

***Case No COMP/M.6522 - GROUPE LACTALIS/
SKANEMEJERIER***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/05/2012

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EUROPEAN COMMISSION

Brussels, 11.5.2012
C(2012) 3244 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sir/Madam,

**Subject: Case No COMP/M.6522 - GROUPE LACTALIS/ SKANEMEJERIER
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 30 March 2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which B.S.A. International, controlled by the Lactalis Group ("Lactalis"), acquires control of the whole of Skånemejerier AB ("Skanemejerier" or "the Target"), a subsidiary of the Swedish cooperative Skånemejerier ek. för, by way of purchase of shares.² Lactalis is designated hereinafter as the "Notifying Party", Lactalis and Skanemejerier together as the "Parties".

I. THE PARTIES

2. B.S.A. International is a holding company within Lactalis, a French family-held firm mainly active in the dairy sector. Lactalis' activities are mainly the production and marketing of drinking milk, butter, cheeses, fresh dairy, cream and industrial dairy products (milk powder, whey, etc.). Lactalis achieves a significant part of its turnover in France and in Italy, but is also active in the rest of the European Union as well as

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 Publication in the Official Journal of the European Union No C 106, 12.04.2012, p.6

outside Europe. At present, it is not directly active in Scandinavia to which it only exports a few products.

3. Skanemejerier is a subsidiary of Skånemejerier ek. för, a Swedish dairy cooperative actives in the production and marketing of drinking milk, fresh dairy products, cheeses, cream, butter and juice. The main industrial and commercial activities of the Skanemejerier Group have been brought into Skanemejerier. Skanemejerier achieves its turnover mainly in Sweden (over [...] %) and, to a lesser extent, in Denmark, Finland, Norway and Germany.

II. THE OPERATION AND THE CONCENTRATION

4. On 30 January 2012, Lactalis and the Swedish cooperative Skånemejerier ek. för signed a Share Purchase Agreement ("SPA") by which Lactalis will acquire 100% of Skanemejerier and will exercise sole control over the company and all of the assets that Skånemejerier ek. för has transferred to Skanemejerier. Following the closing of the transaction, Skånemejerier ek. för will supply milk to Skanemejerier for a transitional period of [...], under the terms set out in the Supply and Service Agreement ("SSA") annexed to the SPA. The rationale of the SSA is to protect Lactalis' investment by ensuring that the Target has sufficient access to raw milk.
5. In view of the above, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ (Lactalis EUR 14 181 million, Skånemejerier ek. för EUR 346 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Lactalis EUR [...], Skånemejerier ek. för EUR [...]), 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 within the meaning of Article 1(2) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

7. The transaction leads to a number of horizontal overlaps between Lactalis and the Target in the production and supply of (i) dairy products and (ii) fruits juices and other beverages.

A. Relevant Market

Relevant product market

(i) Dairy products

8. In its past decisions, the Commissions has defined or envisaged a number of various narrower markets within the dairy sector.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

9. In Friesland/Campina⁴, the Commission made a distinction between fresh basic dairy products, on the one hand, and long-life basic dairy products, on the other.
10. The Commission envisaged to distinguish the market for the supply of dairy products to the out-of-home distribution channel from the market for the supply of dairy products to the retail distribution channel, but ultimately left the question open⁵.
11. The Commission also envisaged a potential distinction between branded products and private labels, although in some instances it came to the conclusion that they belong to the same product markets⁶.
12. The Commission also considered a distinction between organic and conventional basic dairy products⁷.
13. With regard to fresh dairy products, the Commission has distinguished several product categories, namely fresh milk, fresh buttermilk, plain yoghurt and custard⁸. In addition, the Commission has in the past envisaged to define a relevant market for the supply of flavoured milks⁹ or health related milk (e.g., lactose-free milk and milk enriched with calcium, fibres or omega 3)¹⁰. In the Commission's decisional practice, a distinction is also generally made between plain yoghurt and value-added yoghurt, such added value being either flavour or health-related qualities¹¹. Drinking yoghurts were also deemed to constitute a distinct product market. For the purposes of this case, the Commission's also considered specialty yoghurts such as Scandinavian "Fil", Greek, Russian and Turkish yoghurt.
14. With respect to fresh dairy desserts (e.g. mousses, rice pudding, custard, tiramisu, crème brûlée, etc), the Commission distinguished in the past various subsegments such as fresh custard, porridge and portion pack dairy desserts¹².
15. With regard to long-life dairy products, the Commission identified separate product markets for long-life milk, long-life buttermilk and long-life custard¹³. The Commission also distinguished basic long-life milk from flavoured or health related long-life milk¹⁴.

