

***Case No COMP/M.4323 -  
ARLA / INGMAN  
FOODS***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 15/01/2007

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Brussels, 15/01/2007

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4323 - Arla/ Ingman Foods  
Notification of 30.11.2006 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 30/11/2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Arla Foods AB (“Arla”, Sweden) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Ingman Foods Oy Ab (“Ingman Foods”, Finland) 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 (EC) No 139/2004 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

**I. THE PARTIES**

3. Arla is a wholly owned subsidiary to the Danish dairy cooperative, Arla Foods amba. The cooperative is owned by Swedish and Danish farmers who are also the suppliers of the cooperative’s most important raw material – raw milk. Arla achieved a total turnover of EUR 6,338 million in 2005.

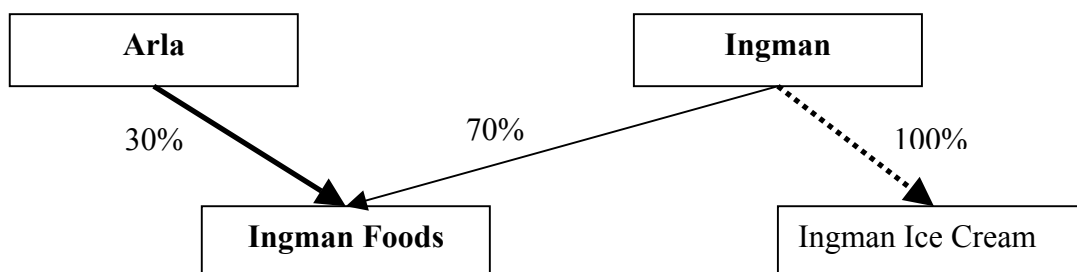
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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

4. Arla is active in the production and sale of dairy products (fresh and long-life milk, cream, flavoured milk products, fermented, products, yellow fats, cheese, desserts, juice, ingredients and milk powder) mainly in Denmark, Sweden and the United Kingdom.
5. Ingman Foods is a Finnish dairy company, active in the supply of milk based products, including the supply of fresh milk, long-life milk, cream, flavoured milk products, fermented products, yellow fats, cheese, desserts, juice, ingredients and milk powder. Ingman Foods is mainly active in Finland where it achieved [...] of its total turnover (EUR 274 million) in 2005 and has only very limited sales in Sweden, Denmark and Lebanon. Ingman Foods is currently part of the Ingman Group Oy ("Ingman"), which is, through its subsidiary Ingman Ice Cream Oy Ab, also active in the production of ice cream products. The ice cream activities are not part of the proposed transaction.

## II. THE OPERATION AND CONCENTRATION

6. The notified operation consists in the acquisition by Arla of a 30% shareholding in Ingman Foods. The structure of the transaction is shown in the diagram below:



7. Although only holding 30% of the shares, Arla will acquire sole control of Ingman Foods. [...]
8. Arla will therefore have the right to determine all main business decisions, [...]. Moreover, Arla is granted an unconditional call option<sup>2</sup> in the Share Sale and Purchase Agreement signed by Arla and Ingman on 7 November 2006, which gives Arla the right to acquire the remaining 70% of Ingman Foods (the "Call Option"). The existence of a call option for the remaining 70% of Ingman Foods is supporting the view that Arla will be already controlling Ingman Foods as from the acquisition of the 30% share<sup>3</sup>. The transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## III. COMMUNITY DIMENSION

9. The concentration has a Community Dimension pursuant to Article 1(2) of the Council Regulation (EC) No 139/2004, although the turnover of the target, Ingman Foods, is below

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<sup>2</sup> Arla also grants Ingman Foods a right to sell the remaining 70% of Ingman Foods to Arla (the "Put Option"). [...]

<sup>3</sup> See paragraph 15 of the Notice on the concept of concentration

€250 million. Indeed, pursuant to Art 5(4)(b) and (c) of the Merger Regulation<sup>4</sup>, the turnover of the non-controlling parent, in this case the Ingman Group, has to be considered for the purpose of turnover calculation. This is because the Ingman Group will still hold a non-controlling share of more than 50% (70%) in Ingman Foods after the transaction. Art 5(4)(c) in connection with Art 5(4)(b)(i) stipulate that undertakings which hold more than half the capital of an undertaking concerned have to be taken into account for the purpose of turnover calculation, regardless of whether they control the undertaking or not. Hence, the turnover of the whole Ingman Group (i.e. including Ingman Ice Cream) has to be considered.

10. Arla and Ingman have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>5</sup> (Arla, EUR 6,338 million; Ingman, EUR 274 million). Each of Arla and Ingman have a Community-wide turnover in excess of EUR 250 million [...], but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

#### IV. COMPETITIVE ASSESSMENT

11. The transaction affects several markets for dairy products. On the basis of Commission's decisional practice<sup>6</sup>, the parties submit that the relevant product markets are: (i) the procurement of raw milk, (ii) the supply of fresh milk, (iii) the supply of long-life milk, (iv) the supply of cream, (v) the supply of flavoured milk products, (vi) the supply of fermented products, (vii) the supply of yellow fats, (viii) the supply of cheese, (ix) the supply of desserts, (x) the supply of juice, (xi) the supply of ingredients and (xii) the supply of milk powder.
12. Furthermore, the parties have provided market shares for the following hypothetical narrower product markets: on (iv) supply of all cream, fresh cream, long-life cream and bulk cream, (v) supply of fresh and long-life flavour milk products, (vii) supply of butter and blends/spreads (non bulk) and yellow fats (bulk), (viii) supply of hard/semi-hard cheese (further sub-divided by Edam, Emmentaler, Havarti-type, Gouda, Mozzarella and Cheddar), cheese spreads and cheese specialties, (xi) proteins and whey. In addition, the parties make the distinction, when appropriate, between the sale to the retail and to the food service segments.

