



DETERMINATION OF MERGER NOTIFICATION M/12/007 -

Nestlé / Pfizer Nutrition

Section 21 of the Competition Act 2002

Proposed acquisition by Nestlé SA of the Pfizer Nutrition business from Pfizer Inc.

Dated 15 June 2012

Introduction

1. On 18 May 2012, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed transaction whereby Nestlé S.A. (Nestlé) would acquire, from Pfizer Inc. ("Pfizer"), the entire business of Pfizer Nutrition ("Pfizer Nutrition").
2. The proposed transaction constitutes an umbrella stock and asset purchase agreement, pursuant to which the parties will enter into separate implementing agreements with respect to the acquisition by Nestlé or its designated affiliates of the capital stock of certain entities and other assets and liabilities that comprise Pfizer Nutrition in various jurisdictions, including Ireland. The structure of ownership and control of Nestlé will not change as a result of the proposed acquisition.

The Undertakings Involved

The Acquirer

3. Nestlé is a public company listed on the Swiss stock exchange and headquartered in Vevey, Switzerland. Nestlé is active globally in the production, marketing and sale of a large variety of food and beverage products for both adults and children. Infant nutrition, including milk formula products, is a very important element in Nestlé's business. For example, Nestlé states that:

"People at all life stages and conditions – for example, babies and growing children, the elderly, people managing or recovering from illness, endurance athletes, or those wanting to manage their weight have very specific nutritional requirements. We at Nestlé Nutrition can offer tailor-made product and service solutions that meet these specific nutritional needs and satisfy our customers' expectations including products for the nutrition of infants."¹

¹ Nestlé Nutrition - Enhance the Quality of Life Page 5. See <<http://www.nestle.com/Common/NestleDocuments/Documents/Brands/2010-06-22%20NN%20Enhance%20Quality%20of%20Life%20brochure.pdf>>. See also the Nestlé Annual Report for 2010 which states "Our biggest area of focus is infants. it is our commitment to use our nutritional expertise to build healthier generations, one infant at a time. We are doing this by pursuing a mission to build awareness among parents of the extreme importance of appropriate nutrition from the very beginning of a child's life through our "Start Healthy, Stay Healthy"

4. Nestlé is involved in the State, through its Dublin-based subsidiary Nestlé Ireland, and also through various UK-based subsidiaries, in the production, marketing, and sale of various food products such as infant breakfast cereals, confectionary and beverages including bottled water and coffee.² Nestlé submits that it is not involved in maternal nutrition in the State.³
5. Of most relevance to the proposed transaction is Nestlé's involvement, worldwide and within the State, in the infant formula milk sector. Nestlé is a leading company globally in the production, marketing and sale of infant formula products. By contrast, as shown below in paragraphs 25-28, Nestlé has a much less significant presence in the State in the infant formula milk sector.
6. For the year ended 31 December 2011, Nestlé's worldwide turnover was approximately €67.858 billion of which approximately €[...] million⁴ was generated in the State.

The Vendor

7. Pfizer, the vendor for the proposed acquisition, is a public company listed on the New York, London, Euronext and Swiss stock exchanges and headquartered in New York, New York, USA. Pfizer is a diversified global pharmaceutical company.⁵
8. Within the State, Pfizer is involved, through a number of wholly owned subsidiaries, in a range of sectors.⁶ These include nutritionals including infant milk products, biopharmaceuticals, pharmaceutical ingredients, solid dose pharmaceuticals (capsules), prescription medicines, sterile injectables, vaccines as well as animal health and consumer health products.⁷
9. For the year ended 31 December 2011 Pfizer's worldwide turnover was €48.438 billion of which €[...] was generated in Ireland.⁸

The Target

10. Pfizer Nutrition,⁹ is a business division of Pfizer based in Madison, New Jersey USA. It is involved globally, and in the State, in the production of a range of products including infant formula milk products. Pfizer

approach to infant nutrition, and by providing the products to help parents achieve that aim." Nestlé 2010 Annual Report, page 19. For more information on Nestlé, see <<http://www.nestle.com/Pages/Nestle.aspx>>.

