



DETERMINATION OF MERGER NOTIFICATION M/12/012 – FRIESLANDCAMPINA / IDB BELGIUM

Section 21 of the Competition Act 2002

Proposed acquisition by Zuivelcoöperatie FrieslandCampina U.A. co-operative, through FrieslandCampina Holding, of IDB Belgium N.V.

Dated 3 August 2012

Introduction

1. On 6 July 2012, in accordance with Section 18 of the Competition Act, 2002 (“the Act”), the Competition Authority (“Authority”) received a notification of a proposed transaction whereby Zuivelcoöperatie FrieslandCampina U.A. (“Zuivelcoöperatie”), through its wholly-owned subsidiary FrieslandCampina International Holding B.V. (“FrieslandCampina Holding”), would acquire control of IDB Belgium N.V. (“IDB Belgium”) from the Irish Dairy Board (“the IDB”).

The Undertakings Involved

The Acquirer

2. Zuivelcoöperatie is a dairy co-operative which has 14,931 member dairy farmers in the Netherlands, Germany and Belgium.¹ Zuivelcoöperatie is the parent of its wholly-owned subsidiary Koninklijke FrieslandCampina N.V. (“FrieslandCampina”) which in turn is the parent of FrieslandCampina Holding which will acquire IDB Belgium. FrieslandCampina Holding is a holding company through which the foreign activities of Zuivelcoöperatie are carried out.² For the purposes of writing this Determination, the Authority has attributed all the activities undertaken by FrieslandCampina to its parent Zuivelcoöperatie, and the parties have confirmed they agree with this approach.
3. Zuivelcoöperatie is a co-operative enterprise which sources milk from its co-operative member dairy farmers and processes it into cheese.³ Zuivelcoöperatie then packages, markets and sells the manufactured cheese products directly to retailers and wholesalers under its own brand names and as private label products.
4. Zuivelcoöperatie also produces, packages, markets and sells an extensive product range including baby and infant food, milk-based drinks, cheese, milk, yogurts, desserts, butter, cream, milk powder, dairy-based ingredients and fruit-based drinks. These products are sold in more than 100 countries, with the key regions being Europe, Asia and Africa. Some of the products listed above, including cheese, are also delivered to professional customers, like cream and butter producers, bakeries and the catering industry. Further,

¹ Source www.frieslandcampina.com.

² Source FrieslandCampina Annual Report 2009 at page 14.

³ The parties have informed the Authority that Zuivelcoöperatie processes over 4.5 billion kilos of milk annually into cheese. See www.frieslandcampina.com

Zuivelcoöperatie produces ingredients and semi-finished products for producers of baby and child nutrition products, the food processing industry and the pharmaceutical industry worldwide.

5. A number of Zuivelcoöperatie's subsidiary companies generate revenue in the State through the sale of products such as food/nutrition ingredients, desserts, cream products and beverages, yogurts, drinks, fromage frais, cheese, butter, evaporated milk and milk powder. Neither Zuivelcoöperatie nor any of its subsidiaries have any assets or production or packaging facilities in the State. The majority of the turnover generated in the State, approximately €[...], is derived from the sale of [...] products.
6. Zuivelcoöperatie has only [...] customers in the State which buy branded and/or private label cheese, namely, [...]. Zuivelcoöperatie sells small amounts of cheese to [...] in the State under their respective private label brands. It also sells some branded cheese products, primarily 'Frico', to [...] in the State.⁴ The sale of its cheese products in the State represented approximately €[...].
7. For the financial year ending 31 December 2011, Zuivelcoöperatie had worldwide turnover of €9.6 billion and turnover in the State for the same period of approximately €[...].

The Vendor

8. IDB Belgium is owned and controlled by the IDB. The IDB is primarily involved in the export and marketing of Irish dairy products to over 80 countries worldwide. The IDB is a "second tier" co-operative, which means that it is a co-operative owned by other co-operatives.⁵
9. The IDB purchases dairy products from its member co-operatives and then sells those products on export markets. The IDB does not produce, manufacture, market, distribute or sell dairy products in the State. The IDB owns the well known Kerrygold brand. The Kerrygold brand label is affixed to the cheese packaged by IDB Belgium on behalf of the IDB. The IDB licences the Kerrygold brand to a number of Irish dairy processors who use the brand on butter products sold in the State but the IDB have confirmed that the Kerrygold brand is not licensed for use on cheese products to any Irish dairy processors in the State. The IDB also has other cheese brands include Dubliner⁶ and Pilgrims Choice.⁷
10. Subsidiaries of the IDB in the UK, mainland Europe and the USA pack, distribute and market a wide selection of branded products, dairy ingredients, and speciality grocery, delicatessen and gourmet food items of both Irish and non-Irish origin.

⁴ [...] sells its own private label cheeses and other brands directly to retailers and to the food industry.

⁵ The IDB is owned by Irish dairy processing co-operatives and dairy companies.

⁶ The IDB and Carbery Co-Op have jointly developed the Dubliner cheese brand. [...]

⁷ Pilgrims Choice is a cheese range produced by one of IDB's UK subsidiaries and is sold mainly in the UK, the US and Greece. The IDB does not market the product in Ireland but on occasion some UK retailers may sell it through their Irish affiliates.

The Target

11. IDB Belgium is incorporated in Belgium. The IDB owns 99.9% of the shares in IDB Belgium. The remaining minority shareholding of 0.1% is owned by [...].⁸ IDB Belgium's production and packaging facilities are located in Belgium. IDB Belgium has no production or packaging facilities located in the State.
12. IDB Belgium is involved in the packaging and sale of cheese. IDB Belgium's website says that it is the largest cheese packaging company in Belgium.⁹ In Belgium, IDB Belgium provides packaging services to retailers (such as [...]) and to other customers.¹⁰ The IDB Belgium also sells cheeses to the foodservice industry and food producing companies in Belgium. IDB Belgium also sells packaged cheese under its own label "Yoko" in Belgium. Cheese products under the 'Yoko' label are not manufactured, packaged or sold in the State. IDB Belgium is also responsible for selling and marketing the "Kerrygold" branded butter (supplied by the IDB) to the Belgian retail sector.
13. IDB Belgium provides cheese co-packing services to [...] Irish entities, [...].¹¹ This involves IDB Belgium [...]buying blocks of Irish natural cheddar cheese from [...] and then transforming and packing these blocks of cheese into grated and sliced packed formats for consumption.¹² The packaged cheese products are then sold back to [...], which are entirely responsible for the commercialisation and distribution of these products to retailers. The parties have confirmed that all of the IDB products packaged as a result of this relationship are exported out of Ireland.
14. IDB Belgium also provides packaging services to [...], which the notifying parties say is entirely responsible for the commercialisation and distribution of the products to retailers.
15. For the financial year ending 31 December 2011, IDB Belgium had worldwide turnover of €[...] and turnover in the State of approximately €[...].¹³

Rationale for the Proposed Transaction

16. The parties submit that through the proposed acquisition "FrieslandCampina wishes to expand itself as a full dairy producer which offers a wide range of hard and semi-hard chesses combined with specialised packaging capacity and expertise. Through vertical integration with IDB Belgium pursuant to the Proposed Transaction, FrieslandCampina will be more able to offer its trading partners a high

⁸ [...]is a family run business in Belgium that is active in the production and commercialisation of butters, concentrated butters and anhydrous milk fat.

⁹ Source IDB Belgium website (www.idb.be) where it states "Cheese pre-packing is our core business. As the largest cheese pre-packer in Belgium, we are continuously upgrading our current production processes and techniques and investing in the latest packaging technologies." The parties explain that the term pre-packing refers to the business of packaging of cheese products.

¹⁰ IDB's customers currently include [...].

¹¹ The parties explain that co-packing is a sub-set of IDB Belgium's packaging business. Co-packing generally involves branded cheese products, where IDB Belgium's customers either provide the cheese that is to be packed or informs IDB Belgium where to source the cheese.

¹² The cheese provided to IDB Belgium for packaging is produced by IDB member co-operatives including [...].

¹³ This figure does not account for intra-group sales of approximately €[...].

quality product that is adjusted to the specific needs of the end consumer.”¹⁴

Third Party Submissions

17. No submission was received.

Analysis

18. There is a horizontal overlap between the activities of Zuivelcoöperatie and IDB Belgium mainly in Belgium in respect of the packaging of cheese products for customers. Some of these customers are located in Belgium while, as stated earlier, some are located in the State. For the following reasons the Authority believes that this horizontal overlap has little or no effect in the provision of packaging services for customers in the State.
19. Although Zuivelcoöperatie sells cheese in the State (cheese that it has packaged) it sells only a very modest amount.¹⁵ Zuivelcoöperatie does not provide cheese packaging or co-packaging services directly to any party in the State, and it does not have a cheese packaging facility in the State.
20. IDB Belgium's provision of services to customers in the State is limited to [...]co-packing cheese for [...] and the provision of packaging services to [...]. All of the co-packaging is done in Belgium. IDB Belgium does not have a cheese packaging facility in the State.
21. Market investigation indicated that cheese producers have the option of using any of a significant number of packaging companies based both inside the State and in the UK and Europe to package cheese products. Some cheese producers also perform their own packaging.
22. IDB Belgium does not market or sell either branded or own label cheese to any third party distributors or to retailers in the State. IDB Belgium provides packaging for [...] private label branded cheese products in Belgium. The parties have confirmed that [...] does not distribute IDB Belgium packaged cheese products (including private label) in the State. Even if the [...] products were to be imported into the State, the resulting level of overlap between the parties would be very small.
23. The proposed transaction does not raise any vertical competitive concerns in the State. In Belgium, there is a vertical relationship between Zuivelcoöperatie and IDB Belgium for the packaging of cheese whereby IDB Belgium provides packaging services to Zuivelcoöperatie. This relationship affects neither cheese production or packaging in the State nor IDB Belgium's relationship with the IDB or its other customers.¹⁶ The parties have confirmed that post-acquisition the

¹⁴ Notification at page 7.

¹⁵ According to BusinessWire Research and Markets Data, the total size of the Irish cheese market in 2010 amount to approximately \$218.2 million (as provided at <http://www.businesswire.com/news/home/20120413005188/en/Research-Markets-Cheese-Ireland>). Zuivelcoöperatie submits that it sold approximately €[...] worth of cheese in 2011.

¹⁶ [...]Under a Supply Agreement in the format provided at Annex [...] of the Share Purchase Agreement for an [...] period from the commencement date.

services provided by IDB Belgium to the IDB and its other customers will not be affected.¹⁷

24. In light of the above the Authority concludes that the proposed transaction does not raise competition concerns in the State.

¹⁷ [...]Under a Co-packing Agreement in the format provided at Annex [...] and [...] of the Share Purchase Agreement for an [...] period from the commencement date.

DETERMINATION

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby Zuivelcoöperatie FrieslandCampina U.A. will acquire control through FrieslandCampina International Holding B.V. of IDB Belgium N.V will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Stephen Calkins
Member of the Competition Authority
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