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<sup>4</sup> Article 5(4) of the Merger Regulation provides the following (formatting inserted by the Commission):

*“Without prejudice to paragraph 2, the aggregate turnover of an undertaking concerned within the meaning of Article 1(2) and (3) shall be calculated by adding together the respective turnovers of the following:*

*(a) the undertaking concerned;*

*(b) those undertakings in which the undertaking concerned directly or indirectly:*

*(i) owns more than half the capital or business assets, or*

*(ii) has the power to exercise more than half the voting rights, or*

*(iii) has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or*

*(iv) has the right to manage the undertaking's affairs;*

*(c) those undertakings which have in an undertaking concerned the **rights or powers listed in (b)**”*

<sup>5</sup> 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).

<sup>6</sup> Cases COMP/M.3130 Arla Foods/Express Dairies and COMP/M.2399 - FRIESLAND COBERCO / NUTRICIA and COMP/M.4135 - LACTALIS / GALBANI.

13. The parties submit that the relevant product markets are EU-wide, with the exception of the market for the procurement of raw milk, which is national in scope and the market for the supply of ingredients (which is considered to be at least EU-wide) and that for the supply of milk powder, which is world-wide. However, in its previous decisions, the Commission has usually defined the markets for dairy products as being national in scope. It is however not necessary for the purposes of the present decision to conclude on the exact geographic dimension of the markets concerned as the proposed transaction does not give rise to any competition concerns under both alternative market definitions.
14. As Arla is mainly active in Denmark and Sweden and Ingman Foods in Finland, the concentration at stake will only lead to few affected markets on the basis of both national and EU-wide markets, as shown in the table below:

Affected market	Arla	Ingman Foods	Combined
Fresh milk – Sweden	[50-60%]	[0-5%]	[50-60%]
Long-life milk – Finland	[0-5%]	[50-60%]	[50-60%]
All cream (non bulk) – Finland	[0-5%]	[20-30%]	[20-30%]
Long-life cream – Finland	[0-5%]	[20-30%]	[20-30%]
Long-life flavoured milk – Finland	[10-20%]	[0-5%]	[10-20%]
Fermented products – Finland	[0-5%]	[20-30%]	[20-30%]
Butter (non bulk) – Finland	[0-5%]	[40-50%]	[40-50%]
All cheese (non bulk) – Finland	[10-20%]	[0-10%]	[20-30%]
Hard/semi hard cheese – Finland	[10-20%]	[10-20%]	[20-30%]
Bulk cheese to industry – Sweden	[50-60%]	[0-5%]	[50-60%]

15. With the exception of the markets for cheese in Finland, the overlap between the parties' activities is always minimal (less than [0-5%]).
16. On the market for hard/semi-hard cheeses, including yellow cheese and cheese products such as Gouda and Cheddar, the parties' combined market share in Finland would amount to [20-30%] (Arla [10-20%] and Ingman [10-20%]). The combined entity would still be far behind the market leader, Valio, which market share amounted to [40-50%] in 2005. Within the specific cheese categories, the parties' combined market shares in the Finnish market would amount to [30-40%] as regards Edam (Arla [20-30%], Ingman [0-10%]); to [20-30%] as regards Emmentaler (Arla [0-5%], Ingman [10-20%]); to [20-30%] for Havarti-type (10-20% both for Arla and Ingman) and to [30-40%] for the category 'Others' (Arla [10-20%] and Ingman [10-20%]). In a hypothetical market for Edam cheese sold to retail customers, the merged entity would hold [40-50%] of the market (Arla [30-40%], Ingman [0-10%]). However, the Commission's market investigation has confirmed that even on such a narrow market, customers would still have the choice to switch to a number of equally strong suppliers of Edam cheese, in particular by the Finnish company Valio. The same would be true, according to customers, if the Commission would regard possible markets for "light" (or "low-fat") cheese products, where customers could easily turn to other suppliers for such products in relatively short time and without incurring significant

costs. None of the customers and competitors answering to the Commission's market investigation expects that the merger would lead to a price increase or other anti-competitive effects in Finland.

17. Since Arla and Ingman are clearly focused on different national markets and since the acquisition is not likely to have any significant effect on the market position of the two parties on their domestic markets, the transaction is unlikely to create competition concerns on any of the dairy markets concerned including with regards to the specific cheese categories. Moreover the market investigation did not raise any specific competition concerns as regards any of the other markets affected by the transaction. To the contrary, the results of the market investigation show that market players believe that the transaction will not materially change the competitive situation and some respondents even indicated that competition will increase as a result of the operation.

## **V. CONCLUSION**

18. 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