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***Case No COMP/M.5020
- LESAFFRE/ GBI***

Only the English text is available and authentic.

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

Article 22(3)
Date: 04/02/2008



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, Brussels, 04/02/2008
SG-Greffe (2008)D/200541

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
ARTICLE 22(3) DECISION

To the Office of Fair Trading

Dear Sir,

Subject: Case No COMP/M.5020 - LESAFFRE/ GBI UK

Request for referral of 17 December 2007 by the Office of Fair Trading of the United Kingdom to the Commission pursuant to Article 22(1) of the EC Merger Regulation

Ref.: Letter of 17 December 2007 (received on that same day) by Mr Simon Pritchard, Senior Director Mergers, Office of Fair Trading, to Mr Philip Lowe, Director General for Competition of the European Commission

I. INTRODUCTION

- (1) With the above-mentioned request of 17 December 2007, the UK Competition Authority - the Office of Fair Trading ("the OFT") – requested the Commission to examine, in application of Article 22(1) of Council Regulation (EC) No 139/2004 ("the EC Merger Regulation"), the concentration whereby the undertaking Compagnie des Levures Lesaffre SA ("Lesaffre", France) acquires sole control of GB Ingredients Ltd and BFP Wholesale Ltd (together "GBI UK", UK).
- (2) Pursuant to Article 22(1) of the EC Merger Regulation, one or more Member States may request the Commission to examine any concentration, as defined in Article 3 of the EC Merger Regulation, that does not have a Community dimension within the meaning of Article 1 of the EC Merger Regulation but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request. Such a request must be made within

15 working days of the date of the notification of the concentration. Pursuant to Article 22(2) of the EC Merger Regulation, any other Member State may join the initial request within a period of 15 working days of being informed by the Commission of the initial request.

- (3) On 27 November 2007, Lesaffre notified the above mentioned concentration to the OFT. On 17 December 2007, the Commission received a referral request pursuant to Article 22(1) of the EC Merger Regulation from the OFT. The OFT has thus made the referral request within 15 working days of the date of the notification as required in Article 22(1) of the EC Merger Regulation.
- (4) On 18 November 2007, the Commission informed the competent authorities of the other Member States and the undertakings concerned of the request made by the OFT, in accordance with Article 22(2) of the EC Merger Regulation. No competition authority has joined the referral request.
- (5) The OFT submits in its request that the case is connected to another case in the yeast business, namely Case No COMP/M.4980 ABF/GBI assets. The UK company Associated British Foods ("ABF") will acquire the continental European assets of a business operated by GBI Holding B.V. ("GBI") that is active in the production and distribution of yeast and in the distribution of other food products. Following the Article 22 referral request of the Spanish Competition Authority in the ABF/GBI assets case, which was joined by Portugal and France, the Commission decided on 13 December 2007 to examine that concentration based on the requests.

II. THE PARTIES AND THE OPERATION

- (6) **Lesaffre** is a privately-owned family company which focuses on three main business areas: yeast, yeast extracts and bakery ingredients. Lesaffre has manufacturing facilities in 26 countries, including France and Belgium. Lesaffre currently supplies the UK market from its production plant in [...] supported by a UK-based sales force.
- (7) The acquired business (**GBI UK**) concerns GBI's activities in yeast and the distribution of food products in the UK. GBI UK is currently ultimately controlled by the Dutch company Gilde Buy-Out Partners. GBI had yeast production plants in the UK, in Italy and Germany. Lesaffre has acquired the UK plant only.
- (8) Pursuant to the share and purchase agreement concluded on 19 October 2007, Lesaffre has acquired all the shares in GBI UK. The transaction has been completed on the same day. Lesaffre has also acquired other subsidiaries of GBI outside Europe.
- (9) With the operation, Lesaffre has acquired sole control by way of acquisition of shares of GBI UK. The transaction is therefore a concentration within the meaning of Article 3 of the EC Merger Regulation.
- (10) The transaction would not have a Community dimension within the meaning of Article 1 of the Council Regulation (EC) No. 139/2004, according to the information provided by the OFT.

III. ASSESSMENT OF THE REFERRAL REQUEST

- (11) The request was submitted within the relevant deadlines and concerns a concentration within the meaning of the EC Merger Regulation. Pursuant to Article 22(3) of the EC Merger Regulation, the Commission may decide to examine the concentration if it considers that (i) it affects trade between Member States and (ii) it threatens to significantly affect competition within the territory of the Member State or States making the request. It follows that if these two legal requirements are met, the Commission may exercise discretion with regard to whether or not it is appropriate that the concentration is examined by the Commission. The Commission has, in its relevant Notice on Case Referral in respect of concentrations ("the Referral Notice")¹, set out in a general manner its understanding regarding the appropriateness of particular cases or categories of cases for referral.

