



EUROPEAN COMMISSION  
DG Competition

***Case M.8549 - GROUPE LACTALIS / OMIRA***

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: 31/08/2017

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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, 31.8.2017  
C(2017) 6043 final

PUBLIC VERSION

**To the notifying party**

**Subject: Case M.8549 – GROUPE LACTALIS / OMIRA  
Commission decision pursuant to Article 6(1)(b) of Council  
Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the  
European Economic Area<sup>2</sup>**

Dear Sir or Madam,

- (1) On 26 July 2017, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the Lactalis Group ("Lactalis", France), indirectly via BSA International, S.A. ("BSA", Belgium), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Omira Industrie GmbH, a wholly owned-subsiary of Omira Oberland-Milchverwertung GmbH ("Omira Milchverwertung", Germany), as well as of all other subsidiaries of Omira Milchverwertung, and substantially of all the assets of Omira Milchverwertung<sup>3</sup>

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

<sup>3</sup> The only assets not subject to the Transaction that are left within Omira Oberland-Milchverwertung are listed in section 3 of the Spin Off Agreement as "Exempted Assets" and cover in essence: the employment contracts with the managers of the farmers' cooperative; the contracts for the purchase of

(targets jointly referred to as "Omira", Germany) by way of purchase of shares and assets ("Transaction")<sup>4</sup>. Lactalis and Omira are designated hereinafter as the "Parties". Lactalis is hereinafter referred to as the "Notifying Party".

## **1. THE PARTIES AND THE OPERATION**

- (2) Lactalis is a French industrial group mainly active in the production and marketing of milk, butter, cheese, fresh dairy, cream, and industrial dairy products (milk powder, whey, etc.). Lactalis has activities across Europe and in particular in France, Spain and Italy. It is not currently active in the German market for dairy products to any significant extent. Lactalis only exports to Germany various products (cheese, butter, cream) for a total turnover of [...], the vast majority of which is achieved with the sale of cheese ([...] euros), in particular through its own brands such as Président, Galbani or Salakis.
- (3) Omira Industrie is incorporated according to German law with its registered office in Ravensburg (Germany). Omira Industrie is wholly owned by Omira Oberland-Milchverwertung GmbH, which is a limited liability company directly or indirectly owned by around 2500 milk producers in the south of Germany. It is active mainly in Germany in the procurement of raw milk and in the production and marketing of milk and various dairy products, as well as in some other Member States, albeit on a more limited basis.
- (4) Pursuant to a share purchase agreement, concluded on 19/20 May 2017 ("SPA"), BSA has agreed to the acquisition of Omira's capital from Omira Milchverwertung. Pursuant to the SPA, the business operations and substantially all of the assets of Omira Milchverwertung as well as all shares in all of the Omira Milchverwertung's subsidiaries will be transferred to Omira Industrie beforehand, so that, ultimately, Lactalis will acquire sole control over the aforementioned.
- (5) As a result, the Omira group will be vertically disintegrated. The industrial activities will be taken over by Lactalis, whereas the production of raw milk will be kept by Omira Milchverwertung. A milk supply agreement between Omira Industrie and Omira Milchverwertung will ensure that the farmers can continue selling their milk and Lactalis gets the necessary input of raw milk.<sup>5</sup>
- (6) Accordingly, the Transaction shall result in the acquisition of sole control by the Lactalis group over Omira, and thus constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

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milks concluded with the farmers; subject to Lactalis exercising the options, the ownership of industrial buildings will also remain with Omira Oberland-Milchverwertung, it being specified that Lactalis will be their legal beneficiary and thus running them; - a bank account and its funds.

<sup>4</sup> Publication in the Official Journal of the European Union No C 253, 04.08.2017, p. 13.

<sup>5</sup> See Annex 3.1.3.D. to the Form CO.

## 2. EU DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>6</sup> (Lactalis: EUR 16 500 million; Omira: EUR [...]). Each of them has an EU-wide turnover in excess of EUR 250 million (Lactalis: EUR [...]; Omira: EUR [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

## 3. COMPETITIVE ASSESSMENT

- (8) Both Parties are active in the dairy sector. Lactalis is active in a number of EU Member States, whereas Omira is mainly active on the German dairy markets, and to a lesser extent in other European countries like Italy and Slovenia.
- (9) The Transaction gives rise to the following six affected markets/ market segments: i) market for the procurement of raw milk in France; ii) market for the procurement of raw milk in the *Grand Est*, France (regional); iii) market for the production of long-life milk in Italy (supplier branded); iv) market for the production of long-life milk in Slovenia (supplier branded); v) market for the supply of long-life milk to be resold under private label to retailers in Italy (private label); vi) market for the supply of long-life milk to be resold under private label to retailers in Slovenia (private label).
- (10) The Transaction does not give rise to any vertically affected markets.

