



ΕΠΙΤΡΟΠΗ ΠΡΟΣΤΑΣΙΑΣ
ΤΟΥ ΑΝΤΑΓΩΝΙΣΜΟΥ

ΚΥΠΡΙΑΚΗ
ΔΗΜΟΚΡΑΤΙΑ

Decision CPC: 61/2019

Case Number: 8.13.019.38

THE CONTROL OF CONCENTRATIONS BETWEEN ENTERPRISES LAW
No. 83(I)/2014

**Notification of a concentration regarding the acquisition by DMK Deutsches
Milchkontor GmbH of part of the share capital of Volac Netherlands B.V. and
Whey Processing Facility Hoogeveen B.V. via Wheyco GmbH**

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou	Chairperson
Mr. Andreas Karidis	Member
Mr. Panayiotis Oustas	Member
Mr. Aristos Aristidou Palousas	Member
Mr. Polynikis-Panayiotis Charalambides	Member

Date of Decision: 8 November, 2019

DECISION SUMMARY

On the 13th of October 2019, the Commission for the Protection of Competition (hereinafter the “Commission”) received, on behalf of Wheyco GmbH (hereinafter “Wheyco”), a notification with regard to a proposed concentration. The notification was filed according to Section 10 of the Control of Concentrations between Enterprises Law 83(I)/14 (hereinafter the “Law”).

The concentration is accomplished by way of purchase of shares. Specifically, DMK Deutsches Milchkontor GmbH, (hereinafter “DMK”) via its subsidiary Wheyco, shall acquire part of the share capital of Volac Netherlands B.V. (hereinafter “Volac NL”) and Whey Processing Facility Hoogeveen B.V. (hereinafter “WPFH”), by Volac International Limited (hereinafter “Volac Int.”)

DMK is a limited liability company duly registered under the Laws of the Federal Republic of Germany and constitutes the mother company of the DMK Group. The company, which is subject to the direction and the sole control of Deutsches Milchkontor eG, a cooperative of German dairy farmers, produces a diversified range of dairy products, that include basic milk products, cheeses, whey-based products, baby foods, ice creams, quark, health products and dairy ingredients for food manufacturing.

Wheyco is a limited liability company duly registered under the Laws of the Federal Republic of Germany and belongs to the DMK Group. Its activities relate to the processing of whey-based products that are inter alia involved in the supply of animal foods, bakery products, beverages, convenience foods, dairy products, frozen foods, ice creams, frozen desserts and baby foods.

Volac NL is a limited liability company duly registered under the Laws of the Netherlands. The company owns 50,88% of the share capital of VOF (the other 49,12% is indirectly owned by DMK) and has no business activities.

Joint Venture DVNutrition (hereinafter “ DVN Business”) is conducted by VOF, a partnership duly registered under the laws of the Netherlands and WPFH, a private limited liability company duly registered under the laws of the Netherlands.

DVN Business is based on the joint venture agreement dated 18/12/2013, between (i) Volac International Limited (ii) Volac Netherlands B.V., (iii) DOC Kaas B.V., (iv) Drents Overijsselse Coöperatie Kaas B.A., (v) DOC Wei B.V., (vi) Coöperatie DOC-Volac Nutrition U.A. and DOC Volac Nutrition V.O.F.. According to the notification, the term “DVN Business” does not refer to a legal entity but to the relationship between VOF and WPFH and the activities performed thereby in line with the Joint Venture Agreement. DVN Business processes whey-based proteins and lactose-based ingredients directly into

speciality whey products (i.e. WPC80 and Permeate), an activity performed by VOF through the operation of machinery and equipment owned by WPFH. The relevant process units are situated in Hoogeveen, Netherlands. According to the notification, DVN Business constitutes one of the largest *Gouda* cheese production units in Europe.

The notified concentration is based on a Share Purchase Agreement, dated 2/9/2019 (hereinafter the “Agreement”), between (i) Volac International Limited, (ii) Volac Netherlands B.V., (iii) Wheyco GmbH, (iv) DOC Wei B.V. (v) DOC Kaas B.V. (vi) DMK Deutsches Milchkontor GmbH (vii) DOC Volac Nutrition V.O.F. and (viii) Whey Processing Facility Hoogeveen B.V..

In accordance with the agreement, upon completion of the notified transaction Volac International Limited (the Seller) shall transfer to Wheyco – which is controlled by DMK – its total number of shares in WPFH and VOLAC NL, corresponding to 50.88% and 99% respectively. Thus, DMK shall indirectly also acquire the shares of VOLAC NL in VOF, corresponding to 50,88%. As a result, following completion of the transaction, DMK, which currently holds 49,12% of the share capital of WPFH and 49,12% of the share capital of VOF through VOLAC NL, shall become the sole shareholder of the target entities as well as of the DVN Business.

In view of the above, the Commission concludes that the transaction constitutes a concentration within the meaning of Section 6(1)(a)(ii) of the Law, since it leads to a change of control of Volac NL, VOF and WPFH on a lasting basis.

The Commission additionally finds that the criteria set forth by Section 3(2)(a) of the Law are met, and thus the notified concentration is of major importance, falling within the scope of the Law.

For the purposes of assessing the merger, the Commission concluded that the relevant product / service market is defined as the trading of whey-based permeate. The Commission has further concluded that the geographic market is defined as the Republic of Cyprus.

In view of the above, the Commission concluded that on the basis of Annex I of the Law, there is no horizontal overlap in this merger, nor does it give rise to any vertical or neighborly relations in Cyprus, and therefore no market effect is created.

On the basis of the factual and legal circumstances of the case before it, the Commission unanimously decided that the concentration under consideration neither creates nor strengthens a dominant position, as there is no affected market, and therefore does not raise serious doubts as to its compatibility with the operation of competition in the market.

In conclusion, the Commission, acting in accordance with section 22 of the Law, unanimously decided not to oppose the notified concentration and declares it compatible with the operation of competition in the market.

Loukia Christodoulou

Chairperson of the Commission for the Protection of Competition