1. Effect on trade between Member States

- (12) Pursuant to paragraph 43 of the Referral Notice, a concentration fulfils the criterion of effect on trade between Member States laid down in Article 22 EC Merger Regulation if it is "*liable to have some discernible influence on the pattern of trade between Member States*".
- (13) The OFT refers to Lesaffre's submission to the OFT which shows significant trade flows between Member States: GBI exports world wide [...] dry yeast ([90-100]%) from its plant in the UK whereas Lesaffre imports all of its liquid and compressed fresh yeast sold in the UK from its plant in [...]. In its submission to the OFT, Lesaffre further indicates that other European producers such the Belgian Puratos have imported fresh yeast into the UK.
- (14) Against this background, it can be concluded that trade between Member States would be affected within the meaning of Article 22 of the EC Merger Regulation.

2. Concentration threatens to significantly affect competition

- (15) Regarding the second criterion, paragraph 44 of the Referral Notice provides that a referring Member State should demonstrate that, "*based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse effect on competition and thus it deserves close scrutiny. Such preliminary indications may be in the nature of prima facie evidence of such a possible significant adverse impact, but would be without prejudice to the outcome of a full investigation.*"
- (16) The proposed concentration mainly concerns the production of yeast and the distribution of yeast and other food products. With regard to **relevant product markets**, the OFT referral request indicates that the parties overlap in the manufacture and supply of bakers' yeast. Lesaffre indicates in its notification to the OFT that there are two main types of yeast, fresh and dry and that, within fresh, one could further distinguish between liquid and compressed yeast. Lesaffre explains that liquid fresh yeast has a short shelf life (around 3 weeks)

¹ OJ C 56, 5.3.2005, p. 2.

and needs insulated tanker trucks for transportation; customers of compressed fresh yeast need a cool room in order to store the product which has a shelf-life of approx. 4-5 weeks; finally, dry yeast has a shelf life of up to 2 years and can be shipped over long distances. Lesaffre and GBI UK produce all these types of yeast. On a preliminary basis, there are therefore indications for distinct product markets of at least fresh and dry yeast.

- (17) As regards the **relevant geographic market** the referral request indicates that the notifying party has provided data that shows significant trade flows between the UK and continental Europe in the segment of dry yeast. Lesaffre submits that the segment for dry yeast may be worldwide in scope referring to the fact that [90-100]% of GBI UK's dry yeast production is exported worldwide. According to Lesaffre's notification to the OFT, the fresh yeast market could be wider than the UK considering that producers from Belgium and Germany could supply the UK market (the UK is a net importer of fresh yeast). This is demonstrated by the fact that all of the fresh yeast supplied by Lesaffre in the UK is produced in its plants in [...]. Moreover, the Belgian yeast producer Puratos, which does not have a production plant in the UK, also supplies certain quantities of fresh yeast into the UK market.
- (18) Based on the above indications, the Commission preliminarily considers that the geographic scope of the yeast markets is at least national and potentially cross-border comprising several countries. In particular, as regards dry yeast, EEA-wide or even wider markets cannot be excluded at this stage.
- (19) It must be stressed that these preliminary conclusions on the relevant markets may change in the course of the Commission's further analysis and investigation.
- (20) With respect to the **structure of the markets**, the OFT indicates that post-transaction, the parties could reach a market share of [60-70]% in the fresh yeast market whereas the main competitor (ABF) will have [40-50]% of the market. Lesaffre's notification provides the following market share information further broken down into liquid and compressed yeast:

Table 1 – Market shares of yeast: UK 2006

Producer	Liquid fresh yeast		Compressed fresh yeast	
	Tonnes	%	Tonnes	%
Lesaffre	[...]	[10-20]%	[...]	[30-40]%
GBI	[...]	[30-40]%	[...]	[30-40]%
Combined	[...]	[40-50]%	[...]	[70-80]%
ABF	[...]	[50-60]%	[...]	[20-30]%
Puratos	0	0%	[...]	[0-5]%

Source: Lesaffre's notification

- (21) The request of the OFT explains that the transaction could *prima facie* significantly affect competition in the UK insofar the proposed operation reduces the number of suppliers in the UK from three to two in the fresh yeast market. This market structure could give rise to both non-coordinated and coordinated effects in the yeast markets in the UK. Moreover, given that the geographic scope of the fresh yeast market may be wider than national and go beyond UK as to cover a part of continental Europe, it is not excluded that negative effects may arise on these wider markets.

