

***Case No COMP/M.7232 -  
CHARTERHOUSE /  
NUOVA CASTELLI***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 21/05/2014

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**To the notifying party**

Dear Sir/Madam,

**Subject: Case M.7232 - Charterhouse / Nuova Castelli  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

(1) On 16 April 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004<sup>2</sup> by which Charterhouse Capital Limited Group ("Charterhouse", United Kingdom) intends to acquire within the meaning of Article 3(1)(b) of Regulation 139/2004 control of the whole of Nuova Castelli S.p.A. (the "Target", Italy) and its subsidiaries, including Magyar Sajt Korlátolt Felelősségű Társaság ("Magyar Sajt", Hungary), by way of purchase of shares (the "Transaction"). Charterhouse is designated hereinafter as the "Notifying Party."

**1. THE PARTIES**

(2) Charterhouse is a UK-based parent company of a group which provides equity capital and fund management services. Charterhouse controls a number of companies in a broad range of businesses in different sectors. Charterhouse controls, among others, Elior SCA ("Elior"), a French company mainly active in the foodservices industry and, in particular, in contract and concession catering.

(3) The Target is a manufacturer, processor and marketer of a wide array of Italian cheeses and dairy products to leading retail chains and other food players around the world. The company's core business is focused on branded, premium private label and industrial

<sup>1</sup> 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.

<sup>2</sup> OJ L 24, 29.1.2004, p. 1 ("Regulation 139/2004").

Italian P.D.O. (Protected Designation of Origin) cheese products, such as Parmigiano Reggiano, Grana Padano, Gorgonzola, Taleggio, Mascarpone and other dairy and Italian specialty food products.

## 2. THE OPERATION

- (4) For the purpose of the Transaction, Charterhouse incorporated an investment vehicle in the UK, Wheel Bidco Limited ("Wheel"). Before closing, Wheel will incorporate a further investment vehicle in Italy ("NewCo"), which will acquire the entire share capital of the Target, net of its treasury shares (so-called *azioni proprie*). In turn, NewCo's capital will be held by Wheel with an 80% equity stake and by Villa Canali S.r.l. ("VC") - one of the Target's current shareholders - with a 20% equity stake.
- (5) According to the transaction documents,<sup>3</sup> the acquisition of control by Charterhouse over the Target is conditional upon the latter acquiring the entire equity stake of Magyar Sajt and *vice-versa*. Magyar Sajt is currently wholly owned by Cheese Company s.r.l. ("Cheese Company"). To comply with this condition precedent, the Target will purchase an additional 80% equity stake in Cheese Company. Moreover, given that both the Target and Magyar Sajt are ultimately controlled by the Bigi family, the two transactions involve the same seller, i.e. the Bigi family, and the same acquirer, i.e. Charterhouse. For these reasons, the two transactions constitute a single concentration within the meaning of Article 3(1) of Regulation 139/2004 in line with paragraphs 38 *et seq.* of the Consolidated Jurisdictional Notice ("CJN").

## 3. THE CONCENTRATION

- (6) The Notifying Party explains that the rights attached to VC's 20% stake in NewCo do not extend to strategic decisions on the Target's business policy and do not go beyond the veto rights normally accorded to minority shareholders to protect their financial interests as investors in the company, as per paragraph 66 of the CJN.
- (7) In particular, the Target will be entitled to appoint only one director on NewCo's board of directors, all other directors being appointed by Wheel. While VC's director will also act as the chairman of the board of directors, this will not grant VC any power to influence the Target's business conduct [...];<sup>4</sup> and [...].
- (8) Therefore, as a result of the Transaction, Charterhouse will acquire sole control over the Target and its subsidiaries in the cheese business. The Transaction therefore constitutes a concentration within the meaning of Article 3 (1) of the Merger Regulation.

## 4. EU DIMENSION

- (9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (EUR [...] million for Charterhouse and EUR [...] million for the Target).<sup>5</sup> Each of them has an EU-wide turnover in excess of EUR 250 million (EUR [...] million for Charterhouse and [...] million for the Target), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

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<sup>3</sup> The Transaction is governed by a Sale and Purchase Agreement and an Investment and Quotaholders' Agreement, both entered into by the parties on 27 February 2014.

<sup>4</sup> [...].

<sup>5</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

- (10) Therefore, the Transaction has an EU dimension within the meaning of Article 1(2) of Regulation 139/2004.

## **5. RELEVANT MARKETS**

- (11) The proposed Transaction concerns the market for the production and sale of cheese, as well as the market for contract and concession foodservices.

### **5.1. Cheese**

#### *5.1.1. Relevant product market*

- (12) In previous decisions,<sup>6</sup> the Commission considered segmenting the cheese market according to cheese categories: (i) spreadable cheese; (ii) fresh cheese; (iii) soft cheese; (iv) semi-hard cheese; and (v) hard cheese. The Commission also considered segmenting the cheese market according to certain narrower cheese types (for example, Mozzarella), the type of presentation (slice, fixed weight, variable weight), type of milk used (for example, Mozzarella using different milks) and protected geographical status (for example, “*appellations d’origine contrôlée*”).

