

# DETERMINATION OF MERGER NOTIFICATION M/20/031 – CALDIC BV / BRAND-NU & BNL

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## Section 21 of the Competition Act 2002

### Proposed acquisition by Caldic B.V. of sole control of Brand-Nu Laboratories, Inc. and BNL Sciences Ltd.

Dated 23 November 2020

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#### Introduction

1. On 19 October 2020, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed acquisition whereby Caldic B.V. (“Caldic”), which is controlled by funds managed by [...], a wholly-owned subsidiary of The Goldman Sachs Group, Inc. (“Goldman Sachs”), would acquire the entire issued share capital, and thus sole control of Brand-Nu Laboratories, Inc. (“Brand-Nu”) and BNL Sciences Ltd. (“BNL Sciences”) (together the “Target Companies”) (the “Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a purchase and sale agreement (the “PSA”) dated 14 October 2020, between Caldic and Brand-Nu, BNL Sciences, [...],<sup>1</sup> John Gorman and James McKeown. Pursuant to the PSA, Caldic will acquire the entire issued share capital, and therefore, sole control of each of the Target Companies following the implementation of the Proposed Transaction.

#### The Undertakings Involved

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<sup>1</sup> [...]

### *The Acquirer*

#### Goldman Sachs

3. Goldman Sachs is a public company headquartered in the United States of America (the “USA”) and listed on the New York Stock Exchange. It is a global investment banking, securities and investment management firm.
4. Goldman Sachs provides a range of banking, securities and investment services worldwide to a substantial and diversified client base that includes corporations, financial institutions, governments and high net-worth individuals.
5. Table 1 below details the portfolio companies active in the State in which Goldman Sachs has a controlling interest:

**Table 1: Overview of portfolio companies active in the State**

Company Name	Sector
[...]	[...]

6. [...].
7. For the financial year ending 31 December 2019, Goldman Sachs’ worldwide turnover was approximately €[...], of which in 2018, approximately €[...] was generated in the State.<sup>2</sup>

#### Caldic

8. Caldic is a private company with limited liability formed under the laws of the Netherlands. It is an international full-line distributor of chemicals headquartered in Rotterdam, the Netherlands.
9. Caldic’s main business is the distribution of commodity and specialty chemicals, including associated value-add services such as storage, repackaging, filling, mixing and bar-coding.

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<sup>2</sup> [...].

10. Caldic also works with its customers to develop customised formulations for different chemical products, and develops and distributes certain chemical products under its own brands. These products and services are not offered on a standalone basis outside the chemical distribution relationship with the customer.
11. Caldic supplies over [...] customers across a number of segments, including the food sector (amounting to approximately [...]% of Caldic’s global sales), general industrial sectors (approximately [...]% of global sales) and health and personal care sector (approximately [...]% of global sales).
12. Within the health sector, Caldic distributes chemicals such as excipients<sup>3</sup>, active pharmaceutical ingredients (“APIs”) intermediates, specialty solvents and process chemicals for pharmaceutical synthesis to the pharmaceutical sector. Caldic’s sales to the pharmaceutical sector accounted for [...]% of its total global sales in 2019.
13. Caldic has no physical presence in the State and its activities are limited to the distribution of commodity and specialty chemicals to customers through exports from locations outside of the State. Table 2 below provides an overview of the main products (accounting for [...]% of Caldic’s turnover in the State) supplied by Caldic to customers in the State in 2019.

**Table 2: Overview of main products sold by Caldic in the State<sup>4</sup>**

Product	Type	End-use segment	Customer
[...]	[...]	[...]	[...]

14. For the financial year ending 31 December 2019, Caldic’s worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

<sup>3</sup> An excipient is an inactive substance that serves as the vehicle or medium for a drug or other active substance, for example colouring agents or preservatives.

<sup>4</sup> Source: Caldic.

*The Target Companies:*

Brand-Nu

15. Brand-Nu is a corporation headquartered in Meriden, Connecticut, the USA. An individual, John Gorman, owns 100% of the issued and equity interests in Brand-Nu.
16. Brand-Nu supplies a broad line of chemicals for the pharmaceutical, biotechnology, microelectronic, academic, and specialty chemical markets, including premium and own brands of high-purity chemicals.
17. In addition, Brand-Nu is active in the USA in custom blending and formulation of chemicals.<sup>5</sup> This involves making acid and solvent dilutions and multi-ingredient formulations to specific customer recipes in addition to some small-scale volumetric solutions for use in laboratories.
18. Brand-Nu's activities in the State are limited to sales of chemicals to BNL Sciences, who then distribute these chemicals within the State.
19. For the financial year ending 31 December 2019, Brand-Nu's worldwide turnover was approximately €[...], of which €[...] was generated in the State.<sup>6</sup>

BNL Sciences

20. BNL Sciences is an Irish private company limited by shares, headquartered in Naas, Co. Kildare. BNL Sciences has two shareholders, John Gorman and James McKeown, who each own 50% of the issued and outstanding equity interests in the company.
21. BNL Sciences is active in the distribution of speciality chemicals in the State. The distribution services involve sourcing, warehousing, packaging and delivery of chemical products in the State. BNL Sciences is focussed predominantly on the supply of biologic ingredients to biopharmaceutical manufacturers. It is not active in the distribution of commodity chemicals in the State.

