
Section 57 of the Competition Act (Cap. 50B)

Grounds of Decision issued by the Commission

**Notification for Decision: Proposed Acquisition of Groupe Danone S.A.'s
Worldwide Biscuits, Snacks and Cereals Business by Kraft Foods Global Inc.**

12 November 2007

Case number: CCS 400/006/07

Confidential information in the original version of this Decision has been redacted from published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [X]

I. INTRODUCTION

1. On 28 September 2007, the Commission received a Notification for Decision pertaining to a proposed acquisition by Kraft Foods Global Inc (“Kraft”) of Groupe Danone S.A.’s (“Danone”) worldwide biscuits, snacks and cereals business (“the business to be acquired”) (collectively referred to as “the parties”), by way of the acquisition of a combination of shares and assets making up the business to be acquired.
2. The Commission has concluded that the proposed acquisition, if carried into effect, will not infringe the section 54 prohibition.

II. THE PARTIES

3. Kraft is a US-registered corporation that is an affiliate of Kraft Foods Inc, one of the largest food and beverage companies in North America. Kraft is active in the manufacture and sale of packaged food and beverages world-wide, in particular, snacks, beverages, cheese and dairy, grocery and convenience meals. Its brands include Kraft cheese, Jacobs and Maxwell House coffee, Nabisco biscuits, Ritz crackers, Philadelphia cream cheese, Oscar Meyer meats, Post cereals and Milka chocolate.

4. Danone is a French-registered company with a worldwide business in three core areas – fresh dairy products, bottled water and biscuits. Its major brands include LU, Prince, TUC and Carcotte.

III. THE MERGER

5. The transaction involves the acquisition of a combination of shares and assets making up the business to be acquired. Kraft will acquire all the shares in Danone Marketing Pte Ltd and Britannia Brands (Kuan) Pte Ltd, two companies incorporated in Singapore. Danone Marketing Pte Ltd serves as a sales and marketing office. Britannia Brand (Kuan) Pte Ltd is a holding company and does not trade. Its affiliate, Kuan Enterprises Pte Ltd, is a holding company which holds the Malaysian manufacturing activities of the Danone Biscuits Business. Kuan Enterprises Pte Ltd does not trade.
6. The proposed transaction therefore constitutes a merger under section 54(2)(b) of the Competition Act (“the Act”).

IV. RELEVANT MARKET

7. The parties submit that the relevant market for the purpose of this Notification is the market for the sale of biscuits in Singapore.

Product market

Parties’ submission

8. The parties submit that the relevant product market is the market for biscuits. They claim that there is no basis for further segmentation of this product market into different types of biscuits, i.e. sweet and savoury biscuits. The parties also claim that there is sufficient supply-side substitutability to treat all biscuits as falling within a single market, since it is not uncommon for sweet and savoury biscuits to be manufactured on the same production lines, where switching of production from one type of biscuit to another can be undertaken in a matter of hours.
9. The parties submit that the market for biscuits is part of the broader universe of “snacking” products which include chocolate confectionary, cakes, salted snacks and bread substitutes. The parties claim that although such snacking products are in a different product market from biscuits, they present various similarities with biscuits and exert a constraining influence on the pricing of biscuits.

Commission's assessment

10. The Commission's investigations indicate that the relevant product market is the market for the sale of biscuits. Although the proposed acquisition includes Danone's worldwide snacks and cereals business, the Commission is of the view that there is no need to further analyze the market for these two other products. The Commission's investigations show that there is no overlap in the parties' businesses in Singapore insofar as cereal is concerned. The Commission's investigations also show that while both parties sell snacks in Singapore, there is minimal overlap in this product market.
11. The question of whether the biscuit market can be further sub-divided into narrower markets (i.e. sweet or savoury biscuits) can be left open since, as detailed below, the Commission's analysis of the proposed merger's impact on competition would be same regardless of whether the narrower product market definition is adopted.
12. The Commission's investigations also indicate that cereals and non-biscuit snacks are not substitutable with, and consequently do not belong to the same product market as biscuits.

Geographic market

Parties' submission

13. The parties submit that the geographic market is that of Singapore, arguing that preferences relating to the texture, taste and appearance of biscuits differ from country to country.

Commission's assessment

14. The Commission's investigations have found that consumer preferences for biscuits are generally localized and differ from country to country. However, the Commission also found that most of the biscuits consumed in Singapore are imported. As both demand- and supply-side factors have to be considered in defining the geographic market, this tends to suggest that, contrary to the parties' claim, the market is broader than Singapore. However, the data shows that the merger parties' market shares for the broader worldwide market is lower than that for Singapore, so it is reasonable to conclude that any competition assessment undertaken should yield the same conclusion, regardless of whether the market is defined as Singapore or wider than Singapore.

V. COMPETITION ASSESSMENT

Market concentration

15. The parties have provided the Commission with market shares based on sales of biscuits by retailers to final consumers in Singapore. These market share figures were based on AC Nielsen's compilation of scanner data for the period May/June 2004-2006.¹ According to data for the moving annual turnover for May/June 2006, the combined share of the parties for the biscuit market in Singapore is [X] % (by value) or [X]% (by volume). The corresponding CR3 of the post-merger market is [X]% and [X]% respectively. The relevant market share figures are reproduced in Table 1.

