

EN

***Case No COMP/M.6321 -
BUITENFOOD / AD
VAN GELOVEN
HOLDING / JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/01/2012

***In electronic form on the EUR-Lex website under document
number 32012M6321***



EUROPEAN COMMISSION

Brussels, 13.1.2012
C(2012) 196 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

Subject: Case No COMP/M.6321 – BUITENFOOD / AD VAN GELOVEN HOLDING / JV Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹

1. On 16 November 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which the undertakings NPM Capital N.V. ("NPM"), a subsidiary of SHV Holdings N.V. (together "SHV", the Netherlands) and Lion Capital LLP ("Lion", United Kingdom) acquire, according to the Parties within the meaning of Article 3(1)(b) of the Council Regulation, joint control of a newly created joint venture ("the JV", the Netherlands) controlling Buitenfood B.V. ("Buitenfood", the Netherlands), previously owned by SHV, and Ad van Geloven Holding B.V. ("AvG", the Netherlands), previously owned by Lion, by way of purchase of shares. Buitenfood and AvG are designated hereinafter as "the Parties".
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation, and that the parts of the transaction that are not related to the Netherlands do not raise serious doubts as to their compatibility with the internal market and with the functioning of the EEA Agreement.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

I. THE PARTIES

3. Buitenfood is the holding company of Royaan B.V., Willie Dokter Snacks B.V. and Tjendrawasih B.V. ("Royaan"). Royaan produces branded and private label frozen snacks, for the retail market and the out of home ("OOH") market (through wholesalers) mainly in the Netherlands and Belgium. In the retail market Royaan sells frozen snacks under brand names such as Van Dobben, Bakker, Mayam and Tjendrawasih. In the OOHmarket, Royaan sells frozen snacks under brand names such as Van Dobben, Buitenhuis, Kwekkeboom, Laan Snacks, Mayam, KB and Willie Dokter. In addition, Royaan produces frozen snack foods for retailers and foodservice wholesalers which then sell them under private label.
4. AvG produces branded and private label frozen snacks for the retail market and the OOH market (through wholesalers), mainly in the Netherlands and Belgium. In the retail market AvG sells frozen snacks under brand names such as Hebro, Mora and De Bourgondiër. In the OOH market AvG sells frozen snacks under the brand names Ad van Geloven, Welten Snacks, Van Lieshout Snacks and Van Geloven Meestercroquette. In addition, AvG produces frozen snacks for retailers and foodservice wholesalers which then sell them under private label.
5. NPM and its parent company SHV do not have participations in companies active in frozen snacks other than Buitenfood. Lion has a participation in the Findus Group ("Findus") and the Picard Group ("Picard"). Findus is a producer of frozen food. According to the Parties, Findus has negligible activities in the Netherlands and Belgium where its main product categories are fish, ready meals, vegetables and pancakes, which are not produced by the Parties. Picard is active in the retail distribution of frozen food through its own distribution network of specialised shops³, almost exclusively in France and Italy.

II. THE OPERATION AND THE CONCENTRATION

6. Following the proposed transaction, NPM and Lion will respectively own [...] % and [...] % of the shares in the JV and exercise joint control over it. Joint control will result from the fact that:
 - (i) The management board will consist of [...] members. [...] will be nominated by NPM, [...] will be nominated by Lion. [...];
 - (ii) NPM and Lion have agreed that each of them will have a veto right on a number of reserved matters, including: [...].⁴
7. The Parties claim that the operation constitutes the acquisition of joint control in accordance with Article 3(1)(b). However, the merged entity is created by SHV and Lion contributing assets (Royaan and AvG respectively) which SHV and Lion previously owned individually. The proposed transaction brings them under a holding company which subsequently will be jointly controlled by SHV and Lion.
8. Consequently, in view of recital 92 of the Commission's Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between

³ Case COMP/M.5975-*Lion Capital/Picard Groupe*, Commission's Decision of 27 October 2010.

⁴ Form CO, Annex 10, p.80, [...].

undertakings⁵, the acquisition has all characteristics of the creation of a joint venture within the meaning of Article 3(4) of the Merger Regulation.

