



EUROPEAN COMMISSION
DG Competition

***Case M.8829 – TOTAL PRODUCE /
DOLE FOOD COMPANY***

Only the English text is available and authentic.

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

Decision on the implementation of the commitments -
Purchaser approval
Date: 24.1.2019



EUROPEAN COMMISSION

Brussels, 24.01.2019
C(2019) 701 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Dear Sir/Madam,

**Subject: Case M.8829 – Total Produce/Dole Food Company
Approval of BAMA Gruppen AS as purchaser of the Divestment Business
following your letter of 19 December 2018 and the Trustee’s opinion of 8
January 2019**

I. FACTS AND PROCEDURE

1. By decision of 30 July 2018 (“the Decision”) based on Article 6(1)(b) in connection with Article 6(2) of Council Regulation No 139/2004¹, the Commission declared the operation by which the undertaking Total Produce PLC (“Total Produce”) acquires within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control over DFC Holdings LLC, and thus indirectly over its wholly-owned subsidiary, Dole Food Company, Inc. (together referred to as “Dole”), compatible with the internal market, subject to conditions and obligations (the “Commitments”). Total Produce and Dole are together referred to as “the Parties”.
2. In particular, the Commitments provide for the divestment of Saba Fresh Cuts AB (“SFC AB”), a Swedish legal entity, currently wholly owned by Dole and running a bagged salad plant in Helsingborg, Sweden (“the Divestment Business”).

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.

3. The Divestment business includes:
 - (i) the following main tangible assets: a bagged salad production plant, located at Torbonav 13 B, 250 15 Helsingborg (Sweden) with a size of 96,529 square feet and under full ownership of Saba Fresh Cuts AB, as well as the equipment used at that plant as listed in Schedule A of the Commitments.
 - (ii) all licences, permits and authorisations issued by any governmental organization or other body for the benefit of the Divestment Business and allowing it to operate its business, to the extent transferable under applicable law;
 - (iii) all customer contracts, agreements, commitments, understandings and orders of the Divestment Business and all contracts, agreements, commitments, understandings and orders relating to suppliers that supply the Divestment Business as at closing;
 - (iv) customer, credit and other records of the Divestment Business;
 - (v) all personnel currently employed by the Divestment Business and selected Key personnel;
 - (vi) any know-how held by the Divestment Business; and
 - (vii) at the request of the Purchaser, the Enterprise Resource Planning(ERP) system, which is an IT data management system currently used solely by the Divestment Business;
4. By letter of 19 December 2018, the Parties proposed BAMA Gruppen AS (“Bama”) for approval by the Commission as purchaser of the Divestment Business and submitted the proposed Share Purchase Agreement (“SPA”) and related agreements, notably the Transitional Services Agreement and the Licence Agreement (together collectively referred to as “the Proposed Agreements”). The acquisition of the Divestment Business by Bama will be referred to as “the Proposed Transaction”.
5. On 8 January 2019, the Monitoring Trustee Advolis (the “Trustee”), submitted an assessment of Bama’s suitability as a purchaser and, in particular, indicated that it fulfils the criteria of the purchaser requirements in section D of the Commitments attached to the Decision. The Trustee also indicated that, in its assessment, on the basis of the Proposed Agreements, the Divestment Business would be sold in a manner consistent with the Commitments.

II. ASSESSMENT OF THE PROPOSAL

(a) 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 the Parties and their affiliated undertakings.

- (ii) The Purchaser has the financial resources, proven expertise 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 is neither likely to create, in light of the information available to the Commission, prima facie competition concerns, nor to 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.

(b) Description of the Proposed Purchaser

- 8. Bama is a Norwegian privately owned trading company and has been operating for over 130 years. It is the parent entity of a group of companies. The group entity acquiring the Divestment Business is BAMA International AS, a limited liability company incorporated in Norway.
- 9. Bama is the Norwegian market leader within fruit and vegetables. Bama is active along the whole value chain from production to processing and logistics. It supplies a range of produce including fresh fruit, berries, vegetables, potatoes, processed products, flowers and other products with a limited shelf life. In addition, Bama sells bagged salads in Norway. The company sources a network of more than 1 400 producers in Norway and abroad. Each year, more than 500 000 tonnes of fresh products pass through Bama's terminals and production facilities. [Information on Bama's customers].
- 10. Next to its Norwegian business, Bama also owns and operates niche businesses in Sweden, the Netherlands and Poland. It is involved in selling exotic fruits and vegetables, berries, flowers and other fresh produce. In Sweden, Bama is active through its subsidiaries Nordic Lunch AB, supplying lunch meal solutions, and VegMe AB, a newly founded company providing vegetarian meal solutions
- 11. In 2017, BAMA employed about 2 450 staff members, generating a turnover of circa EUR 1 700 million (approximately 80 per cent of which was generated in Norway).

