## ACQUISITIONS (FOOD): THE UNILEVER/BESTFOODS CASE

Subject: Acquisitions
Divestments

Industry: Food products
(Implications for all industries)

Source: Commission Statement IP/00/1076, dated 28 September 2000

*(Note. This case is interesting from the point of view of the substantial divestments which are having to be made as the price of approval of the acquisition. Even after divestment a further hurdle has to be crossed by the acquirers, since the parties to whom the divested businesses are transferred will have to be approved by the Commission: that is to say, the Commission will need to be assured that the transfers themselves are not anti-competitive. It seems to be the Commission's policy to approve acquisitions and mergers, wherever possible, rather than to block them; but it is becoming increasingly tough in insisting both on divestments being made and on their being satisfactory as well.)*

The Commission has granted regulatory clearance to the acquisition of US company Bestfoods by Anglo/Dutch company Unilever after the parties made substantial concessions to resolve competition concerns. The two companies overlap in the production and distribution in a large number of national markets for food products both for retailing and for food services across the EEA. The undertakings include the divestment of a significant number of brands such as Lesieur, Royco and Oxo. The total value of the divestment package in terms of annual retail sales is estimated at €500m euros.

The acquisition notified to the Commission will give Unilever sole control of Bestfoods and, as originally notified, would have led to overlaps in nearly 150 separate national food-related markets. Key Unilever brands within the food business include Lipton (tea), Magnum (ice cream), Bertolli (olive oil) and Becel (fat spreads). Bestfoods' most famous brand in Europe is its Knorr brand.

In the food retail sector, where the customers are mainly supermarkets and food retail operators, Unilever and Bestfoods have overlapping activities which would have created competition concerns in the markets for instant and regular dry soups, dry side dishes, cold sauces, hot sauces (wet and dry), jams and other culinary products such as bouillon. Virtually all the countries in the EEA were affected.

In the food service sector, the concentration would have produced competition problems in the Nordic countries (in the markets for dry soups and hot sauces in Finland, Sweden and Denmark and in the markets for bouillon in Sweden and Denmark) as well as in Ireland (in the markets for dry hot sauces) and in the UK

(for dry sauces and bouillon). The food service sector comprises food sales to a variety of catering customers such as hotels, leisure clubs, cafés and restaurants.

To remove the Commission's concerns in the above-mentioned markets, Unilever has undertaken to divest a number of significant brands, which are Lesieur, Batchelors, McDonnells, Bla Band Royco and Oxo, together with the product brands endorsed by them. An important factor is that the divestments will include the whole range of products currently sold under those brands both in the food retail and in the food service sector. The divestiture package will also include appropriate supply arrangements, manufacturing facilities, sales forces and intellectual property rights associated with the individual businesses. This should ensure that the respective purchasers will not only acquire the present market share attached with the above-mentioned portfolios but also their full brand value together with the access to the customer base attached to them.

Thus, the commitments given by Unilever will enable the purchasers, who will have to be approved by the Commission, to be viable competitors and to exercise strong competition against the merging companies in those markets where effective competition would otherwise have been threatened as a result of the acquisition. Competition Commissioner Mario Monti stated: "This merger will bring about a major restructuring of the European food industry and should release significant efficiencies [sic]. At the same time, I believe that Unilever's commitments will fully address the Commission's concerns and will ensure that consumers will continue to benefit from unfettered competition in the markets affected." ■

**The Metsa / SCA Case**

The European Commission has decided to undertake a full, second phase investigation of the proposed purchase of Metsä Tissue by SCA Mölnlycke (SCA). The Commission considers that the proposed operation raises serious doubts about its compatibility with the common market due to the strong positions that would arise on certain markets for hygienic tissue products. SCA is a wholly owned subsidiary of Swedish company Svenska Cellulosa AB, a forest industry and paper company that specialises in the manufacture of absorbent hygiene products, corrugated packaging and graphic papers. SCA manufactures and distributes a variety of tissue-based hygiene products throughout the European Economic Area. SCA produces tissue-based products in most Member States of the European Union and in Poland and Russia. Metsä-Tissue is active in the production of tissue products and of baking and cooking papers. It is majority-owned (66%) by the Metsä-Serla Corp., a Finnish forest industry company. Metsä Tissue has production capacity in Germany, Finland, Sweden and Poland.

Source: Commission Statement IP/00/1063, dated 27 September 2000