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***Case No COMP/M.7709 - BRIGHT FOOD GROUP/
INVERMIK***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 14/09/2015

***In electronic form on the EUR-Lex website under
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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 14.9.2015
C(2015) 6390 final

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sirs,

**Subject: Case M.7709 – Bright Food Group/ Invermik
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

- (1) On 12 August 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Bright Food (Group) Co., Ltd. ('Bright Food Group', People's Republic of China) intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Invermik, S.A. and its following wholly-owned subsidiaries: Miquel Alimentació Grup, S.A.U.; Miquel Alimentació Food Service, S.L.U.; Miquel Alimentació Food Service Canarias, S.L.U.; Miquel Alimentació Grup CM Canarias, S.L.U.; and Miquel Alimentació Grup Colombia, S.A.S. ('Invermik', Spain), by way of acquisition of shares (the 'Proposed Transaction').³ Bright Food Group is hereinafter referred to as the 'Notifying Party' while Bright Food Group and Invermik are together referred to as the 'Parties' or the 'Merged Entity'.

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 1, 3.1.1994, p.3 ('the EEA Agreement').

³ Publication in the Official Journal of the European Union No C 275, 20.8.2015, p. 7.

1. THE PARTIES AND THE OPERATION

- (2) *Bright Food Group* is a food industry group based in Shanghai, the People's Republic of China. It is active in food processing, production and distribution of food products. All shares in Bright Food Group are ultimately held by the Shanghai State Owned Assets Administration Commission ('Shanghai SASAC'). Companies within the Bright Food Group that make sales in the European markets include Diva (France, wine distributor), Manassen (Australia, food distributor), Salov (Italy, olive oil producer), Synlait (New Zealand, dairy producer), Tnuva (Israel, dairy producer) and Weetabix (United Kingdom, cereals and cereal bars producer). With particular regard to Spain, Bright Food Group's activities are mainly limited to the sales of cereals and cereal bars produced by Weetabix.
- (3) *Invermik* is active in the wholesale and retail sale of daily consumer goods, including wholesale cash & carry services, primarily in Spain.
- (4) On 1 July 2015, Shanghai Tangjiu (Group) Co., Ltd., a fully-owned subsidiary of the Bright Food Group, entered into a share sale and purchase agreement with the present owners of Invermik. Following the completion of the transaction, all shares in Invermik will be held by Bright Food Holding (Spain) Co., Ltd, a special purpose vehicle incorporated for the purposes of the transaction. The Bright Food Group, indirectly via Shanghai Tangjiu (Group) Co., Ltd., will hold [...] % of the shares in Bright Food Holding (Spain) Co., Ltd. The remaining shares will be held [...].
- (5) The minority shareholders in Bright Food Holding (Spain) Co., Ltd. will not hold any veto rights that go beyond those normally accorded to minority shareholders. The Bright Food Group will thus acquire sole control over Invermik.
- (6) The Proposed Transaction therefore constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

2. UNION DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (Bright Food Group: EUR [...]; Invermik: EUR [...]). Each of them has a Union-wide turnover in excess of EUR 250 million (Bright Food Group: EUR [...]; Invermik: EUR [...]) but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State⁵. The notified operation therefore has a Union dimension.

3. INDEPENDENCE OF BRIGHT FOOD GROUP

- (8) The Bright Food Group is ultimately owned by the Shanghai State Owned Assets Administration Commission ('Shanghai SASAC'). The Shanghai SASAC is an institutional legal entity authorised to administer state assets.⁶

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

⁵ Bright Food Group achieves two-thirds of its aggregate Union-wide turnover in the United Kingdom while Invermik achieves two-thirds of its aggregate Union-wide turnover in Spain.

⁶ Form CO, paragraph 26.

