

***Case No COMP/M.5286 -
LION CAPITAL /
FOODVEST***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/09/2008

***In electronic form on the EUR-Lex website under document
number 32008M5286***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.09.2008
SG-Greffe(2008) D/205434
C(2008)5337

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5286 – Lion Capital/ Foodvest
Notification of 13.08.2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 13 August 2008, the Commission received a notification of a proposed concentration by which Lion Capital LLP ("Lion Capital") acquires control of Foodvest Equity Co S.A. ("Foodvest") by way of purchase of shares.

I. THE PARTIES

2. Lion Capital is a private equity investor, which is active worldwide. The primary focus of Lion Capital is the investment in businesses engaged in the production and/or sale of consumer-branded goods.
3. Foodvest is engaged in the processing and distribution of frozen and chilled food products and serves the retail sector and the food service sector. The Foodvest Group is primarily active in the United Kingdom, Sweden, Norway, France, Finland and Denmark.

II. THE OPERATION

4. On 13 August 2008, the Commission received a notification of a proposed concentration by which Lion Capital acquires control of Foodvest by way of purchase of shares. The proposed transaction will involve the acquisition, by the investment

¹ OJ L 24, 29.1.2004 p. 1.

vehicle Bidco, of 100% of the share capital and voting rights of Foodvest, and thereby indirectly of all the shares in its subsidiaries.

5. The transaction will be effected through a series of newly incorporated acquisition vehicles, including Topco and Bidco.
6. On 22 July 2008, Topco, via Bidco, its wholly owned subsidiary held through a series of intermediate holding companies, entered into a share purchase agreement providing for the sale and purchase of 100% of the share capital and voting rights in Foodvest, and thereby indirectly of all the shares in its subsidiaries.
7. On, or prior to, closing, the shares in Foodvest will be transferred to a newly incorporated Swedish subsidiary of Bidco, Swedeco.
8. Lion Capital will hold 80% of the shares in Topco and will have sole control over the company. Consequently, Lion Capital will acquire sole control over Foodvest.

III. CONCENTRATION

9. The notified transaction concerns the acquisition of sole control of Foodvest by Lion Capital, through the acquisition vehicle Bidco, which is ultimately controlled by Lion Capital. It therefore constitutes a concentration pursuant to Art. 3(1)(b) of Council Regulation (EC) No 139/2004 of 20 January on the control of concentrations between undertakings (“ECMR”)².

IV. COMMUNITY DIMENSION

10. The parties have a combined worldwide turnover of more than € 2.5 billion (Lion Capital: € [...]; Foodvest: € [...]), the combined turnover exceeds € 100 million in more than three Member States and each have a turnover of more than 25 million in at least three of these Member States. Also, each of the parties has a Community-wide turnover of more than € 100 million. Neither of the parties achieves more than two-thirds of their Community-wide turnover in one Member State. The concentration therefore has a Community dimension (Art. 1 (3) ECMR).

V. COMPETITIVE ASSESSMENT

1. Relevant product markets

11. The proposed transaction concerns the sector for manufacture of bread and cake products.
12. In a previous decision, the Commission has considered the following main product groups: (i) bread (including fresh and pre-packaged bread), (ii) bread substitutes (including crisp bread, extruded bread, crisp rolls, bread sticks, crackers and rusks), and (iii) cake products (including two main segments: the segment for cakes, mini cakes and other pastries produced by craft pastries as well as industrial producers and the segment for morning goods which include bagels, croissants, scones and similar products normally eaten for breakfast). A further distinction into the following markets has also been considered but was ultimately left open: (i) fresh bread, (ii) industrial and

² OJ. L 24/1, 29 January 2004.

pre-packaged bread, (iii) bread substitutes, (iv) cakes, and (v) morning goods.³ The market investigation in the present case has largely confirmed the relevance of the product groups previously identified by the Commission.

