

***Case No COMP/M.4896 -
CVC CAPITAL
PARTNERS / KATOPE
INTERNATIONAL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/02/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08-II-2008

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No COMP/M.4896 - CVC Capital Partners / Katopé International Notification of 04.01.2008 pursuant to Article 4 of Council Regulation No 139/2004¹ Publication in the Official Journal of the European Union No. C 11, 16.01.08, p.16

1. On 4 January 2008, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No. 139/2004 ("the Merger Regulation") by which the undertaking De Weide Blik N.V. ("**DWB**", Belgium) which belongs to CVC Capital Group s.a.r.l. ("**CVC**", Luxembourg) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the company Katopé International S.A. ("**Katopé**", France) by way of purchase of shares.

I. THE PARTIES

2. CVC is an independent private equity firm specialising in large-scale leveraged buy-outs in Europe and the Asia-Pacific Region.
3. DWB is a Belgian Group active in the production, import, export, packaging, handling and logistics of fresh fruit, vegetables, flowers, flower bulbs, plants and convenience meals. Its main activities are concentrated in the Benelux region and Germany.

¹ OJ L 24, 29.1.2004 p. 1.

4. Katopé is a French group which is active in the production, import, export, packaging and distribution of citrus, exotic and off-season fruit². In Europe, UK and France are by far its two most important sales areas.

II. THE OPERATION

5. On 6 September 2007, the merging parties signed a Share Purchase agreement relating to the sale of 100% of the Shares of Katopé by the current owners to DWB. The transaction therefore constitutes a concentration within the meaning of Art. 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The case did not originally have a community dimension. However, as the transaction was notifiable in eight Member States, namely Austria, Bulgaria, Germany, Greece (post-merger review), Ireland, Italy, Malta and Slovakia, following a pre-notification request by the notifying party, it has been referred to the Commission pursuant to article 4(5) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

7. The two merging parties are active in the production, import and wholesale supply of fresh fruit and vegetables. A potential vertical relationship could also arise with respect to the supply of ready-made foods (convenience foods). DWB is a supplier of chilled and ready meals to the retail sector as well as to the food service sector.

RELEVANT PRODUCT MARKETS

8. The notifying party submits, in line with the previous Commission's decision in *CVC/Bocchi/De Weide Blik*³, that due to significant differences in characteristics, prices and intended use between fresh fruit on one hand and fresh vegetables on the other, there is no sufficient demand-side substitutability between the supplies of these two categories of products and thus they do not belong to the same relevant product market. Such an assessment was also confirmed in the market investigation in this case.
9. Furthermore, the notifying party claims that within both, the fruit and vegetables businesses, a further distinction can be made between two levels of supply chain i.e. import/production level and wholesale level. This approach was also adopted in previous decisions⁴ of the Commission, although the precise product market definitions were left open. At the import/production level, importers and producers organisations supply fresh fruit sourced from all over the world. Usually, the larger part of their customers consists of retail chains but they also supply large wholesalers. At the wholesale level, large wholesalers supply smaller wholesalers, retailers and food service companies, such as restaurants and hospitals. Many respondents confirmed this

² Off season fruits are fruits which are supplied to Europe off-season (peaches in winter, grapes in spring or oranges in summer) and sourced from farmers in the Southern hemisphere.

³ Decision COMP/M.4216-CVC/Bocchi/De Weide Blik of 30 May 2006.

⁴ Decisions IV/M.1409-Fyffes/Capespan of 27 April 1999 and Case COMP/M.4216-CVC/Bocchi/De Weide Blik of 30 May 2006.

distinction. Certain respondents, in particular competitors in the Benelux region and larger retailers consider that the distinction tends to become less important as larger customers such as retail chains tend to buy more and more directly from importers/producers in order to improve the whole supply chain in terms of fruit freshness and logistic costs, and several players are active on both levels.

