

***Case No COMP/M.4216 -
CVC / BOCCHI / DE
WEIDE BLIK***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/05/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.05.2006

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4216 – CVC / De Weide Blik / Bocchi
Notification of 24 April 2006 pursuant to Article 3 of Council Regulation
No 139/2004¹**

1. On 24 April 2006, the Commission received a notification of a proposed concentration by which the undertakings CVC Capital Partners Group S.A.R.L (CVC, Luxembourg) acquires the undertakings De Weide Blik, N.V. (De Weide Blik, Belgium) and Bocchi Holding B.V. (Bocchi, the Netherlands) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 139/2004 (“EC Merger Regulation”) and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. CVC is an independent private equity firm specialising in large-scale leveraged buy-outs. The principal part of its business is to provide investment advice to, and/or to manage investments in other companies through CVC funds in various industries in Europe and the Asia-Pacific Region.

¹ OJ L 24, 29.1.2004 p. 1.

4. De Weide Blik is a Belgian group active in the production, import, export, packaging, handling and logistics of fresh fruits, vegetables, flowers, flower bulbs, plants and meals. Primary customers are retail chains, wholesalers and foodservices. Its activities are concentrated in the Benelux region.
5. Bocchi operates as a producer, processor, distributor and marketer of fresh fruit, vegetables, plants and flowers. Its activities are focused on Germany.
6. By means of the operation, CVC will indirectly own [...] % of Bel Newco, the entity that will acquire all of the share capital of De Weide Blik and Bocchi. The remaining [...] % of the shares will be owned by Food Invest International NV ([...] %) and BT Corporate Finance S.A ([...] %)². CVC will have sole control of Bel Newco as it will appoint a majority of directors to the board ([...]) and the minority shareholders will have no veto rights on any decision concerning matters other than the protection of their investment.
7. The purchase by CVC of De Weide Blik on one hand and Bocchi on the other hand, constitutes a single concentration since the individual steps are interdependent. First, the transfer of shares in both companies to Bel Newco will occur on the same date and the shareholder's agreement will become effective on the same date. Also, the transfer of all Bocchi's shares to CVC is a condition precedent of the sale and purchase of De Weide Blik's shares.

II. CONCENTRATION

8. The transaction entails the acquisition of sole control by CVC over the whole of the business and assets of De Weide Blik and Bocchi.
9. Therefore, the operation is a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

² Food Invest International NV and BT Corporate Finance S.A today control respectively De Weide Blik and Bocchi.

III. COMMUNITY DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (CVC EUR [...], De Weide Blik EUR [...] and Bocchi EUR [...]). Each of them has a Community-wide turnover in excess of EUR 250 million (CVC EUR [...], De Weide Blik EUR [...] and Bocchi EUR [...]). While Bocchi makes more than two-thirds of its Community-wide turnover in Germany, neither CVC nor De Weide Blik achieves more than two-thirds of its aggregate Community-wide turnover within one Member State. The notified operation has therefore a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

IV. COMPETITIVE ASSESSMENT

1. Market definition

11. De Weide Blik and Bocchi's activities overlap on the import/production and wholesale of fresh fruit and vegetables, as well as on the wholesale supply of plants, flowers and bulbs.
12. CVC owns chains of supermarkets and department stores in Spain and in the United Kingdom, as well as quick-service restaurants in Spain. De Weide Blik is also active in the supply of ready-made foods. These latter activities give rise to vertical links.

Relevant product markets

13. The parties submit that the relevant product markets are: (i) fresh fruit at the import/production level, (ii) fresh fruit at the wholesale level, (iii) fresh vegetables at the import/production level, (iv) fresh vegetables at the wholesale level, (v) ready-made food for retailers, (vi) ready-made food for foodservice, (vii) wholesale supply of plants and flowers, (viii) wholesale supply of bulbs, (ix) retail market for daily consumer goods, (x) retail market for plants and flowers and (xi) market for informal out-of-home eating.
14. Concerning the first four listed markets, both De Weide Blik and Bocchi are active as importers/producers, and wholesalers of fresh fruits and vegetables. At the importer/producer level, they sell their products to other large wholesalers by sourcing from all over the world, whereas at the wholesale level, they sell to smaller wholesalers, to retailers, and to foodservice⁴.
15. As regards *fresh fruit*, the Commission previously left open the question whether a narrower market definition would be more relevant but mentioned that at least bananas could be considered as part of a distinct product market⁵. The parties submit that such a distinction is no longer relevant as the quotas on banana imports have in the meantime been abolished. In addition, the parties submit that other elements specific to bananas,

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 The distinction between importation/production and wholesale of fresh fruit was also made in the decision No IV/M.1409 Fyffes / Capespan.

