

Part II

Background and evidence

3 The companies involved in the acquisition

Introduction

3.1. The merger concerns the acquisition on 3 February 1995 by Nutricia, which is a subsidiary of NV Nutricia incorporated in the Netherlands, of Valio from Valio Oy, a Finnish company. Following the merger, Valio was renamed SHS Holdings Limited.

3.2. Of particular relevance to the merger are two subsidiaries of Nutricia, CGN and NDP. The former supplies the UK with ECN products (manufactured overseas by another subsidiary of NV Nutricia), infant milk formulae (IMF) and baby foods and drinks; whilst the latter both supplies the UK with and exports gluten-free and low-protein foods (both of which are manufactured in the UK).

3.3. SHS, via its subsidiary SHS International, manufactures ECN products and gluten-free and low-protein foods in the UK for the UK market and overseas.

NV Nutricia

3.4. NV Nutricia was founded in 1901 and produced IMF, initially for the Dutch market but gradually for other markets. In 1981 NV Nutricia acquired Cow & Gate Ltd from Unigate and thereby entered into the UK and Irish markets. It is also represented in Europe, Central America, Australia and the Far East and has over 5,500 employees.

3.5. The group has diversified into product areas beyond IMF, both organically and by acquisition. In 1971 it introduced its first liquid nutritional product, 'Nutrison'. Its primary activities comprise ECN products, dietary foods, IMF, baby and toddler meals, drinks and cereals. Secondary activities include the Galenco range of skincare products and a number of branded goods such as Chocomel chocolate milk, Fristi yogurt drink and Nutroma coffee-cream, marketed primarily in the Low Countries.

3.6. NV Nutricia has been publicly quoted in Amsterdam since 1966. Its principal shareholder is Unigate with approximately a 29 per cent interest.¹

3.7. On 24 August 1995 NV Nutricia reached agreement to acquire Milupa, a subsidiary of Altana AG (which is listed on the Frankfurt Stock Exchange), for 820 million DM (about £380 million). Milupa, founded in 1930, is a major producer of baby food and ECN, with a turnover of 1 billion DM (about £460 million) in 1994. It is active throughout Europe, but in the UK where sales were less than £0.5 million in 1994 it has less than a 1 per cent share of the ECN market.

Nutricia

3.8. Nutricia is the non-trading holding company for NV Nutricia's UK activities. At the time of the merger, Nutricia had three principal trading subsidiaries: CGN, NDP, and Galenco. This inquiry has concentrated on the first two of these companies, since Galenco, which produces bodycare products, does not compete with SHS.

¹On 15 November 1995 the Board of Unigate announced that it intended to dispose of its holdings in NV Nutricia.

CGN

3.9. The Cow & Gate business originated in 1850 as a small high street grocery shop called Gates Groceries in Guildford. In 1903 the company introduced one of the first roller milk-drying plants in England to produce powdered milk for baking and puddings. A year later its use was extended to feeding children and babies. In 1929 the company's name changed to Cow & Gate Ltd and in 1959 it merged with United Dairies to form Unigate Ltd. In 1981 the baby food business was sold to NV Nutricia.

3.10. In 1994 IMF and baby meals accounted for roughly 80 per cent of CGN's turnover. In the last decade CGN entered the ECN market, distributing a range of products manufactured by Nutricia in the Netherlands, Belgium and Germany. About 90 per cent of CGN's ECN turnover comprises whole-protein tube feeds and nutritionally-complete supplements (see Chapter 4).

3.11. CGN's headquarters are at Trowbridge in Wiltshire, with 120 employees permanently based on site and 100 sales personnel in the field. Its factory at Wells, which manufactures baby foods and drinks, employs a further 230 staff. Its UK distribution activities are centred at its distribution centre at Warndon near Worcester, which employs a dedicated fleet of vehicles (operated by TNT Logistics).

NDP

3.12. NDP was formed by the merger of the businesses of GFD, which was acquired by Nutricia in 1988, with Welfare Foods and Wafcol, both acquired in 1989. Its principal activity, the production of specialist gluten-free and low-protein products, was then transferred to a newly-commissioned factory at Stockport.

3.13. GFD's main business was the manufacture and sale of the Juvela range of gluten-free and low-protein products made under exclusive licence from AB Juvel of Sweden. However, in 1991, following the acquisition of AB Juvel by Semper AB, the licence was transferred to SHS. Nutricia commenced proceedings against (amongst others) AB Juvel and SHS for breach of contract, which were settled only when Nutricia completed the acquisition of SHS.

3.14. NDP's products are sold under the brand names Rite-Diet and Glutafin: the latter brand was launched in 1991 to counteract the loss of the Juvela licence. The products comprise gluten-free bread and rolls, mixes, biscuits, cakes and pasta. NDP also produces a range of low-protein products marketed under the Loprofin brand.