10. The notifying party argues that the respective markets should not be further broken down according to sub-segments of different types of fruit and vegetables. As regards fruit at the import/production level, the Commission previously left open the question.⁵ In the market investigation no concise view was expressed on the issue; however, the transaction does not impede effective competition under any possible market definition.
11. With regard to bananas, the Commission considered previously the import of bananas as being part of a separate market due inter alia to a specific EU regime which imposed importation quotas.⁶ The notifying party contends that the importation of bananas has been liberalized since January 2006 and that the need for special installations for the ripening of bananas does not hinder suppliers of other fruit to enter the market for bananas. The market investigation indicated that although the legislative change affects the market structure, banana importers are historically different from other fruit importers and most respondents still consider this market as being separate. Also, banana trade requires specific logistics. In any event, for the purposes of the present decision, there is no need to define the exact scope of the market.
12. As regards vegetables at the import/production level, Katopé is not active in this market. Therefore, the precise product market definition might be left open.
13. As regards fruit at the wholesale level, the notifying party submits that as retailers need to purchase the entire range of fruit to serve their customers' needs, who themselves also regard different fruit as interchangeable, it is not necessary to define separate market for different fruit or fruit categories. According to the notifying party, the same is true for fresh vegetables at the wholesale level. Again, in the market investigation no concise view was expressed in these respects, however, as the transaction does not impede effective competition independently of the market definition the question can be left open in the present case.
14. As regards ready-made foods, the notifying party submits that in the light of a previous Commission decision⁷, the sales to (i) the retail sector (supermarkets, open markets and speciality stores) should be distinguished from sales to (ii) the food service sector (out-of home eating in hotels, restaurants, etc and institutional catering in factory and office canteens, hospitals, schools, etc). Within food service sector, the Commission distinguished between commercial segment (restaurants, snack-bars, hotels, fast-food chains, leisure sector) and social segment⁸ (public institutions such as canteens, schools,

⁵ Decision IV/M.1409-Fyffes/Capespan of 27 April 1999.

⁶ Decision IV/M.1409-Fyffes/Capespan of 27 April 1999.

⁷ See for example Decision COMP/M.3658-Orkla/Chips of 3 March 2005.

⁸ Decision COMP/M.1990 Unilever/Bestfoods of 28 September 2000.

hospitals). According to the notifying party, in the light of previous case law, no further distinction should be made between branded products and retailer branded products⁹.

15. Within the retail sector and both the commercial and social segments of the food service sector, the markets for ready-made foods can be further subdivided into frozen foods, chilled foods and fresh foods¹⁰. The precise market definition can however be left open, as it would not alter the competition assessment.

RELEVANT GEOGRAPHIC MARKETS

16. The notifying party submits that the market for fruit at the import/production level should be defined as at least EEA-wide in scope. Importers and producers sell fresh fruit to large retail chains and large wholesalers who are active across the EEA and deliver the products to different locations of their customers in the EEA. Furthermore, low transportation costs and comparable prices across the EEA should be taken into consideration as factors indicating the European dimension of the market.
17. In the recent *CVC/Bocchi/De Weide Blik* decision, the Commission held that the market investigation broadly confirmed this view but ultimately left the precise geographic definition open. Also during the current investigation competitors indicated that they see the market as European. Given that even on the basis of hypothetical national markets, the transaction is unlikely to affect competition the question of the exact geographic scope of the market can be left open.
18. As regards the market for fresh fruit at the wholesale level, the notifying party indicates that the market should be defined by reference to areas which are linked to ports and distribution centres; moreover there is even a trend towards emerging EEA-wide markets¹¹. However, in the market investigation there were also indications that geographic proximity for customers plays a role and they tend to purchase on regional/national level. The notifying party suggests a similar approach with regard to fresh vegetables at the wholesale level. Respondents explained that due to the nature of the vegetable business, where import to Europe is less important, the market has still an even stronger regional/national character compared to fruit. As the present transaction does not impede effective competition, independently from the geographic scope of the markets, these questions can be left open.
19. As far as ready-made foods are concerned, the notifying party argues that there is an emerging trend towards an EEA-wide market. In particular, they submit that there is an increasing number of suppliers having cross-border sales and there is a trend towards the use of international brands. Furthermore, the historic price disparity between EEA countries starts to erode. So far the Commission has left the exact geographic delineation open, but rather considered the geographic markets for ready-made foods as

⁹ Decision COMP/M.1740-Heinz/United Biscuits Frozen and chilled foods of 6 December 1999.

