

***Case No COMP/M.4089 -
GILDE / HEIPLOEG***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 31/01/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31/01/2006

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE
ART 6.1(B) DECISION

PUBLIC VERSION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.4089 – GILDE/HEIPLOEG
Notification of 22/12/05 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 22.12.2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Gilde Buy-out Management Holding B.V. (“Gilde”, the Netherlands) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Heiploeg Beheer B.V. (“Heiploeg”, the Netherlands) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. Gilde Buy-Out Management Holding B.V. is a private equity investor specialized in management buy-out investments. Gilde manages investment funds through three wholly-owned subsidiaries: Gilde Buy-Out Fund I Management B.V., Gilde Buy-Out Fund II Management B.V. and Gilde Buy-Out Fund III Management B.V.

¹ OJ L 24, 29.1.2004 p. 1.

4. Heiploeg Beheer B.V. is a group, active in the sourcing, processing, distributing and selling of shrimps.

II. THE OPERATION

5. Gilde will acquire control of Heiploeg through a special purpose investment vehicle, called Hilda Holding B.V., which will acquire 100% of the issued share capital of Heiploeg from HSI Holding N.V.
6. Hilda Holding was set up, and is controlled by Gilde Buy-Out Fund III B.V. and Gilde Buy-Out Fund III C.V., who are both under sole control of Gilde Buy-Out Fund III Management B.V.

III. CONCENTRATION

7. The operation concerns the acquisition by Gilde of sole control over Heiploeg. The proposed transaction therefore constitutes a concentration within the meaning of Art. 3(1)(b) of the Council Regulation (EC) No 139/2004.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2.5 billion² (in 2004: Gilde EUR 2,882.9 million, Heiploeg EUR 269.8 million). Each of the undertakings has a Community-wide turnover in excess of EUR 100 million (in 2004: Gilde EUR 2,524 million, Heiploeg EUR 269.8 million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. In addition, in each of at least three Member States the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million and the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million. The notified operation therefore has a Community dimension within Article 1(3) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

1. Relevant markets

Relevant product market

9. The present concentration has only possible vertical effects. The affected markets are A) the market for the wholesale of North Sea shrimps and B) the market for the distribution of fresh food to institutions and caterers.

A) Wholesale of shrimps

² 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).

10. Heiploeg is mainly active on the wholesale distribution of shrimps. The parties submitted that there are three main types of shrimps sold in Europe: tropical shrimps, North Sea shrimps and North Atlantic shrimps. Each of these types of shrimps could be considered to belong to a separate relevant product market, in consideration of the specific characteristics with regard to taste, size, colour, price and processing methods.
11. The market investigation has confirmed the parties' arguments. All respondents agree that tropical shrimps, North Sea shrimps and North Atlantic shrimps could be considered to belong to a separate relevant product market, in consideration of the specific characteristics with regard to taste, size, colour, price and processing methods. In a previous decision the Commission left open the exact definition of the relevant product market.³
12. However, the exact product market definition can in this respect be left open as the transaction, even with the narrowest market definition, does not raise any competition concerns.

B) Distribution of food products

13. Gilde controls through Gilde Buy-Out Fund II Inversco, a specialized food distributor in the Netherlands. Inversco sells its products, like fresh food products, deep frozen foods and convenience products such as ready-made meals, to institutions like schools, hospitals, penitentiaries and the catering industry.
14. The Commission has held in a previous decision that the sale of food products to the out-of-home consumption and to the institutional catering should be distinguished from the sale of food to the retail sector because distribution channels in the catering sector have important features which distinguish them from retail channels.⁴
15. However, the exact product market definition can in this respect be left open as the transaction, even with the narrowest market definition, does not raise any competition concerns.

Relevant geographic market

A) Wholesale of shrimps

16. As regards the geographic scope of the markets, the Commission in a previous decision left open the question whether the markets for shrimps could be regional, national or even European in scope.⁵ In a recent antitrust decision on price fixing in the market for shrimps, the Netherlands competition authority found that the relevant market for North Sea shrimps was the Netherlands, Germany and Denmark, because of the importance of trade among these three countries which resulted in interdependence of price patterns.⁶
17. In any case the exact definition of the relevant geographic markets can be left open since even adopting the narrowest possible product market definition effective competition would not be significantly impeded.

³ See case M.2078, *UBS Capital / Heiploeg Shellfish International*.

⁴ See case M.2302, *Heinz / CSM*.

⁵ See case M.2078, *UBS Capital / Heiploeg Shellfish International*.

⁶ Case n. 2269/Garnalen, NMA decision of 14 January 2003.

B) Distribution of food products

18. As regards the geographic scope of the market for the distribution of food products to the out-of-home consumption and to the institutional catering, the parties submitted that this is a national market: the Netherlands.
19. The Commission in a previous decision indicated also that this is a national market.⁷ The market investigation has also confirmed the parties' arguments. All respondents agree that the geographic scope is national (the Netherlands).
20. However, the exact geographical market definition can in this respect be left open as the transaction, with every alternative market definition, does not raise any competition concerns.

2. Competition analysis

Horizontal overlap

21. Heiploeg has high market shares in the market for the wholesale of North Sea shrimps ([50-60%] at EU wide level, [40-50%] at Dutch level, and [50-60%] considering Germany, Netherlands and Denmark together). In the market for tropical shrimps the market shares of Heiploeg are [10-20%] at EU wide level and [20-30%] at Dutch level. Heiploeg is not active in the market for North Atlantic shrimps.
22. Gilde does not control any undertaking active in the markets for the wholesale of shrimps. Therefore there are no horizontal overlaps.

Vertical relationships

23. There is only a potential vertical relationship between the activity of the parties since Gilde controls Inversco, an undertaking specialized in the distribution of fresh food products, deep frozen foods and convenience products to institutions like schools, hospitals, penitentiaries, and to the catering industry. As part of its activities, Inversco distributes a very limited amount of shrimps and convenience meals using shrimps.
24. In the market for fresh food distribution to institutions and caterers in the Netherlands Inversco has a market share of [0-10%]. The sales of shrimps and convenience meals using shrimps represent a very limited part of total sales of Inversco, approximately [0-5%] of total sales.
25. Given the limited market share Inversco has in the market for fresh food distribution to institutions and caterers in Netherlands and the fact that the amount of shrimps Inversco sources for its business is very limited, the proposed transaction will not lead to the creation or strengthening of a dominant position.
26. The market investigation shows that the competitors of Inversco have sufficient possibilities for sourcing their shrimps from other important wholesalers such as Klaas Puul, Stührk Delikatessen and De Beer.

⁷ See case M.2302, *Heinz / CSM*.

27. Therefore, it can be concluded that the Transaction does not create foreclosure effects, as a result of which effective competition would be significantly impeded in the common market or a substantial part thereof.

VI. CONCLUSION

28. 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