### 3.1. Market definition

#### 3.1.1. Market for procurement of raw milk

##### 3.1.1.1. Product market definition

- (11) The Commission has in the past considered the market for the procurement of raw milk and distinguished the i) market for the procurement of cow milk (including organic and conventional milk) and ii) the market for the procurement of raw milk from goats and sheep.<sup>7</sup>
- (12) The precise product market definition was however left open.
- (13) The Parties agree with the above market delineations.

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<sup>6</sup> 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).

<sup>7</sup> Commission decision COMP/M.5875 of 23 August 2010 – *Lactalis/Puleva*, §11 and Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, §48 *et seq.*

- (14) From a product perspective, Omira only procures raw cow milk from conventional sources, so that only this segment is relevant for the purposes of the Decision and shall be analysed below<sup>8</sup>.

#### *3.1.1.2. Geographic market definition*

- (15) As to its geographic scope, the Commission has considered the market to be sub-national,<sup>9</sup> national<sup>10</sup> or even larger than national (also comprising imports<sup>11</sup>). A smaller than national dimension was found in some large countries<sup>12</sup>, such as Germany and France, where the Commission considered that the maximum viable distance between dairy processing unit and the farmers was usually a maximum of 150 km, and that some price differences could exist between regions. It was left open in those cases whether the market was national or sub-national.<sup>13</sup>
- (16) The precise geographic market definition was however left open.<sup>14</sup>

#### *3.1.1.3. Conclusion*

- (17) For the purposes of the assessment of the present Transaction, it is not necessary to conclude on a precise definition of the relevant product and geographic markets since the Transaction would not raise serious doubts as to its compatibility with the internal market under any of the plausible definitions of the market for procurement of raw milk.

### **3.1.2. Market for long-life dairy products**

#### *3.1.2.1. Product market definition*

- (18) The Commission held that within the supply of basic dairy products, a distinction ought to be made between fresh products, on the one hand, and long-life dairy products, on the other.<sup>15</sup>
- (19) Furthermore, the Commission has in the past considered with respect to long-life dairy products that separate product markets exist for long-life milk (also

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<sup>8</sup> See paragraph 67 of the Form CO.

<sup>9</sup> Commission decision COMP/M.5875 of 23 August 2010 – *Lactalis/Puleva*, §37.

<sup>10</sup> Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, §80.

<sup>11</sup> Commission decision COMP/M.6242 of 14 June 2011 – *Lactalis/Parmalat*, §16.

<sup>12</sup> Commission decision COMP/M.5875 of 23 August 2010 – *Lactalis/Puleva*, §37.

<sup>13</sup> Commission decision COMP/M.6441 of 20 February 2012 – *Senoble/Agrial/Senagral JV*, §20.

<sup>14</sup> Commission decision COMP/M.5875 of 23 August 2010 – *Lactalis/Puleva*, §37 and Commission decision COMP/M.6242 of 14 June 2011 – *Lactalis/Parmalat*, §16.

<sup>15</sup> Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, § 141.

distinguishing basic long-life milk from flavoured or health related long-life milk<sup>16</sup>), long-life buttermilk<sup>17</sup> and long-life dessert cream<sup>18</sup>.

- (20) Regarding the branding, the Commission has considered that the sale of private label and supplier branded products belonged to the same relevant market<sup>19</sup>, but ultimately left the distinction open. A possible distinction with regard to the distribution channel into retail/OOH ("Out of Home") was also left open.
- (21) The Parties agree with the above market delineations, arguing that the distinction concerning the procurement of branded and private labels is fully applicable to long-life products.

### 3.1.3. *Geographic market definition*

- (22) Concerning long-life milk, the Commission has in the past considered that the relevant geographic market is either national<sup>20</sup> or wider than national<sup>21</sup>.
- (23) Regarding the long-life flavoured dairy drinks, the Commission has considered the geographic scope of the market wider than national.<sup>22</sup> In case of branded products for sales to retailers and/ or wholesalers, the Commission has considered the market as being national, taking into account that brands differ to a large extent between Member States.<sup>23</sup>
- (24) The Parties agree with these market delineations, assessing the situation on a national basis, since the Target (Omira) is mostly present on the German market and to a limited extent in other Member States, such as Italy and Slovenia.

