

**INVESTIGATIVE TECHNIQUES SEMINAR**

**MERGER**

**BACKGROUND MATERIALS FOR TRAINEES**

United States  
Federal Trade Commission

United States  
Department of Justice  
Antitrust Division

**Hypothetical Cases**

Materials to be distributed in advance of the  
Investigative Techniques Seminar

NOTE: This seminar will use a discussion and role-playing method. The cases that will be used are hypothetical cases, which were developed to present a wide range of issues. The facts for each of those cases are described in the attached descriptions of hypothetical fact situations. Additional facts will be provided during the discussion.

**BEFORE THE FIRST SESSION:** Participants should read the attached hypothetical cases and prepare to discuss the questions that are listed at the end of each case.

The first case is designed to raise questions about the competitive effects of a merger in the tomato sauce business. The second and third cases are supplemental cases in which the facts of the first case are modified.

The first case will be discussed in the first six sessions of the seminar. Materials for the second and third case, if used, will be handed out during the seminar and will be discussed in the seventh and eighth sessions of the seminar.

## **Overview**

Panagra is a fictitious independent state. The southern border is a coast line. The population is more concentrated in the South. The northern regions are more mountainous and less heavily populated.

Conglom is a diversified food products corporation in the state of Panagra. Five years ago, Ogorco, a state enterprise that produced tomato sauce, was broken up into three separate companies as part of a privatization program in Panagara. The three companies were originally Ogorco factories in three separate cities - Martucha, Sanfor and Candaro. Each new company retained intellectual property rights to the Ogorco-style tomato-sauce making process. At the time, Conglom purchased Martucha, one of the three tomato sauce companies. Sanfor was sold to a group of banks. Candaro was sold to a group of managers and workers. Conglom now seeks to purchase Sanfor.

Before Conglom can purchase the assets of Sanfor, the transaction must be reviewed by the competition agency. The competition agency must determine which markets may be affected by the transaction and whether the transaction will lessen competition substantially in any of those markets.

## **Relevant Law**

Everyone should have a copy of the current sections of the competition law relevant to mergers and acquisitions that apply to the jurisdiction of the trainees. If the trainees come from multiple jurisdictions it may be appropriate to create a hypothetical law. It is assumed for purposes of this hypothetical case exercise that the laws and regulations of Panagra require the parties to the merger to notify the Competition Authority, and that the Authority has the power to compel any person or entity with information needed to conduct the investigation to submit it to the Authority.

**MERGER NOTIFICATION FORM**

(as required by Antimonopoly Law of Panagra, section 7(c) and regulations of the Competition Agency)

1. **Name of acquiring company:** Conglom

2. **(a) Name of acquired company:** Sanfor

**OR**

**(b) Description of acquired assets:** Not applicable

3. **Brief description of transaction:**

Conglom will acquire essentially all of the assets of Sanfor and merge them with Martucha, a subsidiary of Conglom.

4. **Market affected by transaction and shares of that market controlled by acquiring and acquired companies:**

This transaction affects the market for food products in Panagra. In that market, the acquiring company has a 2% market share and the acquired company has less than a 1% market share. This market is subject to very strong competition, including import competition.

5. **Signature and title of submitting officer of acquiring company:**

I certify that this information is true and correct.

Signed, Klaus Burgher  
Conglom

## **The Parties**

**Conglom** is a diversified food products corporation in the state of Panagra. Fifty percent of its shares are owned by a Spanish food products corporation. Conglom owns many subsidiary companies, which produce sausage, jams and jellies, canned vegetables such as beets, corn, green beans, and dried soup mixes, among other products.

**Martucha** was part of Ogorco. Martucha is now one of Conglom's subsidiaries. Martucha is one of three companies that have the intellectual property to the Ogorco-style sauce-making process. When Ogorco was privatized, it was mostly sold to Conglom. The managers own 20% of the stock, and Conglom owns the other 80%. The Competition Agency permitted Conglom to acquire these shares. Martucha has a manufacturing facility, a canning facility and a license to use the recipe which is the key to manufacturing the Italian style tomato sauce.

**Sanfor** was also part of Ogorco and is now owned primarily by a few banks. Sanfor is one of three companies that have the intellectual property to the Ogorco-style sauce-making process. Before the spin-off, it was a factory with large debts. After the other two factories had been split off from Ogorco, the banks' debts were traded for ownership shares in the new company, Sanfor. Bank officers are on the supervisory board of Sanfor, but the day-to-day management is left primarily to the former managers.