² For more information on Nestlé UK and Ireland see <<http://www.nestle.ie/aboutus/Pages/about-us.aspx>>.

³ Correspondence with parties dated 12 June 2012.

⁴ Calculated using the ECB average annual exchange rate of €1 = CHF 1.2326.

⁵ For more information on Pfizer see <<http://www.pfizer.com/home>>.

⁶ *Op cit.* note 3. The parties submit also that while Pfizer Nutrition is active in both maternal and adult nutrition worldwide it is not active in either within the State.

⁷ For more information on Pfizer's activities in Ireland see <http://www.pfizer.ie/about_pfizer_in_ireland.cfm>. For example, Pfizer's Irish operations manufacture some of Pfizer's best-selling and newest medicines including Viagra (urology), Sutent (oncology), Enbrel (rheumatology) and Prevenar (vaccines). Ireland is a leading manufacturing base for Pfizer globally and exports to global markets.

⁸ Using the ECB average annual exchange rate of €1 = €US 1.3920. [...].

⁹ Pfizer had no nutrition business prior to its acquisition of Wyeth Limited, which was notified to the European Commission in 2009. See <http://ec.europa.eu/competition/mergers/cases/decisions/m5476_20090717_20212_en.pdf>.

Nutrition is also involved in the production of maternal and adult nutrition products.¹⁰

11. Within the State, Pfizer Nutrition has a production plant in Askeaton, County Limerick which produces a wide range of products for consumption in Ireland and for export, including infant formula milk products. The Askeaton plant is the primary supplier of powder for the [...] markets. This plant is the [...]. The vast majority of Pfizer Nutrition infant milk production in the State is for export.¹¹
12. For the year ended 31 December 2011 Pfizer Nutrition's worldwide turnover was approximately €[...] billion of which approximately €[...] million was generated in Ireland.¹²

Third Party Submissions

13. No submissions were received.

Rationale for Proposed Transaction

14. For Nestlé, the rationale for the transaction is stated as follows:

*"Infant nutrition has been at the heart of our company since it was founded in 1866. Pfizer Nutrition is an excellent strategic fit and this acquisition underlines our commitment to be the world's leading nutrition, health and wellness company" and "Pfizer Nutrition is a dynamic, high-quality infant nutrition business that complements Nestlé's existing portfolio with strong brands in key segments and geographies. It will enhance our infant nutrition business, building on our growth-focused strategy, global presence and pioneering research and development."*¹³

15. Pfizer acquired Wyeth Limited ("Wyeth"), including Wyeth's nutrition business, in 2009.¹⁴ Pfizer's primary focus is on pharmaceutical activities and subsequent to its acquisition of Wyeth, Pfizer initiated an auction process for, and ultimately selected Nestlé as the buyer of, Pfizer Nutrition. As stated by Pfizer:

"The combination of Nestlé and Pfizer's Nutrition business, with its leading position in emerging markets, portfolio and science, will continue to serve the needs of formula-fed infants and their healthcare professionals and caregivers." and "The sale of the Nutrition business to Nestlé is consistent with Pfizer's intention to generate the greatest value for shareholders by maximizing the value-creation

¹⁰ For more information on Pfizer Nutrition see <<http://www.pfizer.com/nutrition>> and <<http://www.pfizer.com/nutrition/products.jsp>>.

¹¹ Pfizer Nutrition states, in correspondence dated 1 June, that the proportion of total production in the State that is also sold in the State is less than [0-10]% for all categories except Specialty Milk Products. In contrast, for Specialty Milk Products the proportion is approximately [45-55]%.
¹² Calculated using the ECB average annual exchange rate of €1 = €US 1.3920.

¹³ See

<<http://www.nestle.com/Media/PressReleases/Pages/AllPressRelease.aspx?PageId=295>>. The press release also states that "We will be able to combine well-known brands like S-26 Gold, SMA and Promil with our existing portfolio of trusted and successful brands such as Nan, Gerber, Lactogen, Nestogen and Cerelac infant cereal."

