



Decision CPC: 65/2019

Case Number: 8.13.019.53

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

**Notification of a concentration regarding the acquisition of the share capital of
Pioneer Foods by PepsiCo, Inc.**

Commission for the Protection of Competition:

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

Decision Date: December 3rd, 2019

DECISION SUMMARY

On the 21st of November 2019, the Commission for the Protection of Competition (hereinafter the “Commission”) received, on behalf of PepsiCo Inc. (hereinafter “PepsiCo”), 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 PepsiCo shall acquire the total share capital of Pioneer Food Group Ltd, hereinafter “Pioneer Foods” or “the Group”).

PepsiCo is a public company, duly registered under the Laws of North Carolina, United States of America. The company is primarily listed on the Nasdaq Stock Market, but is also listed on the SIX Swiss Exchange. PepsiCo is one of the world's

leading food and beverage companies and its brands include Frito-Lay, Gatorade, Pepsi-Cola, Quaker and Tropicana.

Pioneer Foods is a public company, listed on the Johannesburg Stock Exchange, duly registered under the laws of South Africa. The Group constitutes one of the largest producers and distributors of a range of branded foods and beverage products of the country. Even though it mainly operates across South Africa, Pioneer Foods exports to more than 80 countries across the globe.

The notified concentration is based on the Implementation Agreement between PepsiCo and Pioneer Foods dated 18/7/2019 (hereinafter the “Agreement”). In accordance with the Agreement, the sellers shall sell and PepsiCo shall purchase the total (100%) of the issued share capital of Pioneer Foods.

In view of the above, the Commission concludes that, in order for the transaction to constitute a concentration within the meaning of Section 6(1)(a)(ii) of the Law, the criteria set forth by Section 3 of the Law must also be met.

On the basis of the factual and legal circumstances of the case before it, the Commission unanimously decided that the concentration under consideration does not constitute a “concentration of major importance”, as provided by Section 3 of the Law, due to the fact that Pioneer Foods did not generate turnover in the Republic of Cyprus in the last financial year, i.e. 2018.

Specifically, as provided by Section 3(2)(α)(ii) of the Law, a transaction constitutes a concentration of major importance in the event where at least two of the participating entities generate turnover in the Republic.

According to the notification, the subsidiary of Pioneer Foods in the United Kingdom generated wholesales of products which were subsequently sold in the Cyprus market. As specifically mentioned, Pioneer Foods does not have a corporate or any other presence in Cyprus and does not promote or advertise its products in Cyprus, nor does it actively seek orders for its products in Cyprus. The sales in question were generated by the subsidiary of Pioneer Foods in the United Kingdom which does not deliver its products directly to Cyprus. Specifically, since the products are being delivered to the customer at the company’s premises in the UK (ex-factory), the title/ownership and the risk connected thereto is transferred at the time of delivery and Pioneer Foods does not have any involvement or responsibility in the subsequent delivery or exportation thereof to Cyprus. A similar scenario also applies to the sales generated by Pioneer Foods to another customer, a retail seller, in which

case the products are being delivered (and the risk is thereby transferred) at the UK port, from where they are further exported to various countries.

In accordance with the Jurisdictional Notice of the European Commission under Regulation (EC) No 139/2004¹, the general rule is that turnover should be attributed to the place where the customer is located. The underlying principle is that turnover should be allocated to the location where competition with alternative suppliers takes place. In the event where the place the customer is located at the time of concluding the purchase agreement is different from the billing address and/or the place of delivery, the place where the agreement was entered into and the place of delivery are more important than the billing address. As delivery is in general the characteristic action for the sale of goods, the place of delivery may even prevail over the place where the customer was located at the time of conclusion of the agreement.

In light of the above, the Commission unanimously decided that in both cases the customer is situated and the delivery of products takes place in the United Kingdom. Therefore, since only one of the participating entities, i.e. PepsiCo, generated turnover in Cyprus in 2018, the transaction under consideration does not constitute concentration of major importance, as stipulated by Section 3(2)(α)(ii) of the Law.

In conclusion, the Commission, acting in accordance with Section 22(1)(α) of the Law, unanimously decided that the notified concentration does not fall under the scope of the Law.

Loukia Christodoulou

Chairperson of the Commission for the Protection of Competition

¹ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/95/01).