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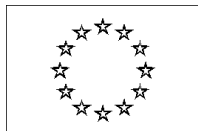
***Case No IV/M.554 -
DALGETY PLC / THE
QUAKER OATS
COMPANY***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 13/03/1995

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EUROPEAN COMMISSION

Brussels, 13.03.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.554 - DALGETY PLC/THE QUAKER OATS COMPANY
Notification of 10 February 1995 pursuant to Article 4 of Council
Regulation No 4064/89

1. On 10 February 1995 the UK company, Dalgety PLC, notified a proposed concentration by which Dalgety PLC will acquire the European petfood business of the US company, Quaker Oats.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of application of Council Regulation (EEC) No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Dalgety PLC is a UK company, active in the following sectors : agribusiness, food (human food and petfood) manufacture and ingredients. Its worldwide turnover amounted to 6,482.7 million ECU in 1994.
4. Quaker Oats is a US company, involved in the manufacture and sale of food, beverages and petfood, but the operation proposed concerns only its European petfood business ("Quaker EPF"). The Quaker EPF worldwide turnover was 682.5 million ECU in 1994.

II. THE OPERATION

5. The proposed operation consists of the acquisition by Dalgety PLC of the European petfood business of Quaker. The acquisition comprises all the European subsidiaries involved in the manufacture and marketing of petfood which Quaker EPF⁽¹⁾ has in the UK, France, Germany, the Netherlands, Italy and Scandinavia (Sweden and Norway).

III. COMMUNITY DIMENSION

6. The combined aggregate turnover of the undertakings concerned is more than ECU 5,000 million (in 1994 Dalgety PLC had a total worldwide turnover of ECU 6,482.7 million, and Quaker EPF ECU 682.5 million). The aggregate Community-wide turnover of each of them is more than ECU 250 million (in 1994 for Dalgety PLC it was ECU 2,546.6 million and for Quaker EPF ECU 677.5 million). The parties did not achieve more than two thirds of their Community-wide turnover in one and same Member State. Consequently the concentration has a Community dimension. The operation is not an EEA "cooperation" case.

IV. COMPATIBILITY WITH THE COMMON MARKET

(a) Relevant product markets

7. The proposed concentration concerns the European petfood sector. It should be noted that the Quaker EPF business encompasses manufacture of products related to petfoods (such as cat litter). Dalgety has very limited involvement in the cat litter sector with sales of about [...] ⁽¹⁾ per annum, primarily in [...] ⁽¹⁾. Quaker EPF makes some sales of cat litter in [...] ⁽³⁾ and none in [...] ⁽³⁾. Because of this very limited overlap, the Commission does not consider that this market is affected.
8. There are four types of prepared petfoods : dry cat food, wet cat food, dry dog food and wet dog food.
9. On the demand side, the notifying party argues that dry and wet cat foods are substitutable and that dry and wet dog foods are substitutable.

It justifies such a substitutability for the following reasons :

- wet and dry formulations are nutritionally equivalent and equally palatable. (Whilst a completely dry diet requires the provision of adequate water alongside the food, from a nutritional point of view dry food is equivalent to wet.)

(1) Read Quaker EPF
(2) Deleted, business secret: below £ 5 million.
(3) Deleted, business secret.

- In addition many of the major brands of petfoods are available in both wet and dry formats. For example, the Mars' leading cat and dog food brands, respectively Whiskas and Pedigree, are represented throughout Europe in both wet and dry formats. Similarly Nestlé's Friskies and Friskies Gourmet brands comprise both wet and dry cat/dog foods. This common branding is reinforced by the usage of consistent pack design across the range.
10. Of the six main customers who answered the Commission's request for information two consider that each specific petfood product (i.e. dry cat food, wet cat food, dry dog food and wet dog food) constitutes a separate relevant product market, three agree with the parties' view that dry and wet cat food are substitutable and dry and wet dog food are substitutable, and one considers that all petfood products constitute a single market.
11. On the supply side, according to the notifying party, these products constitute a single petfood product market. First, it argues that wet cat and dog petfoods are substitutable and also, dry cat and dog petfoods are substitutable, because :
- the basic ingredients, methods of production, canning materials and technology and the means and channels of distribution are the same for each of these categories;
 - most of producers of wet dog food (Mars, Nestlé Royal Canin, IAMS, Dalgety and Quaker) also produce wet cat food and similarly for dry cat and food;
 - manufacturing lines can be shifted quickly (within 20 minutes), easily and at minimal cost between the production

Second, it says that wet petfoods and dry petfoods are substitutable for the following reasons :

- Petfood plants are designed, equipped and managed to produce either dry food or wet food, without regard for whether the food will be for dogs or cats;
- the production process - recipe, ingredients, blending, cooking, packaging - is identical for dog and cat foods. There are only minor differences in formula and (only for dry foods) only minor differences in shape and/or size of machine parts.