III. EU DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁶ (SHV: EUR 16 008 million, Lion: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (SHV: EUR [...] million, Lion: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

IV. PROCEDURE: ARTICLE 9(2)(a) REFERRAL REQUEST OF THE NETHERLANDS

10. By letter dated 8 December 2011, received on the same day, the Dutch Competition Authority, De Nederlandse Mededingingsautoriteit (hereinafter “NMa”), requested the Commission pursuant to Article 9(2)(a) of the Merger Regulation that the notified operation be partially referred to the Netherlands, i.e. to the extent that the proposed operation affects Dutch markets. The Commission granted this request by decision of today.⁷ The present decision therefore only concerns the parts of the transaction that are not related to the Netherlands.

V. COMPETITIVE ASSESSMENT

11. Outside the Netherlands, the proposed transaction leads to horizontal overlaps between the Parties in Belgium with regard to the supply of frozen snacks in the OOH sales channel.
12. Frozen snacks are items such as bitterballen, chicken wings, cheese soufflés, burgers, frikandellen, croquettes, bami/nasi snacks, satay, spring rolls, sausage rolls, hot dogs and toasted ham and cheese sandwiches.
13. Frozen snacks are sold through two sales channels: the food retail channel and the OOH channel. Retail encompasses mainly supermarkets that sell the products to end-consumers. OOH involves hotels, restaurants, pubs, fast-food outlets (friteries), company restaurants, canteens, hospitals, schools, etc., which prepare snacks and meals for end-consumers. The distribution in the OOH channel is performed by foodservice wholesalers which carry a broad range of food and non-food products.
14. Frozen snacks are sold both under manufacturers' brands ("branded products") as well as under private label brands. The Parties sell both private label and branded frozen snacks.

⁵ OJ C 95, 16.4.2008, p. 1.

⁶ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

⁷ Case COMP/M.6321-*Buitenfood/Ad van Geloven Holding/JV*.

A. Relevant market definition

Relevant product market

15. The Parties argue that the following markets should be defined: i) a market for the sale of snack food products (including frozen snacks and non-frozen snacks) to retailers in Belgium; ii) a market for the sale of snack food to foodservice wholesalers in Belgium; and iii) a market for the production of private label products for retailers and foodservice wholesalers. The Parties also consider subdivisions of either of the markets mentioned under i) and ii) into either: a) a market for frozen snacks only, excluding non-frozen snacks; or b) individual markets for each category of frozen snacks.

Distinction between the retail and OOH sales channels

16. The Parties argue that a distinction should be made between the retail channel and the OOH channel.⁸ This is in line with previous Commission's decisions in the food sector.⁹
17. Brand names and customers are to a large extent different in the two sales channels. This is also true of some suppliers. For instance, in Belgium, Royaan is not active in the retail market.¹⁰ [...] ¹¹. In addition, most suppliers that responded to the market investigation considered it difficult to start supplying retail customers when they are initially active in the OOH market.¹²
18. In Belgium, the OOH and retail channels can therefore be considered to belong to separate product markets.

Distinction between frozen snacks and other food products

19. The Parties argue that frozen snacks produced and sold by the Parties compete in a wider market for snack food that includes non-frozen snacks. As regards demand-side substitutability, the Parties consider that the main distinguishing feature of frozen snacks is their long shelf-life. As regards supply-side substitutability, the Parties claim that it is easy for producers to switch between frozen and non-frozen snack food products. According to the Parties, to produce frozen instead of non-frozen snacks, all that needs to be added is an industrial freezing stage at the end of the production process.
20. The Parties add that foodservice wholesalers tend to carry a wide range of snack products, which include both frozen and fresh and ambient snacks. In the OOH channel, end-consumers do not know how the products are stored and therefore they do not compare between frozen and non-frozen products; that decision is made by the end outlets. In the Parties' view, because foodservice wholesalers tend to make frequent

⁸ Form CO, p. 38.

⁹ See for instance case COMP/M.1802-*Unilever/Amora-Maille*, Commission decision of 8 March 2000, paras. 18-21.

¹⁰ Form CO, p. 48.

¹¹ Form CO, p. 47 (footnote 29).

¹² Replies to the Commission's request for information to suppliers of frozen snack products of 22 November 2011, question 28.

deliveries, foodservice outlets can more easily switch between frozen and non-frozen products than customers in the retail channel.

