

***Case No COMP/M.3845 -
PAI / CHR. HANSEN***

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**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 18/07/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18/07/2005

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sir/Madam,

**Subject: Case No COMP/M.3845 – PAI/Chr. Hansen
Notification of 13/06/2005 pursuant to Article 4 of Council Regulation
No 139/2004¹
Publication in the Official Journal of the European Union No C 149 of
21.06.2005, page 18.**

1. On 13/6/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking PAI partners S.A.S. (“PAI”, France) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the food ingredients activities collectively named Chr. Hansen (“Chr. Hansen”) of Chr. Hansen Holding A/S (“Chr. Hansen A/S”, Denmark) by way of purchase of shares and assets.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that it does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES

1. PAI Partners SAS (“PAI”) is an independent investment company controlled by eleven physical persons².

¹ OJ L 24, 29.1.2004 p. 1.

² [...]

2. Chr. Hansen Holding A/S (“Chr. Hansen”) currently has sole control over the food ingredients activities here collectively referred to as Chr. Hansen. It is also active in the production of pharmaceuticals.

II. THE OPERATION AND THE CONCENTRATION

3. The transaction consists of the acquisition by PAI, through the funds it manages or advises, of sole control of all Chr. Hansen’s food ingredients subsidiaries, as well as all tangible and intangible assets related to the food ingredients activities, including the domicile building in Hørsholm, Denmark, and the rights to Chr. Hansen name and trademark
4. Therefore, the operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2.5 billion³ (PAI € [...] million; Chr Hansen € [...] million). The combined aggregate turnover in each of at least three Member States (France, Italy and Germany) exceeded € 100 million in 2004 (€ [...] million in France; € [...] million in Italy and € [...] million in Germany); in each of these Member States the turnover of both PAI and Chr Hansen exceeded € 25 million⁴; each of Chr Hansen and PAI achieved an aggregate Community-wide turnover exceeding € 100 million in 2004 (PAI [...] million; Chr Hansen € [...] million); and none of the two undertakings concerned achieved more than two thirds of their community wide-turnover within one and the same Member State. Consequently, the present transaction meets the thresholds set out in article 1(3) of the EC Merger Regulation. The notified operation therefore has a community dimension.

IV. COMPETITIVE ASSESSMENT

Introduction

6. At the outset, it has to be mentioned that the transaction gives rise to no horizontal overlap. None of the companies within PAI’s portfolio is active in any of the sector of activity of the target.
7. The transaction gives rise only to limited (in number and importance) vertical relationships, which will be described below.

³ 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).

⁴ In 2004 PAI achieved a turnover of € [...] million in France, € [...] million in Italy and € [...] million in Germany.

In the same year Chr Hansen achieved € [...] million in France; € [...] million in Italy and [...] million in Germany.

8. Chr. Hansen is active in the production of food ingredients and namely in the following sectors: (i) enzymes, (ii) fermentation cultures, (iii) colour ingredients, (iv) flavour ingredients, (v) animal health and nutrition ingredients, and (vi) human health and nutrition ingredients.
9. Three of the companies controlled by PAI, i.e. Yoplait, Provimi and Stoeffler, purchase food ingredients produced by Chr Hansen and/or its competitors. Therefore the analysis of the transaction will focus on the markets of activities of the three PAI's subsidiaries i.e.: (i) animal premixes; (ii) processed meat, (ii) fresh dairy products (FDPs) and the vertical relationship with Ch.Hansen input products.

A. Relevant product markets

10. Ch. Hansen's products relevant for the assessment are: a) Cultures for food production; b) Colour Ingredients for food production; c) Flavour Ingredients for Food Production; and d) Animal Health and Nutrition Ingredients.
11. For market definition purposes regarding Chr. Hansen relevant products, the parties have provided data for various level of sub-delineation of the four product areas.
12. At any rate, the precise product market definitions can be left open for the purposes of this decision, as no concerns arise under any possible market definition.

B. Geographic dimension of the relevant product markets

13. The parties, on the basis of previous Commission's and OFT's decisions⁵, have submitted that the geographic scope of the markets for cultures, and flavours for food production would be at least EEA-wide. Moreover, the parties consider the market for colours to be also EEA-wide whereas the market for animal health and nutrition ingredients would be at least world-wide. This would be due to i) the customers' ability to switch suppliers from one country to another, ii) the low transport costs; iii) the absence of trade barriers both in term of regulatory requirements and tariffs iv) the fact that a national distribution capability is not required.
14. At any rate, the precise geographic market definitions can be left open for the purposes of this decision, as no concerns arise under any possible geographic market definition.

