

***Case No COMP/M.4220 -
FOOD SERVICE
PROJECT / TELE PIZZA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/06/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06/06/2006
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.4220 - Food Service Project / Tele Pizza
Notification of 25 April 2006 pursuant to Article 4 of Council Regulation No 139/2004¹**

I. INTRODUCTION

1. The Commission received on 25 April 2006 a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("Merger Regulation") by which the undertaking CVC Group through Food Service Project S.L. ("FSP", Spain) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Tele Pizza S.A. ("Tele Pizza", Spain) by way of public bid announced on 20 April 2006.
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.

¹ OJ L 24, 29.1.2004 p. 1

II. THE PARTIES

3. **CVC** manages investment funds and controls FSP which is active in the informal restaurant business mainly in Spain and to a very limited extent in France and Portugal. The following brands are owned by FSP: Zena, Foster's Hollywood, Il Tempietto, Cañas y Tapas, Goly, Nostrus, Tío Tapas. FSP also operates as a franchisee of Kentucky Fried Chicken, Burger King and Pizza Hut in Spain.
4. **Tele Pizza** manages a network of branded fast food restaurants under the brand names Telepizza and Pizza World. It operates directly through proprietary stores or through third party's franchised stores mainly in Spain and to a limited extent in Portugal, Poland, Czech Republic, Chile and Central America. Tele Pizza is also active in the home delivery services.

III. THE OPERATION

5. The proposed transaction involves a public takeover bid launched by FSP, ultimately controlled by CVC, over 100% of the issued share capital of Tele Pizza. In case of acceptance of the bid, FSP will acquire sole control of Tele Pizza. The transaction constitutes a concentration within the meaning of the Merger Regulation.

IV. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of the undertakings concerned is more than € 5 billion (CVC € [...], Tele Pizza € [...]). The aggregate Community-wide turnover of each of the undertakings concerned is more than € 250 million (CVC € [...], Tele Pizza € [...]). Whilst Tele Pizza achieved more than two-thirds of its Community-wide turnover in Spain in 2005, CVC does not achieve more than two-thirds of its Community-wide turnover in one and the same Member State. The operation has therefore a Community dimension in the sense of Article 1(2) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

The relevant product market

7. The parties submit that the relevant product market is the market for "informal restaurants" which consists of quick-service restaurants, plus a wide selection of chained and independent informal restaurants, pizzerias, cafes, coffee shops, sandwich bars as well as take-away and home delivery outlets. In a previous Commission decision ("Burger King")², it was stated that "quick service restaurants" could be defined as fast-food restaurants, self service restaurants and home delivery/take away outlets. The distinguishing characteristics of quick-service restaurants are generally the emphasis on speed of service and relatively low prices.
8. In the Burger King decision the Commission drew a general distinction between the segment of quick service and low price restaurants and higher-priced and more sophisticated restaurants offering a full service. However, the exact definition was left open in this decision.

² Case No COMP/M.2490-TPG Advisors/Goldman Sachs/Bain Capital Investors/Burger King, Commission decision of 11.10.2002.

9. Possible alternative product market definitions put forward by a third party during the Commission's investigation include a narrow market for “take-away/home delivery” or alternatively a pure “home delivery” market. It was argued that “take-away/home delivery” could be considered as a separate product market to fast food quick service restaurants. It was argued that a distinction should be made between take-away and home delivery because there is no substitutability from the customer's point of view between quick service restaurants and home delivery services and from the supply-side perspective the nature of each market leads to a different pattern of business. There are differentiated features in the outlets (size, decoration, location) and the service they offer (home-delivery).
10. In rebuttal to these arguments the parties have argued that a separate market just for “home delivery” cannot be retained. From a demand-side perspective, some consumers, confronted with a price increase in home delivered pizza will decide to order some other product, decide to go in a quick service restaurant or to do a take-away or to consume refrigerated pizzas. As regards the supply-side substitution the format of e.g. the Tele Pizza outlets has also evolved from a pure “home delivery” (or home-delivery/take-away) to a format more similar to other quick service restaurants. Further, the equipment is standard, supplies are widely available, no specific technology, or branding or R&D would be required. Moreover, no price discrimination between take away and home delivery exists, although it is true that there might be special offers conditional upon non-delivery. In any event, if take-away/home delivery services were to be identified, it should not only include fast-food chains.
11. The majority of responses provided during the Commission’s market investigation supported the parties' broader view that the appropriate definition of the market should be the market of “informal restaurants” given the current market trends in Europe. It was argued that this would include take away and home delivery. In particular it was argued that customers do switch to other informal restaurants offering alternative meal menus in case of substantial variations in service quality, food quality or price.
12. As regards the take away/home-delivery segment it was *inter alia* argued that home delivery or home delivery/take away outlets could also be considered part of a wider informal or quick service restaurant product market because home delivery or take away/home delivery services can be considered as an (often provided) add-on for quick service restaurants, most quick service restaurants offer both eat in and take away services, the main fast food operators offer currently take away services and are able to develop strategies to capture new clients by establishing home delivery services with their products and home-delivery / take away businesses have entered into the eat-in segment.
13. Whether, for the purposes of this decision, the product market definition should be considered as (i) “informal restaurants”, (ii) “quick service restaurants” or (iii) “take away/home delivery” can be left open since on either alternative market definition competition would not be significantly impeded in the EEA or in a substantial part of it.

The relevant geographic market

14. The parties submit that the most appropriate definition of the relevant geographic market is national given that food cultures and consumer preferences differ considerably from Spain to another country, but are generally relatively consistent across Spain. The parties

also argue that prices charged are essentially similar across national jurisdictions and that the range of products offered does not differ between local areas.