The two main competitors who answered the Commission's request for information confirmed this view.

12. In addition, the notifying party, the two main competitors and four of the six retailers questioned by the Commission state that prepared petfood competes with fresh food. The Commission decision does not share this view (BSN/Euralim Case N IV/M 7 June 1994). First, prices between prepared foods and fresh foods are significantly different; second the products have different manufacturing technologies, methods of preservation and directions for use by pet owners. For this reasons mentioned, the Commission considers that prepared petfoods and fresh food do not belong to the same relevant product market .

13. Lastly the notifying party argues that retailers' own branded petfood products compete strongly with branded petfood products. Nowadays the share of the retailers' own brand petfoods represent approximately 16% of the overall European petfood market. For instance in the UK, a steady increase can be observed for the share of wet dog food in 1991 it was 7.9%, in 1994 9.4%. Moreover the notifying party argues that retailers' own brands nowadays are of a comparable quality to branded products and are clearly perceived by customers as such. The two main competitors and the six retailers questioned by the Commission answered that branded and own-brand petfoods belong to the same market. Thus the Commission considers that branded and own branded petfoods compete with each other.
14. It is unnecessary to decide whether each type of petfood products belongs to a separate market, since even on a narrow market definition (a separate market for each type of petfood), the operation does not give rise to a single or collective dominant position.

(b) Relevant geographic market

15. The notifying party states that the relevant geographic market is an EC market. The arguments supporting this view are as follows :
 - 1993 import/export data reveal a level of trading inter-penetration between EC Member States in petfood which indicates a wider than national geographic market. On the basis of the data the parties consider that the relevant geographic market is at least UK/France/Germany/Benelux/Italy.

The trade data between three of these countries, are as follows :

Trade in petfood ('ooo tonnes, 1993)				
	Domestic consumption	Imports	Exports	Domestic production
UK	1357	293	166	1230
France	1047	163	663	1547
Germany	648	254	263	657

The above imports/experts figures demonstrate an interpenetration between these three countries.

Furthermore, import and export data show that the origin of imports for instance into France is Germany Ireland and other countries and that the destination of exports for instance from France is the UK, Germany, Italy, Belgium and other countries.

16. Moreover the following table shows that major petfood suppliers sell their petfood products under brands which are well established all over Europe. For example, the leader of the overall petfood market, Mars, sells its dog petfood under two major brands, i.e. Pedigree which is present in Germany, Spain, France, Netherlands, Scandinavia, Belgium and Italy, and Chappi, which is sold in all these countries plus the UK. It is similar for its cat food brands Whiskas and Kitekat.

As regards Nestlé, which will be the largest European supplier after the new entity, its major dog food brand, Friskies, is sold in six European countries (Nestlé is not active in dog food in the Netherlands). Its major cat food brand, Friskies Gourmet, is present in six European countries.

Major petfood brands sold in Europe								
Brands	Germany	Spain	France	Netherlands	Belgium	Italy	UK	Scand
Cat foods								
MARS	+			+	+	+		+
Whiskas	+	+	+	+	+	+	+	+
Kitekat		+	+				+	
NESTLE	+			+	+	+		
Friskies		+	+				+	
ROYAL	+			+	+	+		
Felino		+	+				+	+
IAMS	+			+	+	+		
Iams		+	+		+		+	
QUAKER	+				+	+		
Dokat ⁽¹⁾			+	+	+			
DALGETY						+		
Felix ⁽⁴⁾		+	+				+	
Dog foods								
MARS	+		+	+	+	+		+
Pedigree	+	+	+	+	+	+	+	+
Chappi	+	+	+		+	+	+	
NESTLE		+						
Friskies	+		+	+	+	+	+	+
ROYAL		+						+
Canin	+		+	+	+	+	+	
IAMS		+						
Eukanuba			+	+		+		
QUAKER	+	+						
Bonzo					+		+	
DALGETY								
Prime								

17. The two main competitors also consider that petfood markets are European. The six retailers questioned by the Commission say that :
- first, they stock a very large range of different branded petfood products from different producers;
 - second, they source these products from other countries than those where they operate. For instance, German retailers source from Denmark, the Netherlands, the UK, Liechtenstein and Belgium; French retailers from the UK and Liechtenstein; and UK retailers from France, Thailand and other overseas suppliers;
 - finally, they do not encounter any problem in importing these products, and transport costs do not constitute a barrier for the imports.
18. For all the above reasons the Commission concludes that the relevant geographic market is EEA-wide.