¹⁰ Decision COMP/M.3658 Orkla/Chips of 3 March 2005.

¹¹ Decision IV/M.1409-Fyffes/Capespan of 27 April 1999.

national¹². For the present case, the question of precise geographic scope of these markets can also be left open.

HORIZONTAL OVERLAPS

20. According to the notifying party, the combined shares in the fruit market at the import/production level (excluding bananas) would be [<5] % on an EEA-wide basis (DWB: [<5] % and Katopé: [<5] %) and [<5] % as far as bananas are concerned (DWB: [<5] % and Katopé: [<5] %). Hence there are no affected markets. Should the market be national, affected markets would exist only in The Netherlands ([15-25] % for fruit excluding bananas, [20-30] % for bananas) but the increment is minimal (+[<5] % for fruit excluding bananas, +[<5] % for bananas).
21. If a distinction was made according to different fruit categories, the notifying party estimates that the Netherlands would be the only country in which the combined market shares of the parties could be expected to be above 15% in several fruit categories. However, Katopé's sales volumes suggest that the increment resulting from the transaction would be negligible, which has been confirmed by the market investigation. Furthermore, the notifying party estimates that DWB will be at most the fourth important player in any fruit segment and will not be among the top ten suppliers in many segments.
22. There would be no increment in the fresh vegetables market at the production/import level, as Katopé is not active in this sector.
23. Based on an EEA-wide market definition, at the wholesale level the combined market share would be less than 1% both for fresh vegetables and for fresh fruit (with or without bananas). On a regional basis, the only region where the merging parties would be active as wholesalers would be the area comprising Belgium, the Netherlands and Germany where their combined market share still would not exceed 1%. When looking at national markets DWB is only active at the wholesale level in Belgium. According to the notifying party's best estimates, the combined market share of the merging parties for fresh fruit (with or without bananas) and also for fresh vegetables markets in Belgium would not exceed 3%. The same is true if narrower segmentations are made within the wholesale distribution of fruit and vegetables.
24. The notifying party submits that the main competitors are Dole, Chiquita, De Monte and Fyffes at the import/production level and a number of smaller local wholesalers at the wholesale level. They have however not been able to provide estimates of their competitors' shares. Indeed, the market investigation indicated that the considerable number of players on the market and the lack of public studies make it very difficult to estimate precise market positions but explicitly confirmed that the new entity does not hold a market share above 5% in any of the potential relevant markets. Furthermore, none of the market participants indicated that the merged entity would have any market power following the merger. One competitor mentioned that DWB has made a lot of acquisitions recently in the fruit sector but acknowledged that in these markets there is a large number of players and therefore the transaction would not have a detrimental effect on competition.

¹² Decision COMP/M.3658 Orla/Chips of 3 March 2005.

25. For the reasons outlined above, in none of the potential markets would the transaction impede effective competition.

VERTICAL ISSUES

26. DWB supplies fresh and chilled food to the retail sector and to the commercial segment of food service sector in Belgium. Katopé is not active on these markets.

27. The markets concerning ready-made food are situated downstream of the wholesale distribution of vegetables. According to the notifying party, DWB's position on these markets is negligible. Based on a EEA-wide market definition, in the commercial segment of the food service sector, the low turnover figures for both fresh and chilled food correspond to modest market shares below 2%. If markets were to be defined as national, DWB would have a share of fresh and chilled food respectively between 1 and 2% in Belgium.

28. In the retail sector, DWB's share is somewhat higher in some countries: in Belgium (which is the core of its retail activities), its market share amounts to [<5]% in the chilled food market and to [20-30]% in the fresh food market, whereas it is [15-25]% in Sweden in the chilled food market. However, in view of the very limited market position of Katopé and the merged entity in the upstream market for wholesale distribution of fresh vegetables, the fact that none of the parties currently directly supplies vegetables to third parties which are active in the convenience market, and the fact that DWB's convenience division already sources its vegetables needs from DWB, the transaction would not impede effective competition on any of these markets.

V. 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