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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Cinven Capital Management (VII)
General Partner Limited
Level 4, Mill Court, La Charroterie
St Peter Port, GY1 1EJ
Guernsey

Allegro Invest SE
32-38 Westpreußenstraße
D-47809, Krefeld
Germany

**Subject: Case M.11706 - CINVEN / AISE / FRESSNAPF
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

Dear Sir or Madam,

- (1) On 24 October 2024, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation, by means of which Cinven Capital Management (VII) General Partner Limited ('Cinven', the United Kingdom) along with Allegro Invest SE ('AISE', Germany) will acquire, within the meaning of Article 3(1)(b) and Article 3(4) of the Merger Regulation, joint control over Fressnapf Holding SE and its subsidiaries ('Fressnapf', Germany) (the

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').

‘Transaction’).³ Cinven and AISE are collectively referred to as the ‘Notifying Parties’ and, together with Fressnapf, as the ‘Parties’.

1. THE PARTIES

- (2) Cinven is a private equity firm engaged in the provision of investment management and investment advisory services. Cinven’s portfolio companies are active in a variety of sectors, including the manufacture and supply of pet food. Within the pet food industry, Cinven is active through Partner in Pet Food Hungaria Kft. (‘PPF’)⁴, a company headquartered in Hungary focusing on the manufacture and supply of private label pet food.
- (3) AISE is an investment vehicle and the current parent company of Fressnapf.
- (4) Fressnapf is active in the supply of pet care products including pet food and accessories, pets and zoological supplies at a retail level, through approximately 2,100 stores located in 14 countries across Europe. Fressnapf has limited pet food manufacturing activities, mostly used for its retail business.⁵

2. THE CONCENTRATION

2.1. Joint control

- (5) As part of the Transaction, Cinven will acquire 15.7% of the shares and the corresponding voting rights in Fressnapf, the remaining 84.3% of the shares and corresponding voting rights being held by AISE.
- (6) The Transaction gives rise to a change of control of Fressnapf, from sole control by AISE to joint control by Cinven and AISE. In particular, pursuant to a shareholders’ agreement entered into by the Notifying Parties on 28 June 2024, resolutions on reserved matters,⁶ such as [confidential], will require the approval of both AISE and Cinven. These powers will enable each of Cinven and AISE to exercise decisive influence in relation to the strategic business behaviour of Fressnapf.

2.2. Full functionality

- (7) Fressnapf will remain full-functioning post-Transaction as it (i) will have sufficient resources to operate independently, (ii) does not have any sale or purchase relationships with either AISE or Cinven, (iii) performs and will continue performing activities beyond a specific function for either AISE or Cinven and (iv) has access to and presence on the market. In particular, Fressnapf has and will continue having an ongoing and stand-alone established customer base and sufficient human and capital resources to operate independently on a lasting basis.

³ OJ C, C/2024/6672, 30.10.2024.

⁴ PPF is jointly controlled by Cinven and CVC Capital Partners plc (‘CVC’). See Commission decision of 12 September 2024 in case M.11646 *CVC / Cinven / Partner in Pet Food*.

⁵ Fressnapf is active on the market for the manufacture and supply of private label and branded pet food through two of its subsidiaries, namely through BAF Petfood GmbH (BAF) (Germany) and through Jaap Koopman Diervoeding B.V. (JKD) (the Netherlands). Approximately [...] of BAF’s and [...] of JKD’s production are supplied internally to Fressnapf.

⁶ Reserved matters are, according to the shareholders’ agreement entered into between the Notifying Parties on 28 June 2024, decisions about the [confidential].

In addition, Fressnapf operates 2,100 stores and online shops in 14 countries across Europe and employs 12,000 employees, including 30 executives, and has fixed intangible assets, including industrial property rights, goodwill and property, plants and equipment, including land rights and office equipment.⁷

3. UNION DIMENSION

- (8) The undertakings concerned have a combined aggregate worldwide turnover of more than € 5 000 million (Cinven: € [...] in 2022; AISE: € [...] in 2023). Each of them has an EU-wide turnover in excess of € 250 million (Cinven: € [...] in 2022; AISE: € [...] in 2023) and they do not both achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

4. MARKET DEFINITION

4.1. Supply of pet food

4.1.1. Product market definition

- (9) In past decisions, the Commission considered that each of the markets for the supply of cat food and dog food⁸ could be further segmented: (i) between dry food, wet food and snacks and (ii) between branded products and products for private labels at the wholesale level.⁹ However, the Commission considered that different quality categories of pet food were not deemed to form separate relevant product markets.¹⁰
- (10) The outcome of the market investigation in the present case confirmed the Commission's previous decisions.
- (11) The results of the market investigation confirmed that dry food, wet food and snacks should be considered to belong to different product markets. On the demand side, dry food is less expensive and can be stored for longer periods without refrigeration, while wet food offers higher hydration and palatability particularly for pets with specific health needs or preferences.¹¹ Snacks are generally used as treats, but do not provide a balanced nutrition and therefore cannot substitute dry or wet food. On the supply side, these products are manufactured on distinct

⁷ Form CO, paragraphs 67-69.

⁸ PPF only supplies minimal amounts of food for other pets, such as birds and rodents, accounting for [...] of its revenues (*i.e.* less than EUR [...]). The company therefore has no significant presence in these sectors, considering their overall size in Europe (circa € 554 million for bird food and € 321 for rodent food). Those markets therefore are not further assessed in this decision.

⁹ Commission decision of 15 February 2002 in Case M.2544 *Masterfoods / Royal Canin*; Commission decision of 27 July 2001 in Case M.2337 *Nestlé / Ralston Purina*. Instead, at the retail level (*i.e.* in the relationships between retailers and final consumers), private label and branded pet food products were not deemed to form separate relevant product markets. This is because final consumers (unlike retailers) do see branded and private label products as substitutable with each other to a significant extent. However that approach is not relevant to the present case, which focuses on the relationships between suppliers of pet food at the wholesale level of the market, like PPF, and pet food retailers, like Fressnapf).

¹⁰ Case M.2544 *Masterfoods / Royal Canin*, *supra*, para. 17.

¹¹ Questionnaire to retailers, question C.A.1.1.

production lines with entirely different technical processes and dedicated packaging.¹²

- (12) The results of the market investigation also confirmed the relevance of a segmentation between branded product and products for private labels at the wholesale level. On the demand side, these products address clearly distinct use cases for retailers: the formulation and packaging of products for private labels are customized to the specific retailer and are labelled with the retailer's own brand, while branded products feature the supplier's own brand and are made available to several retailers in the same format. On the supply side, although the same production lines can in principle be used to produce both branded products and products for private labels,¹³ the supply base in these two segments is significantly different. This is because the main suppliers of branded products (such as Mars and Nestlé) are large, sophisticated conglomerates focusing on the promotion of their own brands and are not active (or no longer active) in the supply of products for private labels. Conversely, producers for private labels are generally smaller in size. And even if some of them also offer a range of branded products, this offering is often rather marginal and in any case much smaller than the abovementioned branded suppliers.¹⁴
- (13) With respect to quality categories, the results of market investigation confirmed that, although consumers often have a preference for one or the other quality tier, these different categories exist in a continuum and respondents were not able to indicate clearcut criteria demarcating the boundaries of each segment.¹⁵ Moreover, most suppliers producing pet food of different quality categories do so on the same production lines with no or minor adjustments to the manufacturing process.¹⁶
- (14) Therefore, in line with its past decisions, in the present case the Commission assessed market shares for the supply of cat and dog food at wholesale level distinguishing between dry food, wet food and snacks and between branded and private label products.

4.1.2. *Geographic market definition*

- (15) The Commission's past decisions concluded that the relevant geographic market is national in scope for branded products and larger than national (and possibly EEA-wide) for private label product at the wholesale level. This difference stems from the fact that private label products are not advertised by their supplier, as any advertising for private label products is done by the retailer. Producers may therefore afford higher transport costs and still offer the product at competitive prices compared to the branded pet food. Therefore, manufacturers of private label can competitively sell such products throughout an extensive area, which is wider than national. Moreover, some international hypermarket chains tend to carry out their procurement policies for private label purchases in a context which is wider than national.¹⁷

¹² Questionnaire to suppliers, question C.B.1.

¹³ Questionnaire to suppliers, question C.D.1.

¹⁴ Questionnaire to suppliers, question B.2.

¹⁵ Questionnaire to retailers, question C.B.1.1.

¹⁶ Questionnaire to suppliers, question C.C.1.

¹⁷ M.2337 Nestlé / Ralston Purina, *supra*, paras. 31-34.

- (16) In the present case, the large majority of responding suppliers indicated that their European plants are able to deliver their branded and private label products in most of the EU territory and even to other continents.¹⁸ The large majority of responding retailers similarly indicated that they are able to procure branded and private label products from producers located in most of the European territory.¹⁹ In any event, the geographic market can be left open, because the transaction does not raise any concerns even under the most conservative approach (*i.e.* assuming a national scope of the relevant markets).

