



DETERMINATION OF MERGER NOTIFICATION M/07/053 – VION/OERLEMANS

Section 21 of the Competition Act 2002

Proposed acquisition by VION N.V. of Oerlemans Foods B.V.

Dated 10/10/2007

Introduction

1. On 18 September 2007 the Competition Authority (the “Authority”), in accordance with Section 18(1)(a) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposed acquisition whereby VION N.V. (“VION”), either directly or through a wholly-owned subsidiary, would acquire 100% of the issued share capital of Oerlemans Foods B.V. (“Oerlemans”) from Kleiberg Beheer B.V.

The Undertakings Involved

The Acquirer

2. VION, the acquirer, headquartered in the Netherlands, is an internationally operating foodstuffs group with global production and sales branches. The group operates in the field of high quality foodstuffs and ingredients for both human and animal consumption.
3. VION Holding N.V. (“VION Holding”) holds 95% of the shares in VION. The shares in VION Holding are indirectly held by Zuidelijke Land en Tuinbouw Organisatie (“ZLTO”), via Noordbrabantse Christelijke Boerenbond, Rooms-Kathleen Vereniging van Boeren en Tuinders-Ontwikkeling (“NCB”), an association of farmers and agriculturalists, which has no further economic activities or subsidiaries.
4. VION’s activities are organised into three business divisions:
 - VION Fresh Meat is active in the purchase, slaughtering and deboning of pigs and cattle and the sale of fresh meat;
 - VION Convenience produces and distributes a wide range of mainly meat-based convenience foods, e.g. pre-packed fresh and deep-frozen products, finger foods, product toppings and ready-to-serve meals; and,
 - VION Ingredients mainly processes slaughter by-products (blood, bowel packages, skins and bones) for use in a variety of applications (food, pet food, animal feed, pharmaceuticals, fertilizer, technical products).
5. Banner, a separate business unit, is involved in the development and production of forms of (non) gelatin-based pharmaceutical administration for the pharmaceutical, food supplement and cosmetics industries.

6. VION makes sales on an international level, including in Europe, Asia, Africa, Oceania, North American and South America. The majority of sales are made in the EU (approximately €6,737 million out of a total of approximately €7,329 million in 2006).
7. VION's three business divisions and Banner make sales in the State. VION does not have any production facilities or sales offices in the State. VION sells directly to customers and does not sell through third party distributors. VION sells to the retail and food services channels in the State. VION's sales in the State (approximately €[...] in the financial year ending December 2006) [...].

The Target

8. Oerlemans, the target, is a grower, producer and supplier of frozen fresh vegetable, fruit and potato products. Oerlemans is active on a global level, including in Europe, the Middle East, the Far East, North America and South America. Oerlemans sells its products under the following brands: Oerlemans, Keizer and the local Eastern European brands, Bauer and Mifrovit. Oerlemans sells to the retail (branded and private label), food service and industry channels. Oerlemans generated consolidated worldwide turnover in 2006/2007 of approximately €[...], of which approximately €[...] was generated in the State.
9. Oerlemans does not produce or sell any meat-based products in the State or elsewhere. Oerlemans supplies deep frozen pre-fried potato products and deep frozen vegetable products in the State. Oerlemans does not have any production facilities or sales offices in the State. Oerlemans sells its products both directly to customers and through third party distributors.

Analysis

10. The parties are both active in supplying to the convenience food sector in the State. However, as can be seen from the description of the parties' respective activities, while VION's focus is on meat products and meat related products, Oerlemans only produces vegetable, fruit and potato products (i.e. non-meat products).
11. Convenience food has been defined by the European Commission in *Best Agrifund/Nordfleisch*¹ and *SOVION/HMG*² as "a fully or partially prepared dish or packaged food that can be prepared quickly and easily". The parties estimate that total sales of convenience food products in the State amount to approximately €1.1 billion per annum.
12. VION made sales of convenience food products in the State in 2007 to date of €[...]. Of these, [...] of sales were of vegetable products (namely, grilled Mediterranean vegetables) while the remainder were all of meat-based convenience food, i.e. they have a meat content of 90% or more (e.g. burgers, hotdogs, meatballs, chicken wings, chicken sticks, BBQ ribs).
13. Oerlemans sales in the State consist entirely of frozen vegetable and potato convenience food products (i.e. no meat based convenience

¹ Case No COMP/M.3337 *Best Agrifund/Nordfleisch* (19 March, 2004).

² Case No COMP/M.3605 *SOVION/HMG* (21 December, 2004).

food products). These sales amounted to €[...] in the most recent financial year.

14. Using the Commission's definition of the convenience food market, the parties estimate that they have a combined market share of less than [...] % in the State. Other players selling convenience food products in the State include: Kerry Foods, OSI International, Queally, AIBP, Kepak and Slaney Foods.
15. Alternatively, considering the narrowest possible market definition, i.e. vegetable or non-meat convenience food products, it can be seen that the overlap is also minimal since VION made sales in Ireland in 2007 of [...] of vegetable convenience food products.³ Other players selling non-meat convenience food products in Ireland include: McCain, LambWeston, Farm Frites, Lutosa, Ardo, Pinguin, D'Arta and Unifrost.
16. The Authority considers that given the minimal overlap between the activities of parties in the State on any possible relevant market definition, the proposed acquisition does not raise competition concerns in the State.

Ancillary Restraints

17. The Authority also reviewed the restrictive arrangements agreed by the parties in their Share Purchase Agreement and referred to in the notification of the merger. The arrangements provide for a 3-year non-compete restriction on Oerlemans (together with its employees and associated parties) in respect of the market on which Oerlemans is active.
18. The Authority considers that the non-compete restriction is directly related and necessary to the implementation of the merger because it guarantees the transfer to VION of the full value of the assets transferred, which include both physical assets and intangible assets, such as goodwill accumulated and know-how developed by the target.

Determination

The Competition Authority, in accordance with Section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby VION N.V, either directly or through a wholly-owned subsidiary, would acquire 100% of the issued share capital of Oerlemans Foods B.V. from Kleiberg Beheer B.V will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Dr. Paul K. Gorecki
Member of the Competition Authority

³ There is no overlap between the parties in respect of meat-based convenience food products as Oerlemans does not sell any meat-based products in the State or elsewhere.