

***Case No COMP/M.5199 -
DE WEIDE BLIK /
ATLANTA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/08/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.08.2008

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.5199 - DE WEIDE BLIK/ ATLANTA
Notification of 04.07.2008 pursuant to Article 4 of Council Regulation
No 139/2004¹
Publication in the Official Journal of the European Union No. C78,
15.07.08, p.25**

1. On 04 July 2008, the Commission received a 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 Atlanta AG ("Atlanta", Germany) by way of purchase of shares.
2. After examination of the notification, the Commission concluded that this concentration falls within the scope of the Merger Regulation and that it does not raise serious doubts with regard to its compatibility with the Common Market and the EEA agreement.

I. THE PARTIES

3. CVC is an independent private equity firm specialising in large-scale leveraged buy-outs in Europe and the Asia-Pacific Region.

¹ OJ L 24, 29.1.2004 p. 1.

4. 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.
5. Atlanta is a German company which is active in the import, export, packing, handling and distribution of fresh fruit and vegetables and in the provision of banana ripening services. Germany and Austria are by far its most important sales areas. Atlanta is controlled by Chiquita Brands International Inc ("Chiquita").

II. THE OPERATION

6. On 13 May 2008, DWB and Chiquita signed a Sale and Purchase agreement relating to the sale of 100% of the Shares of Atlanta by Chiquita to DWB. The transaction therefore constitutes a concentration within the meaning of Art. 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The parties have a combined worldwide turnover of more than EUR 5 000 million (CVC: EUR [...]; Atlanta: [...]) and an individual Community-wide turnover of more than EUR 250 million (CVC: EUR [...]; Atlanta: EUR [...]). Whilst Atlanta achieves more than two thirds of its EEA-wide turnover in Germany, CVC does not. The concentration therefore has Community dimension within the meaning of Article 1(2) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

8. The relevant product markets in which both parties are active concern the production, import and wholesale supply of fresh fruit and vegetables, as well as the supply of banana ripening services. A potential vertical relationship could also arise with respect to the supply of ready-made foods (convenience foods) in which DWB is active.

RELEVANT PRODUCT MARKETS

Fruit and vegetables

9. The notifying party submits that due to significant differences in characteristics, prices and intended use between fresh fruit and fresh vegetables, these two categories of products do not belong to the same relevant product market. Such an assessment was confirmed in the Commission's previous decisions in CVC/Bocchi/De Weide Blik² and CVC/Katopé International³. The notifying parties have not provided any elements leading to a different conclusion. This distinction has been confirmed by the market investigation.
10. Furthermore, the notifying party claims that within the fruit and vegetables businesses, a further distinction can be made between two levels of supply chain that is import/production level and wholesale level. This approach was also adopted in

² Decision COMP/M.4216-CVC/Bocchi/De Weide Blik of 30 May 2006.

³ Decision COMP/M.4896 CVC Capital Partners/Katopé International of 8 February 2008.

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 to large wholesalers and large retailers. At the wholesale level, large wholesalers supply smaller wholesalers, retailers and food service companies, such as restaurants and hospitals. A large majority of respondents confirmed that this distinction is still valid. Therefore, for the purpose of the present case, the Commission will consider distinct markets for import/production and wholesale levels.

11. The notifying party argues that the respective markets should not be broken down further according to sub-segments of different types of fruit and vegetables. As regards fruit at the import/production level, the Commission previously left open in past cases the question whether a narrower segmentation for fruit (e.g. tropical fruit, citrus fruit, stone fruit, deciduous fruit, berries, kiwifruit) would be more appropriate with the exception, however, of bananas⁵. In particular, the Commission considered the import of bananas as being part of a separate market due to a specific EU regime for the import of bananas (for which a license is required and quotas are fixed) and the special installations that are needed for the ripening of the product. The notifying party contends that the importation of bananas has been liberalized since January 2006⁶ 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. However, most respondents still consider this market as being separate. In any event, this question can be left open as it would not change the competitive assessment.
12. As regards vegetables at the import/production level, the notifying party submits also that it is not necessary to further distinguish between different categories of vegetables. In any event, this question can be left open as the conclusions of the competitive assessment would not be modified.
13. As regards fruit at the wholesale level, the Commission agreed in the Fyffes/Capespan⁷ case that it is not necessary to split fruit into different categories since end-consumers tend to spend a fixed amount of the household budget on fresh fruit in general, without having specific fixed categories in mind, with the exception of bananas bought for children. The Commission did not reach a firm conclusion on this issue in the CVC/Katopé decision and it can also be left open in the present case as it would not change the competitive assessment.
14. According to the notifying party, the same is true for fresh vegetables at the wholesale level. Likewise, this question can be left open as it would not change the competitive assessment.