#### 3.1.3.1. *Conclusion*

- (25) For the purposes of the assessment of the present Transaction, it is not necessary to conclude on a precise definition of the relevant product and geographic markets since the Transaction would not raise serious doubts as to its compatibility with the internal market under any of the plausible definitions of the market of long-life dairy products.

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<sup>16</sup> Commission decision COMP/M.5875 of 23 August 2010 – *Lactalis/Puleva*, §§95, 122.

<sup>17</sup> Commission decision COMP / M.5046 of 17 December 2008 – *Friesland Foods/Campina*, § 382.

<sup>18</sup> Commission decision COMP/M.5046 of 17 December 2008 – *Friesland Foods/Campina*, § 382.

<sup>19</sup> Commission decision COMP / M.5046 of 17 December 2008 – *Friesland Foods/Campina*, § 405.

<sup>20</sup> Commission decision COMP/M.6242 – *Lactalis/Parmalat*, § 42 and Commission decision COMP/M.6611 – *Arla Foods/Milk Links*, § 70.

<sup>21</sup> Commission decision No COMP/M.5046 – *Friesland Foods / Campina*, § 422.

<sup>22</sup> Commission decision COMP/ M.6119 – *Arla/Hansa*, § 38.

<sup>23</sup> Commission decision No COMP/M.5046 – *Friesland Foods / Campina*, § 1130.

## 3.2. Competitive assessment

### 3.2.1. Market for procurement of raw milk

- (26) On the market for procurement of raw milk, the Parties' activities lead to affected markets only in France, where at national level, the Transaction results in the Parties' combined market share of [20-30]% (with a negligible increment of [0-5]% from Omira). At the narrowest plausible geographic market, the regional level of Grand-Est region of France, the Transaction results in a combined market share of [20-30]% (with a negligible increment of [0-5] % from Omira).

Table 1: France - Parties' market shares in the affected markets:

	<b>Lactalis</b>	<b>Omira</b>	<b>Combined</b>
Raw milk – France	[20-30]%	[0-5]%	<b>[20-30]%</b>
Raw milk – <i>Grand Est</i>	[20-30]%	[0-5]%	<b>[20-30]%</b>

*Source: Internal data of the Parties/ Parties' best estimates on the basis of IRI data for the volume of products sold under private label (for the supply of long-life milk to be sold as private label)*

- (27) Considering the moderate level of the combined market shares of the Parties and the extremely limited overlap on these markets both at the national level ([0-5]%) and at the Grand Est region level ([0-5]%), the Transaction is highly unlikely to lead to any merger-specific competitive concerns.
- (28) In light of the above, the horizontal overlap between the Parties' activities on the market for the procurement of raw milk does not raise serious doubts as to the compatibility of the present Transaction with the internal market.

### 3.2.2. Market for long-life dairy products

- (29) With respect to the market for long-life dairy products, the Parties' activities lead to four affected markets.
- (30) In Italy, where Lactalis owns the Italian manufacturer Parmalat, the Transaction results in i) an affected market for the supply of long-life milk (supplier branded) leading to the Parties' combined market share of max. [30-40]% (with a negligible increment of [0-5]% from Omira); as well as ii) an affected market for the supply of long-life milk to be resold under private label to retailers, with the Parties' combined market share being [20-30]% (with a negligible increment of [0-5]% from Omira).
- (31) Furthermore, in Slovenia, the Transaction results in iii) an affected market for the supply of long-life milk (supplier branded), where the Parties' combined market share reaches max. [30-40]% (with a negligible increment of [0-5]% from Omira); as well as iv) an affected market for the supply of long-life milk to be resold under private label to retailers, with the Parties' combined market share being [30-40]% (and an increment of [5-10]% from Omira).

Table 2: Italy – Slovenia: Parties’ market shares in the affected markets:

	<b>Lactalis</b>	<b>Omira</b>	<b>Combined</b>
Long-life milk in Italy (supplier branded)	[30-40]%	[0-5]%	<b>[30-40]%</b>
Supply of long-life milk in Italy (private label)	[20-30]%	[0-5]%	<b>[20-30]%</b>
Long-life milk in Slovenia (supplier branded)	[30-40]%	[0-5]%	<b>[30-40]%</b>
Supply of long-life milk in Slovenia (private label)	[20-30]%	[5-10]%	<b>[30-40]%</b>

*Source: Internal data of the Parties/ Parties' best estimates on the basis of IRI data for the volume of products sold under private label (for the supply of long-life milk to be sold as private label)*