⁵ This distinction was considered mainly due to the existence of quotas on banana imports.

both on the supply side and the demand side⁶ are not decisive enough to consider bananas as part of a distinct product market.

16. In the course of the market investigation in the present case, most respondents confirmed the parties' view, while some pointed out that further distinction should be made within the fresh fruit category based on demand-side or supply-side considerations. In this respect, it has to be noted that the Commission has found in a recent decision that the logistics can be very different from a category of fruit to another⁷(depending for example on the handling conditions of fruits).
17. For the market investigation, various categories were identified: bananas, deciduous fruit, citrus fruit, stone fruit, berries/soft fruit, kiwifruit and tropical fruit. However, the parties claim that such categories are not warranted as consumers tend to spend a fixed amount of money on fruits as a whole and that therefore the various fruit categories, including bananas, are substitutable: if a price increase occurred on one category/type of fruit, consumers would switch to other fruits. This reasoning was confirmed by most respondents through the market investigation.
18. However, for the purpose of this decision, the question whether the market for fresh fruit should be segmented can remain open as, under all alternative market definitions, no competition concerns can be identified.
19. Concerning *fresh vegetables*, the parties make also the claim that no distinctions should be made among vegetables. Importers and wholesalers generally supply the whole range of vegetables to their customers, whereas consumers spend a fixed amount of money on vegetables.
20. For the purpose of the market investigation, different product categories were identified (tomatoes, salads – including bagged salads, other vegetables – including pre-cut and/or peeled not further processed packed vegetables and potatoes). Most respondents confirmed the parties' views that all fresh vegetables belong to the same product market, while some made further distinctions among different categories. In any case, for the purpose of this decision, the question whether the market for fresh vegetables should be segmented can remain open as, under all alternative market definitions, no competition concerns can be identified.
21. As regards *ready-made foods*, the parties submit in accordance to the Commission's previous decisions⁸ that a distinction should be drawn between ready-made food made to retailers and those made to foodservice. Within the sales made to the retail sector, the Commission considered subdividing the market into (i) frozen food, (ii) chilled food, and (iii) fresh food⁹, while the parties submit that chilled and frozen foods are part of the

⁶ In particular, bananas require a special production unit as they have to be ripened; such an installation takes 8 months to be set up. On the demand-side, bananas have specific features compared to other fruits as they are "easy-to-eat fruits" (often targeted towards children) and are available throughout the year, at relatively steady prices.

⁷ See decision COMP/M.3829 Maersk/PONL

⁸ See decisions IV/M.1990 Unilever/Bestfoods and COMP/M.3658 Orkla/Chips

⁹ See decision COMP/M.1740 Heinz/United Biscuits Frozen and Chilled foods

same product market. Within the foodservice sector, a distinction can be made between sales to the commercial segment (restaurants, fast-food chains, etc.) and sales to the social segment (canteens, hospitals, etc.)¹⁰. Finally, the parties submit that bagged salads belong to the ready-made food markets and not to the market for wholesale supply of fresh vegetables.

22. Through the market investigation, most respondents were of the opinion that bagged and pre-cut salads rather belong to the fresh vegetables market than to the ready-made food markets, given the high degree of substitutability for the consumer between bulk and bagged/pre-cut salads. However, for the purpose of this decision, these questions can be left open since they will not change the competition assessment of the merger.
23. Regarding the *wholesale of flowers and plants*, the parties submit that it is not relevant to make any distinction between flowers and plants as wholesalers allegedly need the full range of floral products in order to meet the demands of their customers and because wholesalers can easily add new products to their portfolio. Furthermore, from the demand side, a high degree of substitutability would exist between the different sort of flowers and plants.
24. The market investigation has confirmed this view, although some respondents were of the opinion that further distinctions were to be made between flowers on the one hand and plants on the other hand. Still, for the purpose of this decision, this question can be left open since it will not change the competition assessment of the merger.
25. However, the parties acknowledge that the *wholesale supply of bulbs* constitute a separate market as their characteristics are too different from those of plants and flowers to be perceived as substitutes by the end consumer. The market investigation has confirmed this view.
26. Concerning *retail markets for daily consumer goods and for plants & flowers*, the parties submit that retailers of daily consumer goods such as fruits and vegetables are not the same as retailers of plants and flowers since, in particular, the latter include independent florists. This would warrant making a distinction between the retail market for daily consumer goods on one hand, and the retail market for plants and flowers on the other. However, this issue can be left open since it does not affect the competition assessment of the merger.
27. Regarding the market for out-of-home eating, the parties submit that “*informal eating-out*” restaurants (fast-food restaurants, self-service restaurants, etc.) constitute a single relevant product market. In a previous decision¹¹, the Commission regarded the “informal eating-out” market as a possible relevant market but also considered defining narrower markets such as quick-service restaurants. However, for this case, it is not necessary to decide on the exact market definition, which can be left open.