4 Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, recital 141.

5 Commission decision COMP/M.6242 of 14 June 2011 – *Lactalis/Parmalat*; recitals 22-23; Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, recital 414; Commission decision COMP/M.5875 of 23 August 2010 – *Lactalis/Puleva*, recitals 82 and 151; Commission decision COMP/M.6119 of 1 April 2011 – *Arla/Hansa*, recital 21.

6 Commission decision COMP/M.6242 of 14 June 2011 – *Lactalis/Parmalat*, recital 26.

7 Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, recital 141.

8 Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, recital 167.

9 Commission decision COMP/M.5875 of 23 August 2010 – *Lactalis/Puleva*, recital 102.

10 Commission decision COMP/M.5875 of 23 August 2010 – *Lactalis/Puleva*, recital 129.

11 Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, recital 927.

12 Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, recital 1272.

13 Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, recital 382.

14 Commission decision COMP/M.5875 of 23 August 2010 – *Lactalis/Puleva*, recitals 96 and 125.

16. With respect to butter, the Commission has defined separate product markets for butter sold in bulk and butter sold in packets¹⁵.
17. In relation to cream, the Commission has previously distinguished between long-life cream and fresh cream and, within the long-life cream segment, between liquid cream and spray cream¹⁶. A distinction was also suggested between dairy cream and non-dairy cream¹⁷ or, with respect to the Italian market, between cooking cream and dessert cream within the long-life cream segment¹⁸.
18. The notifying Party submits that the distinction between fresh and long-life cream is particularly relevant for the Swedish markets based on a clear preference of Swedish consumers for fresh cream and low substitutability evidenced from consumer habits.
19. Moreover, all respondents to the market investigation confirmed¹⁹, within the long-life cream segment, the distinction between the market for liquid cream and spray cream. Moreover, respondents did not consider that a further distinction should be made.
20. With respect to cheese, the Commission considered a further segment according to cheese categories (i) spreadable cheese; (ii) fresh cheese; (iii) soft cheese; (iv) semi-hard cheese; and (v) hard cheese²⁰, cheese type (e.g. mozzarella), type of presentation (slice, fixed weight, variable weight), type of milk used (e.g., mozzarella using different milks) and protected geographical status (e.g. “appellations d’origine contrôlée”)²¹.
21. For the purposes of this decision, the precise product market definition can be left open, since the proposed transaction does not give rise to serious doubts with respect to its compatibility with the internal market under any of the segmentations presented above.

(ii) Fruit juices and other beverages

22. Lactalis sells fruit juices in Italy, Portugal and Romania, under the Santal brand. Skånemejerier, on the other hand, sells fruit juices only in Sweden, under the Bravo brand.
23. Within the sector of non-alcoholic beverages, the Commission made a distinction between carbonated soft drinks and other non-alcoholic beverages²². The other non-alcoholic beverages category comprises a wide range of products such as fruit juices,

¹⁵ Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, recital 816.

¹⁶ Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, recitals 1338 and 1379-1381.

¹⁷ Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, recital 1379.

¹⁸ Commission decision COMP/M.6242 of 14 June 2011 – *Lactalis/Parmalat*, recital 46.

¹⁹ See Replies to Questionnaires to Competitors in the milk and dairy sector sent on the 4 April 2012.