C. Vertically related markets

a) Animal premixes

15. Provimi S.A., jointly controlled by PAI and CVC investment fund, is a French manufacturer of animal feed and pet food. The parties submit that Provimi purchases negligible volumes of probiotic growth promoters from Chr. Hansen, which are used to manufacture premixes. Premixes consist of a mix of variable higher value added additives, nutritionally optimised and adapted to the needs of the individual customer's requirements. In the CVC/PAI Europe/Provimi⁶ case, the Commission found that

⁵ Case COMP M. 2926 EQT/H&R/DRAGOCO and OFT decision issued on 3/6/2004 in the case Danisco/Rhodia.

⁶ Case COMP M. 2956 CVC/PAI EUROPE/PROVIMI.

premises belong to a distinct product market the geographic scope thereof should be at least EEA-wide.

16. At any rate, the precise product and geographic market definitions can be left open for the purposes of this decision, as no concerns arise under any possible market definition.

b) Processed meat

17. Stoeffler S.A. is a French manufacturer of chilled processed meat; which purchases flavours and colours from several local operators. The Commission has previously defined the market for processed meat products as comprising meat from mammals or birds, containing external ingredients such as salt or spices, being raw, dried or cooked. It has left open the question of whether several segments could be distinguished within this market⁷. Because the processors are able to use the same processing techniques, i.e., drying, smoking and cooking, for different types of meat, the parties consider the market to include all kinds of prepared meats. In previous Commission decisions⁸ similar markets have been considered national. However, it has to be noted that Stoeffler is active only in France.
18. At any rate, the precise product and geographic market definitions can be left open for the purposes of this decision, as no concerns arise under any possible market definition.

c) FDPs

19. Yoplait S.A.S. (“Yoplait”), jointly controlled by PAI and the French dairy cooperative Sodal, produces and sells FDPs and purchases dairy cultures from Chr. Hansen and its competitors. The FDPs market is composed of four categories of products: yoghurts, fromage frais, crème fraîche and desserts. The parties consider that all FDPs belong to the same product market because (i) most manufacturers are active in all or several of the relevant segments, (ii) the production processes and ingredients are similar, and (iii) the customers and distribution channels are identical, for the different segments. Nevertheless information and market share data have been provided for further sub-delineations.
20. The parties submit that the geographic dimension of this market is national due to significant differences in relation to both prices and customers’ tastes and habits across the EEA, transportation costs and the perishable nature of the products concerned.
21. At any rate, the precise product and geographic market definitions can be left open for the purposes of this decision, as no concerns arise under any possible market definition.

D. Competitive assessment

22. As previously noted, there is no overlap in the parties’ activities resulting from the present concentration.

⁷ Cases IV/M. 1313 Danish Crown/ Vesysiske Slagterier, COMP M.3522 Danish Crown/HK Ruokotalo/Sokolow.

⁸ Case COMP M. 3401 Danish Crown/Flagship Food.

23. As regards vertical relationships, the upstream market for dairy culture and the downstream market for FDP constitute the only vertically affected markets, under the terms of the Form CO. For all other vertical relationships, market shares are well below 25% both for the relevant upstream and downstream markets.
24. Competition concerns can be excluded also at the vertical level, in view of a) the low market shares of Chr Hansen (which exceed 25% only on the market for dairy cultures); b) the limited market shares of the companies belonging to PAI's portfolio in the respective downstream markets c) the consequent *de minimis* impact of their purchases volumes on Chr Hansen's sales volumes and d) the unlikelihood of Chr Hansen favouring these companies to the detriment of their competitors.
25. The parties submit that Chr. Hansen's sales to Provimi account for less than [0-15%] of Chr Hansen's EEA sales to the animal health and nutrition industry and around [0-5%] of the sales on the EEA market for animal health and nutrition cultures whereas Yoplait accounts for less than [0-5%] of Chr Hansen's global sales of cultures. Finally, the parties submit that Stoeffler does not currently purchase any ingredients from Chr Hansen. Therefore the vertical relationship between the two entities is merely potential.
26. The market investigation carried out by the Commission targeted the main competitors of Yoplait and Chr Hansen respectively in the downstream market for FDP and the upstream market for the production of dairy cultures (as mentioned, the only affected market under the terms of the Form CO) and focussed on the possible risk of input foreclosure, in view of Chr. Hansen's sales of dairy cultures. The respondents have largely confirmed the parties' positions as regards the absence of competitive concerns regarding the existing and potential vertical relationships stemming from the transaction. In particular, the market investigation has confirmed that the presence in both the upstream market for dairy cultures and the downstream market for FDP of important players leads to the exclusion of any anti-competitive impact of the transaction. Finally, no concerns were raised as regards the other actual and potential vertical relationships stemming from the transaction.

V. CONCLUSION

27. 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 (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission