



REPUBLIC OF ALBANIA
-THE COMPETITION AUTHORITY-
-THE COMPETITION COMMISSION-

D E C I S I O N

Nr.85 Dated 29 .07.2008

On

“The authorization of the concentration realized through the merger of Wrigley Jr. Company and Mars Incorporated company”

The Competition Commission, on its meeting held on 29.07.2008, with the participation of:

- Mrs. Lindita Milo (Lati) Chairwoman
- Mr. Lush Përpali Deputy chairman
- Mrs. Servete Gruda Member
- Mr. Koço Broka Member

Discussed the following issue:

Subject: The authorization of the concentration realized through the merger of Wrigley Jr. Company and Mars Incorporated company.

Legal basis: Law No. 9121, dated 28.07.2003 “On Protection of Competition”, as amended, Article 24, letter “d”, Articles 10-12, Chapter IV “Procedures for the control of Concentrations”, Articles 53-56, the Regulation “On the implementation of the concentration procedures of the undertakings”, the Guideline “On the form of the notification of concentrations and the option for a simplified form of notification”, and the Form “On the notification of the concentration”.

Upon reviewing the report submitted by the Secretariat, on the notification of the concentration realized through the merger of of Wrigley Jr. Company and Mars Incorporated company, the Competition Commission

NOTED THAT:

The notification of the concentration with object the merger of of Wrigley Jr. Company and Mars Incorporated company, on behalf of Mars Incorporated, was submitted to the Competition Authority on 05 May 2008.

Pursuant to Article 4, paragraph 1 of the Regulation No. 139/2004, Mars Incorporated, on 20 June 2008 has notified the European Commission on the transaction performed, as well as the Competition Authorities of non-member states (Albania, Bosnia-Hercegovina, Croatia, Montenegro, Serbia, and Macedonia), where the parties to the concentration are engaged, either directly or indirectly, in the product market.

Pursuant to Article 4, paragraphs 2, 3 and 4 of the Regulation No. 802/2004 of the Commission, the European Commission has accepted the submitted notification and proceeded with the registration in the registrar of the the notifications, with reference No. COMP/M. 5188- Mars/Wrigley.

The proposed concentration was notified to the Federal Trade Commission (USA) and Competition Bureaus of Canada, Brasil, Jordan, Australia, Mexico, China, etc. for the purpose obtainig an authorization from the same.

Since the parties in the territory of the Republic of Albania are present in the product market through their distributor, Interbrand Company(1), the Competition Authority, on the basis of Article 2, and Articles 10 and 12, paragraph 1 of Law No. 9121, dated 28.07.2003 "On Protection of Competition", considered the transaction subject to its review.

I. The parties involved

1. **WM WRIGLEY JR. COMPANY**, the **seller**, was founded in October 1927, and operates in compliance with the legislation in effect in Delaware of the United States of America, with headquarters in Wrigley Building 410 North Michigan Avenue, Chicago, Illinois 60611, USA.

Wrigley is an internationally known company, engaged in the production and sale of chewing gums (the best-known brand names are Orbit, Extra, Doublemint, etc.) and sugar confections.

Wm. Wrigley Jr. Company operates through its agencies spred in over 180 countries, and thre of its mowt well-known brand names, i.e. Wrigley Spearmint, Juicy Fruit and Altoids have been in the market since almost one century.

The total annual turnover realized by Wrigley in the year 2007, was:

¹ Interbrand sha, with headquarters at Autostrada Tiranë-Durrës, km 1. This local distributor trades the products of both companies participating in the merger transaction.

- In the international market: 3.9 billion Euro⁽²⁾ = **47 billion Lek**; and
 - In the domestic market: 4.9 million Euro = **602 million Lek**
2. **MARS INCORPORATED**, the **buyer**, is a family-owned company, founded in the year 1911 in compliance with the legislation in effect in the United States of America, with headquarters in 6885 Elm Street, Mc Lean, Virginia 22101-3883, USA.

Mars Incorporated operates through its branches extending in over 66 countries and its activity consists on the production and sale of the following:

- Food products (e.g. condiments and rice),
- Food for pets (Whiskas, Pedigree brand names)
- Chocolates, ice cream products, (Snickers, Dove, Mars, Bounty brand names)
- Sugar products (Skittels, Starbuck brand names, etj); and,
- Beverage products.

Total annual turnover realized by Mars Incorporated in the year 2007, was:

- In the international market: **15.5 billion Euro = 1906 billion Lek**⁽³⁾; and
- In the domestic market: 875 000 Euro = **107 million Lek**.

II. The transaction

3. The agreement and cooperation plan was signed on Marrëveshja and 28 April 2008.

The transaction shall be financed through a combination of reserves and own financial resources on Mars Incorporated and the loan granted by the following companies: Berkshire Hathaway, Goldman Sachs and JP Morgan, which, at the conclusion of the transaction shall be paid by Wrigley company. The biggest sponsor is Berkshire Hathaway Company, which shall buy 19.3% of the shares of Wrigley company, thus becoming minority shareholder in the new company (Mars-Wrigley) ⁽⁴⁾, which, after the merger shall have the following structure:

- Mars Incorporated, owner of 80.7% of the capital; and
- Berkshire Hathaway, owner of 19.3% of the capital.

The value of the merger transaction is 23 billion dollars and the value of one share ⁽⁵⁾ to be paid in cash to Wrigly's shareholders is ështëë 80 \$.

2 According to the official exchange rate of the Bank in Albania for the year 2007, 1 Euro=123.6 Lek.
Source: The Report on Statistics

3 According to the official exchange rate of the Bank in Albania for the year 2007, 1 Euro=123.6 Lek.
Burimi:Raporti Statistikor

⁴ Berkshire Hathaway shall not have rights that may grant joint control on Wrigley

⁵ Of the category of common shares and common shares of class B.

Upon completion of the transaction, Mars shall transfer the production and trade of sugar confection at Wrigley's, which shall continue to remain as independent entity, a branch within the new Mars-Wrigley company, and by continuing to keep its brand name.

The product market

4. The product market are the products tradeable in the domestic market, as follows:

1. Sweets (A. chocolates and B. Non-chocolate products) and
2. Food for pets, according to their categories:

A. Regarding chocolate products, the following brandnames are traded: Snickers, Mars, Twix, Bounty, Milky Way and M&M's.

B. Regarding non-chocolate products, the following brandnames are traded:

-Chewing-gums of the following brand names: Spearmint, Juicy Fruit, Doublemint, Big Red, Winterfresh, Extra, Freedent, Orbit, Hubba Bubba, Airwaves, Cool Air, Eclipse, etc.

and;

- Sugar confections⁽⁶⁾ of brandnames: Altoids, Orbit, Solano, Sugus, Winterfresh etj

Chocolates, chewing-gums and sugar confections are neither substitutes, nor complements of each-other

The products produced by each of the undertakings participating in the concentration and that have common characteristics and the same purpose of use, and that are considered as substitutes are only sugar confections that are produced and traded by both companies under different brand names.

The geographical market: The territory of the Republic of Albania.

5. Mars and Wrigley are active in the Albanian market through the same distributor, Interbrands Sha. company, with headquarters in Tirana and regional agencies in (wholesale points), in 12 cities, which are: Korçë, Fier, Durrës, Vlorë, Shkodër, Gjirokastër, Elbasan, Pogradec, Lushnje, Berat, Laç, Kavajë.

III. Evaluation of impact on competition

6. The merger of the two undertakings, Mars Incorporated and Wrigley shall expand the geographical market by trading Mars products into markets formerly dominated by Wrigley only. Furthermore, by promoting innovations [in marketing] and joining the distribution logistics shall

⁶ Here are included soft and strong candies that are produced by both companies, but under different trademarks.

contribute to the competitiveness in the market, therefore increasing market efficiency.

7. Mars and Wrigley operate in Europe through their branches located in Austria, Poland, the Netherlands, Germany and France, the United Kingdom (UK). The main distributor of Mars Incorporated products in Europe is located in the Netherlands, from where the products are imported into the Albanian market by Interbrands sha company, which is non-exclusive distributor in the domestic market.
8. The parties participating to the transaction are present in the internal market through the trading of their brand products. Mars Incorporated company is not present in the market regarding sugar confections ⁽⁷⁾, and therefore there is no superimposition for products that are substitutes.
9. The realization of the concentration does not cause any changes in the market, because the distributor of the products of both companies remains Interbrands sha company, which performed the same function prior to the transaction. The market share of chocolate products is 10%, while the market share of chewing gum and sugar confection products is 75%.
10. The biggest competitors of Mars and Wrigley in Albania are as follows:

For chocolate products:

- Kraft (main brand names are Milka, Toblerone, that hold 40% of the market share),
- Nestlé (main brand names are Kitkat, Lion that hold 26% of the market share);
- Ferrero (main brand names are Kinder, Duplo and Kinder Bueno that hold 5% of the market share);
- Ulker (main brand names are Luna, Twingo and Metro that hold 7% of the market share);

For chewing-gums products:

- Cadbury company, with Stimorol, Trident brand names holding a 7% market share.
- Perfetti company, with Happydent, Vivident, Big Babol brand names, holding a 15% market share.
- Intergum company, with Taxi and Kola brand names.

For sugar confections products:

- Perfetti with Mentos, Golia and Alpen Liebe brand names.
- Ferrero with Tic Tac brand name.

⁷ Based on the definition of affected markets under Section 6 (III) of the “Form of Notification of Concentrations”, there are no markets affected as a result of the notified concentration.

- Cadbury with Halls brand name.

V. Conclusion:

The notified transaction that consists in the merger of Mars Incorporated Company and Wrigley Company and the transfer sugar confections production and sale activity from Mars to Wrigley, neither creates or reinforces the dominant position of Mars Incorporated and Wrigley products at the distribution level in the domestic market. As a consequence, there is no restriction of competition at this level of the market.

FOR THE ABOVE REASONS:

Pursuant to Article 24, letter “d”, and Article 56, paragraph 1 of Law No. 9121, dated 28.07.2003 “On Protection of Competition”, as amended, the Competition Commission,

DECIDED:

1. To authorize the concentration realized through the merger of Wrigley Jr. Company , with headquarters in Delaware, US, and Mars Incorporated company with headquarters in Virginia, US, because such concentration has no impact upon competition in the product market in the territory of the Republic of Albania.

THE COMPETITION COMMISSION

Lush Përpali

(_____)

Deputy Chairman

Servete Gruda

(_____)

Member

Koço Broka

(_____)

Member

Lindita Milo (Lati)
CHAIRWOMAN