Banana ripening services

⁴ Decisions COMP/M.4216-CVC/Bocchi/De Weide Blik and COMP/M.4896 CVC Capital Partners/Katopé International.

⁵ Decision COMP/M.4896 CVC Capital Partners/Katopé International

⁶ A tariff-only system has applied instead of the earlier fixed quota system.

⁷ Decision IV/M.1409 Fyffes/Capespan of 27 April 1999.

15. The notifying party further submits that banana ripening services offered to third parties by DWB and Atlanta could be considered as a separate product market. Bananas are typically harvested and shipped to their final destination while still green. Before reaching the retailers' shelves, they are placed in banana ripening chambers during 4-7 days. In these chambers, the temperature is slowly raised and ethylene gas (a product also emitted in the natural ripening process of bananas) is circulated through the bananas to assist the ripening process in a controlled manner. The market investigation confirmed that banana ripening services should be viewed as a separate product market in the light of the specific know-how and investment required. Nevertheless, this question can be left open as it does not affect the competitive assessment.

Ready-made food

16. As regards ready-made foods, the notifying party submits that in the light of a previous Commission decision⁸, sales to the retail sector (supermarkets, open markets and speciality stores) should be distinguished from sales to the food service sector (out-of home eating in hotels, restaurants, etc and institutional catering in factory and office canteens, hospitals, schools, etc). 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. These questions can be left open as they would not change the competitive assessment.
17. DWB is active in both the retail sector and the food service sector. Within the retail sector, the market for ready-made foods can be further subdivided into frozen foods, chilled foods and fresh foods¹⁰. Within the food service sector, the Commission distinguished between the commercial segment (restaurants, snack-bars, hotels, fast-food chains, leisure sector) and the social segment¹¹ (public institutions such as canteens, schools, hospitals). A further sub-division into frozen foods, chilled foods and fresh foods may also apply within each of these two segments of the food service sector. The precise market definition can however be left open, as it would not alter the competition assessment.

⁸ See Decision COMP/M.3658-Orkla/Chips of 3 March 2005.

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

¹⁰ Decision COMP/M.3658 Orkla/Chips

¹¹ Decision COMP/M.1990 Unilever/Bestfoods of 28 September 2000.

RELEVANT GEOGRAPHIC MARKETS

18. The notifying party submits that the markets for fruit and for vegetables at the import/production level should be defined as at least EEA-wide in scope. Importers and producers sell fresh fruit and vegetables 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 a factor indicative of a European dimension of the market.
19. In the recent *CVC/Katopé* decision, the Commission held that the market investigation broadly confirmed this view (for fruit) but ultimately left the precise geographic definition open. The market investigation conducted in this case did not lead to a different conclusion. These markets are at least national in scope and probably EEA-wide. This question can be left open as it would not change the competitive assessment.
20. As regards the market for fresh fruit at the wholesale level, the Commission so far has left open its exact geographic scope, even if it has noted that geographic proximity for customers plays a role and that they tend to purchase at national or regional (cluster of countries) level¹², which has been broadly confirmed by the market investigation. This issue would not change the competitive assessment and can therefore be left open.
21. The same applies to the market for fresh vegetables at the wholesale level where imports to Europe are less important and therefore the market probably has a smaller dimension compared to fruit¹³. However, as it would not change the competitive assessment, the question can be left open.
22. With regard to banana ripening services, the notifying party argues that this is a rather "decentralized" activity with facilities located in the general vicinity of customers' distribution platforms, due also to the fact that it is undesirable from a quality standpoint to transport already ripened bananas over long distances. The market investigation confirmed that customers purchase these services in their own country or at most in close neighbouring areas (UK-Ireland, Austria-Germany). The markets therefore are at least national in scope. As this issue does not affect the competitive assessment, it can be left open if these markets are wider.

¹² Decision COMP/M.4896 CVC Capital Partners/Katopé International.

¹³ Decision COMP/M.4896 CVC Capital Partners/Katopé International, para 18.

23. 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 has started to erode. So far the Commission has tentatively considered the geographic market for convenience foods as national, although leaving the exact geographic delineation open.¹⁴ In the present case, the question of the precise geographic scope of these markets can also be left open as it would not change the competitive assessment.

