The Autorité de la concurrence clears the acquisition of Alsa by Dr. Oetker (Ancel) by approving a commitment which addresses in advance competition issues (“fix-it-first” commitment), by granting a credible market player a license for the Ancel brand

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On 16 November 2018, the Dr. Oetker group notified the Autorité de la concurrence of its intention to take sole control of Alsa France (Alsa and Moench brands).

Parties to the transaction

Dr. Oetker is especially active in the market for fabrication and marketing of baking aids (flavoured sugars, baking powder, glazes, etc.), dessert mixes (baking mix and crème desserts) and gellants and gelling sugars for supermarkets and hypermarkets (hereafter « GMS »), under the Ancel and

Dr. Oetker brands. Dr. Oetker also offers baking aids and baking mixes to out-of-home food channels and to the agri-food industry (mostly to bakery and pastry shops), via the Dr. Oetker and Sébalcé brands.

The targeted assets are present in the markets described above under the Alsa brand for supermarket distribution and Moench for business customers.

Potential competition issues in the market for fabrication and marketing of dessert mixes to supermarkets and hypermarkets

After the transaction, the new entity would become the leader in the market of fabrication and marketing of dessert mixes to supermarkets and hypermarkets, with a market share greatly superior to 50%. The transaction would have united the main two brands of this market (Ancel and Alsa) within the same entity.

The investigation found that Dr Oetker and Alsa were the closest competitors in the market for fabrication and marketing of dessert mixes to supermarkets and hypermarkets. Had the transaction taken place, distributors would not have had credible alternative suppliers: on the one hand, the other market players have significantly smaller market shares, and on the other, the investigation did not show the existence of potentially viable competitors.

Following its analysis, the Autorité deemed that without remedial action, the transaction would harm competition in the market for fabrication and marketing of dessert mixes to supermarkets and hypermarkets.

A turnkey solution to remedy the competition issues identified: a licensing of the Ancel brand conceded to Sainte Lucie in the dessert mixes sector in the framework of a fix-it-first commitment

In order to remedy the competition issues identified by the Autorité, Dr. Oetker committed to enter a trademark licensing agreement for Ancel dessert mixes for

a duration of 5 years, renewable once. Trademark licensing, i.e. the exclusive (as far as this case is concerned) use of the brand by a competitor, in the Ancel dessert mix sector, will ensure the existence of a credible alternative for the distributors of dessert mixes and in fine for the consumer, and thus, ensure that sufficient competition is maintained in the market.

This commitment is linked to two others. The first one aims to guarantee the financial viability of the assets until the trademark licensing takes effect on May 1, 2019. The second consists in the conclusion of a subcontract enabling the license holder to acquire Ancel dessert mixes for a transitory period of three years in order to avoid any supply disruption and to enable the license holder to immediately stimulate competition, independently of the development of its own production capacities.

The buyer put forward by Dr Oetker and approved by the Autorité is Sainte Lucie. Active in the market for fabrication and marketing of baking aids to supermarkets and hypermarkets, Sainte Lucie has been experiencing strong growth in the last ten years, strongly developing its range and recently invested in new production capacities. It therefore appears a capable player, able to stimulate competition in the dessert mixes sector.

The Autorité therefore cleared the transaction with these conditions.

What is a « fix-it-first » commitment?

A « fix it first » commitment consists in the fact that the purchaser of the assets affected by the remedy (in this case the license holder) is identified before the adoption of a decision by the Autorité.

The Autorité previously employed « fix-it-first » commitments on two occasions: in the framework of Decision 09-DCC-67 of 23 November 2009 regarding the acquisition of Arrivé by LDC Volailles (see press release); and Decision 15-DCC-53 of 15 May 2015 regarding the acquisition of sole control of Totalgaz SAS by

UGI Bordeaux Holding SAS (see the press release).

The use of the « fix it first » principle aids in reducing uncertainty and the commitment implementation time as it obviates the research and approval period of the license holder. In this case, Dr. Oetker and Sainte Lucie already signed a memorandum of understanding on 15 January 2019, which presents the main terms of the trademark license contracts and subcontracts. The proposed solution in this case is additionally secure as the notifying party also committed to sign these contracts before the implementation of the transaction cleared today.

Full text of Decision 19-DCC-15 of 29 January 2019

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