



**BEFORE
THE COMPETITION COMMISSION OF PAKISTAN**

**In the matter of
Acquisition of Pfizer Nutrition (a business unit of Pfizer Inc.) By
Nestlé S.A.**

(File No.493 /MERGER-CCP/2012)

Date of hearing: 2 October, 2012

Present: Mr. Abdul Ghaffar, Member
Dr. Joseph Wilson, Member

Present for Nestlé S.A. Mr. Ijaz Ahmed, Advocate
Mr. Habib Ahmed Bhatti, Advocate,
Of Ijaz Ahmed & Associates.

Present for Pfizer Inc. (Wyeth Pakistan) Ms. Ferzeen Bhadha, Advocate
Ms. Samiya Farkee, Advocate,
Of Vellani & Vellani Advocates.

ORDER

1. Nestlé S.A. (“Nestlé or the Acquirer”) through its legal advisors, Ijaz Ahmed & Associates, submitted a pre-merger application, dated 6 June 2012, pursuant to section 11 of the Competition Act, 2010 (hereinafter the “Act”), regarding the

clearance from the Competition Commission of Pakistan (the “Commission”) the acquisition of the Nutrition Business of Pfizer Inc. (“Pfizer”).

2. The transaction involves an acquisition of the Nutrition Business of Pfizer Inc. (“Pfizer”) by Nestlé. The relevant product market of the merger parties comprises of two parts, Infant and Follow-On Milk (“IFFO”) (0-12 months) and Growing-Up Milk (“GUM”) (12 months +). The Acquirer is engaged in the relevant product market and is already enjoying a dominant position in the relevant product market by having% &% market share in IFFO milk and GUM in terms of volume, respectively. The target Pfizer, which is also engaged in the same line of business and is having% and% market share in IFFO milk and GUM respectively. The post-merger market shares of the acquirer would be% and% in IFFO milk and GUM, respectively. Once transaction is consummated, the already held dominant position of the acquirer Nestlé would further strengthen.
3. Nestlé is a dominant player in the relevant product markets and would further strengthen its dominant position in the relevant markets, which raised competition concerns for the Commission. Therefore, the Commission initiated the IInd phase review of the transaction and granted its approval subject to conditions documented below in this Order.

A. UNDERTAKINGS

- i. **Nestlé S.A.**
4. Nestlé S.A. was incorporated under the laws of Switzerland, and is active worldwide in the production, marketing and sale of a large variety of food and beverage products including infant nutrition formula milk. Nestlé is present in Pakistan through its wholly owned subsidiary, Nestlé Pakistan Limited, which produces the following relevant products in Pakistan:

IFFO Milk: NAN, Lactogen, AL110, Lactogen Recover, Pre-NAN.

GUM: Lactogen 3 and NNS.

ii. Pfizer Inc.

5. Pfizer Inc. is a corporation incorporated under the laws of the State of Delaware, United States of America. In 2009, Pfizer acquired Wyeth LLC, USA (“Wyeth”) whereby it acquired the Nutrition business of Wyeth. Pfizer’s presence in the relevant markets in Pakistan is through its subsidiary Wyeth Pakistan Limited. Pfizer Nutrition, formerly Wyeth Nutrition, is a global pediatric nutrition business unit of Pfizer which includes specialty infant and toddler formulas, follow-on formulas, as well as maternal and adult nutrition products and is present in Pakistan in the IFFO milk and GUM market through the following products:

IFFO Milk: SMA 1 and 2, Promil Gold and S-26 LF.

GUM: Progress Gold and SMA.

B. TRANSACTION

6. The transaction involves the proposed acquisition of the Nutrition Business of Pfizer by way of contracts, assets and liabilities of the business segment by Nestlé. Pursuant to a Stock and Asset Purchase Agreement between Nestlé and Pfizer, Nestlé will acquire the global infant nutrition business of Pfizer Nutrition for an aggregate purchase price of USD (approx. PKR).
7. As part of the current transaction, the business (contracts, assets and liabilities) of Wyeth Pakistan Limited relating to IFFO milk and GUM will be transferred to Nestlé’s designated entity in Pakistan i.e., Nestlé Pakistan Limited.

C. COMPETITION ASSESSMENT

8. Sub-section 1 of Section 11 of the Act lays down the substantive test for reviewing a merger, that is, whether a merger “substantially lessens competition by creating or strengthening a dominant position in the relevant market.” Section 2(e) of the Act defines dominant position as:

“dominant position” of one undertaking or several undertakings in a relevant market shall be deemed to exist if such undertaking or undertakings have the ability to behave to an appreciable extent independently of competitors, customers, consumers and suppliers and the position of an undertaking shall be presumed to be dominant if its share of the relevant market exceeds forty percent.

9. In the instant case, the Acquirer is already enjoying a dominant position in the relevant product market by having *per cent* and *per cent* market share, in terms of volume, in IFFO milk and GUM, respectively. The pre-merger market shares, in terms of volumes and sales, of the merger parties as well as all that of their competitors in the relevant product markets are given in the table below:

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10. Regulation 6 of the Competition (Merger Control) Regulations, 2007 (the “CMCR”) lays down the factors in which the Commission may consider when determining substantial lessening of competition in the relevant market. One such factor which the Commission may consider when determining substantial lessening of competition in the relevant market is “whether the merger situation will result in the removal of an

effective competitor.” Apart from lessening of competition, elimination of a competitor also reduces the choices available to consumer. Availability of choice is an important determinant of a competitive market.¹ Reduction in choices available to consumers was the concern of the Commission, which prompted the initiation of IInd Phase review.

11. A hearing was held with the parties to the merger on 2 October 2012, wherein the Bench raised the concerns of elimination of choices available to the consumers. The Council for the Acquirer apprised the Bench that Pfizer has no manufacturing facilities pertaining to IFFO and GUM in Pakistan. Pfizer’s presence in the Pakistan market is through import of relevant products from Ireland and Singapore. The relevant products are imported by distributors which are associated with Pfizer as well as by independent distributors. It was further represented that Nestlé would continue to allow the imports of Pfizer’s nutrition products; thereby ensuring the choices available to consumers will not be reduced.

D. REMEDIES/CONDITIONS

12. The Bench and the merger parties agreed that a written undertaking by Nestlé to the effect that “Pfizer (Wyeth) products will continue to be available for a period of three years from the date of the closing of the transaction in Pakistan” will assuage the concerns raised by the Commission.
13. Since Nestlé has given a written undertaking to the Commission that “Pfizer (Wyeth) products will continue to be available for a period of three years from the date of the

¹ See Einer Elhauge and Damien Geradin, GLOBAL COMPETITION LAW AND ECONOMICS, (Hart, 2007) at p. 1; Richard Whish, COMPETITION LAW, (Oxford Uni. Press, 5th ed., 2005) at p. 6. (The determinants of a competitive market are: (i) absence of a dominant player; (ii) availability of choices; (iii) perfect information as to market conditions; (iv) easy entry; and (v) easy exit.)

closing of the transaction in Pakistan”; the bench hereby authorize the acquisition under Section 31(1)(d)(i) of the Act.

14. It is so ordered.

(ABDUL GHAFAR)
Member

(DR. JOSEPH WILSON)
Member

ISLAMABAD, The 9th of October, 2012