- (22) Given the duopolistic, rather symmetrical market structure resulting from the concentration, on a *prima facie* basis, and without prejudice to the outcome of the investigations by the Commission, it therefore can be concluded that the transaction threatens to significantly affect competition within the territory of the UK.

3. Appropriateness of a referral of the present case to the Commission

- (23) According to point 45 of the Referral Notice, as post-notification referrals to the Commission may entail additional cost and time delay for the merging parties, they should normally be limited to those cases "*which appear to present a real risk of negative effects on competition and trade between Member States, and where it appears that these would be best addressed at the Community level.*" The Referral Notice then exemplifies two categories of cases which normally are most appropriate for referral to the Commission pursuant to Article 22: "*(i) cases which give rise to serious competition concerns in one or more markets which are wider than national in geographic scope, or where some of the potentially affected markets are wider than national, and where the main economic impact of the concentration is connected to such markets; (ii) cases which give rise to serious competition concerns in a series of national or narrower than national markets located in a number of Member States, in circumstances where coherent treatment of the case (regarding possible remedies, but also, in appropriate cases, the investigative efforts as such) is considered desirable, and where the main economic impact of the concentration is connected to such markets*".
- (24) In the present case, the Commission appears to be better placed to assess the transaction for a number of reasons. Firstly, at this stage in the procedure it cannot be excluded that the relevant geographic market for (liquid and compressed) fresh yeast is wider than national in scope, given the trade flows that can be observed between the UK and continental Europe. As the parties already have considerably high combined market shares regarding liquid and compressed fresh yeast in the UK (cf. above, Table 1), it cannot be excluded that the case might give rise to negative competition effects on potential markets that are wider than national. The case therefore is in line with the first category mentioned in paragraph 45 of the Referral Notice.
- (25) Moreover, the Commission appears to be better placed to assess the transaction in the light of the particularities of the present case. The present concentration is one limb of a major restructuring in the European yeast industry whereby the EEA assets of one of the major yeast producers in the EEA (GBI) are being split between the two other major producers (Lesaffre and ABF). As stated above, the Commission has already decided to examine the acquisition by ABF of GBI assets pursuant to Article 22 of the EC Merger Regulation.
- (26) Both concentrations concern yeast markets in Western Europe (the UK is ABF's home market and France is Lesaffre's home market) and, arguably, their effects may impact on each other. First, Lesaffre is currently serving the UK market from its plant in [...] and by acquiring GBI's production facility in the UK, Lesaffre may free up capacities in the [...] plant, which may have an impact on the competitive situation in neighbouring markets including France. Second, as the geographic scope of the fresh yeast markets may comprise a market going beyond the UK as to cover a part of continental Europe, it is not excluded that negative

effects may arise on these wider markets, which may overlap with the relevant geographic market examined in the ABF/GBI Business concentration. Third, both transactions lead to the removal of GBI (which is being split up between ABF and Lesaffre). GBI is one of the three main EEA yeast suppliers, together with Lesaffre and ABF, in the markets concerned by both concentrations. Moreover, there are only a limited number of yeast production plants in these markets, so that changes in that respect can impact on wider regional areas. Given these particular circumstances, the Commission considers that in order to ensure an efficient and coherent assessment of the changes brought about by both operations on the overall market structure for the supply of yeast in the EEA, it is appropriate that the present case is examined at the Community level.

- (27) The Commission has therefore concluded that it is, for the above reasons and in view of consistency and efficiency with respect to the substantive analysis and investigation, the better placed authority to assess this concentration, and that the present case is appropriate for a referral to the Commission pursuant to Article 22 of the EC Merger Regulation.

IV. CONCLUSION

- (28) The case is eligible for referral under Article 22 of the EC Merger Regulation, since the proposed concentration affects trade between Member States and threatens to significantly affect competition in the UK. Moreover, it appears that the real risk of negative effects on competition and trade between Member States would be best addressed at the Community level. Therefore, the Commission has decided to examine the concentration pursuant to Article 22(3) of the EC Merger Regulation.

For the Commission
(*signed*)
Neelie KROES
Member of the Commission