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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party:

Subject: **Case M.9010 - JAB / PRET A MANGER**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 31 July 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which JAB Holdings B.V., an indirect wholly owned subsidiary of JAB Holding Company S.à r.l. ("JAB", Luxembourg), or its designated affiliate, acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over PAM Group Limited ("Pret", UK) by way of purchase of shares.[3] JAB and Pret are designated hereinafter as the 'Parties'.

1. THE PARTIES

(2) Within the EU, JAB owns portfolio companies that are active in the retail food and drink sector (including Krispy Kreme in the UK, Espresso House in the Nordics, the Coffee Company in the Netherlands and 12oz Coffee Joint in Italy (part of Jacobs Douwe Egberts)), as well as in wholesale coffee and other hot drinks (Jacobs Douwe Egberts and Johan & Nyström). JAB is ultimately controlled by Agnaten SE, an asset management firm.

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

3 Publication in the Official Journal of the European Union No C 277, 07.08.2018, p. 21.

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(3) Pret, operating under the brand Pret A Manger, is a food and drink retailer which has over 500 stores worldwide, including, within the EU, in the UK, France, Denmark and the Netherlands. Pret offers a wide selection of food and drinks including sandwiches, hot food, salads, soups, baked goods, fresh fruit, snacks, juices and organic coffee.

2. THE OPERATION

(4) Pursuant to a share purchase agreement entered into on 28 May 2018, JAB will acquire 97.8% of the shares in Pret (the "Transaction").

(5) As a result of the Transaction, JAB will acquire sole control over Pret. The Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[4] (JAB: EUR 15 055 million; Pret: EUR 1 003 million; combined: EUR 16 058 million). Each of them has an EU-wide turnover in excess of EUR 250 million (JAB: EUR […]; Pret: EUR […]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. COMPETITIVE ASSESSMENT

(7) The Transaction gives rise to horizontal overlaps, as the Parties are both active in the retail of casual food and drinks. Moreover, the Transaction gives rise to vertical relationships between JAB's activities in the wholesale supply of coffee (and other hot drinks) and Pret's activities as a retailer of coffee and other hot drinks.

4.1. Market Definition

4.1.1. Retail supply of casual food and drinks

(8) The Commission has previously left open the precise product market definition for informal restaurants. It has considered various segmentations, such as a distinction between quick-service and other informal, casual restaurants, a distinction between chains and non-chain restaurants, and a distinction between eat-in and take-out/delivery.[5]

(9) Both Parties offer baked goods. In a decision on cake products, the Commission has left the market definition open but considered a segmentation between (i) cakes, mini cakes and other pastries produced; and (ii) morning goods which

4 Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

5 Cases COMP/M.2940 – TPG Advisors III/Goldman Sachs/Bain Capital Investors/Burger King, COMP/M.4220 – Food Service Project/Tele Pizza, and COMP/M.6895 – 3G Special Situations Fund III/ Berkshire Hathaway/ H J Heinz Company.

include bagels, croissants, scones and similar products normally eaten for breakfast.[6]

(10) The Commission has not previously considered the markets for out-of-home coffee or hot drinks at the *retail* level.

(11) In the previous decisions referred to above, the Commission has also left the geographic market definitions in relation to the retail supply of casual food and drinks open but has suggested that the markets may be national or wider in scope due to supply-side substitutability, whilst in some instances acknowledging the local dimension of demand.

4.1.2. Wholesale supply of hot drinks

(12) In a previous decision, the Commission considered that all hot drinks (including not just coffee but also tea and hot chocolate) for out-of-home consumption form part of the same product market at the *wholesale* level, that wholesale sales of hot drinks for out-of-home consumption form a separate market from those for in-home consumption (e.g., sold through supermarkets), and that the geographic market is national in scope.[7]

4.1.3. Conclusion

(13) In the present case, the precise product and geographic market definitions may be left open as the Transaction does not raise competition concerns under any plausible market definition.

4.2. Competitive Assessment of Horizontal Overlaps

4.2.1. United Kingdom

(14) In the UK, Pret (378 stores) competes to some extent with JAB's Krispy Kreme (111 stores). However, the Parties do not appear to be close competitors, as Krispy Kreme's core business is doughnuts (in 2017, it sold […] doughnuts compared to only […] cups of coffee), while Pret's core offering is fresh, healthier convenience food made from natural ingredients such as salads, sandwiches, soups and other hot food (in 2017, food accounted for [70-80]% of Pret's sales, of which only [5-10]% baked goods and [60-70]% other food). Pret does not sell any doughnuts in the UK; the baked goods it sells include cookies, croissants, muffins, mince pies and pretzels.