- (9) When assessing a concentration, it is necessary to first establish what are the undertakings involved in the transaction. In order to maintain non-discrimination between publicly and privately held undertakings, the assessment must take account of undertakings making up an economic unit with an independent power of decision, irrespective of the way in which the undertakings' capital is held or of the rules of administrative supervision applicable to them.⁷ In cases concerning publicly-held companies, it is therefore also necessary to assess to what extent the company is independent from the state.
- (10) In case of various government bodies owning companies, a question may also arise about any possible control relationships between those bodies. In the present case, the relationship between the Shanghai SASAC, which owns the Bright Food Group, and other similar, regional or central, government bodies will arise if the Bright Food Group is not considered an independent economic entity but part of an entity encompassing (at least) the Shanghai SASAC and all its controlled possessions.
- (11) The Notifying Party submits that the Bright Food Group constitutes an independent economic unit that has an independent management able to autonomously and independently decide all relevant aspects of the company's activities, including its market behaviour. It should therefore not be considered part of the same economic entity with the Shanghai SASAC or other companies controlled by the Shanghai SASAC.
- (12) The Notifying Party further submits that the Shanghai SASAC is independent from the central Chinese SASAC. According to the Notifying Party, the Shanghai SASAC is integrated in the Shanghai municipal government and acts primarily in its own interest, not in the interest of the central government.
- (13) The Notifying Party has nonetheless provided market information that includes all companies controlled by the central and regional SASACs, including but not limited to the Shanghai SASAC. The Proposed Transaction does not give rise to serious doubts about its compatibility with the internal market even under that basis. It is therefore not necessary to conclude on the control of the Bright Food Group for the purposes of this case.

4. RELEVANT MARKETS AND COMPETITIVE ASSESSMENT

4.1. Introduction

- (14) Invermik's main activity is the wholesale of daily consumer goods through cash and carry outlets in Spain. Bright Food Group does not carry out any activities in those markets. Therefore, there are no horizontal overlaps between the Parties.
- (15) With regard to potential vertical links between the Parties resulting from the supply of food products by Bright Food Group (upstream market) to cash and carry services, wholesalers and supermarkets (downstream market), the Bright Food Group's activities in Spain are limited and only total approximately EUR [...] a year. A clear majority of those sales are ready-to-eat cereals and cereal bars sold by Weetabix, a part of the Bright Food Group. The sales of other products by the Bright Food Group are notably small and they will not be considered further in this

⁷ Recital 22 of the Merger Regulation.

decision.⁸ That vertical link gives rise to vertically affected markets in that Invermik has a market share of 30% or above in certain regional cash & carry markets within Spain and the Bright Food Group makes sales of certain products, which could also be sold in cash & carry stores in Spain.

- (16) Therefore, the Proposed Transaction concerns i) the upstream market for the supply of cereals and cereal bars in Spain and ii) the downstream market for cash and carry wholesaling in Spain.

4.2. Relevant markets

4.2.1. Upstream markets: Ready-to-eat cereals and cereal bars

4.2.1.1. Product market definition

- (17) Ready-to-eat cereals ('RTEC') are made of different grains – for instance corn, wheat, oats or rice – and other ingredients such as nuts, dried fruit, sweeteners and other additives that are processed into the final product. The products can take various forms such as extruded, flaked, shredded, gun-puffed or oven-puffed cereals or muesli.
- (18) The Commission has previously considered that the market for RTEC products could potentially be further segmented into (i) all RTEC products, (ii) RTEC products excluding muesli, (iii) muesli, (iv) RTEC products in 'health' category', (v) RTEC products for children and (vi) RTEC products for adults/family.⁹ In line with a number of other consumer goods markets, the Commission has further considered that private label and branded RTEC products may constitute distinct markets.¹⁰
- (19) The Notifying Party submits that all RTEC products belong to the same relevant market.
- (20) Cereal bars, on the other hand, are products that can be eaten 'on-the-go'. They are made of different cereals, nuts and other additives such as fruit and chocolate. The bars may also have a coating or decoration.
- (21) The Commission has previously left the exact market definition for cereal bars open but has assessed them separately from other products even though it found in *OEP / MSP-Stiftung / DVG / Dailycer Group* that RTEC producers were generally also active in the production of cereal bars and that retailers generally included cereal bars in their tenders for RTEC products.¹¹ The Commission has for many

⁸ The Notifying Party has further explained that CNFC China National Fisheries Corporation is a Chinese state-owned enterprise that is active in Spain, and that it makes limited sales of fishery products which could be distributed in cash & carry markets. However, given its extremely limited market shares in the fishery products in Spain ([0–5]% by value according to the Notifying Party's best estimates), it will not be considered further in this decision.

