

EN

*Case No COMP/M.6753- ORKLA/
RIEBER & SØN*

Only the English text is available and authentic.

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

Article 6(4)

Date: 25.1.2013



EUROPEAN COMMISSION

Brussels, 25.1.2013
C(2013)523

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To: Konkurransetilsynet
(Norwegian Competition Authority):

Dear Sirs,

Subject: Case No COMP/M.6753– ORKLA / RIEBER & SØN
Reasoned Submission pursuant to Article 6(4) of Protocol 24 to the EEA Agreement for partial referral of the case to Norway.

Date of filing: 4 January 2013

Legal deadline for response of Norway: 29 January 2013

Legal deadline for the Commission decision: 8 February 2013

I. INTRODUCTION

1. On 4 January 2013, the Commission received by means of a reasoned submission a referral request pursuant to Article 6(4) of Protocol 24 to the EEA Agreement with respect to the transaction cited above. The parties request the operation to be examined, as regards the Norwegian part of the transaction, by the competent authorities of Norway.
2. According to the rules governing the referral system of Protocol 24 to the EEA Agreement, before a formal filing has been made with the Commission, the merging parties may inform the Commission by means of a reasoned submission that a concentration may significantly affect competition in a market within an EFTA State that presents all the characteristics of a distinct market and should therefore be examined, in whole or in part, by that EFTA State.

3. A copy of this reasoned submission was transmitted to the EFTA Surveillance Authority and all Member States on 4 January 2013.
4. By letter of 22 January 2013, the Norwegian Competition Authority ("NCA") as the competent authority of Norway informed the Commission that Norway agrees with the proposed referral.

II. THE PARTIES

5. **Orkla ASA** ("Orkla") is a group of companies headquartered in Oslo, Norway. It is listed on the Oslo Stock Exchange and comprises approximately 100 subsidiaries that operate in a variety of product areas, and have a total of approximately 30,000 employees in more than 40 countries worldwide. Orkla is divided into three business areas: (i) Sapa, which is active in the manufacture and sale of aluminium profiles, heat transfer and building systems, (ii) Investments, which manages the group's financial investments including share portfolio and hydropower holdings, minority holdings in Jotun ASA (paints and coatings), REC (solar power), and Borregaard (chemicals and energy), and (iii) Orkla Brands, which is active in the processing and sale of food, drink and snack products to retail shops and food service customers, as well as in the production and sale of detergents and personal care products, cleaning solutions, dietary supplements, health products and basic textiles. Orkla Brands has activities principally in Norway, Sweden, Finland, Denmark, Russia, Austria, Germany, India and the Baltics.
6. **Rieber ASA** ("Rieber") is a group of companies operating in the food sector, headquartered in Bergen, Norway. It is also listed on the Oslo Stock Exchange. Rieber comprises 11 subsidiaries and employs approximately 2,900 people in more than 10 countries. Rieber is a supplier of branded food products, primarily to the grocery and out of home channels. Rieber is divided into three reporting units representing three geographical areas, namely Western Europe (Norway, Denmark, Sweden, Germany), Central Europe (Czech Republic, Slovakia, Poland) and Russia/others.

III. THE OPERATION AND CONCENTRATION

7. The proposed transaction concerns the acquisition of Rieber by Orkla. On 19 August 2012, Orkla and several investment companies owned by the Rieber family entered into an agreement according to which Orkla will acquire 90.11% of the shares in Rieber. This acquisition will trigger a mandatory offer for the remaining shares on the Oslo Stock Exchange.

IV. EU DIMENSION

8. The notified operation has an EU dimension within the meaning of Article 1(3) of the Merger Regulation.¹

¹ The proposed transaction does not meet the turnover thresholds of Article 1(2) of the Merger Regulation as although the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 000 million [Orkla: EUR [...] million, Rieber: EUR [...] million], only one of the undertakings concerned had a Community-wide turnover of more than EUR 250 million ([...]). The proposed transaction fulfils the alternative turnover thresholds of Article 1(3) of the Merger Regulation as the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2 500 million, in each of at least three Member States the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million ([...]) and in each of these Member States the

V. ASSESSMENT

9. As a preliminary remark, it has to be noted that, since the referral request only concerns the Norwegian part of the transaction, the rest of the transaction will be assessed by the Commission. The following assessment, therefore, is only relative to the Norwegian part of the transaction.