Table 1: Market shares for May/June 2006 for the biscuit market in Singapore (%)

	Value (%)	Volume (%)
Kraft	[5-15]	[5-15]
Danone	[10-20]	[10-20]
Kraft+Danone	[20-30]	[20-30]
Khong Guan	[1-10]	[5-15]
Perfect Food	[1-10]	[5-15]
Hup Seng	[1-10]	[10-20]
Loacker	[1-10]	[1-10]
Campbell Arnott's	[1-10]	[1-10]
Total	100%	100%

Note: Market shares of only top 6 players (pre-merger) reflected.

16. The same data, when further segmented into sweet and savoury biscuits, indicates that the combined share of the parties for the sweet biscuit market in Singapore is [X] (by value) or [X] (by volume). The corresponding CR3 of the post-merger market is [X]% and [X]% respectively. The relevant market share figures for sweet biscuits is reproduced in Table 2a:

Table 2a: Market shares for May/June 2006 for the sweet biscuit market in Singapore (%)

	Value (%)	Volume (%)
Kraft	[10-20]	[10-20]
Danone	[10-20]	[10-20]
Kraft+Danone	[25-35]	[25-35]
Khong Guan	[1-10]	[5-15]
Perfect Food	[1-10]	[1-10]
Hup Seng	[1-10]	[1-10]
Loacker	[1-10]	[1-10]
Campbell Arnott's	[1-10]	[1-10]
Total	100%	100%

Note: Market shares of only top 6 players (pre-merger) reflected.

17. The combined market share for the parties for the savoury biscuit market in Singapore is [X]% (by value) and [X]% (by volume) and the corresponding

¹ Tables 1 and 2 are based on scanner data by AC Nielsen taken from a sample comprising the following participants: NTUC Fairprice (including Liberty), Cold Storage (including Market Place), Shop'N'Save, Sheng Siong, Giant, Carrefour, Watson's, Guardian, 7-Eleven, Cheers, FairPrice Xpress, Shell, Caltex, SPC, Econ "and a large sample of independent outlets".

CR3 of the post-merger market is [x]% and [x]% respectively. The relevant market share figures for savoury biscuits is reproduced in Table 2b:

Table 2b: Market shares for May/June 2006 for the savoury biscuit market in Singapore (%)

	Value (%)	Volume (%)
Kraft	[5-15]	[1-10]
Danone	[15-25]	[10-20]
Kraft+Danone	[20-30]	[15-25]
Hup Seng	[10-20]	[25-35]
Perfect Food	[10-20]	[10-20]
Khong Guan	[1-10]	[5-15]
Campbell Arnott's	[1-10]	[1-10]
Loacker	[1-10]	[1-10]
Total	100%	100%

Note: Market shares of only top 6 players (pre-merger) reflected.

18. The parties' combined market share for biscuits as a whole fall below the indicative thresholds in the CCS Guidelines, although the Commission notes that the parties' combined post-merger market share will be considerably larger than that for the next largest competitor. The same is true in respect of the market for sweet biscuits.
19. As regards the market for savoury biscuits, the combined market share of the parties (in terms of value) marginally crosses the indicative thresholds in the CCS Guidelines, although the difference between this market share figure and that of the next largest competitor (i.e. Hup Seng, for savoury biscuits) appears to be relatively narrower than that for the market for biscuits in general and for sweet biscuits.

Non-coordinated effects

20. The Commission's investigations show that the majority of biscuits consumed in Singapore are imported. There are also low barriers to import, with recent entry by new players and re-branding by older players.
21. The parties also submit that the main customers of biscuit suppliers are large sophisticated retailers such as hypermarkets, convenience chain stores and food distributors who account for a sizeable proportion of the merger parties' sales and who are capable of resisting price increases by the merger parties. The parties thus argue that buyer power limits the scope for post-merger price increases. The Commission's investigations showed that the larger supermarkets can and do resist or delay price increases by biscuit suppliers. Third party feedback also indicates that these retail customers may use the shelf space currently used for the parties' products for their private label products.
22. The Commission also notes that while the parties' combined market share will, on most measures, be considerably larger than that of the next largest player, the data provided shows that the market shares of both Kraft and

Danone have declined since 2004. There are numerous other suppliers catering to the consumption of biscuits in Singapore, and consumers enjoy a wide choice of biscuit products.

Coordinated effects

23. The biscuit market is a fragmented market characterized by a large number of players and a wide range of non-homogenous biscuit products. The buyer power exerted by retailers and low barriers to import make it difficult for players in the market to coordinate behaviour.

Effect on Singapore

24. For the above reasons, the Commission is of the view that the merger is not likely to lead to a substantial lessening of competition in markets in Singapore.

VI. CONCLUSION

25. For the reasons stated above and based on the information available to the Commission, the Commission concludes that the acquisition, if carried into effect, will not infringe the section 54 prohibition.
26. In accordance with section 57(7) of the Act, this decision shall be valid for a period of 1 year from the date of this decision.
27. Under the terms of the acquisition, the parties have also agreed that Danone and its subsidiaries shall not for a period of [X] engage in any business which competes with the business to be acquired, and that Danone and its subsidiaries shall not for a period of [X] engage the services of certain key individuals and employees of the business to be acquired, or to move these persons out of the business to be acquired. The parties explain that these restrictions are necessary in order for Kraft to receive the full benefit of the goodwill and/or know-how of the business to be acquired. The Commission is of the view that these restrictions are directly related and necessary to the implementation of the merger, and therefore fall within paragraph 10 of the Third Schedule to the Act.



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