3.15. NDP shares its headquarters with CGN at Trowbridge. Thirty-eight of its 49 employees are based at the Stockport factory site, which produces gluten-free and low-protein bread and mixes. Other lines within the NDP range are acquired from third party suppliers, both in the UK and overseas.

Valio Oy

3.16. Valio Oy originated as a dairy co-operative in Finland. In 1990 Valio Oy, via Valio, its UK holding company, acquired the SHS business from its existing family owners. Over the next four years Valio Oy played a non-interventionist role in the running of its UK business. In 1994 Valio Oy embarked on a reorganization to change its status from a co-operative to a limited company in preparation for Finland joining the EC. The new Chief Executive Officer decided to sell all the international businesses that Valio Oy had acquired and return to its core dairy activities. In February 1994 SHS was put up for sale to the highest bidder.

SHS

3.17. SHS is the holding company for SHS International, through which the SHS business is conducted.

3.18. The original SHS business was founded in 1879 and traded as Powell & Scholefield Ltd (Powell & Scholefield), producing additives for the brewing industry. The company entered the ECN market in 1960

and, following a phase of rapid expansion, it relocated to Wavertree Technology Park, Liverpool. In 1988 it disposed of its brewing business to focus on ECN and in 1990 the family owners of Powell & Scholefield retired and sold the company to Valio Oy.

3.19. Powell & Scholefield changed its name to SHS International on 20 December 1991 and in the same year it was awarded the Queen's Award for Industry for exports. During the period since 1983 subsidiary companies have been established in the USA, Australia, Ireland, Spain and Germany.

3.20. SHS has developed, produced and marketed a range of specialist ECN products, focusing on low-volume, customer-specific business, with an emphasis on high customer service levels. The company's products can be considered as positioned on the boundary between the food industry and the pharmaceutical industry and include modules, disease-specific products and gluten-free and low-protein foods. In particular, SHS has pioneered a range of protein substitutes which are used in the treatment of patients with inborn errors of metabolism and a number of foods designed for the dietary management of gastro-intestinal diseases.

The acquisition of SHS

3.21. NV Nutricia first expressed an interest in SHS in 1988 and approached the principal shareholders in 1989 and 1990, but in the event the business was sold to Valio Oy.

3.22. In early 1993 NDP approached SHS to propose that spare capacity at Stockport should be used to manufacture the Juvela range under contract to SHS. SHS declined, having already committed itself to constructing a new bakery at Wavertree.

3.23. Then in 1994 Samuel Montagu Ltd notified Nutricia that it had been appointed by Valio Oy to find a buyer for SHS and supplied an Information Memorandum relating to the business. After an initial bid, Nutricia was told that it had been short-listed, and after further discussions it was invited to negotiate a binding agreement for the purchase of SHS, which was entered into and completed on 3 February 1995. The consideration for sale and purchase was £[*].

Financial information on NV Nutricia

3.24. Appendix 3.1 shows summarized group profit and loss information for NV Nutricia for each of the five years up to 31 December 1994. This shows that between 1990 and 1994 its turnover increased by 30 per cent, from 1,143 million guilders to 1,490 million guilders, which is approximately £600 million. In the same period its operating profit rose by 48 per cent, from 120 million guilders to 178 million guilders, approximately £70 million.

3.25. NV Nutricia's return on sales fluctuated during this period over a narrow range between a low of 9.0 per cent in 1993 and a high of 11.9 per cent in 1994.

3.26. Its return on average capital employed has similarly fluctuated between a low of 26.0 per cent in 1993 and a high of 36.7 per cent in 1994.

CGN

3.27. Nutricia distributes ECN products in the UK via its subsidiary CGN. In the year ended 31 December 1994 CGN made an operating profit of £16.2 million on turnover of £99.1 million: a return on sales of 16.3 per cent and on average capital employed of 54.5 per cent. Of the total turnover, £17.3 million (17 per cent) related to ECN, the remainder being attributed to infant food products. The level of exports of ECN products was negligible.

*Figure omitted. See note on page iv.

3.28. Summarized profit and loss information for CGN (relating to the UK market only), for 1992 to 1994 and the first six months of 1995, for ECN products (including £0.8 million of Flocare products for tube feeds) is set out in Table 3.1.

TABLE 3.1 CGN: profitability of UK ECN products, 1992 to 1995

	<i>£ million</i>			
	<i>Years ended 31 December</i>			<i>6 months to 30 June</i>
	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>
Turnover	11.0	14.9	17.3	8.8
Gross profit	[<i>Figures omitted.</i>]
Operating profit		<i>See note on page iv.</i>]
		<i>per cent</i>		
Return on sales	[<i>Figures omitted.</i>]
Return on average capital employed		<i>See note on page iv.</i>]*

Source: CGN.