COMPETITIVE ASSESSMENT

Horizontal overlaps

Fruit and vegetables: import/production level

24. The parties' combined shares¹⁵ in the fruit market at the import/production level (excluding bananas) would be less than [0-5]% on an EEA-wide basis (DWB: [0-5]% and Atlanta: [0-5]%) and [5-10]% as far as bananas are concerned (DWB: [0-5]% and Atlanta: [0-5]%). Hence there are no affected markets at EEA level.
25. Should the markets be considered as national, affected markets would exist in The Netherlands ([20-30]% for fruit excluding bananas, [20-30]% for bananas) but the increment for both markets is below [0-5]%. If a distinction was made according to different fruit categories, the notifying party estimates that in the Netherlands the combined market shares of the parties could be expected to be above 15% in several fruit categories. However, Atlanta's sales volumes suggest that the increment in all categories resulting from the transaction would be negligible. This has been confirmed by the market investigation. The impact of the transaction in the Netherlands is therefore marginal and the transaction does not raise serious doubts on a hypothetical national market for import/production of fruit in the Netherlands.
26. The parties' activities overlap also in the bananas markets in Germany ([20-30]% with an increment below [0-5]%). The impact of the transaction in Germany is marginal and the transaction does not raise serious doubts on a hypothetical national market for import/production of bananas in Germany.
27. The parties' activities overlap also in the bananas markets in Austria ([20-30]% with an increment below [0-5]%). The impact of the transaction in Austria is therefore limited and the parties would face competition from importers such as Melchert, Mathy and Zellberger. Furthermore, none of the market participants indicated that the concentration would eliminate a strong alternative to the other party in Austria. Therefore the transaction does not raise serious doubts on a hypothetical national market for import/production of fruit in Austria.

¹⁴ Decision COMP/M.3658 Orkla/Chips.

¹⁵ Source : Notifying party's best estimates.

28. Likewise, the parties' combined shares in the vegetables market at import/production level on an EEA-wide basis are limited ([0-5]%; DWB [0-5]% and Atlanta [0-5]%) and affected markets would only arise in the Netherlands ([30-40]%) albeit with a minuscule increment (<[0-5]%). Therefore the transaction does not raise serious doubts on the vegetables markets at import/production level, irrespective whether these markets are considered as EEA-wide or national.

Fruit and vegetables: wholesale level

29. Based on an EEA-wide market definition, at the wholesale level the combined market share would be less than [0-5]% both for fresh vegetables and for fresh fruit (with or without bananas). On a regional basis, the only region where the parties would be active as wholesalers would be the area comprising Belgium, the Netherlands, France and Germany where their combined market share still would not exceed [0-5]%. When looking at national markets the only country where the parties' activities overlap is Germany. According to the notifying party's best estimates, the combined market share of the parties in the fresh fruit (with or without bananas) and also in the fresh vegetables wholesale markets in Germany would not exceed [0-5]%. The same is true if narrower segmentations are made within the wholesale distribution of fruit and vegetables. Therefore the transaction does not raise serious doubts for wholesale markets, irrespective whether these markets are considered as EEA-wide or national.

Banana ripening services

30. With regard to banana ripening services, the parties' activities do not overlap since Atlanta is only active in Germany (13 banana ripening facilities covering [20-30]% of the market) and Austria (2 facilities covering [20-30]% of the market) whereas DWB is only present in the Netherlands ([10-20]%) and Poland (where it ripens bananas for one single customer, [...]). The banana ripening market appears to be more concentrated than the fruit and vegetables markets but still there are several nationally active competitors supplying these services. Therefore the transaction does not raise serious doubts for banana ripening markets, irrespective whether these markets are considered as national as or wider than national in scope.
31. For the reasons outlined above, in none of the potential markets would the transaction raise serious doubts as to its compatibility with the common market and the EEA agreement.

Vertical issues

32. DWB supplies fresh and chilled food to the retail sector and to the commercial segment of the food service sector in Belgium. Atlanta is not active on these markets.
33. The markets concerning ready-made food are situated downstream of the wholesale distribution of vegetables. According to the parties, DWB's position on these markets is negligible: Based on an EEA-wide market definition, in the commercial segment of the food service sector (where DWB is active), the low turnover figures for both fresh and chilled food correspond to modest market shares remaining below 2%. If markets were to be defined as national, the parties claim that DWB would have a share (for fresh and chilled food) of [0-5]% in Belgium (the only EEA country where DWB is active).
34. 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 [0-5]% in the

chilled food market and to [20-30]% in the fresh food market, whereas it is [20-30]% in Sweden in the chilled food market. However, in view of the fact that Atlanta is not active in the wholesale market of vegetables in Sweden and Belgium, that none of the parties currently directly supplies vegetables to third parties which are active in the convenience foods market, and that DWB's convenience food division already sources its vegetables needs from DWB, the transaction does not raise serious doubts with regard to its vertical impact on the ready-made food markets.

35. The transaction creates also a vertical link between the parties' activities in banana ripening services and their activities in bananas distribution and therefore banana ripening services markets in Germany, Austria and the Netherlands would be affected. However, this new vertical link does not create any risk of foreclosure given that there is no overlap on the banana ripening services market in these three jurisdictions and strong providers of banana ripening services are active in these countries (including Edeka, Fruchtimport, Dole Foods and Fresh Del Monte).

V. CONCLUSION

36. 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]
Olli REHN
Member of the Commission