A. Relevant product markets

10. On the basis of the information submitted in the reasoned submission, the transaction concerns the production and sale of food products.
11. In previous decisions in the food sector, the Commission distinguished the production and sale of food products dedicated to the retail sector from the production and sale of food dedicated to the food service sector.²
12. As regards the retail sector, the Commission has further defined the relevant product market based on demand-side characteristics, in particular by reference to the product characteristics, price and end-use (e.g. frozen snacks, ketchup, ambient wet soup).³
13. As regards the food service sector, the Commission has previously distinguished the commercial segment (e.g. hotels, restaurants, catering or 'horeca') from the social segment (e.g. canteens, schools, hospitals). Certain products markets may also be further segmented between "front-of-house" products, which are used in offices or canteens, and "back-of-house" products, which are typically used in the kitchen and not visible to the customer. As in the retail sector, the different product markets have also been defined according to their characteristics (e.g. ingredient based soups and ready-to soups).⁴

B. Relevant geographic market

14. According to the Commission's previous practice, the geographic scope of the above-mentioned food markets is predominantly national since, in particular, consumer tastes vary between Member States, brands or brands' reputations vary from one Member State to another, and negotiations with customers are still conducted on a national basis.⁵

C. Assessment

15. On the basis of the information provided by the parties in the reasoned submission, the proposed transaction is an appropriate candidate for a pre-filing referral from the

aggregate turnover of at least two of the undertakings concerned is more than EUR 25 million [...]. In addition, the aggregate Community-wide turnover of at least two of the undertakings concerned is more than EUR 100 million [...] and none of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

² Case COMP/M.1990 – Unilever/Bestfoods, Case COMP/M.3658 – Orkla/Chips.

³ Case COMP/M.1990 – Unilever/Bestfoods, Case COMP/M.3658 – Orkla/Chips.

⁴ Case COMP/M.1990 – Unilever/Bestfoods, Case COMP/M.3658 – Orkla/Chips.

⁵ Case COMP/M.1990 – Unilever/Bestfoods, Case COMP/M.3658 – Orkla/Chips.

Commission to the NCA as regards the Norwegian part of the transaction in accordance with Article 6(4) of Protocol 24 to the EEA Agreement.

16. The proposed transaction meets the legal requirements set out in Article 6(4) of Protocol 24 to the EEA Agreement. The transaction is a concentration within the meaning of Article 3 of the Merger Regulation, it has an EU dimension and it may significantly affect competition in distinct markets in Norway.
17. The proposed transaction will lead to a number of affected markets in Norway both in the retail sector (i.e. wet hot sauces including pizza sauce, frozen ready-to-eat meals, crispy fried onions, seafood-based bread toppings, cake cream and icing, bread mix, and sweet baking and dessert mix) and the food service sector (i.e. sweet bread toppings, seafood bread toppings, wet hot sauces, wet cold sauces, ready dessert sauces, crispy fried onions, potato products, and frozen ready-to-eat meals).
18. In particular, the combined market shares of the parties would be [20-30]% in a Norwegian food service market for wet hot sauces, [30-40]% in a Norwegian retail market for seafood bread toppings, and [40-50]% in a Norwegian food service market for sweet spreads. As a consequence, and according to the Commission's notice on Case Referral in respect of concentrations,⁶ whose guidance applies *mutatis mutandis* to the referral rules contained in the EEA Agreement, the proposed transaction may significantly affect competition in one or several markets in Norway.

Additional factors

19. With respect to Norway, the NCA is well placed to examine the Norwegian part of the case since it has extensive knowledge of the food sector. In particular, according to the information provided in the reasoned submission, the NCA has regular contacts with the main market players, including annual meetings, and receives copies of important agreements in the food sector pursuant to a reporting obligation placed on the four major retail chains. In addition, the NCA has performed a number of investigations in the food sector and has also contributed to several reports.⁷
20. In addition, a number of products concerned by the proposed transaction fall outside the scope of the EEA Agreement and therefore the Commission's jurisdiction. In particular, this is the case of all fish-based bread spreads and crispy fried onions, where the combined market share of the parties would be above 15%.⁸ Moreover, in the case of some frozen ready-to-eat meals, while some fall within the scope of the EEA Agreement and therefore the Commission's jurisdiction, others do not meaning that the Commission would not be in a position to carry out a comprehensive assessment of all the aspects of the proposed transaction as they relate to the Norwegian market.

⁶ Commission Notice on Case Referral in respect of concentrations, OJ C 56, 5.3.2005, p. 2, paragraph 17 and footnote 21.

⁷ See e.g. Report from the Nordic Competition Authorities N° 1/2005, Nordic Food Markets – a taste for competition.

⁸ The provisions relating to trade in goods, including food products, are set out in Article 8 of the EEA Agreement and Protocol 3.

VI. REFERRAL

21. On the basis of the information provided by the parties in the reasoned submission, the case meets the legal requirements set out in Article 6(4) of Protocol 24 to the EEA Agreement in that the concentration may significantly affect competition in a market within an EFTA State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations⁹ (point 17), which applies *mutatis mutandis* to Article 6(4) of Protocol 24 to the EEA Agreement, indicates that, in seeking a referral, “*the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*”, and that “*such indications may be no more than preliminary in nature...*”. The Commission considers, on the basis of the information submitted in the reasoned submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in Norway.

VII. CONCLUSION

22. For the above reasons, and given that Norway has expressed its agreement, the Commission has decided to refer the assessment of the effects of the proposed transaction on the relevant markets in Norway to be examined by the Norwegian Competition Authority. This decision is adopted in application of Article 6(4) read in conjunction with Article 6(1) of Protocol 24 to the EEA Agreement.

*For the Commission
(signed)*

*Alexander ITALIANER
Director-General*

⁹ OJ C 56, 5.3.2005, p. 2.