13. According to the notifying party, a distinction can be made between the abovementioned group of products and ready-to-bake/bake-off products. Ready-to-bake/bake-off products consist of dough, batter, pastry and unbaked and partly-baked semi-finished products (bread, pastries, cakes etc.). Such distinction has been considered in a previous Commission decision.⁴ The majority of the respondents to the Commission's market investigation consider such a distinction relevant.
14. In previous decisions, the Commission has also made a distinction between the sale of food products to the retail sector and the sale of food products to the foodservice sector (hotels, restaurants, fast-food outlets, sandwich shops, canteens, hospitals, schools etc.).⁵ The market investigation in the present case showed that a clear majority of the respondents had a different distribution structure according to whether their customers are in the retail sector of the food service sector, and that a distinction between the two sectors would still be relevant.
15. In the present case, the precise definition of the relevant product market can be left open, because in all the alternative product market definitions the proposed transaction would not give rise to competition concerns.

2. Relevant geographic markets

16. According to the notifying party, the geographic scope of the relevant product markets is national. This is in line with previous Commission decisions⁶, and the market investigation in the present case has confirmed the relevance of this definition of the relevant geographic market.

3. Assessment

17. According to the notifying party, the activities of Lion Capital (through the company Vaasan & Vaasan) and Foodvest overlap in the markets presented in tables 1 and 2. In the market investigation respondents were asked to estimate the parties' market share. It could be confirmed that the parties' best estimates are in line with the estimates of other market players.

3.1 Cake products

18. In the market for cake products, the activities of the parties would overlap in the Finnish retail market and the Norwegian foodservice market.

³ Commission decision of 25.06.2002, case No COMP/M2817 – Barilla/BPL/Kamps.

⁴ Commission decision of 28.09.2000, case No COMP/M.2084 – CSM/European Bakery Supplies Business (Unilever). Bakery ingredients such as improvers and mixes are excluded.

⁵ Commission decision of 28.09.2000, case No COMP/M.1990 – Unilever/Bestfoods.

⁶ Commission decision of 25.06.2006, case No COMP/M.2817 – Barilla/BPL/Kamps.

Table 1: Market shares, cake products

	Foodvest		Vaasan & Vaasan		Combined	
	Retail	Foodservice	Retail	Foodservice	Retail	Foodservice
Finland	[0-5]%	Not relevant	[10-20]%	0%	[10-20]%	Not relevant
Norway	Not relevant	[0-5]%	0%	[5-10]%	Not relevant	[5-10]%

19. In the Finnish retail market for cake products, the proposed transaction would lead to an increase in the market share of less than [0-5]%. In the Norwegian foodservice market for cake products, the proposed transaction would lead to an increase in the market share of less than [0-5]%.
20. On the basis of this minor overlap, the proposed transaction does not raise serious doubts in the affected cake markets in Finland and Norway.

3.2 Ready to bake / bake-off products

3.2.1 Market structure

21. In the market for ready to bake/bake-off products, the activities of the parties would overlap in the Finnish, Norwegian and Swedish foodservice markets.

Table 2: Market shares, ready to bake/bake-off products

	Foodvest		Vaasan & Vaasan		Combined	
	Retail	Foodservice	Retail	Foodservice	Retail	Foodservice
Finland	0%	[0-5]%	Not relevant	[20-30]%	Not relevant	[20-30]%
Norway	Not relevant	[0-5]%	0%	[30-40]%	Not relevant	[30-40]%
Sweden	Not relevant	[0-5]%	0%	[30-40]%	Not relevant	[30-40]%

22. In the Finnish foodservice market for bake-off products, the proposed transaction would lead to an increase in the market share of less than [0-5]%. In Sweden, the proposed transaction would lead to an increase in the market share of less than [0-5]% in the foodservice market for bake-off products. In the Norwegian foodservice market

for bake-off products, the proposed transaction would lead to an increase in the market share of less than [0-5] %.

3.2.2 Conclusion on the market for bake/bake-off products

23. On the basis of these very minor overlaps, the proposed transaction does not raise serious doubts in the affected ready to bake/bake-off markets in Finland, Norway and Sweden.
24. Although one respondent in the market investigation raised concerns regarding the significant market share of Lion Capital in the Norwegian market, these concerns merely reflect Lion Capital's relatively high market shares only as the increment brought about by the transaction is very limited. Accordingly, these concerns cannot be merger specific.

3.3 Overall Conclusion

25. The transaction does not raise serious doubts as to its compatibility with the common market.

VI. CONCLUSION

26. 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