market will increase by [deleted Business secrets] and Nestlé would be number two ( market share) behind the market leader Ferrero ( market share) [deleted Business secrets]. The market is competitive with other market players such as Mars, Philip Morris (J. Suchard), etc. The new entity will be a minor player in the sugar confectionery sector with market shares in the Italian market under 8 % and very small overlap.

24. Thus, the proposed concentration will not create or strengthen a dominant position in any affected markets.

#### IV. CONCLUSION

For all 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 N\* 4064/89.

For the Commission