- (32) Nonetheless, the Transaction will not lead to any competitive concerns on either the Italian or Slovenian market for the supply of long-life milk (either sold under private label or as supplier branded).
- (33) Firstly, in all of these markets, except for the supply of long-life milk to be sold as private label in Slovenia, the increments brought about by the Transaction are *de minimis*, so that the merger-specific effects of the Transaction are negligible. Moreover, the merged entity would have rather moderate market shares which reach at most [30-40]%.  
 (34) Secondly, in all these markets, Lactalis will continue to face competition from established and credible competitors. In Slovenia, these include Pomurske mlekarne and Mlekarna Celeia.<sup>24</sup> Also, in Italy, the customers confirmed that they have several alternatives<sup>25</sup>, so that Lactalis will continue to face several national competitors, such as Granarolo and Sterilgarda.  
 (35) Thirdly, Lactalis will continue to face strong buyer power. Omira’s business relates mainly to the sale of products to be sold under private label, in the context of competitive calls for tenders. Also, Omira's own brands are little known outside of Germany. The acquisition of Omira will accordingly not change Lactalis’ bargaining position vis-à-vis retailers to any material extent.  
 (36) Fourthly, Omira’s business [...]. In the absence of the contemplated transaction, it is likely that [...].

<sup>24</sup> See reply to a Request for Information from customer [...] of 7.8.2017, ad.6.

<sup>25</sup> See minutes of the call with customer [...] of 24.7.2017, paragraphs 4-6; E-mail reply of customer [...] of 11.8.2017, ad 5, 7, 9 & 12.



- (37) More particularly with regards to the Slovenian market for the supply of long-life milk (private label) with the highest, yet still limited increment of [5-10]% by Omira, so far in 2017, Omira has sold [...] litres of long-life milk (to [...]). On the assumption that sales of long-life milk are stable throughout the year, this would entail sales of [...] litres in 2017, versus sales of close to [...] litres in 2016. The resulting 2017 market share would be of around [0-5]%. Even if this projection were incorrect, and Omira would retain approximately its market share of 2016, the market share of the combined entity would still be relatively limited (around [30-40]%). Moreover, [...] could terminate the contract with the combined entity (more specifically, with the Omira part thereof) with a [...] notice period and call for tenders should [...] so decide, so that the combined entity's market share is relatively fragile and could quickly change to zero.<sup>26</sup>
- (38) Besides, the majority of respondents to the market investigation confirmed that companies from neighbouring Member States also supply the Slovenian market and could easily increase their volumes of supply to retailers active in Slovenia.<sup>27</sup> In particular, a majority of the respondents in Slovenia also considered that long-life milk can easily be, and already is being procured by them from Austria, Italy, France or Germany.<sup>28</sup>
- (39) Moreover, all of the respondents to the market investigation confirmed the availability of several alternative sources of long-life milk in Slovenia.<sup>29</sup> None of the respondents to the market investigation considered there to be any switching barriers to a potential change of a supplier either.
- (40) Therefore, post-Transaction, retailers will continue having a wide range of choice and competitive offers to their calls for tender to procure basic long-life milk to sell as private label, be it with the various dairy companies already active in Slovenia or with dairy companies in various other neighbouring Member States.
- (41) Finally, a vast majority of the participants to the market investigation did not raise any competitive concerns with respect to the impact of the Transaction. Equally, none of the respondents to the market investigation considered the Transaction to have any impact on the Slovenian market.<sup>30</sup>
- (42) Given the above, the Transaction does not give rise to serious doubts on the market for the supply of long-life milk to be sold under supplier brand or under private label.

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<sup>26</sup> See minutes of the call with customer [...] of 24.7.2017, paragraphs 5-6.

<sup>27</sup> See minutes of the call with customer [...] of 24.7.2017, paragraphs 4-6; reply to a Request for Information from customer [...] of 7.8.2017, ad 6; E-mail reply of customer [...] of 11.8.2017, ad 8 & ad 11.

<sup>28</sup> Ibid.

<sup>29</sup> See minutes of the call with customer [...] of 24.7.2017, paragraphs 5-6; minutes of the call with customer [...] of 13 July 2017, paragraphs 2-3; reply to a Request for Information from customer [...] of 7.8.2017, ad.7. ad.11; E-mail reply of customer [...] of 11.8.2017, ad 11, ad 15.

<sup>30</sup> See minutes of the call with customer [...] of 24.7.2017, paragraph 3; minutes of the call with customer [...] of 13 July 2017, paragraphs 2-3; reply to a Request for Information from customer [...] of 7.8.2017, ad.12; E-mail reply of customer [...] of 11.8.2017, ad 11, ad 15.

**4. 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*