



EUROPEAN COMMISSION

DG Competition

***Case M.8150 - DANONE / THE
WHITEWAVE FOODS COMPANY***

Only the English text is available and authentic.

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

Decision on the implementation of remedies - Art. 6(1)(b) in
conjunction with 6(2) - Purchaser approval

Date: 17 July 2017



EUROPEAN COMMISSION

Brussels, 17.7.2017
C(2017) 5182 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

**Subject: Case M.8150 – Danone / The WhiteWave Foods Company
Approval of Inex Group NV as purchaser of the Divestment Business
following your letter of 6 June 2017 and the Trustee's opinion of
13 June 2017**

I. FACTS AND PROCEDURE

1. By decision of 16 December 2016 ('the Decision') based on Article 6(1)(b) in connection with Article 6(2) of Council Regulation No 139/2004 ('the Merger Regulation'), the Commission declared the operation by which the undertaking Danone S.A. ('Danone', France) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over The WhiteWave Foods Company ('WhiteWave', USA), compatible with the internal market and the EEA Agreement, subject to full compliance with the conditions and obligations in the commitments submitted by Danone annexed to the Decision ('the Commitments'). Danone and WhiteWave are jointly referred to as 'the Parties'.
2. In order to remove the Commission's serious doubts as to the compatibility of the concentration with the internal market, the Commitments provide for the divestment of the growing-up milk ('GUM') business of Danone, including regular and plant-based products, in Belgium ('the Divestment Business').

3. The the Divestment Business includes:
- (a) the following main intangible assets:
 - (i) the assignment of the “Bambix” brand and the use of the blue-and-green ellipse logo surrounding the brand, both for use solely in Belgium (with an exclusive royalty-free license back to Danone for use in the Netherlands and Luxembourg for a period of [...] from Closing);
 - (ii) an exclusive license of the “Olvarit” brand and the use of the double heart logo, both for use solely in Belgium for the sale of liquid GUM products, for a period of [...] from Closing;
 - (iii) access, by virtue of the license, to the secret know-how used in the operation of the Divestment Business, notably relevant product formulae and recipes (including at the option of the Purchaser, changes made by Danone to the relevant formulae and recipes during the Olvarit License Agreement), as well as slogans, advertising and promotional materials (including the copyrights thereto) used in relation to the Divestment Business;
 - (iv) access, by virtue of the license, to copyrights relating to the packaging for the products supplied by the Divestment Business to the retail sector in Belgium.
 - (b) all purchase orders, contracts, agreements and other obligations exclusively related to, or necessary for, the operation of the Divestment Business. To the extent legally and technically feasible, Danone will transfer the contracts with customers existing at the time of completion of the divestiture of the Divestment Business to the Purchaser.
 - (c) copies of all the books, records and other documents exclusively related to, or necessary for the operation of the Divestment Business (including, without limitation, customer and supplier lists and files, distribution lists, mailing lists, sales materials, operating, production and other manuals, advertising and promotional materials);
 - (d) the following tangible assets: stock of finished goods for resale;
 - (e) Key personnel;
 - (f) at the option of the Purchaser and with the prior approval of Milcobel¹, the transfer of the part of the Manufacturing and Supply Agreement that Danone Trading BV concluded with Milcobel that concerns the manufacturing, packaging and supply of liquid regular and soy-based GUM products sold under the “Olvarit” brand.
4. By letter of 6 June 2017, Danone proposed Inex Group NV ('Inex'), for approval by the Commission as purchaser of the Divestment Business and submitted the proposed Master Purchase Agreement ('MPA') and related agreements, notably as regards brands and patent licensing, transitional services and third party manufacturing (together with the MPA collectively defined as the 'Transaction documents'). Inex is referred to hereinafter as 'the Proposed Purchaser'.

¹ Milcobel is a Belgian dairy company manufactory growing-up milk for Danone

5. On 13 June 2016, [Advolis] (the 'Trustee') submitted an assessment of the Proposed Purchaser's suitability and, in particular, indicated that it fulfils the criteria of the purchaser requirements in section D of the Commitments attached to the Decision. In his assessment, the Trustee also indicated that, on the basis of the Transaction documents, the Divestment Business would be sold in a manner consistent with the Commitments.

II. ASSESSMENT OF THE PROPOSAL

II.1. Legal framework

6. Pursuant to paragraph 17 of the Commitments, the Commission has to verify that the purchaser fulfils the purchaser criteria and that the Divestment Business is being sold in a manner consistent with the Commitments.
7. According to paragraph 16 of the Commitments, in its assessment of the Proposed Purchaser, the Commission should ensure in particular that:
 - (i) The purchaser is independent of and unconnected to Danone/WhiteWave and its affiliated undertakings.
 - (ii) The purchaser has the financial resources, proven expertise with an industrial background and incentives to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.
 - (iii) The acquisition of the Divestment Business by the purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

II.2. Description of the Proposed Purchaser

8. Inex (together with its affiliates) is a family-owned Belgian manufacturer and supplier of dairy products that has been active in Belgium for over 100 years.
9. Inex is engaged in long-term relationships with dairy farmers to procure more than [...] litres of raw milk per year. It processes this raw milk at its factory located in Sint-Lievens-Houtem near Ghent. It has developed also a limited co-packing activity where it carries out some steps of the production of both dairy and non-dairy products for different brands (including, for example, packing of juices for [...]).
10. Inex produces and sells milks (including buttermilk and fermented milk), milk drinks, cream, butter and yoghurts for the industrial, out of home and retail channels under both private labels ([...] % of its turnover) as well as under the Inex brand ([...] % of its turnover). Its customers are the major Belgian retailers and hard discounters such as Colruyt, Delhaize, Carrefour, Aldi and Lidl. [...].
11. In 2016, Inex employed about 400 staff members (out of which [...] are dedicated to production) generating a turnover of EUR [...] (half of which in Belgium, the

rest mostly in the Netherlands and to a lesser extent in France and the United Kingdom).