⁹ M.4738 – *OEP / MSP-Stiftung / DVG / Dailycer Group*, paragraph 15.

¹⁰ M.4738 – *OEP / MSP-Stiftung / DVG / Dailycer Group*, paragraph 14.

¹¹ M.4738 – *OEP / MSP-Stiftung / DVG / Dailycer Group*, paragraphs 17 and 39.

consumer goods considered possible segmentation between private label and branded products and has also assessed cereal bars under that distinction.¹²

- (22) The Notifying Party submits that cereal bars either (i) belong to the same product market with RTEC products or (ii) form part of a larger market of snack products that consist of various products generally consumed between meals, such as cake bars, chocolate bars, bread substitutes, yoghurt and fruit.
- (23) In any event, the Commission considers that the exact definition of the upstream product markets for cereals and cereal bars can be left open for the purposes of the present case as that definition does not ultimately influence the outcome of the competitive assessment of the Proposed Transaction.

4.2.1.2. Relevant geographic market

- (24) The Commission has previously left it open whether the relevant geographic market for RTEC products and cereal bars is national or European wide.¹³
- (25) In any event, the Commission considers that the exact definition of the geographical upstream markets for cereals and cereal bars can be left open for the purposes of the present case as that definition does not ultimately influence the outcome of the competitive assessment of the Proposed Transaction.

4.2.2. Downstream market: Cash & carry of daily consumer goods

4.2.2.1. Relevant product market

- (26) Cash & carry is a type of self-service wholesale where customers provide for the transport and also typically pay for the goods in cash rather than in credit. Cash & carry stores typically sell to bars, restaurants and cafés but not to private individuals. A cash and carry store typically includes a wide range of different products and is not limited to one particular group of products.¹⁴
- (27) The Commission has in the early *Kesko / Tuko* case concluded that the cash & carry market constitutes a market separate from other wholesale of daily consumer goods.¹⁵ In certain other cases, the Commission has left the question open or even considered that there is a common wholesaling market comprising not only cash & carry but other types of wholesaling as well.¹⁶

¹² M.4738 – *OEP / MSP-Stiftung / DVG / Dailycer Group*, paragraph 39.

¹³ M.4738 – *OEP / MSP-Stiftung / DVG / Dailycer Group*, paragraphs 19–20.

¹⁴ See, e.g. M.1064 – *Metro / Makro*, paragraph 10. Also Invermik’s cash & carry stores offer a wide range of products, ranging from food stuff to drinks, cleaning products, furniture, perfumery products and electrical appliances among others.

¹⁵ M.784 – *Kesko / Tuko*, paragraph 31.

¹⁶ See, e.g. M.1064 – *Metro / Makro*, paragraph 12 and M.2161 – *Ahold / Superdiplo*, paragraph 15. In some other cases, the question about cash & carry has not been discussed in the decision with respect to the whole sale of daily consumer goods. See, e.g. M.4293 – *Nordic Capital Fund IV / ICA Meny*, paragraphs 8–10.

- (28) The Notifying Party submits that cash & carry form part of a wider market for the wholesale of daily consumer goods. According to the Notifying Party, customers source similar products not only from cash & carry and other wholesale but directly from suppliers and from retailers as well.
- (29) The Proposed Transaction only gives rise to affected markets if cash & carry is considered a distinct relevant market.
- (30) In any event, the Commission considers that the exact definition of the downstream product market for the cash and carry of daily consumer goods can be left open for the purposes of the present case as the definition does not ultimately influence the outcome of the assessment of the Proposed Transaction even when considering the potential distinct cash & carry market.