21. The Commission, however, on the basis of the market investigation, considers that non-frozen and frozen snack products differ in both price and quality. While some substitution is possible in theory as fresh or ambient alternatives exist in Belgium for croquettes, chicken snacks, bami/nasi snacks, Asian snacks, hamburgers and breaded snacks, in practise the consumers' demand tend to be inelastic as consumers would not switch to fresh or ambient snacks in response to a permanent price increase of frozen snacks.¹³
22. Supply side substitutability between frozen and non-frozen snacks also appears limited in practise. In the market investigation, most frozen snack suppliers indicated that they do not produce non-frozen snacks and do not consider switching production to non-frozen products.¹⁴
23. On the basis of the market investigation therefore, the Commission considers that supports are provided for a finding that frozen and non-frozen snacks are not part of the same product markets in Belgium. However, for the purposes of the present case, the precise definition of the relevant product market in Belgium can be left open as the transaction would not raise any serious doubts even under the narrowest product market definition.

Distinction between frozen snacks themselves by type of frozen snack

24. A further division of the market for the supply of frozen snacks could be made by type of snacks. The Parties consider that the various types of frozen snacks are substitutable from a consumer point of view. Also, supply side substitutability between categories of frozen snacks is considered high.
25. The Commission considers, however, that, on the basis of the market investigation, indications exist that various types of frozen snacks should be distinguished from each other in view of their limited demand substitutability for customers.¹⁵ In case all prices in a given category of frozen snack were permanently increased by 5-10% in the OOH channel, few customers would switch, as they would rather continue to buy the same type of frozen snacks.¹⁶
26. As regards supply side substitutability, the Parties argue that switching production between different types of snacks requires a low investment. In the market investigation, most suppliers confirmed that switching does not require large investments or amounts of time.

¹³ Replies to the Commission's request for information to OOH wholesalers in Belgium on frozen snacks of 22 November 2011, questions 3, 4, 5 and 7. Replies to the Commission's request for information to suppliers of frozen snack products of 22 November 2011, questions 9.2, 9.3, 11, 12, 13, 14 and 15.

¹⁴ Replies to the Commission's request for information to suppliers of frozen snack products of 22 November 2011, questions 7 and 17.

¹⁵ Replies to the Commission's request for information to OOH wholesalers in Belgium on frozen snacks of 22 November 2011, question 6.

¹⁶ Replies to the Commission's request for information to OOH wholesalers in Belgium on frozen snacks of 22 November 2011, question 7. Replies to the Commission's request for information to suppliers of frozen snack products of 22 November 2011, question 13.

27. On the other hand, some suppliers indicated that the difficulty of switching a product line depends mainly on the type and shape of the snacks. Switching from croquettes to bitterballen or to frikandellen is, for example, relatively easy, while switching to a spring roll or sausage roll takes more time and investment.¹⁷
28. In addition, substantial investments are required to create brand awareness and a brand image. For example, Mora is the best known brand for snack foods and one of the few with high brand awareness for all product segments (together with the other "generalist" brands Beckers and Vanreusel) due to strong and regularly repeated advertising campaigns.¹⁸ For competition at the consumer level, supply side substitution is therefore limited for most brands.
29. The Commission considers therefore, that, on the basis of the market investigation, supports are provided for a finding that the various types of frozen snacks belong to separate product markets in Belgium. However, for the purposes of the present case, the precise product market definition in Belgium can be left open as the transaction would not raise any serious doubts regardless of whether frozen snacks are considered to constitute a single relevant product market or whether narrower markets by type of snacks are retained.

Distinction between private label products and branded products

30. According to the Parties, demand side substitutability exists between branded snacks and those offered under private labels, in particular in the OOH channel. The Parties argue that brands do not play an important role in the foodservice channel, because their brands are not visible to the final consumer and foodservice outlets placing orders with the foodservice wholesalers are professional buyers who will be attracted by product characteristics, price and quality, rather than brand image. Accordingly, in the Parties' view, private label products of the foodservice wholesalers compete on an even stronger footing with supplier-branded products than in the retail channel.¹⁹
31. The Commission considers that, on the basis of the market investigation, at the level of end-consumers, some demand side substitutability exists between branded snacks and those offered under private label, since private label products are very similar in terms of quality and offer a credible cheaper alternative to branded products.²⁰ Consumers seem willing to switch between private label and branded products, as evidenced by the increasing shares of private label products in recent years.²¹ However, brands cannot fully replace private label frozen snacks as some consumers stick to branded products (e.g. as a result of effective marketing and of consumers' higher "emotional involvement"

¹⁷ Replies to the Commission's request for information to suppliers of frozen snack products of 22 November 2011, question 16.1.