(15) While, according to the Parties, precise market shares depend on the exact market definition and data is not readily available, the Parties estimate that they have a combined market share of below 20% on any of the possible market segmentations mentioned in Section 4.1.1 above. According to the Parties' estimates based on market intelligence collected by the Boston Consulting Group[8], in the UK market for retail casual food and drinks, the merged entity would have a combined share of [0-5]%, within which [0-5]% for food, [0-5]%

6 Case COMP/M.2817 – Barilla/BPL/Kamps.

7 Case COMP/M.7292 – DEMB/Mondelez/Charger OPCO.

8 The Boston Consulting Group estimated the total market size for casual retail food and drink and assumed a […] split between food, hot drinks and cold drinks. The Parties provided their actual sales data.

for hot drinks and [0-5]% for cold drinks.[9] On a narrower market for chained casual food and drink restaurants the combined market share would be [5-10]%, with an increment brought about by Krispy Kreme of [0-5]%.

(16) The largest competitor of the merged entity for casual and casual chained restaurants would be McDonalds with a share of [5-10]% overall and [30-40]% for chained restaurants. Close competitors of the merged entity include Greggs, Subway and Starbucks with market shares of [between 0-5% each] in the overall market and [10-20]%, [5-10]% and [5-10]% in the chained segment. Both Parties and all major competitors offer both eat-in and take away.

(17) As regards baked goods, while according to the Parties precise market shares are not readily available, the Parties state that their combined market share is below 20% under any plausible market definition. The Parties are not close competitors, as Pret does not offer doughnuts, which is Krispy Kreme's core business. Moreover, baked goods are not an important part of Pret's business, accounting for only [5-10]% of its sales, which is instead centred around healthier, natural and fresh food, as explained above. Competitors in the area of baked goods include not just food chains like McDonalds and coffee chains like Starbucks, Costa Coffee and Nero, but also supermarkets, bakeries and patisseries.

(18) Regarding coffee and other hot drinks, this is neither the core business of Pret nor of Krispy Kreme. While precise market shares are not readily available according to the Parties, the Parties estimate that their combined market share in hot drinks by value is [0-5]%, while in terms of number of cups of coffee sold it is at most [0-5]%. Competitors in this area include on the one hand specialised coffee chains like Starbucks, Costa Coffee and Nero; and on the other hand a range of chained and independent casual food and drink retailers who sell coffee as an ancillary offer.

(19) At a local level, the Parties overlap in 63 cities within the UK, in the sense that they operate retail casual food and drinks stores within a 500m-radius of each other. While precise market share data is not available, in each of the areas where the Parties overlap, there are at least 4 other retailers of casual food and drinks within the same radius (and often several more), pointing to a rather moderate if not low market share.

4.2.2. Denmark

(20) In Denmark, Pret has only 2 stores, while JAB owns 63 coffee shops (30 under the Espresso House brand and 33 under the Baresso brand, which is owned by Espresso House). The Parties are not close competitors, as the JAB stores earn the majority of their revenues with hot drinks, while Pret's main offering is food.[10]

(21) At a national level, the Parties estimate that their combined market share is well below [0-5]% for retail casual food and drinks and all sub-segments thereof

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9 These market share estimates are by value. The Parties also provide an alternative market share estimate by number of cups of coffee, according to which they have a combined share of at most [0-5]%.

10 Since the two Pret stores only opened in 2018, precise revenue information is not available for Denmark, but the fact that in its main market (the UK), Pret earns more than [70-80]% of its revenue with food is illustrative of its business model.

discussed above, including hot drinks. According to the Parties, the increment brought by Pret is de minimis.

(22) At a local level, the Parties submit that both Pret stores are located land-side at Copenhagen airport. According to the Parties, there are no JAB stores land-side but JAB expects to open a shop air-side at Copenhagen airport during the summer of 2018. In any event, there are more than 20 other retailers of casual food and drinks at Copenhagen airport.