- (13) According to the Notifying Party, the Transaction essentially relates to the following segments: (i) fresh cheese (including mozzarella, ricotta, mascarpone and similar products); (ii) soft cheese (including gorgonzola and similar products); (iii) semi-hard and hard cheese (including Parmigiano Reggiano, Grana Padano and similar products); and (iv) fresh dairy desserts (including Tiramisù and similar products), in France, United Kingdom, Italy and Germany.

- (14) In any event, the precise product market definition regarding the differentiation of cheese according to its type can be left open in this case, as no competition concerns arise under any plausible market delineation.

#### *5.1.2. Relevant geographic market*

- (15) In previous decisions,<sup>7</sup> the Commission has defined the geographic scope of the cheese markets as national. This is because of, among other things, the existing differences in consumers’ choices, differences in prices and the presence of strong national trademarks.

### **5.2. Contract vs concession foodservices**

#### *5.2.1. Relevant product market*

- (16) In previous decisions,<sup>8</sup> the Commission considered that contract foodservices and concession foodservices constituted two distinct product markets. This is because the conditions of competition in the two markets are different (for example, barriers to entry into concession foodservice were higher in terms of investment, reputation and access to established brands; concession contracts were generally longer and prices to

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<sup>6</sup> Case COMP M.6722 *Frieslandcampina / Zijerveld & Veldhuyzen And Den Hollander* (2013); Case COMP M.6242 *Lactalis / Parmalat* (2011); Case COMP M.5046 *Friesland / Campina* (2008); and Case COMP M.4135 *Lactalis / Galbani* (2006).

<sup>7</sup> Case COMP M.6242 *Lactalis / Parmalat* (2011); and Case COMP M.4135 *Lactalis / Galbani* (2006).

<sup>8</sup> COMP M.4762 *Autogrill / Alpha Airports Group* (2007); and Cases COMP M.4202 *Charterhouse / Elios* (2006).

consumers higher; also whereas contract caterers compete only at the tendering stage, concession caterers, whilst also subject to tendering, often faced competition from other outlets within the facility).

- (17) Contract foodservice covers the preparation, presentation and delivery of food and beverage services to clients and their customers where clients have chosen to outsource this activity on their premises. The client pays the contract caterer a fee for the provision of the catering service and the food is often sold to consumers at subsidised prices. Contract catering services are carried out in various sectors, including business and industry (staff canteens in both public and private sectors), healthcare (hospitals, nursing homes) and education (schools, universities).<sup>9</sup>
- (18) Concession foodservice covers the provision of foodservice requirements to the public in travel locations such as airports, railway stations, ferries, roadsides, retail related locations such as department stores and sports stadia and leisure venues. The principal purpose of the customer's visit in the travel location is not for the consumption of food or beverage but for an alternative purpose. The contractor pays the location owner (client) a rent for the right to trade at the premises; the contractor's income is sourced entirely from sales made to the public.<sup>10</sup>
- (19) The Commission has in the past also considered whether further segmentation of the market for concession foodservices by channels such as airport, railway and motorway concession foodservices would be appropriate.<sup>11</sup>
- (20) In any event, the exact product market definition can be left open in this case, as no competition concerns arise under any plausible market delineation.

#### 5.2.2. *Relevant geographic market*

- (21) In past decisions,<sup>12</sup> the Commission defined the geographic market for concession and contract foodservice as having a national dimension because of, among other things, legislative differences (public procurement and labour laws), national preferences (in terms of quality, charging and prices) and strong differences with respect to in-house providing of feeding needs.
- (22) In any event, the exact product market definition can be left open in this case, as no competition concerns arise under any plausible market delineation.

## 6. COMPETITIVE ASSESSMENT

### 6.1. Cheese

- (23) The Transaction does not give rise to any horizontal overlaps, as none of the portfolio companies currently controlled by Charterhouse is engaged in the production and sale of cheese in the EEA, where the Target is currently active. Some vertical relationships may however arise, as one of Charterhouse's portfolio companies, Elior, is active in the

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<sup>9</sup> Case COMP M. 2373 *Compass / Selecta* (2001); Case COMP M.1972 *Granada / Compass* (2000); and Case COMP M.126 *Accor / Wagon Lits* (1992).

<sup>10</sup> Case COMP M.4249 *Abertis / Autostrade* (2006); and Case COMP M.1972 *Granada / Compass* (2000).

<sup>11</sup> For instance, in Case COMP M. 2639 *Compass Restorama / Rail Gourmet / Gourmet Nova* (2002), the Commission considered the segment of on-train foodservices.

<sup>12</sup> Case COMP M. 2373 *Compass / Selecta* (2001); and Case COMP M.1972 *Granada / Compass* (2000).

markets for contract and concession foodservice, which are located downstream in relation to the production and sale of cheese.