²⁰ Commission decision COMP/M.6242 of 14 June 2011 – *Lactalis/Parmalat*, recital 51.

²¹ Commission decision COMP/M.6348 of 7 November 2011 – *Arla Foods/Allgauland*, recital 30, Commission decision COMP/M.6242 of 14 June 2011 – *Lactalis/Parmalat*, recital 52.

²² Commission decision COMP/M.2504 of 29 October 2001 – *Cadbury Schweppes/Pernod Ricard*, recitals 8-9; Commission decision COMP/M.2276 of 27 September 2001 – *The Coca-Cola Company/Nestlé/JV*, recital 16.

tea, coffee, water, energy drinks, etc. The Commission indicated that this category could be segmented into mineral waters, fruit juices and energy drinks²³.

24. For the purposes of this decision, the precise product market definition can be left open, since the proposed transaction does not give rise to serious doubts with respect to its compatibility with the internal market under any of the segmentations presented above.

Relevant geographic market

(i) *Dairy products*

25. The Commission considered in some cases that the supply of fresh milk is national in scope²⁴, although in some other cases, it left open the question of whether subnational markets could be defined²⁵. In relation to the supply of yoghurt and of fresh dairy desserts, the Commission has defined national markets²⁶.
26. With regard to the supply of long-life milk, the Commission has in the past considered that the market was either national in scope²⁷, or wider than national²⁸.
27. In relation to butter, the Commission considered in its past decisional practice that the relevant market is regional (i.e. including more than one Member State) or EEA-wide in scope²⁹. Concerning Sweden, the Parties submit that the market is not wider than national and that in any event the Parties' activities only overlap in Sweden.
28. In line with the past practice of the Commission, the notifying party submits that the relevant markets for the supply of cream³⁰ and cheese³¹ are national in scope. The market investigation showed that the negotiation of the supply of cream is on a national level. Moreover, respondents to the market investigation indicated that there are also national preferences in relation to cream³².
29. For the purposes of this decision, the precise geographic market definition can be left open, since the proposed transaction does not give rise to serious doubts with respect to its compatibility with the internal market under any of the segmentations presented above.

²³ Commission decision COMP/M.5633 of 26 October 2009 – *Pepsico/The Pepsico Bottling Group* recital 12; Commission decision M.1065 of 16 February 1998 – *Nestlé/San Pellegrino*, recital 17.

²⁴ Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, recital 230.

²⁵ Commission decision COMP/M.6242 of 14 June 2011 – *Lactalis/Parmalat*, recital 34.

²⁶ Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, recitals 230 and 1281; Commission decision COMP/M.6119 of 1 April 2011 – *Arla/Hansa*, recital 36.

²⁷ Commission decision COMP/M.6242 of 14 June 2011 – *Lactalis/Parmalat*, recital 42.

²⁸ Commission decision COMP/M.6348 of 7 November 2011 – *Arla Foods/Allgauland*, recital 37.

²⁹ Commission decision COMP/M.6348 of 7 November 2011 – *Arla Foods/Allgauland*, recital 38; Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, recital 874.

³⁰ Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, recital 1281.

³¹ Commission decision COMP/M.4135 of 24 April 2006 – *Lactalis/Galbani*, recital 18; Commission decision COMP/M.6242 of 14 June 2011 – *Lactalis/Parmalat*, recital 55.

³² See Replies to Questionnaires to Competitors in the milk and dairy sector sent on the 4 April 2012.

(ii) *Fruit juices and other beverages*

30. According to the Commission's decisional practice, the market for the production and supply of fruit juices is national in scope in light of "*differentiated consumer preferences between countries, the importance of national brands, significance of marketing and advertising expenses, and the significance of transport costs in relative terms to the final value of the product*"³³.
31. For the purposes of this decision, the precise geographic market definition can be left open, since the proposed transaction does not give rise to serious doubts with respect to its compatibility with the internal market under any of the segmentations presented above.