4.2. Retail of pet food

4.2.1. Product market definition

- (17) At the retail level, the Commission's precedent concluded that products sold through grocery outlets (e.g. supermarkets or convenience stores) and specialist outlets (e.g. pet shops and veterinaries) form an overall market.²⁰
- (18) The market investigation in the present case confirmed this conclusion. From the point of view of the upstream producers (which is particularly relevant in this case), the different distribution channels are seen to a large extent as interchangeable, because producers supply the same products across channels with no or minor adjustments.²¹ Suppliers also explained that they are able to shift volumes among different channels in response to changes in market demand.²² Also from the point of view of downstream consumers, grocery and specialist outlets are seen as competing against each other and consumers often buy products in both channels.²³
- (19) The Commission's precedent (dating back to more than 20 years ago) did not mention sales on online platforms. The market investigation in the present case showed that customers easily switch between online and brick-and-mortar shops and suppliers increasingly pursue omni-channel strategies that span both online and offline sales.²⁴ The Commission therefore considers that the overall market for the retail of pet food also includes online sales.

4.2.2. Geographic market definition

- (20) The Commission's precedent also concluded that, at the retail level, the pet food markets are national in scope.²⁵ The market investigation in this case provided no reasons to deviate from this approach.

5. HORIZONTAL EFFECTS

- (21) Fressnapf has marginal activities in the wholesale supply of pet food, with market shares not exceeding 1% in any segment. The very limited overlaps between these activities and the position of Cinven's subsidiary PPF do not give rise to any

¹⁸ Questionnaire to suppliers, question D.1 and D.2.

¹⁹ Questionnaire to retailers, question D.1 and D.2.

²⁰ M.2544 *Masterfoods / Royal Canin*, *supra*, para. 23.

²¹ Questionnaire to suppliers, question C.G.2.

²² Minutes of a call on 18 October 2024.

²³ Questionnaire to retailers, questions C.D.1, C.D.2 and E.5.

²⁴ Questionnaire to retailers, questions C.D.1, C.D.2 and E.5. Minutes of a call on 22 October 2024.

²⁵ Case M.2544 *Masterfoods / Royal Canin*, *supra*, para. 23.

affected markets within the meaning of recital 25(g) Annex I to Regulation (EU) 2023/914.²⁶

6. VERTICAL EFFECTS

- (22) The Transaction gives rise to vertical relationships between the upstream activities of Cinven’s subsidiary PPF in the wholesale supply of private label pet food (and, to a smaller extent, branded pet food) and Fressnapf’s downstream activities in the retail of pet food.
- (23) If the markets for the wholesale supply of pet food for private labels were considered to be EEA-wide in scope, the Transaction would not give rise to any affected market within the meaning of recital 25(g) of Annex I to the Implementing Regulation.²⁷ As explained above, both the Commission’s precedent and the investigation in the present case provide indications that these markets are indeed broader than national and possibly EEA-wide.
- (24) However, during the investigation, some market participants have raised concerns about the Parties’ market positions in certain individual Member States. Out of an abundance of caution, the Commission therefore assessed the conditions of competition in those Member States where the Parties have high market shares at the national level. Under this conservative approach, the Transaction would give rise to the following affected markets.

Table 1 Parties’ market shares (2023)

Geographic market	PPF’s upstream share	Fressnapf’s downstream share
Denmark	[60-70]% (cat, wet, private label)	[30-40]% (retail of pet food)
Hungary	[40-50]% (dog, dry, private label) [30-40]% (cat, dry, private label)	[10-20]% (retail of pet food)
Romania	[60-70]% (dog, wet, private label)	<1% (retail of pet food)

Source: Parties’ estimates

6.1. Input foreclosure

- (25) Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals’ costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs,

²⁶ Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ L 119, 5.5.2023 (the ‘Implementing Regulation’), p. 22.