15. From a demand-side perspective it could be argued that the market (irrespective of product definition) is local in scope or at least has a local dimension. It has also been argued that the major brands are not active throughout Spain and therefore the competitive pressure is different in different areas. Further, time plays a key role for customers when deciding on their choice of restaurants for take-away or to eat at and also for delivery restaurants to serve their customers. Moreover, suppliers may have different local policies for prices and offers.
16. However, it was also noted that as regards the supply side, there are a number of players that operate on a national basis and who fix the important parameters of competition at that level. For example FSP [...]. As regards promotions, [...].
17. A large majority of the respondents to the Commission's market investigation have also agreed with the parties that the relevant geographic market should be considered as national. This is also consistent with finding in a previous decision of the Commission³. However, for the purposes of this decision, the exact definition of the relevant market can be left open since on the basis of all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or in a substantial part of it.

Competitive analysis

18. It has been argued by one third party that the proposed transaction could lead to competition concerns since it allows the notifying parties to control two of the main pizza brands in Spain. However, FSP is only active in the pizza segment in Spain as a franchisee of Pizza Hut and not an owner of Pizza Hut Spain. Thus, there is only a direct overlap within this segment if one considers the franchised outlets of FSP. Given that FSP does not control the main parameters of competition of the Pizza Hut brand the impact of the proposed transaction should also be assessed in that light.
19. On the basis of a worst-case scenario including the franchised businesses of FSP, the proposed transaction would lead to overlaps in the parties' activities in Spain and Portugal. However, the sales of FSP in Portugal are limited to those obtained in only two outlets and the overlap is marginal. The parties' combined market share in Portugal would according to the parties be [0-10]%. In Spain the overlap would be larger given the number of franchised Pizza Hut outlets and that FSP is also e.g. a franchisee of Burger King.
20. It has in general been difficult to estimate the total size of the market, mainly due to the particularities of the sector in which franchising is the predominant business method, its fragmented nature where the turnover of a great number of small operators is not known and the fact that most quick service restaurant providers do not generally separate their sales in take away/home delivery and eating-in activities.
21. On a market for *informal restaurants in Spain* the parties estimate their combined market share (2005) in the range of [5-15]% (depending on whether or not franchisees are

³ Case No/COMP/M.2490 (see above).

included). The market is very fragmented and the parties would continue to face competition from strong international competitors such as McDonald's ([10-20]%), Burger King ([0-10]%) and a considerable numbers of smaller players.

22. On a more narrow market for *quick service restaurants in Spain*, the parties estimate their combined market share (2005) in the range of [10-25]% (depending on whether or not franchisees are included). Other competitors such as McDonald's ([20-30]%), Burger King ([10-20]%), Agrolimen-Eat Out Group ([0-10]%), Rodilla ([0-10]%) and many other players are active on the market.
23. The parties have also provided their market share's estimates on the *regional/local markets* for quick service restaurants in Spain where the activities of FSP and Telepizza overlap. However, the parties' data reflect only quick service restaurants encompassing hamburger, pizza and sandwich outlets and self-service restaurants but other outlets such as kebabs, oriental and chicken food categories were not taken into account. In addition all FSP's sales include its Burger King and Pizza Hut franchised outlets and Telepizza's sales reflect any Telepizza branded outlet, be it a franchisee or an owned outlet. The market share estimates of the parties in the 55 cities in Spain where the activities of the parties overlap show that parties' combined market share is below 35% and the parties face competition both from the main national competitors such as McDonalds and from a number of smaller local competitors.
24. On a market of *take away/home delivery services* in Spain, the combined market share (2005) of the parties is estimated to about [15-25]% (Telepizza [10-20]%, FSP [0-10]%) on the same basis as above and including the franchised activities. Other competitors such as McDonald's, Burger King, The Eat Out Group, Rodilla, Establiments Viena, 100 Montaditos, Dönnner Kebab, Pizza móvil, Pizza Sapri, Subway, Don Carpi and others are active on the market. In addition a number of local players are active in all towns where the proposed transaction would lead to overlaps. The parties have also provided market share estimates on the local/regional segment of the take away/home delivery services market and in all the 55 cities where parties have overlapping activities and in all those areas the combined market share is estimated to be below 30%.
25. The parties argue that no legal entry barriers exist as opening a restaurant or bar in Spain requires exclusively a local license which can not be refused if the activity conditions are met. In addition the financial risks in this market are limited and the market is by no means saturated or concentrated as it is shown by the constant entry and expansion. Customer loyalty in the take away/home delivery quick service restaurant market is rather low. The parties argue that the take away/home delivery quick service segment as a market is highly contestable in which expansion and new concepts dominate. Moreover there are no significant cost savings related with size and there are examples of new entrants who made a successful entry in the market.
26. The market investigation has also confirmed that there are no significant entry barriers either green-field entry or as an expansion of services from a pure restaurant business into take-away and home-delivery services.
27. The assessment above does not take into account the competitive pressure from ready-made pizzas. As pointed out by the parties' pizza home delivery is increasingly exposed to competition from a rise in supermarket ready-made pizzas, which has also had a direct

impact of Telepizza's sales in Spain⁴. During the period 1999-2005 Telepizza's position also declined due to the slowing demand for pizzas. Pizza faced strong competition from food retailers such as supermarkets, hypermarkets and other food operators offering wider options of choice.

28. Therefore, given the large number of competitors in the market and that the investigation has not shown that there are any significant barriers to entry into the markets whether on the national or local quick service restaurant markets or any narrower segments of it, the transaction does not lead to serious doubts as to its compatibility with the common market or a substantial part of it.

CONCLUSION

29. 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

⁴ *Consumer Foodservice in Spain*, Euromonitor International, January 2006.