¹⁴ *op cit.* note 9. See also

<http://www.pfizer.com/investors/shareholder_services/wyeth_transaction.jsp>.

potential of our businesses and prudently managing our capital allocation.”¹⁵

Analysis

16. The proposed transaction does not raise any vertical competitive concerns. There is no vertical relationship between the parties in the State.
17. There is minimal overlap between the parties in respect of the sale of infant formula milk in the State.
18. The parties identify four segments within the infant formula milk sector that are relevant to the proposed transaction:
 - a) Standard Milk - given to babies usually between birth and 6 months,
 - b) Follow-on Milk - given to babies aged between 7 and 12 months,
 - c) Toddler Milk - given to babies/toddlers from 1 to 5 years old, and
 - d) Specialty Milk including specialty formulas - for infants and children with special needs.¹⁶
19. The parties state further that, on the basis of recent European Commission decisions, the infant milk formula sector can be divided into two product markets:
 - i. Infant and Follow-on Milk (“IFFO”) – which corresponds to both the Standard and Follow On Milk categories above, and
 - ii. Growing-Up Milk (“GUM”) – which corresponds to the Toddler category above.¹⁷
20. In M.4842 - Danone / Numico the Commission did not further define markets within the IFFO market. Rather, the Commission left open the question of distinct markets for infant (0-6 months) and follow-on (7-12 months) formula milks. In addition the Commission did not consider it necessary to further distinguish the IFFO market in terms of, (i) distribution channel (i.e., pharmacy versus retail), or (ii) regular and therapeutic milks.¹⁸
21. The parties also state that, on the basis of European Commission decisions, the infant milk formula sector can be described in terms of national geographic markets.¹⁹

¹⁵ See

<http://www.pfizer.com/news/press_releases/pfizer_press_release.jsp?guid=20120422005112en&source=RSS_2011&page=2>.

¹⁶ Notification Form, page 8 and also page 12. This categorisation encompasses both solid (powder) and liquid infant formula milk products.

¹⁷ See

<http://ec.europa.eu/competition/mergers/cases/decisions/m4842_20071031_20212_en.pdf>. pp. 3-5.

¹⁸ *ibid.* pp. 3-4. The Commission was silent on distinguishing the GUM market in terms of, (i) distribution channel (i.e., pharmacy versus retail), or (ii) regular and therapeutic milks.

¹⁹ *ibid.* page 7.

22. In M.4842 - Danone / Numico the Commission stated that:
- "... the Commission takes the view that the different markets for branded baby food and baby milk products have a national geographic dimension."*²⁰
23. Previously in M.4688 - Nestlé / Gerber, however, the Commission left open the question of the relevant geographical market.²¹
24. For the purpose of examining the competitive effects of the proposed transaction, the Authority does not need to come to a definitive view on the precise relevant product market because its conclusions concerning the competitive effects of the proposed transaction, outlined below, would be unaffected whether the relevant product market is narrow (e.g., the segments identified above in paragraph 18), broader (e.g. IFFO and GUM markets), or to encompass the entire infant formula milk market.²²
25. For the purposes of reviewing the proposed transaction, the Authority has analysed each of the four segments identified above in paragraph 16. Tables 1 and 2 below show the Nestlé and Pfizer Nutrition market shares across the four segments, both world wide and with the State respectively.

Table 1: World Market Share 2010 € Value²³

Market Segment	Nestlé %	Pfizer Nutrition %	Combined %	Increase %²⁴
Standard	[10 -20] %	[0-10] %	[15-25] %	[0-10] %
Follow On	[10 -20] %	[0-10] %	[20-30] %	[0-10] %
Toddler	[15-25] %	[0-10] %	[20-30] %	[0-10] %
Specialty	[10 -20] %	[0-10] %	[15-25] %	[0-10] %

Source: Information provided by Nestlé

26. As indicated above in Table 1 there is there is significant worldwide overlap between the parties in each of the above segments and an increase in market share of more than [0-10]% of the market for each of the Standard, Follow on and Toddler categories.

²⁰ *ibid.* page 7.

²¹ See http://ec.europa.eu/competition/mergers/cases/decisions/m4688_20070727_20310_en.pdf. Page 5.

²² The Authority also does not consider it necessary to distinguish between distribution channels (i.e., pharmacy versus retail).

²³ Market share data is provided by Euromonitor data. The parties state that 2010 is the most recent year for which market share data is currently available. For more information on Euromonitor see <http://www.euromonitor.com>.

²⁴ A 0% increase indicates there is no overlap.

Table 2: Ireland Market Share 2010 € Value

Market Segment	Nestlé %	Pfizer Nutrition %	Combined %	Increase %
Standard	0%	[20-30]%	[20-30]%	0%
Follow On	0%	[0-10]%	[0-10]%	0%
Toddler	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Specialty	0%	[25-35]%	[25-35]%	0%

Source: Information provided by Nestlé

27. In contrast, within the State the horizontal overlap is *de minimis*, and limited only to the Toddler category. Nestlé states that one product, Nestlé Nido Instant Full Cream Milk Powder ("Nido"), can be consumed as Toddler milk formula product. Nido is sold by Osem UK Ltd ("Osem") to two cash and carry retailers in the State: Kinex Ireland Ltd. and World Wide Foods. Osem's parent company is Osem Investments Ltd. which is [...] % owned by Nestlé. Nestlé's market share is estimated to be [0-10] % based on a turnover of approximately €[...].²⁵
28. In summary, within the State, the limited extent of the overlap, as described above, does not indicate that the proposed transaction will give rise to competition concerns. However, the magnitude of the world wide overlap may be indicative of possible competition concerns arising from the proposed transaction in jurisdictions outside of the State.
29. Notwithstanding an absence of significant horizontal overlap between the activities of the parties within the State, it is still possible that a merger between two or more undertakings could adversely affect competition to the detriment of consumers by way of removing a potential competitor. That is, competition concerns might arise if a potential competitor is removed, as would be the case if entry to a market is by way of an acquisition of a substantial exiting business rather than by starting a new business or by acquiring a small competitor.
30. Nestlé previously had a presence in the State in the infant formula milk sector. In 2000 and 2001 Nestlé launched three specialty milk brands, two of which were withdrawn from sale within the State in 2001 and one in 2009.²⁶

²⁵ Using an ECB exchange rate of €1 = £0.8679 and Euromonitor's €[...] million estimate of total market size estimate for Toddler milk formula in the State.

²⁶ Correspondence with Nestlé dated 1 June 2012. Two brands, Alfaré and AL110, were withdrawn in 2001 and PreNAN was withdrawn in 2009.

31. In 2002 Nestlé launched one brand in the Standard (0-6 months) category and one brand in the Follow On (7 - 12 months) category. Nestlé did not, however, establish much of a presence for these brands. Nestlé had [...] in 2007 and sold [...] in 2008. In 2009 Nestlé decided to (largely) withdraw from the UK and Irish markets for infant formula because it had no representation in the key trade channels and had yearly volumes of less than [...].²⁷
32. Notwithstanding Nestlé's global leadership in infant nutrition, including infant milk formula, the removal of a potential competitor does not appear to be a viable theory of harm in this instance. No Nestlé plan has considered re-entering the Irish market (other than by the proposed transaction), and no evidence available to the Authority suggests that prior to the proposed transaction Nestlé had an interest in re-entering the infant milk formula sector in the State.
33. In light of the above, the Authority considers that the proposed transaction will not raise competition concerns in any market for goods or services in the State.

²⁷ Correspondence with Nestlé dated 7 June 2012.

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 transaction whereby Nestlé S.A. would acquire, from Pfizer Inc., the entire business of Pfizer Nutrition will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect.

For the Competition Authority

Stephen Calkins
Member of the Competition Authority
Director, Mergers Division