¹⁰ See decision IV/M.1990 Unilever/Bestfoods

¹¹ See decision COMP/M.2940 TPG Advisors III/Goldman Sachs/Bain Capital Investors/Burger King

Relevant geographic market

28. The parties submit that the market for the import/production of fresh fruits and for the wholesale of flowers and plants is at least EEA-wide. The markets for the wholesale supply of fruits¹² the import/production and the wholesale supply of vegetables, for ready-made food¹³ would be, according to the parties, at least be regional if not EEA-wide. In addition, the market for the wholesale supply of bulbs would be worldwide. Finally, the parties also submit that the retail markets and the informal out-of-home eating market are national in scope¹⁴.
29. The Commission's investigation in the present case has broadly confirmed this view. In any case, the exact geographical scope of the product markets can be left open for the competitive assessment of this merger.

2. Competitive assessment

Horizontal overlaps

30. On the basis of the geographical market definitions submitted by the parties, the merger does not give rise to any affected markets.
31. However, if the wholesale markets for fresh fruits and vegetables were to be deemed national in scope, some markets would be technically affected in the Netherlands: the market for *fresh fruits* (excluding bananas) - De Weide Blik: [15-20]%; Bocchi: [0-5]%¹⁵; the market for *bananas* (De Weide Blik: [25-30]%; Bocchi: [0-5]%) and the market for *fresh vegetables* (De Weide Blik: [20-25]%; Bocchi: [0-5]%).
32. However, these overlaps should not lead to any competition impediment: first, Bocchi has been so far a minor actor in the Netherlands and has focused its activity in Germany, which explains the insignificance of the overlaps. Second, the market investigation indicated that most of the customers of the parties source their products at least on a EEA-wide basis so that they can easily resort to alternative suppliers¹⁶. Finally, no customers voiced any concerns about the transaction and, to the contrary, some of them welcomed it on the ground that Bocchi and De Weide Blik together would become a more reliable and efficient supplier.

¹² The Commission left the exact definition open in No IV/M.1409 Fyffes / Capespan as regards the markets for the import/production and wholesale of fruits.

¹³ In COMP/M.3658 Orkla/Chips, the Commission considered that the relevant geographic market is probably national in scope in line with the previous decisions COMP/M.1990 Unilever/Bestfoods and COMP/M.2817 Barilla/BPL/Kamps.

¹⁴ In COMP/M.2940 TPG Advisors III/Goldman Sachs/Bain Capital Investors/Burger King, the Commission left open the question whether this market was national or wider in scope.

¹⁵ The market shares of the parties on the Dutch market for the wholesale of fresh fruits *including* bananas are: De Weide Blik: [15-20]%; Bocchi: [0-5]%.

¹⁶ The respondents also explained that they can easily switch from a supplier to another.

Vertical links

33. Fresh fruits (including bananas) and fresh vegetables are used in the production of ready-made food¹⁷. Since the parties to the concentration would hold together slightly above 25% of the possible markets for fresh vegetables and bananas in the Netherlands, these latter markets as well as the possible downstream Dutch markets for ready-to-eat food are technically affected. Currently, only De Weide Blik is (marginally) active on these downstream markets.
34. The operation will nevertheless not lead to any foreclosure. First, as seen above, the operation results in a very modest reinforcement of De Weide Blik's position in the upstream market. Furthermore, De Weide Blik has so far not supplied fresh vegetables or bananas to any third party active in any ready-to-eat food segments. This means that companies active in the ready-to-eat food segments will barely be concerned by the transaction as only those who are currently customers of Bocchi (less than 1% of the markets) could be affected. Thus, no competition concerns can be identified on these markets.
35. Other vertically linked markets are not affected by the operation: the upstream market for the wholesale supply of fresh fruits, vegetables, plants and bulbs (where De Weide Blik and Bocchi are active) and the downstream markets for the retail sales of consumer goods/plants & flowers (where CVC is active but only in Spain and the UK); the upstream market for the wholesale supply of ready-to-eat food (where De Weide Blik is active) and the downstream possible market for "informal eating-out" (where CVC is active, mainly in Spain).

V. CONCLUSION

36. For the above reasons, the notified operation does not raise serious doubts with regard to a significant impediment to effective competition in any affected market.
37. The Commission has therefore 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

¹⁷ [...]