3G wins unconditional Mexican approval for Heinz buy

Tuesday, 30 July 2013 *(over a year ago)* by Joe Rowley

Mexico's Von Wobeser y Sierra SC has helped 3G Capital and investment fund Berkshire Hathaway obtain Mexican antitrust approval with no conditions for the local leg of their acquisition of US food company H.J. Heinz Company.

Heinz, which manufacturers a host of popular products including Tomato Ketchup, turned to Mexican firm Creel, García-Cuéllar, Aiza y Enriquez SC for the transaction that was given the all clear at the end of June.

The London office of Kirkland & Ellis LLP advised 3G on antitrust matters in other jurisdictions, while Heinz turned to the New York office of Davis Polk & Wardwell LLP.

Both 3G and Berkshire Hathaway already have stakes in companies operating in Mexico's food industry and the analysis by the country's Federal Competition Commission (CFC) rested on the possibility of horizontal and vertical effects arising from the sale.

A particular concern for the CFC was the possibility that Heinz's new owners could sign exclusive supply agreements to supply sauces to the restaurants they hold interests in. 3G owns a 70 per cent stake in Burger King following its US$4 billion acquisition in 2010, while Berkshire Hathaway holds interests in fast food chain Dairy Queen as well as other food and drink companies, including Coca Cola and Kraft.

Von Wobeser partner Fernando Carreño says that while it was relatively straightforward to prove there was no overlap between Heinz and Berkshire Hathaway's numerous other interests, which were "usually less than one per cent", it was more difficult to show there would not be vertical effects arising from the sale, and required demonstrating there were "other strong competitors in the sauces and ketchup markets" that could supply the fast food industry.

While the CFC did not place any restrictions on Heinz's future supply agreements, Carreño notes that Heinz will likely have to be "very careful" to avoid vertical effects; particularly in light of the master franchise agreement signed by Alsea (owner of Starbucks, Domino´s Pizza and The Cheesecake Factory franchises) with Burger King, which created "a lot of noise" during the closing of the Heinz deal.

The US$28 billion dollar acquisition is the largest ever in the food industry and spans a host of jurisdictions, including Brazil, numerous countries in Europe, the US, Canada, South Africa, South Korea, Japan and China.

In light of the "incredible number of jurisdictions" involved in the deal, Creel partner Luis Gerardo García notes the speed with which antitrust approval was obtained by the parties. This is echoed by Carreño, who explains that the "active and intense communication" between the CFC and other agencies around the world presented a "very, very important challenge to the firms" in coordinating legal counsel and securing waiver letters from the parties to speed up antitrust approval across the various jurisdictions.

3G made the purchase through holding company Hawk Acquisition Holding Corporation.

Counsel to Hawk Acquisition Holding Corporation

Von Wobeser y Sierra SC

Partner Fernando Carreño and associate José Palomar in Mexico City

Kirkland & Ellis LLP

Partner Shaun Goodman and associates Annabel Borg, Felicity Deane and Adam Kidane in London

Counsel to H.J. Heinz Company

Creel, García-Cuéllar, Aiza y Enriquez SC

Partner Luis Gerardo García and associate Mauricio Serralde in Mexico City

Davis Polk & Wardwell LLP

Counsel Stephen Pepper in New York

Comments

There are currently no comments.