B. Competitive Assessment

32. The transaction leads to only one affected market, namely in relation to the supply of cream in Sweden, where the merged entity would hold a [10-20]% market share (Lactalis [0-5]%, Target [10-20]%). Since Lactalis only sells long-life cream in Sweden, while the Target is not active in this segment, the narrower markets for respectively long-life cream and fresh cream are not affected as a result of the proposed transaction.
33. The highest combined market share is found on a potential market for the sale of branded cream in the OOH channel ([10-20]% with an increment of [0-5]%). The increment in market share as a result of the transaction is thus very limited. Post-transaction the merged entity would continue to face competitive pressure mainly from the market leader (Arla), and other players such as ICA Group, Axfood and Coop.
34. Respondents to the market investigation indicated that they do not expect any anticompetitive effects on the market for cream.³⁴

C. Competitive impact of certain terms set out in the Supply and Service Agreement

35. On 29 February 2012, Arla Foods ("Arla"), a competitor of Skånemejerier ek. för in the production of raw milk and of Skånemejerier AB in the production of dairy products, sent a letter to the European Commission (DG Competition) expressing its concerns over the proposed transaction.
36. Arla is a co-operative dairy company owned by Danish, Swedish and German dairy farmers. Arla also develops and produces milk-based products, for instance different varieties of milk, yogurt, desserts, cheese, etc. Arla's activities focus mainly on Denmark, Sweden, Finland, Germany, the Netherlands and the UK.
37. Prior to the proposed transaction, the Skånemejerier group is vertically integrated, i.e. it produces upstream the raw milk that it then uses to produce its various dairy products downstream.

³³ Commission decision COMP/M.5633 of 26 October 2009 – *Pepsico/The Pepsico Bottling Group*, recital 19.

³⁴ See Replies to Questionnaires to Competitors in the milk and dairy sector sent on the 4 April 2012.

38. Following the proposed transaction, this vertical integration will cease since Skånemejerier ek. för (cooperative owned by farmers) will produce raw milk upstream, whereas Skånemejerier AB (owned by Lactalis) will produce the downstream dairy products. Instead of the current vertical integration, Skånemejerier ek. för and Skånemejerier AB will have in place the SSA for the supply of raw milk by the former to the latter.
39. Arla claimed that during the last few years farmers have been switching from the Skånemejerier group to Arla and vice versa, depending on the prices that each of the two companies would offer for raw milk. The SSA would allegedly end this switching behaviour through two mechanisms:

(i) Lactalis would guarantee to the raw milk farmers of Skånemejerier ek. för that they would receive the same price as the one Arla offers for purchases of raw milk from its raw milk farmers.

(ii) Lactalis would also pay a supplement to the raw milk farmers of Skånemejerier ek. för through instalments over the next 8-10 years on the condition that the respective raw milk farmers stay with Lactalis.

(i) The alleged guarantee of "Arla prices"

40. The SSA refers to payments according to market prices, which at present the SSA presumes to correspond to the prices paid (and published) by Arla. Because of Arla's very strong and possibly dominant position on the market for the procurement of raw milk in Sweden (73%), the price it pays to its farmer-members has become the reference price on the market. The SSA, however, allows the parties to change this reference in the future should they consider that the Arla price no longer reflects the market price.
41. In fact, the prices offered to farmers for the procurement of raw milk by Arla and Skånemejerier have been roughly at the same level over the past years. Lactalis claims that this is also the case for other competitors.

€ cents / Kg	2011	2010	2009	2008	2007	Average over 5 years
ARLA milk price	35.7	35.8	31.4	39	32.9	35
SKANEMEJERIER milk price	[...]	[...]	[...]	[...]	[...]	[...]

42. There is thus no guarantee that exactly the same prices as those of Arla will be paid to the raw milk farmers of Skånemejerier ek. för and in any event the situation will not change materially as a result of the merger because prices were already very similar.