(c) Independence from the Parties

- 12. According to the information provided by the Trustee, the Parties have no direct or indirect capital interest neither in Bama, nor in Bama's main shareholders and Bama or its main shareholders have no capital interest in the Parties.
- 13. There are some existing arms' length commercial agreements between Bama and the Parties. [Information on existing commercial agreements].
- 14. [Information on existing commercial agreements]. Therefore, the links would not impair the incentives of the Proposed Purchaser and the Parties to compete on the Swedish market for bagged salad.
- 15. The Commission thus considers that the Proposed Purchaser will be independent from and unconnected to the Parties.

(d) Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

16. The Trustee submits that the Proposed Purchaser has sufficient financial resources, proven expertise and incentives to maintain and develop the Divestment business as a viable and active competitive business. According to its most recent annual report, Bama's turnover for the year 2017 was EUR 1 700 million and it had an EBITDA of EUR 91.6 million and a net profit of EUR 40.2 million.
17. According to the Trustee, [information on Bama's financial situation]. In addition, Bama's financial liability has been stable and the company exhibits a very strong liquidity position. Moreover, two of Bama's main shareholders are large Norway-based long-term established retailer chains, who display solid financials. The Trustee concludes that Bama boasts sound financial resources and that it has the financial capacity to maintain and support the Divestment Business.
18. Bama has a long and proven experience in the Norwegian wholesale market for imported and Norwegian-produced fresh fruit, vegetables and flowers, and as stated above, it operates a bagged salad business in Norway. According to the purchaser approval request submitted by the Parties, Bama is a reliable industrial owner with deep insight into the business and markets in which the Divestment Business operates and is able to build up long-term strategic relationships with major retail clients and suppliers. According to the Trustee, Bama's expertise in bagged salads will help with the integration of the Divestment Business.
19. [Information on Bama's strategy].
20. In view of the above considerations, the Commission considers that the Proposed Purchaser has the financial capabilities, proven expertise and incentives to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other rivals.

(e) Absence of prima facie competition problems

21. The Decision defined national markets for the supply of washed bagged salads. Bama is currently not active on the Swedish market for bagged salad, selling only "meal salads" that contain proteins or carbohydrates and that do not fall into the same product market as washed bagged salads. Consequently, the implementation of the Commitments leads to the entry of a new player on this market. There is no horizontal overlap or vertical link between the Parties and Bama's activities. Accordingly, the acquisition of the Divestment Business does not raise prima facie competition concerns. There is no regulatory approval required for completion of the Proposed Transaction apart from the Commission's approval of Bama as the Divestment Business' purchaser.

(f) Conclusion on the Purchaser criteria

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

III. ASSESSMENT OF THE PROPOSED TRANSACTION

23. The Proposed Agreements comprise: (i) the Share Purchase Agreement, which sets out the terms of the sale of the Divestment Business; (ii) the Transitional Services Agreement (“TSA”), which specifies and sets out the terms and conditions of certain IT-, HR- and finance-related support services to be provided by the Parties to Bama; and (iii) the License Agreement, which sets out the terms for the use of Dole’s trademarks by Bama.
24. According to the Trustee, the Proposed Transaction does not contain any modifications to the scope of the assets, which form the Divestment Business, and they fully comply with the Commitments.
25. The SPA includes Dole’s Finnish fresh cut products business operated by Saba Fresh Cuts Oy (“SFC Oy”), which will be purchased by Bama in combination with the Divestment Business. The SPA, therefore, goes beyond the scope of the Commitments. According to the Trustee, the addition of SFC Oy to the divestment package is a positive development, since the Divestment Business and SFC Oy have various ties in terms of joint procurement, joint customers, intercompany sales and joint personnel.
26. The TSA provides for a transitional period of [...] in which the Parties will provide certain back-office services to the Divestment Business and SFC Oy. The [...] transitional period starts at the date of the closing of the Proposed Transaction and may be extended by [...] after that period upon request by Bama. The transitional period allows Bama to complete the migration process of the service areas in a way that preserves the business continuity and viability of the Divestment Business and SFC Oy. [Information on Bama's strategy]. Furthermore, the TSA specifies that the terms and conditions of the services will be equivalent to those currently provided, meaning they will be based on the actual costs.
27. Under the License Agreement, the Parties agreed to grant Bama an exclusive, royalty-free, non-transferrable and non-assignable license for the use of Dole’s trademarks by the Divestment Business and SFC Oy. The term of the license is [...] from the date of signing of the License Agreement, which will occur at the closing of the Proposed Transaction, which is in line with the Commitments. In any event, the products sold by the Divestment Business under the Dole Brand are limited and [information on Bama's strategy].
28. In light of the above considerations, and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the Proposed Agreements are consistent with the Commitments and that, accordingly, the Divestment Business is being sold in a manner consistent with the Commitments.

IV. CONCLUSION

29. On the basis of the above assessment, the Commission approves Bama as a suitable purchaser.
30. On the basis of the Proposed Agreements, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.

31. This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreements. This decision does not constitute a confirmation that the Parties have complied with the Commitments.
32. This decision is based on Section D of the Commitments attached to the Commission Decision of 30 July 2018.

For the Commission

(Signed)
Johannes LAITENBERGER
Director-General