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<sup>5</sup> Brand-Nu does not carry out any custom blending activities in the State.

<sup>6</sup> [...].

22. Table 3 provides an overview of the top five specialty chemicals supplied by BNL Sciences to customers in the State in 2019.

**Table 3: Overview of top five products sold by BNL Sciences in the State<sup>7</sup>**

Product	Type	End-use segment	Customers
[...]	[...]	[...]	[...]

23. For the financial year ending 31 December 2019, BNL Sciences' worldwide turnover was approximately €[...], of which €[...] was generated in the State.

#### **Rationale for the Proposed Transaction**

24. The parties state in the notification: [...]

#### **Third Party Submissions**

25. No submission was received.

#### **Competitive Analysis**

##### Horizontal Overlap

26. There is a horizontal overlap between the activities of the parties as both Caldic and the Target Companies are active in the distribution of chemicals in the State.

##### Market Definition

27. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission notes that the European Commission has considered the distribution of chemical products in a number of previous decisions.<sup>8</sup>
28. The European Commission has found that the distribution of chemical products involves primarily the purchase and resale of solid and liquid chemicals to industrial and commercial end-users.<sup>9</sup> The chemicals can be warehoused in the distributor's facilities or, particularly with

<sup>7</sup> Source: BNL Sciences.

<sup>8</sup> See M/17/026 - Novcap/PCAS, paragraph 20, M/13/032 - Tennants/Dynea, paragraph 17 and M/05/041 - BASF Aktiengesellschaft/Orgamol S.A., paragraph 7.

<sup>9</sup> M.6012 - CD&R/CVC/Univar, paragraph 13 and M.5814 - CVC/Univar Europe/Eurochem, paragraph 12.

regard to larger volumes of chemical products, directly shipped from the manufacturer's facilities through either a distributor, or a trader, or by the manufacturer itself.<sup>10</sup> In this regard, the European Commission has identified three main distribution channels: (a) direct sales from manufacturers, (b) sales by traders, and (c) sales by distributors. The European Commission has found that direct sales by chemical manufacturers and sales by traders to customers comprise distinct categories, and identified a separate category for the distribution of chemicals via third-party specialist distributors.<sup>11</sup>

29. Within the third-party distribution category, the European Commission has considered further segmentations by reference to:
- a. the distribution of commodities; and
  - b. the distribution of specialties.

30. As regards this sub-segmentation, the European Commission has noted the following:

*“In distribution of commodities, chemical distributors buy commodities in large quantities from producers and/or traders and distribute them to customers that require a large range of different chemicals in smaller quantities, thereby also providing additional services like filling, storing, blending and logistics. By contrast, specialties are high-priced, branded products distributed in small quantities to selected customers. Several distributors specialise in specific products for a range of user groups.”<sup>12</sup>*

31. The Commission considers that there are no reasons to depart from the European Commission's approach on the relevant product market for the purpose of assessing the competitive impact of the Proposed Transaction. Furthermore, in this instance, it is not necessary for the Commission to define the precise relevant markets because doing so will not alter the Commission's assessment of the likely competitive effects of the Proposed

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<sup>10</sup> M.6012 - CD&R/CVC/Univar, paragraph 13 and M.5814 - CVC/Univar Europe/Eurochem, paragraph 12.

<sup>11</sup> See M.6012 - CD&R/CVC, paragraph 14, M.5814 - CVC/Univar Europe/Eurochem paragraph 14, and M.2244 - Royal Vopak/Ellis & Everard, paragraph 11.

<sup>12</sup> M.6012 - CD&R/CVC/Univar, paragraph 15.

Transaction in the State. Nevertheless, for the purposes of the review of the Proposed Transaction, the Commission has analysed the likely effects of the Proposed Transaction by reference to the sub-segment for the distribution of specialties (i.e. the narrowest potential relevant market ) as the Target Companies are not active in the distribution of commodities in the State.

32. With regards to the geographic market, previous European Commission decisions have considered the geographic scope of the distribution of chemical products to be at least national.<sup>13</sup> For the purposes of the review of the Proposed Transaction, the Commission has analysed the likely effects of the Proposed Transaction by reference to the narrowest potential relevant market, i.e., the State.