(4) Material error, read Felix under QUAKER and Dokat under DALGETY. DALGETY acquires Felix brand from QUAKER EPF by the operation.

c) Competitive assessment

Market shares

19. The notifying party has provided data for Belgium, France, Germany, Italy, the Netherlands, Spain and the United Kingdom (Dalgety Europe). Approximately 90% of the total European petfood market is accounted for by the markets in these countries. Dalgety has only limited petfood sales in the other EC Member States and in the EFTA States. Total European market shares would thus be lower than those for Dalgety Europe. These figures are sourced from Nielsen whose audits cover sales through the grocery channel only. However, estimates suggest that the market shares of the parties through non grocery channels are similar.
20. After the completion of the proposed concentration the new entity will be the second largest European operator in the markets of cat food and dog food. With regard to the narrowest petfood market, it will be the third in the dry cat food segment and the second in the three other segments. Mars will remain the leader in each market.

European Cat Food and Dog Food (by value) 1994, year ended January ⁽¹⁾						
	Cat Food			Dog Food		
	Wet %	Dry %	Total %	Wet %	Dry %	Total %
MARS	[50-60]	[30-40]	[50-60]	[60-70]	[30-40]	[50-60]
NESTLE	[0-10]	[30-40]	[10-20]	[0-10]	[0-10]	[0-10]
QUAKER	[10-20]	[10-20]	[10-20]	[0-10]	[0-10]	[0-10]
DALGETY	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
DALGETY + QUAKER	[20-30]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]
OWN BRANDS	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]
OTHERS	[0-10]	[0-10]	[0-10]	[0-10]	[20-30]	[10-20]

Accordingly the operation does not result in the creation of a dominant position.

V. ANCILLARY RESTRAINTS

21. The notifying party has requested that certain restrictions be considered ancillary to the concentration.
- Each party accepts restrictions as to the conduct of its business during the period between contract and completion.
- In addition Quaker Oats agrees to discharge specified debts, liabilities and obligations between the companies acquired by Dalgety and those retained by Quaker Oats, and the parties agree arrangements relating to the employees of the business transferred. The agreement provides for the exchange of information necessary for the operation to take effect and contains concomitant restrictions on the disclosure of such information.
- It also makes arrangements for the transfer to other Quaker Oats companies of assets held by the companies transferred but not connected with the business acquired by Dalgety.

(5) Figures in table deleted, business secrets.

Also by the agreement Dalgety and Quaker Oats will each supply specified services which the other requires for the recovery of specified liabilities.

These provisions contain no restrictions except those relating to the conduct of business pending completion and disclosure of information. Those restrictions are necessary to ensure the complete and effective transfer of the business.

22. The parties accept restrictions as to the use of names, trade marks and similar rights - Dalgety that it will not use specified Quaker names in the acquired business and Quaker Oats that it will not use names and marks of the acquired business in an area which includes the EEA. These provisions preserve for Quaker Oats the full value of the business which it retains and for Dalgety the full value of the business which it acquires.
23. Quaker Oats accepts restrictions (of differing duration, but non exceeding two years) on soliciting employees of the business acquired by Dalgety. Quaker Oats also agrees that for [...] ⁽¹⁾ from completion it will not compete in the manufacture or sale of, or accept business from existing Quaker Oats customers for, cat or dog food products or cat litter. These restrictions ensure that Dalgety obtains the full value of the business which it acquires.
24. Quaker Oats grants to Dalgety exclusive intellectual property licences relating to the manufacture and distribution of the products of the acquired business. In the case of one patent which relates both to products of the acquired business and to non-petfood products which Quaker Oats will continue to produce Quaker Oats assign the patent to Dalgety and Dalgety confer back upon Quaker Oats an exclusive licence. These restrictions too ensure for Quaker Oats the full value of the business which it retains and for Dalgety the full value of the business which it acquires
25. These restrictions can therefore be considered ancillary to the concentration.

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 functioning of the EEA agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,

(6) Deleted, business secret: not more than five years.