14 June 2018: Acquisition of William Saurin

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The Autorité de la concurrence clears the acquisition Financière Cofigeo of certain securities and assets of the ready meals arm of Agripole group (William Saurin, Panzani, Garbit) subject to two targeted divestments designed to maintain competition in the sector.

The Autorité enables Cofigeo to become the leader of the canned ready meals sector while still protecting consumers from price increase risks linked to the transaction.

Background

On 12 June 2017, the company Financière Cofigeo ("Cofigeo") notified the Autorité of its intention to acquire exclusive control of certain securities and assets of the "ready meals" arm of Agripole group (hereafter "target companies"), which have been placed under receivership.

This transaction follows the dismantling of the Financière Turenne Lafayette ("FTL") group, which headed the Agripole group, leading to other divestments. In this framework, the *Autorité* has already interceded when it unconditionally cleared the acquisition of the cooked meats arm of the FTL group (Paul Prédault, La Lampaulaise de salaisons, Madrange, Montagne noire brands) by Cooperl[1], a Brittany-based cooperative .

The take-over of companies belonging to the Agripole group gave rise to a procedure dedicated to finding a buyer. Several companies showed interest during this procedure.

On 3 October 2017, the Paris Commercial Court selected Cofigeo as the buyer of several assets of Agripole group (including the brands William Saurin, Panzani and Garbit, and the production sites concerned).

However, the merger control procedure submitted to the Autorité, which is a legal obligation for all companies, subject to certain turnover thresholds, was still in progress. This procedure, which is separate from the examination of the conditions of the acquisition by the commercial court, is designed to protect consumers from restrictive competitive practices, which could, for example, lead to a risk of price increases due to excessive market concentration. In this case, the transaction was likely to create a quasi-monopoly in the markets for the production of canned Italian and exotic ready meals in France insofar as Cofigeo, the second biggest operator for such meals through its "Zapetti" brand, was to acquire the assets of its main rival and the leading operator in the market (thanks to its "Panzani" and "Garbit" brands).

The decision taken by the *Autorité* subsequent to an in-depth examination of the potentially anti-competitive effects of the transaction clears the transaction provided that Cofigeo sells its Zapetti brand and a production site to a third party operator in order to enable the latter to stimulate competition in the markets for the production and sale of canned Italian and exotic ready meals in France.

Parties to the transaction

Cofigeo operates primarily in the market for the production and sale of ready meals (in particular under the “Raynal & Roquelaure” and “Zapetti” brands, as well as private labels), cooked vegetables and canned meat products for mass retail distribution. Cofigeo’s parent companies are MBO Partenaires and Société Générale Capital Partenaires.

The assets acquired by Cofigeo relate to the production and sale of ready meals (in particular under the "William Saurin", "Panzani" and "Garbit" brands, as well as private labels).
After completion of the transaction, and in the absence of any remedies, Cofigeo would have had 80% market share in Italian ready meals, over 70% market share in exotic ready meals, and would have concentrated all of the best known brands of the sector.

The *Autorité* analysed the effects of the transaction on the markets likely to be influenced by the acquisition of the assets and brands “William Saurin”, “Panzani” and “Garbit”, that is: the markets for French ready meals (hereinafter FRM: cassoulet, choucroute, etc.), Italian ready meals (hereinafter IRM): raviolis, cannelloni, etc. and exotic ready meals (hereinafter ERM: couscous, chilli con carne, etc.), sold in jars and tins. The Autorité also analysed the impact of the transaction on the separate market for ready meals sold in microwavable trays.

After completion of the transaction, the new entity would have become the undisputed leader in most of the markets studied, with over 80% of the market share on the IRM market and over 70% on the ERM market. Moreover, Cofigeo would have marketed all of the well-known brands on these markets: William Saurin, Panzani, Garbit, Raynal & Roquelaure and Zapetti. Yet, in these markets and beyond, in the wake of the recent food crises (especially the “horse meat” scandal), manufacturer brands play a reinforced role in consumer choice, which was taken into account by the *Autorité*.