- (24) The Notifying Party considers that any such vertical relationship is purely hypothetical, since there is no existing supplier / customer relationship between Elior and the Target and this is unlikely to change in the future. This is because (i) this is a private equity and financing transaction, which will not affect the interests of intermediate and ultimate consumers; (ii) the Target's sales are mainly devoted to customers in the large retail distribution sector [...].
- (25) In the light of the above and of the available evidence, the Commission considers that a vertical relationship between the Target and Elior is unlikely. In any event, the paragraphs below provide a competitive assessment of any affected markets.
- (26) The Target sells its dairy products mainly in France, Germany, Italy and United Kingdom, [...]. Elior is present in the market for concession foodservices only in France, Germany, Italy and Spain. For this reason, a vertical relationship between cheese and concession foodservices would only be conceivable in France, Germany and Italy.
- (27) If for the sake of completeness the Commission were to retain a segmentation of the British cheese market by cheese type, the Transaction would in principle also give rise to vertically affected markets in the United Kingdom. In particular, there would be a hypothetical vertical relationship between the segments for Mascarpone and Gorgonzola, where the Target has a share of [30-40]% and [40-50]% respectively,<sup>13</sup> and contract foodservices, where Elior has a share of [5-10]%. However, anticompetitive effects are highly unlikely because, beside Elior's small market share: (i) the Target has very modest sales in the United Kingdom[...]; (ii) [...] % of its sales are devoted to private label through the largest distribution retailers; (iii) the Target's own branded products have market shares lower than [0-5]%; (iv) in the United Kingdom, the Target sells its products [...]; and (v) the Target's competitors represent credible alternative sources of supply for retailers, wholesalers and other foodservices operators. For these reasons, no competitive concerns can be expected.
- (28) With regard to Germany, in the light of the information provided by the Notifying Party, the Target's market share in the cheese market does not exceed [0-5]% in any plausible market segment, while Elior's market share in the concession foodservices is <1%. Therefore, the following paragraphs will focus on France and Italy.
- (29) In this regard, and in the light of the information provided by the Notifying Party, the Transaction gives rise to two vertically affected markets consisting of a vertical relationship between cheese and concession foodservices in France and a vertical relationship between cheese and concession foodservices in airports in Italy.

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<sup>13</sup> The Notifying Party stresses that the weight of the Italian cheese segment in the United Kingdom is around 7.2% of the total British cheese market.

### 6.1.1. France

- (30) In France, the Target's market share for cheese is below [0-5]% and does not exceed [20-30]% under the narrowest possible segment and cheese type, i.e. Gorgonzola.<sup>14</sup> Elior's market share in France is [40-50]% in the overall concession foodservices market, [50-60]% in the segment for airports, [40-50]% in the segment for motorways and [30-40]% in the segment for railway stations. This relationship gives rise to vertically affected markets in this country.
- (31) The Transaction is however unlikely to cause any anticompetitive effects. First, the Target's market share in France is relatively limited and insufficient to grant significant market power. Cheese markets in each EU Member States are highly fragmented, with the presence of several global (such as Lactalis, Arla and others) or niche players (like the Target). Second, the Target's competitors represent credible alternative sources of supply of cheese products for retailers, wholesalers and other foodservices operators. In the light of the above the Commission considers that no input foreclosure is conceivable.
- (32) With regard to Elior, the sourcing of cheese is a negligible part of its food requirements, as players in the market for concession foodservices must purchase a wide array of products. Moreover, within a single country final consumers generally have quite harmonized preferences. This is particularly true in France, where loyalty to traditional French cheese makes any major change in Elior's purchasing patterns unlikely. The French market for concession foodservices also features important players such as Autogrill and SSP and a large variety of other outlets are also available for cheese producers. Finally, Elior's market share should not be overemphasized, as concession services are subject to tendering. On the basis of the above, the Commission considers that customer foreclosure is equally unlikely.

### 6.1.2. Italy

- (33) In Italy, the Target's market share for cheese is below [0-5]% and does not exceed [0-5]% in any plausible market segment. Elior's market share in Italy is [10-20]% in the overall concession foodservices market, [50-60]% in the airports segment and [0-5]% in the motorways segment.<sup>15</sup> This relationship would give rise to a vertically affected market in this country in relation to the airports segment.
- (34) The Transaction is however unlikely to cause any anticompetitive effects. According to the information provided by the Notifying Party, the Target's market share in Italy is very limited, less than 5% under any plausible segmentation, and insufficient to grant significant market power. On the basis of the above the Commission considers that no input foreclosure is conceivable. With regard to Elior, the same reasoning set out for France applies *mutatis mutandis* to Italy. In addition, Elior's market share should not be overemphasized, airport concessions in Italy are subject to tendering and are generally awarded for a duration of five years, without automatic renewal or exclusive rights. In the light of the above the Commission considers that customer foreclosure is equally unlikely.

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<sup>14</sup> The Notifying Party stresses that the weight of the Italian cheese segments in France is around 4.7% of the total French cheese market. The Target market shares in the segment for Mozzarella is around [10-20]%, for Parmesan is around [10-20]% and for Mascarpone is around [10-20]%.

<sup>15</sup> Elior's market presence in the segment for concession foodservices in railway stations in Italy is negligible.

**7. CONCLUSION**

- (35) 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 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*