(ii) The alleged supplement payment

43. The industrial assets that Lactalis will buy by virtue of the proposed transaction should process at least [...] of raw milk per year to cover its costs. On the other hand, such assets have a maximum processing capacity of [...]. Accordingly, the pricing system designed in the SSA seeks to ensure deliveries of a minimum of [...] and a

maximum of [...]. The supplement of [...] thus encourages dairy farmers to supply at least [...] kilos to Skånemejerier AB.

44. However, this supplementary payment does not imply that Skånemejerier AB will pay a higher price than Arla pays to its Swedish members. It would also not imply the risk that such a mechanism would in the end lead to an increase of the raw milk prices in Sweden. In fact, the price paid by Arla to its members also includes a form of dividend, called “consolidation payments”. [...]. As section 4.2 of the SSA makes clear, the supplementary payment of [...] per kilo to Skånemejerier ek. för's farmers has been designed “[...]”.
45. Therefore, although Lactalis is trying to safeguard the value of its investments by securing that dairy farmers deliver the necessary volumes of raw milk to Skånemejerier AB, this does not change the incentive of dairy farmers to switch from Skånemejerier to Arla or vice versa.
46. Moreover, Lactalis emphasizes that Skånemejerier ek. för.'s [10-20]% market share on the Swedish market for the procurement of raw milk is limited compared to Arla's 73% market share. The maximum SSA quantity of [...] accounts for approximately [10-20]% of the total market for the procurement of raw cow milk in Sweden. Thus, with a market share over [...] smaller than that of Arla, neither Skånemejerier before the operation nor Lactalis after the operation are in a position to have any significant impact on effective competition on the market.

The situation before and after the proposed transaction

47. The relationship between the dairy farmers and Skånemejerier ek. för. is governed by the Articles of Association of Skånemejerier ek. för. and by the Swedish Competition Authority's interpretation of the Swedish Competition Act. On the other hand, the relationship between Skånemejerier ek. för. and Skånemejerier AB is governed by the SSA.
48. Pursuant to the SSA, Skånemejerier ek.för. has to supply all of the milk that its members deliver to it. This does not mean that Skånemejerier ek. för will have to deliver to Skånemejerier AB all of the milk that its members produce. In fact, according to the parties, [...].
49. In that regard, it should be pointed out that the drafting of section 1.1 of the SSA, [...]. A different interpretation of the SSA would run contrary to both Swedish law and the Articles of Association of Skånemejerier ek. för.
50. [...].
51. In light of the above, the proposed transaction would not lead to any material change on the market for the procurement of raw milk. With respect to sales of raw milk by farmers, over the last 5 years not more than [5-10]% of the total volumes of raw milk produced by Skånemejerier ek. för.'s members was sold to third parties. [...]. With respect to sales of raw milk by the cooperative, Skånemejerier ek.för. so far has not had any other customers than Skånemejerier AB.

The access to raw milk supplies in Sweden

52. In 2010/2011, Sweden's total raw milk production was 19.6 % below its quota in the context of the Common Agricultural Policy. Similarly, in 2009/2010, Sweden's production was 17.7 % below quota. In the past years, Sweden has constantly been amongst the Member States with total raw milk production at least 5% below quota. Therefore, the quota system does not play any significant role in the Swedish dairy sector and the expiration of the quota system in 2015 is not expected to lead to important changes on the Swedish market for the supply of raw milk.

The market investigation

53. Moreover, respondents to the market investigation do not expect any anticompetitive effects on the market for procurement of raw milk. On the contrary, most of the respondents to the market investigation indicated that the proposed transaction would improve competition and increase access to raw material for dairy production in Sweden.³⁵

Conclusion

54. In view of the above, it is concluded that the proposed transaction does not raise serious doubts in as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to any market described in the decision.

V. CONCLUSION

55. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission
(Signed)
Joaquín ALMUNIA
Vice-President*

³⁵ See Replies to Questionnaires to Competitors in the milk and dairy sector sent on the 4 April 2012.