*Annualized and based on average capital employed for the year ended 31 December 1994.

3.29. The return on capital employed is particularly high for ECN, since there is minimal capital employed in the UK, which is purely a sales and marketing operation. In addition R&D costs incurred by NV Nutricia are not apportioned to the UK.

NDP

3.30. Nutricia manufactures and distributes gluten-free and low-protein products in the UK via its subsidiary NDP. In the year ended 31 December 1994 NDP made an operating profit (before central administration charge) of £[†] million on turnover of £7.2 million: a return on sales of [†] per cent and on average capital employed of [†] per cent. Approximately one-quarter of sales (accounting for one-quarter of operating profits) were exported from the UK.

3.31. Summarized profit and loss information for NDP (relating to the UK market only), for 1992 to 1994 and the first six months of 1995, for gluten-free products and low-protein products, is set out in Tables 3.2 and 3.3.

TABLE 3.2 NDP: profitability of UK gluten-free products, 1992 to 1995

	<i>£ million</i>			
	<i>Years ended 31 December</i>			<i>6 months to 30 June</i>
	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>
Turnover	3.9	4.4	4.5	2.1
Gross profit	[<i>Figures omitted.</i>]
Operating profit/(loss)*		<i>See note on page iv.</i>]
		<i>per cent</i>		
Return on sales	[<i>Figures omitted. See note on page iv.</i>]			

Source: NDP.

*Operating profit/(loss) has been arrived at after deducting a central administration charge of 1.9 per cent of sales.

TABLE 3.3 NDP: profitability of UK low-protein products, 1992 to 1995

	<i>£ million</i>			
	<i>Years ended 31 December</i>			<i>6 months to 30 June</i>
	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>
Turnover	0.80	0.77	0.68	0.26
Gross profit	[<i>Figures omitted.</i>]			
Operating profit/(loss)*	[<i>See note on page iv.</i>]			
	<i>per cent</i>			
Return on sales	[<i>Figures omitted. See note on page iv.</i>]			

Source: NDP.

*Operating profit/(loss) has been arrived at after deducting a central administration charge of 1.9 per cent of sales.

Financial information on SHS

3.32. Appendix 3.2 shows the summarized group profit and loss accounts of SHS for each of the four years up to 31 December 1994. This shows that between 1991 and 1994 SHS's turnover increased by 128 per cent, from £10.3 million to £23.5 million. In the same period its operating profit increased by 269 per cent, from £0.6 million to £2.3 million.

3.33. SHS's return on sales has increased each year, from 6.0 per cent in 1991 to 9.7 per cent in 1994, and its return on average capital employed has likewise increased every year over the same period, from 13.4 to 27.9 per cent.

Exports

3.34. SHS exports just over 50 per cent of its products, primarily to countries in Europe, North America and Australasia. However, although its operating profit margins on exports have increased they are considerably lower than margins in the UK. As a result the UK market accounted for 75 per cent of SHS's operating profits in 1994.

ECN, gluten-free and low-protein products

3.35. Summarized profit and loss information for SHS (relating to the UK market only), for 1992 to 1994 and for 1 January to 20 June 1995, for ECN, gluten-free and low-protein products is set out in Table 3.4.

TABLE 3.4 SHS: profitability of UK ECN, gluten-free and low-protein products, 1992 to 1995

	<i>£ million</i>			
	<i>Years ended</i>			<i>6 months to</i>
	<i>31 December</i>			<i>30 June</i>
	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>
<i>ECN products</i>				
Turnover	4.6	5.3	6.3	3.2
Gross profit	[<i>Figures omitted. See note on page iv.</i>]			
Operating profit	[<i>Figures omitted. See note on page iv.</i>]			
Return on sales (%)	[<i>Figures omitted. See note on page iv.</i>]			
<i>Gluten-free products</i>				
Turnover	3.56	4.02	4.42	2.19
Gross profit	[<i>Figures omitted. See note on page iv.</i>]			
Operating profit	[<i>Figures omitted. See note on page iv.</i>]			
Return on sales (%)	[<i>Figures omitted. See note on page iv.</i>]			
<i>Low-protein products</i>				
Turnover	0.25	0.37	0.41	0.19
Gross profit	[<i>Figures omitted. See note on page iv.</i>]			
Operating profit	[<i>Figures omitted. See note on page iv.</i>]			
Return on sales (%)	[<i>Figures omitted. See note on page iv.</i>]			

Source: SHS.