4.2.3. The Netherlands

(23) In the Netherlands, Pret has only 1 store, while JAB owns 34 coffee shops under the Coffee Company brand, through Jacobs Douwe Egberts. The Parties are not close competitors, as the JAB stores earn the majority of their revenues with hot drinks, while Pret's main offering is food.[11]

(24) At a national level, the Parties estimate that their combined market share is below [0-5]% for retail casual food and drinks and all sub-segments thereof discussed above, including hot drinks. The increment brought by Pret is de minimis.

(25) At a local level, the Pret store is located at Utrecht central station. There are two JAB stores in Utrecht, but neither is located in the central station or within a 500m radius around that station. Moreover, there are several other retailers of casual food and drinks at Utrecht central station.

4.2.4. Germany

(26) In Germany, JAB owns 43 coffee shops under the Balzac brand, through Espresso House. Pret does not currently have any stores in Germany but plans to open one in Berlin Hauptbahnhof train station in October 2018. The Parties are not close competitors, as the JAB stores earn the majority of their revenues with hot drinks, while Pret's main offering is food.[12]

(27) At a national level, the Parties estimate that their combined market share is below [0-5]% for retail casual food and drinks and all sub-segments thereof discussed above, including hot drinks. The increment appears to be de minimis and concerns future competition only.

(28) At a local level, JAB does not own any stores in Berlin Hauptbahnhof station, where there are several other retailers of casual food and drink.

4.2.5. Wider than national markets

(29) On any wider than national market, combining several Member States or encompassing the entire EEA, the Parties' combined market shares in the retail supply of casual food and drinks and in any sub-segments would be below 20%, as the combined market share of the Parties is below 20% in all national markets within the EEA.

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11 Since the Pret stores only opened in 2018, precise revenue information is not available for the Netherlands, but the fact that in its main market (the UK), Pret earns more than [70-80]% of its revenue with food is illustrative of its business model.

12 Since the Pret store has not yet opened, precise revenue information is not available for Germany, but the fact that in its main market (the UK), Pret earns more than [70-80]% of its revenue with food is illustrative of its business model.

4.2.6. Conclusion

(30) In conclusion, in all markets where their activities overlap in the retail casual food and drinks sector, the Parties have limited market shares, are constrained by several national chains and local retailers, and are not close competitors. The Transaction therefore does not raise any horizontal competition concerns on any geographic market, irrespective of the precise product market definition.

4.3. Competitive Assessment of Vertical Relations

4.3.1. Denmark and the Netherlands

(31) According to the information submitted by the Parties, Denmark and the Netherlands are the only countries where JAB's upstream market share in the wholesale supply of hot drinks for out-of-home consumption exceeds 30%. In Denmark, JAB has a market share of [30-40]% at the wholesale level but Pret only has 2 stores, giving rise to an individual market share well below [0-5]% in the retail supply of hot drinks at national level (and a combined market share well below [0-5]%). In the Netherlands, JAB has a market share of [40-50]% at the wholesale level but Pret only has 1 store, giving rise to an individual market share well below [0-5]% in the retail supply of hot drinks at national level (and a combined market share also well below [0-5]%).

(32) Therefore, although the Transaction gives rise to affected markets, due to the de minimis importance of Pret and JAB as customers of wholesale out-of-home hot drinks, the merged entity will not have the ability to engage in any meaningful customer foreclosure in Denmark or in the Netherlands. As regards input foreclosure, the Transaction will have no impact on the ability of JAB to foreclose retail shops. The Transaction will not affect JAB's incentive either, due to the minimal importance of Pret's retail activities in these countries. In any event, other significant wholesale providers of out-of-home coffee and hot drinks are present in these two countries to serve competing retailers with this rather commoditised product.

4.3.2. UK, France, Germany and Belgium

(33) In the UK, France, Germany and Belgium[13], both JAB's and Pret's market shares in the wholesale and retail supply of hot drinks for out-of-home consumption respectively, are significantly below 30% (and are in fact even below […]% in each of these countries).

4.3.3. Conclusion

(34) In light of the above, the merged entity will not have the ability and incentive to engage in customer or input foreclosure. Therefore, the Transaction does not raise any vertical competition concerns on any geographic market, irrespective of the precise product market definition.

[13] Pret does not currently have any stores in Germany or Belgium, but is planning to open one in Germany in October 2018 […].

5. CONCLUSION

(35) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission