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*Case No COMP/M.4117
– Dairy Crest / Arla*

Only the English text is available and authentic.

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

Article 4 (4)
Date: 03/04/2006



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.04.2006

SG-Greffe(2006) D/201469

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 4(4) DECISION

To the notifying parties

To the Office of Fair Trading

Dear Sir or Madam,

**Re: Case No COMP/M.4117 – Dairy Crest / Arla
Reasoned Submission within the meaning of Article 4(4) of the EC Merger
Regulation for referral of the case to the competent authorities of the
United Kingdom**

I. INTRODUCTION

1. On 27 February 2006, the Commission received by means of a reasoned submission a referral request pursuant to Article 4(4) of Council Regulation (EC) No 139/2004 („the EC Merger Regulation“) with respect to a concentration leading to the acquisition of joint control by Dairy Crest Group plc („Dairy Crest“, United Kingdom) and Arla Foods UK plc („Arla“, United Kingdom) over a newly created company constituting a joint venture. A copy of this reasoned submission was transmitted to all Member States on 28 February 2006. The parties request that the concentration be examined by the competent authorities of the United Kingdom.
2. According to Article 4(4) of the EC Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition in a market which present all the characteristics of a distinct market.
3. By fax of 17 March 2006, the Office of Fair Trading of the United Kingdom informed the Commission that the United Kingdom agrees with the proposed referral.

II. THE PARTIES

4. Dairy Crest is a leading dairy food company in the United Kingdom. Its activities include the supply of liquid milk, yellow fats, other fresh dairy products and food ingredients.
5. Arla is a leading dairy company in the United Kingdom, established in 2003 as a result of the merger between Arla Foods plc and Express Dairies plc. Its activities include the supply of liquid milk, yellow fats, cheese and food ingredients. Arla is 51% owned by Arla Foods amba, a Danish/Swedish cooperative.

III. THE OPERATION

6. The proposed transaction concerns the establishment of a liquid milk joint venture (“JV”) by merging the parties’ doorstep and depot-based middle ground fresh milk delivery businesses. The parents will retain their businesses for delivering fresh milk to national multiples and some other large customers.

IV. CONCENTRATION

7. The operation is a concentration within the meaning of Article 3 of the EC Merger Regulation. The JV will be jointly controlled by the parties, since both parties have to agree on certain strategic business decisions, in particular the strategic plan and budget as well as the appointment of the members of the executive committee, which is in charge of the day-to-day management of the JV. The parties will transfer the whole of their existing doorstep and depot-based middle ground fresh milk delivery businesses, including three glass-bottling dairies, to the JV, which will thus constitute a full-function joint venture within the meaning of Article 3(4) of the EC Merger Regulation.

V. COMMUNITY DIMENSION

8. The concentration has a Community dimension within the meaning of Article 1 of the EC Merger Regulation. The parties achieved in the last financial year together a world-wide turnover in excess of EUR 5 billion (Dairy Crest EUR 1.85 billion, Arla Foods amba EUR 6.4 billion). Each of the parties achieved a Community-wide turnover in excess of EUR 250 million, and they did not achieve more than two-thirds of their Community-wide turnover within one and the same Member State.

VI. EXISTENCE OF A DISTINCT MARKET WITHIN THE UNITED KINGDOM

9. The main product affected by the proposed JV is fresh processed milk. Fresh processed milk is one of a number of products made from the raw milk collected from farms. The great bulk of processed liquid milk is sold fresh, as standardised whole, semi-skimmed or skimmed fresh milk, although a small proportion is sold as sterilised or long life (UHT) milk. The UK Office of Fair Trading (“OFT”) and Competition Commission

("CC") have distinguished between fresh processed milk and other types of milk (such as UHT and sterilised milk) on grounds of differences in taste¹.

10. The OFT (and the CC in its 1996, 2000 and 2003 reports²) has previously segmented the market for the supply of fresh processed milk into three customer groups: doorstep customers, middle-ground customers and large supermarkets. The JV will not be concerned with the latter category of customer, which will continue to be served by the JV's parents.