High market shares are usually associated with a competition decrease. By way of exception, operations leading to high market shares can sometimes be authorised when competition remains effective, notably when new competitors can enter the market or if customers have credible alternatives. The Autorité could thus clear the acquisition of the assets of the cooked meats arm of FTL despite market share in excess of 50% in some markets. However, when the operation presents a risk of a significant reduction in competition and especially if there is a risk of the new entity being able to increase its prices without its current or potential rivals, or customers, being able to resist this, the operation must then be subjected to remedies or be blocked.

In this case, the investigation shows high risks of price increases for products bought daily by French consumers

In its examination of the transaction, the Autorité established that Cofigeo and the targeted companies were the closest rivals on the canned ready meals markets (the second largest purchased the leader): for example, the mass retail distribution sector employed competitive bidding between them to obtain the best prices, either for national brands or retailers' brands.

Moreover, the *Autorité* noted that, on the IRM and ERM markets, the production capacities at competitors'disposal were weak. It also noted that it was unlikely that new operators or foreign operators would enter the French market in the short term.

Thus, the mass retail distribution sector would have had no more credible alternative suppliers in the IRM and ERM markets, while the market tests (survey of the sector operators) conducted by the Autorité revealed that the products marketed by the new entity are an essential component of its product ranges.

In light of its analysis, the *Autorité* concluded that if the transaction were not accompanied by remedies, it would lead to significant risks of sharp price increases in the IRM and ERM markets, which ultimately would be to the detriment of the consumer.

To outweight these negative operation effects, the Autorité attached conditions to its decision to be met by Cofigeo, whose goals are to enable the development of an alternative in the Italian and exotic markets.

As Cofigeo did not propose any commitments allaying the competition concerns identified, the Autorité made use of its power of injunction to clear the transaction. This is the second time this power has been used since 2009 (date on which the Autorité was granted merger control powers[2]), which allows it, under exceptional circumstances, to clear a transaction subject to remedies, rather than block it.

The *Autorité* therefore ordered Cofigeo to sell the brand Zapetti, which is used in the IRM and ERM markets, as well as a production site allowing for its operation and the production of private label products in these same markets. These injunctions will enable a rival operator to swiftly supply a credible alternative to the products of the new entity and thereby prevent significant price increases as a result of the transaction. An independent agent will ensure compliance with these injunctions.

Targeted measures that allow for the maintenance of the strategic character of the operation for Cofigeo while protecting consumer interests

By ordering such injunctions, which are proportionate to the risks identified, the decision of the *Autorité* serves to protect the economic value of the transaction by clearing Cofigeo to become the leader in most of the canned ready meals markets while maintaining a satisfactory competitive structure in the IRM and ERM markets.

The Autorité's decision is therefore balanced; it enables Cofigeo to significantly reinforce its position by becoming the leader in the FRM, and acquiring strong positions in the ERM and IRM markets, thanks to brands like William Saurin, Panzani and Garbit. The Autorité pronounces proportionate remedies in view of preventing the creation of a quasi-monopoly in the Italian and exotic markets.

While in the French ready meals sector, Cofigeo also significantly reinforces its position as it will own the leading brands (with Raynal et Roquelaure and William Saurin), third-party operators exist in the market and their presence will allow for competition risks to be limited and to offer an alternative to the new entity for consumers.

Isabelle de Silva stated: "*Budget canned ready meals are consumed by all segments of the French population, particularly the lowest income households. This transaction contained a price increase risk as a result of the disappearance of the* *current competition in the markets for meals prepared with Italian or exotic recipes. The Autorité was of the opinion that it was essential for French people to be able to continue to benefit from a broad range of canned ready meals at affordable prices, which the transaction would not have allowed for in its proposed form.* "

[1]

http://www.autoritedelaconcurrence.fr/user/standard.php?lang=fr&id_rub=662&id

[2] **The previous use of injunctions relates to the re-examination of the acquisition of TPS and CanalSatellite by Vivendi Universal and Canal Plus : http://www.autoritedelaconcurrence.fr/user/standard.php?lang=fr&id_rub=417&id_**

> See the Q&A on Cofigeo

> See the full text of decision 18-DCC-95 of 14 June 2018

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