4.2.2.2. Relevant geographic market

- (31) While the Commission has generally considered the wholesale of daily consumer goods to be of at least national in scope, it has in previous cases concluded that the market for cash & carry is regional (smaller than national)¹⁷ or left the question open¹⁸.
- (32) The Notifying Party submits that the market is national in scope.
- (33) Given the nature of cash & carry wholesaling that serves small customers which pick up the products from an outlet, it would appear reasonable that the geographic scope of the market is narrower than national.
- (34) In any event, the Commission considers that the exact definition of the downstream geographical markets for the cash and carry of daily consumer goods can be left open for the purposes of the present case as it does not ultimately influence the outcome of the assessment of the Proposed Transaction under any alternative feasible market definition.

4.3. Competitive assessment of vertical links

- (35) The Proposed Transaction gives rise to vertically affected markets between (i) Invermik's cash & carry operations (downstream) and the Bright Food Group's production and supply of RTEC products and cereal bars (upstream).
- (36) Invermik operates 63 cash & carry outlets with a total of [...] m² surface area in 11 regions in Spain. The outlets are operated under the brand 'Gros Mercat'. At the national level, Invermik's market share is [10–20]%¹⁹ and the Proposed Transaction does not give rise to affected markets if the relevant market is considered national.

¹⁷ M.784 – *Kesko / Tuko*, paragraph 32.

¹⁸ M.1064 – *Metro / Makro*, paragraph 13.

¹⁹ June 2015. In 2014, the market share was [10–20]%. The market shares have been provided by the Notifying Party and they are based on the surface area of the cash & carry outlets.

- (37) In the potential regional cash & carry markets, Invermik's market shares range between [0–5]% and [50–60]%. The market shares reach or exceed 30% in three regions: (i) the Balearic Islands ([30–40]%), (ii) Catalonia ([40–50]%) and (iii) La Rioja ([50–60]%). In all of those three regions, Invermik is also the market leader with Makro being number two in the Balearic Islands ([20–30]%) and Catalonia ([20–30]%) while H.D. Covalco is number two in La Rioja ([20–30]%).²⁰
- (38) In Spain, the Bright Food Group (Weetabix) only sells branded RTEC products and cereal bars, primarily under the brands Weetabix, Alpen and Minis. Its primary competitors include companies such as Kellogg's and Nestlé. According to the Notifying Party, the majority of the total RTEC and cereal bars market in Spain ([60–70]%) is held by private label products.
- (39) Bright Food Group's market share in the total RTEC and cereal bars market (including private label) in Spain was [0–5]% in 2014 and is estimated to be [0–5]% at present. In the potential sub-segment of only branded products, the market share would be approximately [0–5]%.²¹ While the Notifying Party has not been able to provide separate market shares for each of the potential sub-segments of the market, it submits that the market shares on those sub-segments do not significantly differ from the market share in the total market.
- (40) Given the Merged Entity's limited market share ([0–5]%) on the upstream markets, the merged entity is unlikely to be able to engage in input foreclosure. The fact that Invermik does not at present source any products from the Bright Food Group also supports the view that their products are not 'must-carry' products in a cash & carry store. Input foreclosure concerns can therefore be excluded.
- (41) As to customer foreclosure, the Merged Entity would have a notable market share particularly in Catalonia ([40–50]%) and La Rioja ([50–60]%). However, a number of cash & carry competitors will remain active even in those regions, and any demand for RTEC products and cereal bars there is also only a fraction of the total demand in the upstream RTEC and cereal bars markets that are at least national. On the national level, the Merged Entity's cash & carry stores have a total market share of [10–20]%. It is therefore unlikely that the Merged Entity could, solely on the basis of it having notable market shares in some regional downstream markets, be able to deprive its upstream competitors of an adequate customer base.
- (42) Therefore, the Commission considers that any competition concerns can be excluded and that the Proposed Transaction does not give rise to serious doubts about its compatibility with the internal market.

²⁰ The market shares provided by the Notifying Party are for June 2015 and they are based on the surface area of the cash & carry outlets.

²¹ Market shares are the Notifying Party's best estimates.

5. CONCLUSION

- (43) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission