



Determination No. M/04/073 of the Competition Authority, dated 10 January 2005, under Section 21 of the Competition Act, 2002

Notification No. M/04/073 – The proposed acquisition of joint control of Wagner Tiefkühlprodukte GmbH by Nestle Deutschland AG and Wagner Holding GmbH

Introduction

1. On 10 December 2004 the Competition Authority, in accordance with Section 18 (1) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposal whereby Nestle Deutschland AG (“Nestle Deutschland”) and Wagner Holding GmbH (“Wagner Holding”) would, by way of a share purchase agreement, acquire joint control of Wagner Tiefkühlprodukte GmbH (“Wagner”). The notified transaction is hereinafter described as “the proposed acquisition”.
2. The proposed acquisition is also being notified to the relevant competition authorities in Austria and Germany.

The Parties

3. Nestle Deutschland is a wholly-owned subsidiary of Nestle S.A., the parent company of the Nestle Group. The Nestle Group is principally involved in the manufacture and supply of a large range of food and drink products worldwide.
4. Wagner Holding, a family-owned German undertaking, holds 99% of the shares in Wagner. Wagner is active in the manufacture and supply of frozen food (principally frozen pizzas) in Germany and Austria. Wagner has no physical presence in Ireland and all of its Irish sales are to one customer, a retailer, which sells Wagner frozen pizzas under a private label brand.

Analysis

5. The parties submit that frozen and chilled pizzas constitute separate product markets for competition analysis, because of significant structural differences in terms of competitors, manufacturing processes, distribution systems, consumer purchasing patterns, and the quality, shelf-life and pricing of the respective pizza products. In support of this, the parties refer to the fact that the major Irish producers of frozen pizza do not produce chilled pizza. The parties also cite two decisions of the European Commission, where it was held that frozen foods constitute a separate product market¹.
6. Wagner [...] sells frozen pizzas in Ireland [...], while Nestle does not sell any frozen foods in Ireland, and holds an estimated [...] % share of the chilled pizza sector. Accordingly, there is minimal horizontal overlap in the parties’ activities in the State and the proposed acquisition does not raise competition concerns. The Authority does not consider it necessary to define the relevant product and geographic market, or markets.

¹ Rewe/Meinl, Case No IV/M.1221 (3 February 1999); Nestle/Schöller, Case No COMP/M.2640 (25 February 2002)



The Competition Authority
An tÚdarás Iomaíochta

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 of joint control of Wagner Tiefkühlprodukte GmbH, by Nestle Deutschland AG and Wagner Holding GmbH, 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

Edward Henneberry
Member of the Competition Authority