²⁷ In particular, the Parties’ upstream combined share in the EEA markets for the supply of pet food for private labels is always lower than 30% and Fressnapf hold a purchasing share of less than 30% in that market. See point 5(d)(ii)(bb) of the Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 160, 5.5.2023, p. 1. No affected markets would arise with respect to branded pet food or snacks irrespective of whether these markets are considered to be national or EEA-wide.

second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream. In practice, these factors are often examined together since they are closely intertwined.²⁸

- (26) As shown above, PPF has considerable market shares in some segments of the market for the supply of pet food in Hungary (where the company is headquartered), as well as in Denmark and Romania. However, feedback received from customers in each one of these markets confirms that the Transaction will raise no input foreclosure concerns.
- (27) *First*, all respondents in the three affected countries confirmed that they can procure pet food for their private labels from producers located abroad. The large majority of these respondents can procure in most of the European territory and sometimes even from other continents.²⁹ This means that PPF's supply shares on a hypothetical national market greatly overestimate its market power.
- (28) *Second*, none of the respondents in the three affected countries expects that PPF will discontinue or significantly reduce its sales to them after the Transaction.³⁰
- (29) *Third*, a large majority of respondents in the three affected countries confirmed that they have access to sufficient alternative suppliers that could replace PPF for the procurement of pet food for their private labels.³¹ These include, among others, United Pet Food, Bosch, Mera and Dr. Alder.
- (30) *Fourth*, customers' ability to switch to alternative suppliers is further confirmed by the fact that already now they multisource from several suppliers. In fact, in the three affected countries, respondents on average procure a limited share of their private label products from PPF.³²
- (31) *Fifth*, PPF is currently jointly controlled by Cinven and CVC. This corporate structure further reduces Cinven's ability to coordinate the activities of PPF and Fressnapf post-Transaction, since an integration of the two businesses is not possible while they are subject to different control structures. Moreover, CVC is unlikely to allow any input foreclosure strategy on the part of PPF, because it would suffer from the decrease in upstream sales by PPF without benefiting from the hypothetical increase in downstream sales by Fressnapf.
- (32) For these reasons, PPF will not be able to engage in an input foreclosure strategy post-Transaction. Since PPF is not able to foreclose competitors, its incentives to do so and the potential effects of this strategy are not assessed further.

6.2. Customer foreclosure

- (33) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or

²⁸ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 6 ('NHMG'), paras. 31 f.

²⁹ Questionnaire to retailers, question D.1.

³⁰ Questionnaire to retailers, question E.2.

³¹ Questionnaire to retailers, question E.3.

³² Questionnaire to retailers, question E.1.

potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete. In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.³³

- (34) As shown above, Fressnapf has a substantial market share in the market for the retail of pet food in Denmark. The Commission has also canvassed Fressnapf's suppliers in Austria and Germany (where the company is headquartered), in light of Fressnapf's considerable market shares at the retail level (between 30% and 50%) in certain product segments in those countries.³⁴ Feedback received from these suppliers in each one of these markets³⁵ confirms that the Transaction will raise no customer foreclosure concerns.
- (35) *First*, a large majority of suppliers confirmed that they can supply pet food for private labels to customers located in most of the European territory and sometimes even in other continents.³⁶ This means that Fressnapf's downstream shares on a hypothetical national market greatly overestimate its buyer power and suppliers have access to a sufficient number of alternative customers across Europe.
- (36) *Second*, the availability of alternative customers is confirmed by the fact that Fressnapf does not account for a considerable share of the responding suppliers' sales of products for private label.³⁷
- (37) *Third*, a majority of responding suppliers do not expect Fressnapf's procurement with them to change significantly post-Transaction.³⁸
- (38) *Fourth*, even if Fressnapf were to reduce its procurement of pet food from third-parties post-Transaction, rivals downstream are unlikely to be put at a competitive disadvantage as a result of this strategy.³⁹ In fact, a majority of suppliers do not expect that this strategy would reduce their revenues to the point that would negatively impact the quality of their offering.⁴⁰ Moreover, suppliers indicated that in any case they would not be able to increase the prices applied to other customers in response to a combined entity's hypothetical customer foreclosure strategy.⁴¹
- (39) For these reasons, the combined entity will not be able to engage in a customer foreclosure strategy post-Transaction and in any case that strategy would not have significant impact on effective competition. Since the combined entity is not able to foreclose competitors, its incentives to do so are not assessed further.

³³ NHMG, paras. 58 f.

³⁴ In particular in the supply of cat and dog dry food in Austria, cat and dog dry food in Denmark and dog dry food in Germany. Those market shares do not give rise to affected markets in those segments due to PPF's limited upstream shares.

³⁵ [Confidential information in relation to Fressnapf's procurement activities].

³⁶ Questionnaire to suppliers, question D.2.

³⁷ Questionnaire to suppliers, question E.1.

³⁸ Questionnaire to suppliers, question E.3.

³⁹ NHMG, para. 72.

⁴⁰ Questionnaire to suppliers, question E.4.

⁴¹ NHGM, para. 58.

7. CONCLUSION

- (40) 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
Executive Vice-President