¹⁸ Form CO, p. 56.

¹⁹ Form CO, p. 68.

²⁰ Replies to the Commission's request for information to OOH wholesalers in Belgium on frozen snack of 22 November 2011, questions 10 and 11.

²¹ Form CO, Annex 20 (Nielsen).

related to certain product segments).²² The Parties state that Mora is the best known brand for snack foods due to strong and regularly repeated advertising campaigns.²³

32. When viewed at the level of OOH wholesalers, it must be considered moreover that, in the competition to get on the customer's shelves, private label products cannot fully substitute branded products since a number of frozen snack brands are highly demanded by customers and are therefore considered as "must-stock" items.²⁴
33. The Commission considers also that, on the basis of the market investigation, supply side substitution from branded frozen snacks to private label exists on the production level since switching production from branded to private label products does not require large investments or significant time, at least when the same types of snacks are considered.²⁵ In addition, the main producers of branded frozen snacks are also supplying frozen snacks for sale under private labels. The Parties further indicate that it occurs that the conditions regarding the sale of branded and private label products are included in one and the same contract.²⁶
34. However, significant barriers to introducing new brands as well as extending existing brands to new product categories appear to exist, which render supply-side substitutability one-sided i.e. only from the supply of branded snacks to private label frozen snacks.²⁷
35. Branded products and private label products can therefore be considered to belong to a single differentiated product market where they exert on each other some degree of competitive pressure.

Relevant geographic market

36. The Parties identify two relevant geographic markets in the OOH channel: i) a Belgian market for the sale of snack food products to foodservice wholesalers; and ii) a market including the Netherlands, Belgium, Germany and France for the production of private label products for foodservice wholesalers in Belgium.²⁸
37. In previous cases in the food sector²⁹, the Commission has consistently considered the relevant geographic market definition for food products to be national for both the retail

²² See for a similar reasoning case COMP/M.4533-SCA/P&G *European Tissue Business*, Commission Decision of 5 September 2007, para. 167.

²³ Form CO, p. 56.

²⁴ For AvG mainly frikandellen, croquettes and bitterballen are considered must-stock products. For Royaan mainly mini snacks are considered must-stock products. Replies to the Commission's request for information to OOH wholesalers in Belgium on frozen snacks of 22 November 2011, question 44.

²⁵ Replies to the Commission's request for information to suppliers of frozen snack products of 22 November 2011, question 16.2.

²⁶ Form CO, p. 39.

²⁷ Replies to the Commission's request for information to suppliers of frozen snack products of 22 November 2011, question 29.

²⁸ Form CO, p. 47.

²⁹ See cases COMP/M.1990-*Unilever/Bestfoods*, Commission Decision of 28 September 2000, paras. 8-54 and COMP/M.3658-*Orkla/Chips*, Commission Decision of 3 March 2005, paras. 9-15.

and OOH market. In *Unilever/Bestfood*³⁰, the market investigation nonetheless indicated tendencies towards a widening in the scope of food service markets in the EEA.

38. In the present case, the Commission, based on the results of the market investigation, considers that the geographic scope of the markets for the supply of frozen snacks products is national in scope. Most suppliers and Belgian wholesalers indicated that they decide on their marketing strategy on a national level, while tastes, consumer habits, brand awareness and brand presence for frozen snacks are also primarily determined on a national level.³¹ The Parties also indicate that Royaan [...]³².
39. Data analysis carried out by the Commission on the basis of the Parties' transaction data³³ also shows that [...].
40. As to the production of private label frozen snacks, the market investigation indicated that Belgian wholesalers purchase frozen snacks products (or consider it realistic to do so) both nationally and internationally (mostly from the Netherlands and Germany).³⁴ The existence of imports and potential foreign entrants is however not sufficient to conclude that the relevant geographic market is wider than national: while some suppliers may be active on a scale which is wider than national, most of them decide on their marketing strategy on a national level and agree that tastes, consumer habits, brand awareness and brand presence for frozen snacks are primarily national.³⁵ Royaan for instance is almost not active in the production of private labels in Belgium. More generally, private label sales also play a less important role in Belgium than in the Netherlands for the Parties. In the Netherlands, private label product represent [20-30]% of volume sales for Royaan and [50-60]% for AvG, leading to total volume sales of [...]. In Belgium, private label products represent respectively [5-10]% and [10-20]% of the Parties' sales, leading to total volume sales of [...].
41. In addition, the analysis of the transactional data provided by the Parties shows that [...]³⁶ [...].
42. For the reasons given above, the Commission concludes that the relevant geographic market for the supply of frozen snacks (including both private label and branded frozen snacks) in the OOH channel is national.

³⁰ Case COMP/M.1990-*Unilever/Bestfood*, Commission Decision of 28 September 2000, para. 58.

³¹ Replies to the Commission's request for information to OOH wholesalers in Belgium on frozen snacks of 22 November 2011, questions 13 and 14.

³² Form CO, p. 47 (footnote 29).

³³ Datasets provided by the Parties on 11 October 2011.

³⁴ Replies to the Commission's request for information to OOH wholesalers in Belgium on frozen snack of 22 November 2011, questions 15, 16, 17, 75 and 76. In this regard, the Parties also indicated that transport costs and other costs affecting imports are marginal and are estimated to represent less than 5% of the purchase price of (frozen) food/snacks (Form CO, p.98).

³⁵ Replies to the Commission's request for information to suppliers of frozen snack products of 22 November 2011, questions 20 and 21.

³⁶ [...].

B. Competitive assessment

43. None of the Belgian wholesalers that responded to the market investigation raised substantiated concerns with respect to the potential impact of the proposed transaction on either their business or the Belgian market for frozen food.³⁷ Also a majority of the suppliers that responded to the market investigation believe the transaction is not likely to create competition problems in Belgium on any of the relevant markets and will not affect negatively their own business.³⁸

Frozen snacks in the Belgian OOH channel

44. Both AvG and Royaan are active in the Belgian OOH market for sale of frozen snacks. When all branded frozen snacks are considered, the relative increment arising from the proposed transaction is marginal at [0-5]%, leading to a share of sales of branded frozen snacks for the merged entity of [20-30]%. The total value of the sales by Royaan in the Belgian OOH channel is [...], amounting to [...] EUR [...] million in 2010.³⁹ In fact, Royaan's main products are croquettes, cheese soufflés and bapao sandwiches, which are typical Dutch snack products.⁴⁰
45. The Commission considers that, based on the market investigation, the Parties compete in this market with a number of other branded snack food producers,⁴¹ while some of the main competitors of the Parties also indicated that they have spare production capacity.⁴²
46. The Commission also notices, on the basis of the market investigation, that Belgian wholesalers use a dual sourcing strategy for branded frozen snacks, which, according to a majority of respondents, will not be affected by the proposed transaction.⁴³ In addition, it indicated that Belgian wholesalers believe that the proposed transaction will not increase the effectiveness/credibility of a threat by the merged company to stop supplying frozen snacks.⁴⁴
47. The Parties consider that the private label products of the OOH wholesalers themselves are the Parties' most important competitors, and that ample alternative producers for such private label products exist. Given that private label products differ in price, but

³⁷ Replies to the Commission's request for information to Belgian OOH wholesalers of frozen snacks of 22 November 2011, questions 81, 83, 84 and 85.

³⁸ Replies to the Commission's request for information to suppliers of frozen snack products of 22 November 2011, questions 65, 68, 69, 70 and 71.

³⁹ Form CO, p. 93. [...].

⁴⁰ Form CO, p. 47 (footnote 29).

⁴¹ Beckers Benelux B.V., Daloon A/S, Foster Fast food bvba, Kuma Eersel B.V. (First Class Bakery), Mekkafood Halal Products B.V., PB Snack NV, Sprehe Geflügel- und Tiefkühlfeinkost Handels GmbH & Co. KG and Swinkels Snackery & Bakery. Replies to the Commission's request for information to suppliers of frozen snack products of 22 November 2011, question 3.

⁴² Replies to the Commission's request for information to suppliers of frozen snack products of 28 November 2011, question 5.

⁴³ Replies to the Commission's request for information to OOH wholesalers in Belgium on frozen snacks of 22 November 2011, questions 45 and 46.

⁴⁴ Replies to the Commission's request for information to OOH wholesalers in Belgium on frozen snacks of 22 November 2011, question 38.

not in quality, they offer in the Parties' view an appealing alternative for customers, as evidenced by the increasing shares of private label products in recent years.⁴⁵ Indeed, the market investigation confirmed that branded and private label frozen snacks belong to a single differentiated product market where they exert on each other some degree of competitive pressure (see recital 35 above).

48. The Parties claim that the market shares of the private label products that they manufacture themselves should not be attributed to them. They rely on case *Kaysersberg v. Commission*, in which the General Court held that, when assessing the market strength of an undertaking, the market shares of the products which it manufactures as a subcontractor for retailers which resell those products under their private labels cannot, in principle, be imputed, in whole or in part, to the market share held by that undertaking in regard to similar products which it sells under its own brand. Since the retailers sell those products under their private brands in order to compete with the branded products, the market share which they hold as a result of those sales must, as a general rule, be attributed to them for the purposes of assessing the competition to which the manufacturers of premium and secondary brands are subject.⁴⁶
49. It must be noted however that, in the same case, the General Court also stressed that if the subcontractor manufactured a large part of the products sold under private brands, the failure to take any account of that share of production would result in an underestimation of the actual strength of the manufacturer, in particular if the manufacturer was the main source of supply for retailers in regard to the products which they sell under their private brands.⁴⁷
50. Consequently, to understand whether the competitive pressure exerted by private label products on the branded products may be limited as a result of this situation, it needs to be analysed to which extent wholesalers are dependent on the Parties for their purchases of products to be sold under private labels.⁴⁸ However, the data provided by the Parties and depicted in Table 1 does not allow to assess the market shares of the Parties in the production of private label frozen snacks only.
51. In any event, on a potential market for all frozen snacks, it follows from Table 1 that, even if supplies of private label frozen snacks are attributed fully to the Parties, the Parties combined market share remains modest ([20-30]%) and the increment low ([0-5]%). Suppliers of frozen snacks other than the Parties supply [70-80]% of all frozen snacks. In addition, the Parties' private label supplies are small and represent only [0-5]% of the market for all frozen snacks.

⁴⁵ Form CO, Annex 20 (Nielsen).

⁴⁶ Judgement of the Court of First Instance in Case T-290/94. *Kaysersberg SA v Commission*, 27 November 1997, paras. 172-174.

⁴⁷ *Idem*, paras. 175-177.

⁴⁸ Such an approach is in line with the Commission's practise in case COMP/M.5046-*Friesland/Campina*, Commission Decision of 17 December 2008.

Table 1: Shares of Royaan and AvG in branded, private label and production of frozen snacks by type of snack, in the Belgian OOH channel (in volume, 2010)

In %	Parties' branded products		Private label products manufactured by the Parties		Others (branded and private label)	Parties combined :	
	Royaan	AvG	Royaan	AvG		share of sales (branded products only)	share of production (branded & private label products)
All frozen snacks	[0-5]	[20-30]	[0-5]	[0-5]	[70-80]	[20-30]	[20-30]
Categories							
Frikandellen	[0-5]	[10-20]	[0-5]	[0-5]	[80-90]	[10-20]	[10-20]
Meat loaf	[0-5]	[5-10]	[0-5]	[0-5]	[90-100]	[5-10]	[5-10]
Hamburgers	[0-5]	[0-5]	[0-5]	[0-5]	[90-100]	[0-5]	[0-5]
Satay	[0-5]	[30-40]	[0-5]	[0-5]	[60-70]	[30-40]	[30-40]
Croquettes	[0-5]	[50-60]	[0-5]	[0-5]	[30-40]	[50-60]	[60-70]
Bitterballen	[0-5]	[50-60]	[0-5]	[0-5]	[40-50]	[50-60]	[50-60]
Poultry	[0-5]	[50-60]	[0-5]	[0-5]	[20-30]	[50-60]	[50-60]
Bami/nasi	[10-20]	[30-40]	[0-5]	[5-10]	[40-50]	[40-50]	[50-60]
Mini snacks	[30-40]	[5-10]	[0-5]	[0-5]	[50-60]	[40-50]	[40-50]

Frozen snacks in the Belgian OOH channel by type of snack

52. If narrower product markets are considered by type of frozen snack (i.e. frikandellen, meat loaf, hamburgers, satay, croquettes, bitterballen, poultry, bami/nasi snacks, breaded snacks and mini snacks), the markets in which the Parties' activities overlap are limited to bitterballen, croquettes, bami/nasi snacks and mini snacks.

