



DETERMINATION OF MERGER NOTIFICATION M/11/003 -

DSM/Martek

Section 21 of the Competition Act 2002

Proposed acquisition by Koninklijke DSM N.V. of sole control of Martek Biosciences Corporation

Dated 11 February 2010

Introduction

1. On 17 January 2010, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority (the "Authority") received a notification of a proposed acquisition whereby Koninklijke DSM N.V. ("DSM") would acquire sole control of Martek Biosciences Corporation ("Martek").

The Undertakings Involved

DSM

2. DSM, headquartered in the Netherlands, is a chemical company specializing in life sciences and material sciences. DSM's business activities can be grouped into five areas: nutrition; pharmaceuticals; performance materials; polymer intermediates; and, base chemicals and materials. DSM's nutrition business, of which Martek will become a part, supplies a range of products to the food, animal feed, cosmetic, and pharmaceutical industries.
3. DSM supplies the following products in the State: pharmaceutical ingredients; anti-infectives; animal feed products; personal care ingredients; human nutrition and health products; and, infant nutrition.
4. For the year ending 31 December 2009, DSM's worldwide turnover was €7,732 million. DSM's turnover in the State for the same period was €[...].

Martek

5. Martek, headquartered in the United States, manufactures and sells nutritional products. In particular, Martek has developed and patented a strain of algae that produce oils rich in docosahexaenoic acid ("DHA")¹ and a strain of fungus that produces oils rich in arachidonic acid ("ARA")².
6. In the State, Martek supplies omega-3 DHA and omega-6 ARA for use in the manufacture of infant and growing-up formulae. In 2010, Martek also sold a very small amount (less than €[...]) of algal-based

¹ DHA is an Omega-3 polyunsaturated fatty acid which has positive effects on human health.

² ARA is an Omega-6 polyunsaturated fatty acid used in the manufacture of infant formula.

DHA for use in food and beverage manufacturing to customers in the State.

7. For the year ending 31 October 2010, Martek's worldwide turnover was €323 million. Martek's turnover in the State for the same period was €[...].

Rationale for the Proposed Acquisition

8. DSM submits that the proposed acquisition will add new products to its portfolio, including Martek's unique DHA and ARA products. DSM submits that it will be able to use its existing global nutritional infrastructure to accelerate the growth of Martek's products in new regions, applications, and market segments.
9. DSM submits that Martek's algal-based and microbial-based biotechnology portfolio and its microbial technology pipeline complements DSM's own biotechnology portfolio. DSM submits that this will enable the merged entity to develop new nutritional and non-nutritional growth opportunities.
10. The parties submit that the proposed acquisition will realise significant cost savings.

Third Party Submissions

11. No submissions were received.

Analysis

Horizontal Overlap

12. Both DSM and Martek manufacture and sell DHA. However, Martek's DHA is derived from algae, while DSM's DHA is derived from fish-oil. Algal-based DHA is primarily sold to infant formula manufacturers while fish-oil based DHA is primarily sold to manufacturers of food and beverages. In addition, the parties informed the Authority that there is a significant price difference between algal-based DHA and fish-oil based DHA (the former is often several times more expensive than the latter) and customers tend not to select one or the other based on relative price changes. If algal-based DHA and fish-oil based DHA are considered as separate product markets, there is no horizontal overlap between DSM and Martek.
13. Even if algal-based DHA and fish-oil based DHA comprise one product market, the increment in market share following the proposed acquisition would be negligible since DSM made minimal DHA sales (€[...]) in the State in 2010.

Vertical Overlap

14. There is also a vertical relationship between the parties with respect to the production and supply of ARA products. Martek manufactures ARA products. DSM does not manufacture ARA products but it currently supplies Martek with a key input (fungal biomass) for its production of ARA products. However, DSM supplies Martek with 100% of its fungal biomass requirements and does not supply fungal biomass to any other manufacturer of ARA products. Given these facts, the proposed

acquisition does not raise any foreclosure concerns since it will not result in other suppliers of fungal biomass being denied access to a downstream customer, nor will it result in other manufacturers of ARA products losing an existing supplier of fungal biomass.

15. In light of the above, the Authority considers that the proposed acquisition will not raise any competition concerns in the State.

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 Koninklijke DSM N.V. would acquire sole control of Martek Biosciences Corporation will not be to substantially lessen competition in markets for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition Authority

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Member of the Competition Authority