1. Supply of fresh processed milk to the doorstep sector

11. The CC noted in its Arla/Express Report that there exists a differential between the price of milk sold by retailers and the price of doorstep milk, and that customers value the convenience of daily delivery. Accordingly, the CC distinguished doorstep customers as constituting a separate market segment, an approach which the Commission also adopted.³
12. As regards the geographic scope of the doorstep sector, the CC concluded in its Arla/Express Report that the geographic scope for supply to doorstep customers is local, as "each delivery round can be viewed as a 'local monopoly', at least in the short term, since customers generally have only one option for doorstep delivery of bottled milk".
13. Indeed, the Commission stated in its Arla/Express Article 9(3) decision that "the relevant geographical scope of the supply of bottled milk should be considered local"⁴, noting that "each area is confined to a very limited geographic area".⁵

2. Supply of fresh processed milk to the middle ground sector

14. Middle ground customers typically include smaller supermarkets, convenience stores, local authorities (who purchase, inter alia, on behalf of schools), prisons, wholesalers and newsagents. These customers purchase either directly from dairies or through wholesalers/BMBs/foodservice operators

¹ For example, the CC concluded in its *Arla/Express* Report: "...we do not think that fresh flavoured milk, non-cows' milk, sterilized milk or UHT milk are close substitutes for fresh processed milk." (paragraph 2.32).

² CC: *Scottish Milk: A report on the supply of fresh processed milk to middle-ground retailers in Scotland*, 22 December 2000, *Arla/Express* Report; OFT: *First Milk/Wiseman, Robert Wiseman/Scottish Milk Dairies Ltd*, October 2005.

³ Commission decision of 10 June 2003, case no COMP/M.3130 – Arla Foods/Express Dairies, paragraphs 27-28.

⁴ Commission decision of 10 June 2003, case no COMP/M.3130 – Arla Foods/Express Dairies, paragraph 45.

⁵ Commission decision of 10 June 2003, case no COMP/M.3130 – Arla Foods/Express Dairies, paragraph 46.

15. In relation to middle-ground supplies, the parties consider that the relevant geographic market is regional or at most national, i.e. England and Wales⁶ for the middle ground, since:
- many middle ground customers operate nationally and procure liquid milk on a national or multi-regional basis;
 - middle ground customers may procure from a number of processors but seek to purchase at a common price, or play the processors off against each other;
 - there are large overlaps between the areas supplied by rival processors;
 - liquid milk can travel greater distances from the dairy than in the past due to extended shelf life and further still by utilising outlying depots.
16. For the above reasons the Commission considers that the markets for the supply of fresh processed milk to the doorstep sector and to the middle ground sector constitute distinct markets within the United Kingdom within the meaning of Article 4(4) of the EC Merger Regulation.

VII. EFFECT ON COMPETITION

17. According to the parties, there are affected markets for the supply of fresh milk by the JV within Great Britain, but none outside Great Britain.
18. Concerning the doorstep sector, there are a number of local areas where the parties' doorstep rounds are overlapping or adjacent, i.e. the Midlands (Langley Mill/Ilkeston, Sandwell Valley/West Bromwich and Coventry/Harper Road) and London (Yiewsley/Hillingdon and Streatham/Purley/Orpington/Anerley). In view of the local scope of doorstep sector markets, each delivery round can be viewed as a local monopoly.
19. Furthermore there are affected markets for the supply of fresh milk to the middle-ground sector in England and Wales in five regions where the JV's market share will exceed [10-20]%, namely London ([10-20]%), the Midlands ([10-20]%), Lancashire ([20-30]%), South of England ([20-30]%) and Anglia ([20-30]%).
20. The Commission therefore considers that the concentration may affect competition in the above mentioned markets which constitute distinct markets within the United Kingdom.

VIII. REFERRAL

21. The effects of the present operation on competition are likely to be confined to the United Kingdom.

⁶ The JV will not operate in Scotland and therefore the national market for these purposes is England and Wales.

22. Furthermore, the competent authorities of the United Kingdom appear to be best placed to investigate this operation.. In 2003 Arla amba notified the proposed Arla/Express transaction to the Commission under the EC Merger Regulation. The United Kingdom made a referral request pursuant to Article 9 of the EC Merger Regulation. The Commission referred the liquid milk component of that transaction to the United Kingdom. In its decision on the referral the Commission stated that, “*given the national or sub-national scope of the markets affected by the transaction, the competent authorities of the United Kingdom are better placed to carry out a thorough investigation of these markets, and that it is therefore appropriate for the Commission to exercise its discretion under article 9(3)(b) so as to grant the referral*”⁷.
23. Thus the concentration meets a number of criteria set out by the Commission in its Notice on Case Referral⁸ for being an appropriate candidate for referral.

IX. CONCLUSION

24. For the above mentioned reasons and with reference to the agreement of the United Kingdom with the proposed referral, the Commission has decided to refer the whole of the case to the competent authorities of the United Kingdom. This decision is adopted in application of Article 4(4) of the EC Merger Regulation.

For the Commission
signed
Neelie KROES
Member of the Commission

⁷ Commission decision of 10 June 2003, case no COMP/M.3130 – Arla Foods/Express Dairies, paragraphs 114-115.

⁸ Commission Notice on Case Referral in respect of concentrations, OJ C 56, 5 March 2005, p. 2, paragraphs 19-23.