Bitterballen and croquettes

53. As regards the branded bitterballen and croquettes, the proposed transaction leads to combined market shares of respectively [50-60]% and [50-60]%. However, it appears from Table 1 that the overlap is marginal as Royaan's market share on the Belgian OOH market is only [0-5]% for croquettes and [0-5]% for bitterballen.⁴⁹ In addition, [...]. In any event, it follows from Table 1 that, even if supplies of private label croquettes and bitterballen are attributed fully to the Parties, the increment remains low ([0-5]% for croquettes and [0-5]% for bitterballen).

Bami/nasi snacks

54. As regards bami/nasi snacks, the increment arising from the proposed transaction is [10-20]%, and gives rise to a combined market share of [40-50]%. However, the value of the total size of the Belgian OOH market for bami/nasi snacks is very limited (EUR [...])⁵⁰ and bami/nasi snacks are for both Parties of limited importance in Belgium (representing [0-5]% of the sales of Royaan and [0-5]% of the sales of AvG). Furthermore, the market

⁴⁹ The total value of Royaan's sales in these segments is also marginal (EUR [...] for bitterballen and EUR [...] for croquettes). Furthermore, these products segments are of limited overall importance to the Royaan's activities in Belgium: bitterballen and croquettes represent respectively [0-5]% and [0-5]% of Royaan's sales in the Belgian OOH channel.

⁵⁰ In an email dated 2 December 2011 (12:00 PM), the Parties estimate that the total market for mini snacks in the Belgian OOH market is approximately [...] tons with an average price of EUR [...].

investigation showed that the Parties compete with other producers of bami/nasi snacks of which some indicated that they have spare production capacity.⁵¹

55. Moreover, as follows from Figure 1 below, the parties are positioned in different price segments for bami/nasi snacks as the strongest bami/nasi brand of AvG, Welten snacks (representing [50-60]% of AvG's total bami/nasi volume supplied), is positioned [...] than Royaan's strongest brand, Laan snacks (representing [90-100]% of Royaan's total bami/nasi volume supplied).

Figure 1

[...]

Mini-snacks

56. The increment in the segment for mini-snacks is [5-10]%, leading to a combined market share of [40-50]%. However, in the last three years a new producer of mini snacks has entered the Belgian OOH market for mini snacks.⁵² The market investigation also showed that the Parties compete with other producers of mini-snacks of which some indicated that they have spare production capacity.⁵³ In addition, the Parties' mini snacks compete with private label mini-snacks sold by the wholesalers. For instance, one Belgian wholesaler indicated that it offers a private label mini snack product (produced by a third party supplier) to compete against branded mini snacks and a separate branded product as cost leader (produced by a third party supplier).⁵⁴

Larger product markets, also including products other than frozen snacks

57. The Commission considers that, on the basis of the market investigation conducted in this case, (see recital 19 to 23), the relevant product market does not include product other than frozen snacks. For the present case, it can however be left open whether the product market also includes products other than frozen snacks as the Parties do not at all or only marginally supply products other than frozen snacks. Hence, the proposed operation gives rise to combined market shares and increments on such wider product markets that are in any event smaller than those on a product market comprising frozen snacks only. Indeed, in the Belgian OOH channel⁵⁵, the Parties' combined market share would be [10-20]% (AvG [10-20]% and Royaan [0-5]%) if frozen snacks and equivalent non-frozen snacks are considered to be part of the same product market.

⁵¹ Beckers and PB snacks indicated that they supply bami/nasi snacks in the Belgian OOH market. Replies to the Commission's request for information to suppliers of frozen snack products of 28 November 2011, question 3.

⁵² Amuso recently entered the Belgian OOH market and specializes in mini snacks (Form CO, p.108).

⁵³ Beckers and Mekkafood indicated that they supply mini-snacks in the Belgian OOH market. Replies to the Commission's request for information to suppliers of frozen snack products of 28 November 2011, question 3. In addition, Amuso and Vanreusel are mentioned as alternative suppliers by OOH wholesalers. Replies to the Commission's request for information to Belgian OOH wholesalers of frozen snacks of 22 November 2011, question 44.

⁵⁴ Replies to the Commission's request for information to Belgian OOH wholesalers of frozen snack products of 22 November 2011, question 49.

⁵⁵ Form CO, Table 6-24.

Conclusion

58. In view of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market.

VI. CONCLUSION

59. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare compatible with the internal market and with the EEA Agreement the parts of the transaction that are not related to the Netherlands. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

Signed
Joaquín ALMUNIA
Vice-President