#### *Competitive Assessment*

33. For the reasons set out below, the Commission considers that the Proposed Transaction will not substantially lessen competition in the distribution of specialty chemicals in the State.
34. First, the parties' combined share of supply in the potential market for the distribution of specialties the State is small ([...]%) and the increment following the completion of the Proposed Transaction is negligible ([...]%).
35. Second, the distribution of chemical products is highly fragmented both in the State and worldwide. There are a large number of other distributors of chemicals that are active in the State, including: Azelis Ireland Limited, Brenntag Chemicals Distribution (Ireland) Limited, Camida Limited, Carbon Chemicals Group Limited, Chemco Ireland Limited, Corcoran Chemicals Limited, C&G Logistics Group, IMCD Ireland Limited, Lennox Laboratory Supplies Limited, The National Chemical Company Limited, Univar Solutions Ireland Limited and VWR International Limited. Of these competitors, IMCD has the largest market share with [...]%, followed by Lennox with [...]%, Corcoran Chemicals with [...]% and NCC with [...]%.
36. Third, the parties' businesses are highly complementary both from a geographic perspective and from a product perspective.

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<sup>13</sup> M.6012 - CD&R/CVC/Univar, paragraph 26.

- a. With regard to geography, the Target Companies generate the vast majority of their turnover from sales to customers in the USA and the State. By contrast, Caldic's sales in the State are limited (€[...] in 2019, which represented approximately [...] % of Caldic's worldwide turnover in 2019) and its sales are predominantly in other countries, including [...] and [...] (approximately [...] % of Caldic's sales in the pharmaceutical sector) as well as [...], [...], the [...] and others.
  - b. With regard to products, the Target Companies are focussed predominantly on the supply of biologic ingredients to biopharmaceutical manufacturers, with BNL Sciences generating [...] % of its turnover from biopharmaceutical/pharmaceutical customers. By contrast, Caldic supplies customers in a large number of segments, including the food sector (amounting to approximately [...] % of Caldic's global sales), general industrial sectors (approximately [...] % of global sales) and health and personal care (approximately [...] % of global sales). Within the health sector, Caldic's sales to the pharmaceutical sector accounted for just [...] % of its total sales in 2019. Caldic's focus in the pharmaceutical sector is on the distribution of excipients, active pharmaceutical ingredients ("API"), intermediates, specialty solvents and process chemicals for pharmaceutical synthesis. These products are largely different to the products distributed by the Target Companies and the customers are different.
37. Finally, the parties' principal customers are large and sophisticated purchasers of chemicals (including in the Target Companies' case, [...], [...] and [...]) with substantial budgets.

#### Vertical Relationship

38. The parties have stated that there are no vertical relationships between Caldic and the Target Companies in the State. The Commission has not identified any vertical relationship between Caldic and the Target Companies in the State.
39. There is a vertical relationship between the Target Companies, in that Brand-Nu sells products to BNL Sciences, which are then distributed by BNL Sciences within the State. However, as Brand-Nu is not active in the State aside from its sales to BNL Sciences, the Commission does not consider there to be any competition concerns associated with this vertical relationship.



40. The parties have stated that there are no vertical relationships between Goldman Sachs and the Target Companies in the State, with the possible exception of Flint Group, which is a Goldman Sachs controlled portfolio group.
- a. Flint Group, headquartered in Luxembourg, is a supplier to the printing and packaging industries worldwide.
  - b. Flint Group's activities in the State are limited to a site at Ballymount, Dublin 12, which is mainly used for [...].
  - c. In addition, the site also performs [...].
  - d. In addition, it is active in the printing and packaging sectors rather than the pharmaceutical sector, which is the customer sector in which a predominant proportion of the Target Companies' sales are made.
41. For the reasons outlined above, the parties consider that any possible vertical relationship which might exist between the Target Companies and Flint Group in the State is *de minimis*. Having regard to the reasons provided by the parties the Commission does not consider the potential vertical relationship between the Target Companies and the Flint Group is likely to raise any competition concerns.
42. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

### Conclusion

43. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

### Ancillary Restraints

44. The parties provided two separate non-competition and non-solicitation agreements (the "Agreements") as appendices to the notification. The first is between [...] and [...] and the second is between [...] and [...]. The Agreements contain non-compete and non-solicitation

obligations for a period of [...] years from the date of completion of the Proposed Transaction. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission.<sup>14</sup> The Commission considers these non-compete and non-solicitation obligations to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

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<sup>14</sup> In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 of its “Commission Notice on restrictions directly related and necessary to concentrations” [2005] OJ C56/03. For more information see [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)

### **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby Caldic B.V., which is controlled by funds managed by [...], a wholly-owned subsidiary of The Goldman Sachs Group, Inc., would acquire sole control of Brand-Nu Laboratories, Inc. and BNL Sciences Ltd., will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**