## **Industry Background**

The following information regarding the industry was obtained through discussions with Conglom and Sanfor officials, and from general knowledge of the Competition Agency staff:

### **Tomato sauce consumption and sales**

Panagran tomato sauce is a popular food product. Many people eat tomato sauce several times a week. The sauce is eaten mainly as a topping on various types of pasta, but also on pizza, milanesa, provoleta, and many other snacks and dishes. In addition, tomato sauce is an ingredient in many Italian dish recipes.

Panagrans obtain the tomato sauce they consume from one of two sources: they make their own or purchase it. Home-made sauce is prepared using fresh tomatoes grown in household gardens or purchased in markets. The tomatoes are pureed and mixed with various seasonings according to family recipes. Tomato sauces made in this fashion are eaten immediately or home canned.

Tomato sauce is available commercially in grocery stores and from vendors in local markets. Some Panagrans prefer to purchase tomato sauce rather than make it themselves. Those who prefer to make their own tend to be older or to live in rural areas. Conglom/Martucha, Sanfor, and Candaro are the only suppliers of tomato sauce for grocery store sales in the southern region of Panagra, and they also supply some vendors who sell in the local markets. The sauce of all three companies are called "Ogorco-style" sauce, but sold under their

separate brand names. Ogorco-style sauce is somewhat unique in that it is produced using a closely-guarded recipe that was originally developed decades ago by a guild in southern Panagra. Many Panagrans believe that the Ogorco-style sauce has a distinct flavor, and some insist on eating only Ogorco-type sauce.

### **International Trade**

While tomato sauce is one of the most popular food products in Panagra, the output of Conglom/Martucha, Sanfor, and Candaro is greater than demand in their region. Thus, over the past few decades, the companies have been actively pursuing export opportunities, and have developed a strong international consumer base. Today, approximately 20% of Ogorco-style sauce is sold abroad.

In the last three years, imported sauces have begun to appear in local shops. They are vastly more expensive than local sauce, but some consumers prefer them. Their total sales volume is not a large part of total tomato sauce sales, however.

### **Northern Panagra**

In the north of Panagra, the historic patterns were slightly different. A large company, Norco, had taken over most of the local tomato producers during the 1930s. After the war, Norco was nationalized, as were a few remaining small plants in Pico Blanco, Colina and San Pedro. These three small companies retained their separate legal status after nationalization, and each served the area nearest to it. Otherwise, Norco tomato sauce was sold throughout the north. Despite the changing ownership of the tomato sauce producers in northern Panagra, they continued to use the traditional, small volume, labor intensive manufacturing processes that had been used in southern Panagra before Ogorco took over. For the past fifty years, each tomato sauce manufacturer has continued to sell almost exclusively in its own traditional region.

### **Pricing practices**

At the time the firms were privatized, the firms each issued a price list that maintained prices at the levels previously charged by Ogorco, the former state enterprise. The price lists include prices for (A) 100-liter steel drums, mainly for institutional purchasers (restaurants, schools, etc.) and for industrial purchasers who purchase the sauce to incorporate in other products; and prices for (B) cases of sauce in glass jars (12 jars per case), mainly for wholesale purchasers such as retail grocery stores, small restaurants, small wholesaler/distributors, etc. The prices for tomato sauce in jars are generally twice the price for 100-liter drums. Over the past two years, the three firms have increased the list prices on two occasions.

On the first occasion early in 1999, six months after the firms were privatized, the three firms simultaneously raised their prices by 10% (the rate of inflation at the time was about 5%). Each of the firms issued an announcement. The announcements were similar. Each of the firms attributed the increase to "restructuring costs and changes in supply and demand conditions."

The second increase was one year later. Martucha announced, without explanation, that a

price increase of 30% would take effect one month later. (Inflation in the previous year had been about 20%.) The other two firms immediately announced that they would also implement the same price increase. Since then, the firms have maintained list prices that are equivalent to each other-s.

In the face of these price increases, some industrial customers and large purchasers of cases have begun to use a different purchasing strategy. A customer asks for sealed bids from the three tomato sauce firms, and awards the contract to the low bidder. While this purchasing strategy is relatively new, a discernable pattern has developed: The first time that a customer uses a bidding procedure, the bidding has almost always been won by the firm whose factory was the supplier before Ogorco was divided. In subsequent bids for the same customer, the firm that won the initial bid at that customer has generally been the low bidder.

Consumers have complained to the Competition Agency, claiming that bids are unrealistically high compared to costs and that Conglom/Martucha, Sanfor, and Candaro are engaged in anticompetitive practices, specifically price fixing and market allocation. However, the Competition Agency has not found enough evidence to proceed with a case against the companies.