II.3. Independence from the Parties

12. According to the information provided by the Trustee, there are no direct or indirect ownership links (including joint venture agreements) between Inex or the wider Inex Group on the one side and the Parties on the other. Similarly there are no commercial agreements between Inex and the Parties.
13. The Commission thus considers that the Proposed Purchaser will be independent from and unconnected to the Parties.

II.4. Financial resources, proven expertise with an industrial background and incentive to maintain and develop the Divested Business as a viable and active competitor

14. The Trustee submits that the Proposed Purchaser has sufficient financial resources, proven expertise with an industrial background and incentive to maintain and develop the Divestment Business as a viable and active competitive business.
15. According to the Parties, Inex has adequate financial resources in terms of acquisition costs and ongoing running and development costs of the Divestment Business. According to its most recent audited financial accounts, Inex's turnover for the year ending 31 December 2016 was EUR [...] and it had an operating profit of EUR [...].
16. According to the Trustee, Inex is a stable company where the shareholders aim at supporting the long-term growth of the company [...]. Its financial position is therefore robust despite its exposure to decreasing milk prices and margin pressure on private labels.
17. Inex has a long and proven experience in the production and sale of dairy products in Belgium. It has its own production site where it already manufactures dairy products and will be able to progressively insource the production of the Divestment Business. Until it decides to internalise the production of the GUM products, and to limit itself to the sales, marketing and logistics aspects of the Divestment Business, Inex will also be able to rely on Milcobel's existing industrial capacities. In this respect, Inex has all capabilities in terms of marketing and sales, IT and supply chain and should also benefit from the transfer of the Hold Separate Manager to Inex' business.
18. Inex has an existing relationship with Belgian retailers and therefore negotiates regularly with all the customers of the Divestment Business. Inex has the capabilities to lead a marketing effort to develop and maintain brand awareness on the market, an ability that Inex will be able to use to gain traction on the GUM market after the acquisition of the Divestment Business. The acquisition of the Divestment Business fits with its strategy [...].
19. [...]. Inex will have incentives to exert full competition on the market in order to develop strong brand equity around the Bambix brand. Inex has provided a credible business plan [...].
20. In view of the above considerations, the Commission considers that the Proposed Purchaser has the financial capabilities, proven expertise with an industrial

background and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other rivals.

II.5. Absence of prima facie competition problems

21. Inex is currently not active on the Belgian GUM market so that the implementation of the Commitments leads to the entry of a new player on this market. After the acquisition, Inex will have a market share of approximately [20-30]% in value competing with Nestlé, Danone and the private labels active on the market. As a consequence, the acquisition of the Divestment Business does not raise prima facie competition concerns. There is no regulatory approval required for completion of the transaction apart from the Commission's approval of Inex as the Divestment Business' purchaser.

II.6. Conclusion on the purchaser criteria

22. In the light of the above considerations and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that Inex meets the purchaser criteria set out in paragraph 16 of the Commitments.

III. ASSESSMENT OF THE TRANSACTION DOCUMENTS

23. The Transaction documents comprise: (i) The Master Purchase Agreement (MPA) which sets out the terms of the sale of the Divestment Business; (ii) The Olvarit License Agreement; (iii) The Olvarit Patent License Agreement; (iv) The Bambix IP Assignment Agreement; (v) The Bambix License Back Agreement; (vi) The Transitional Service Agreement (TSA); and (vii) The Third-Party Manufacturing and Supply Agreement between Inex and Milcobel (and the Amendment to the Supply Agreement between Milcobel and Danone).
24. According to the Trustee, the Transaction documents do not contain any major modifications to the scope of the assets which form the Divestment Business and they fully comply with the Commitments.
25. As regards key personnel, the transfer of the Hold Separate Manager, [...], to Inex is foreseen under the Master Purchase Agreement. The transfer is however not automatic under Belgian labour law and subject to the consent of [...]. In practice, Inex has to make an employment offer to [...].
26. There is no transfer of distribution contracts [...]. [...]. This negotiation will start as soon as possible and, pursuant to Article 8-2 of the Master Purchase Agreement, be facilitated by Danone Nutricia's sales team.
27. In addition, the access to the consumer database (which is owned by a third party) used for direct mailings could not be transferred as it is both used by the Divestment Business and the business retained by Danone. However, Danone committed to facilitate the duplication of the database by requesting the consent of this third party. This duplication will also be subject to the consent of consumers through an opt-in procedure.
28. Finally, Inex will benefit from the transitional services it had identified as being necessary to ensure a smooth transition of the Divestment Business, [...].
29. In the light of the above considerations and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the Transaction

documents are consistent with the Commitments and that, accordingly, the Divestment Business is being sold in a manner consistent with the Commitments.

IV. CONCLUSION

30. On the basis of the above assessment, the Commission approves Inex as a suitable purchaser for the above-mentioned reasons.
31. On the basis of the Transaction documents, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
32. This decision only constitutes approval of the Proposed Purchaser identified herein and of the Transaction documents. This decision does not constitute a confirmation that the Parties have complied with the Commitments.
33. This decision is based on Section D of the Commitments attached to the Commission Decision of 16 December 2016.

For the Commission

(Signed)
Johannes LAITENBERGER
Director-General