

**Decision required under the Overseas Investment Act
2005: B.S.A. International**

Date	16 May 2019
Security Level	Commercial: In Confidence
Priority	High
Case Number	201810245
Decision Required By	30 June 2019 (Decision requested by 31 March 2019 because part of a global transaction)

Contact for Telephone Discussion

Name	Position	Telephone (wk)	Cellphone	First Contact
Charlotte Connell	Manager Applications	(04) 462 4407	021 401 811	✓
Daniel Mumford	Senior Solicitor	(04) 830 3959		

Released under
Official Information Act 1982

Executive Summary:

1. B.S.A. International has applied for consent to acquire 100% of the shares in each of New Zealand New Milk Limited, New Zealand New Milk Brands Limited, and New Zealand New Milk Trading Limited via its wholly-owned subsidiary Sanulac Oceania Pty Limited.
2. This is an overseas investment in significant business assets, and requires consent because the consideration provided for the securities of these three companies exceeds \$100 million.
3. Our provisional recommendation is to grant consent to this transaction, however this application is finely balanced and we have outlined issues for the consideration of the decision maker.

Applicant

4. B.S.A. International is part of the Lactalis dairy company, which is one of the largest dairy products groups in the world.
5. Lactalis is a multinational dairy products company that is owned by the Besnier family and is based in Laval, France. Lactalis produces a variety of dairy products, including yoghurt, butter, cheese, milk powder, baby formula, and milk drinks.

Investment

6. B.S.A. International plans to acquire the shares in the following three companies:
 - (a) New Zealand New Milk Limited (manufactures infant milk formula predominantly for export);
 - (b) New Zealand New Milk Brands Limited (exports the manufactured infant milk formula to China for sale); and
 - (c) New Zealand New Milk Trading Limited (holds the shares in a company that distributes products in China that have been manufactured by New Zealand New Milk Limited)

as part of a series of transactions under a global acquisition agreement, in which it will acquire the business and assets of a number of companies, which relate to the production, export, and sale of infant nutritionals in a number of countries.

7. The total value of the transactions under the global acquisition agreement is [REDACTED] [s9(2)(b)(ii)], with the New Zealand component comprising €78 million (approximately NZD\$136 million).
8. The Applicant has submitted that the New Zealand component of the transactions is not severable from the remainder, so that if consent is not granted to the Investment it is likely the entire series of global transactions will not proceed. The Applicant publicly announced the global transactions in 2018.

Vendors

9. Aspen Pharmacare Holdings Limited is the vendor of the shares in New Zealand New Milk Limited and New Zealand New Milk Brands Limited. Aspen is a global pharmaceutical and nutritional company registered and based in South Africa.
10. New Zealand New Milk Brands Holdings Limited (yet to be incorporated) is a holding company that is the vendor of the shares in New Zealand New Milk Trading Limited.

Assessment of the Application

11. While our provisional recommendation is to grant consent, we consider this application to be finely balanced. There are good character matters (paragraphs 28-51) that require consideration by the decision maker. These matters are summarised below.

Good character

12. We are aware of a number of matters that are relevant to the good character of the individuals with control of the relevant overseas person:
- (a) In January 2019, Lactalis recalled batches of milk powder produced in a Spanish factory due to the risk of salmonella contamination.
 - (b) In November 2018, Lactalis was fined €500,000 for a factory polluting a river in Saint-Just-de-Claix in south-east France.
 - (c) In December 2017, a milk powder factory in Craon (north-west France) had a salmonella contamination event during which 35 children were taken to hospital.
 - (d) In 2015, two entities as part of a joint venture between Lactalis and Nestlé were initially fined €56.1 million and €4 million respectively (reduced on appeal in 2017 to €40.5 million and €2.9 million respectively) by the French competition authority for price fixing supermarket own-brand yoghurt and dairy products. Ten other dairy companies were also fined, with the total fines amounting to €193 million.
 - (e) In 2015, two entities owned by Lactalis were fined €11.6 million and €10.2 million respectively by the Spanish competition authority for colluding with other dairy companies for the price of milk. Ten other dairy companies were also fined, with the total fines amounting to €88.6 million.
 - (f) In 2011, Lactalis acquired 83% of Parmalat. In 2012, Lactalis sold Lactalis American Group to Parmalat at a price that exceeded the true value. The sale was approved by the Parmalat board of directors.
 - (g) In 2012 Parmalat was fined €60,000 by an Italian authority for failing to meet its reporting obligations on its relationship with its controlling shareholder B.S.A.
 - (h) The Applicant's parent company (B.S.A.) has failed to publish its annual financial accounts in France since 2000 (a legal obligation) and is paying fines for this ongoing failure.
 - (i) Allegations regarding the tax structure of companies involving the registration of companies in different countries to obtain more favourable tax conditions.
13. While we consider these matters do not prevent a finding that the individuals with control of the relevant overseas person are of good character, we are aware that they require consideration as it is finely balanced. See paragraphs 28-51 for more detail.

Report and Guidance

14. We have made some small alterations to the usual format of this covering memorandum to reflect the finely balanced nature of this application.
15. Please see **Appendix 2** for guidance about how to apply the Overseas Investment Act 2005.

Provisional Recommendation and Decision:

16. On balance, we consider that, taking into account the interests acquired, the Applicant has met the investor test. Our provisional recommendation is that **consent is granted** to the transaction, subject to your consideration of the good character matters (paragraphs 28-51).
17. **If you agree to grant consent** to this transaction, then we recommend that you determine that:
- (a) the 'relevant overseas person' is (collectively):

Entity	Relationship
B.S.A. International	Applicant and parent company of the acquiring entity
B.S.A.	Parent company of the Applicant
Sanulac Oceania Pty Ltd	Acquiring entity and subsidiary company of the Applicant
[s9(2)(a)]	[s9(2)(b)(ii)]

- (b) the 'individuals with control of the relevant overseas person' are:

Individual	Role
[s9(2)(a)]	[s9(2)(b)(ii)]

18. To grant consent you must be satisfied that the criteria for consent in section 18 have been met:
- (a) the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment; and
- (b) the relevant overseas person has demonstrated financial commitment to the overseas investment; and
- (c) all the individuals with control of the relevant overseas person are of good character; and

- (d) each individual with control of the relevant overseas person is not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.

Manager review:

I approve this briefing and report

Decision-maker:

I grant/~~decline~~ consent to this transaction in the form of the Proposed Decision in Appendix 1 and subject to the conditions set out in the Proposed Decision

[s9(2)(a)]

Charlotte Connell
Manager, Applications (OIO)

Vanessa Horne
Group Manager, Overseas Investment

Date: 15/05/2019

Date: 16/5/2019

Released under

icial

Act 1982

Report of the Overseas Investment Office
on the application for consent by
B.S.A. International
Case: 201810245

Contents

WHAT IS THE INVESTMENT? 6

WHO IS MAKING THE INVESTMENT 7

DOES THE APPLICANT MEET THE INVESTOR TEST CRITERIA? 9

PROVISIONAL RECOMMENDATION 16

THIRD PARTY CONSULTATIONS 16

APPENDIX 1 - PROPOSED DECISION 18

APPENDIX 2 - GUIDANCE 21

APPENDIX 3 - GOOD CHARACTER 22

APPENDIX 4 - INTERNATIONAL DAIRY INCIDENT SCAN 30

Released under the Official Information Act 1982

What is the Investment?

Applicant	B.S.A. International (France 100%)
Vendors	Aspen Pharmacare Holdings Limited (Various 67.97%, South Africa 26.98%, United States of America 5.05%) New Zealand New Milk Brands Holdings Limited (New Zealand 100.0%)
Consideration	\$136,127,146
Recommendation	Grant Consent

Description of the Investment

1. B.S.A. International ("**Applicant**") has applied for consent to acquire 100% of the shares in each of New Zealand New Milk Limited, New Zealand New Milk Brands Limited, and New Zealand New Milk Trading Limited ("**Target Companies**") via Sanulac Oceania Pty Limited ("**Sanulac**"), its wholly-owned subsidiary ("**Investment**").
2. The Investment is an overseas investment in significant business assets and requires consent because the consideration provided for the shares of the Target Companies exceeds \$100 million.
3. The Applicant plans to acquire the shares in the Target Companies as part of a series of transactions under a Global Acquisition Agreement dated 12 September 2018 ("**GAA**"), in which it will acquire the business and assets of a number of companies, which relate to the production, export, and sale of infant nutritionals in a number of countries.
4. The total value of the transactions under the GAA is [REDACTED] [REDACTED] [s9(2)(b)(ii)], with the New Zealand component comprising €78 million (approximately NZD\$136 million). The Applicant has submitted that the New Zealand component of the GAA is not severable from the remainder of the GAA, so that if consent is not granted to the Investment it is likely the entire series of global transactions will not proceed. The Applicant publicly announced the global transactions in 2018.

5. [REDACTED]

[s9(2)(b)(ii)]

[s9(2)(b)(ii)]

Vendors

7. Aspen is the vendor of all of the shares in New Zealand New Milk Limited and New Zealand New Milk Brands Limited. Aspen is a global pharmaceutical and nutritional company registered and based in South Africa.
8. Aspen obtained OIO consent on 28 November 2018 to acquire 50% of the shares in New Zealand New Milk Limited (Aspen already owned the other 50%) and 100% of the shares in New Zealand New Milk Brands Limited.

9. New Zealand New Milk Brands Holdings Limited (yet to be incorporated) is a holding company that is the vendor of all of the shares in New Zealand New Milk Trading Limited.

Reasons for Sale

10. Aspen decided to divest all of the regional components comprising its nutritionals business to enable it to solely focus on its pharmaceuticals business.
11. [s9(2)(b)(ii)]

Sensitive Assets

12. The Investment is an overseas investment in significant business assets only.

Who is making the Investment

Applicant

Who the Applicant is

13. The Applicant is a company registered in Belgium, and is part of the Lactalis dairy company, which is one of the largest dairy products groups in the world.
14. Lactalis is a multinational dairy products company based in Laval, France which produces a variety of dairy products, including yoghurt, butter, cheese, milk powder, baby formula, and milk drinks.
15. Lactalis employs approximately 80,000 people and owns 246 industrial plants in 49 different countries. In 2017 Lactalis had a book value of approximately €3.3 billion with gross revenue of approximately €5.4 billion.

Who owns the Applicant

16. The Applicant is almost entirely (99.99%) owned by B.S.A. ("BSA"), which is a company incorporated in France on 10 August 1977. [s9(2)(a)]
17. [s9(2)(a)]
18. [s9(2)(b)(ii)]

[s9(2)(b)(ii)]

Who controls the Applicant

19.

[s9(2)(a)]

20. A detailed ownership and control structure of the Applicant is shown below:

[s9(2)(b)(ii)]

[s9(2)(b)(ii)]

Relevant Overseas Person

21. We have determined that the 'relevant overseas person' is (collectively):

Entity	Relationship
B.S.A. International	Applicant and parent company of the acquiring entity
B.S.A.	Parent company of the Applicant
Sanulac Oceania Pty Ltd	Acquiring entity and subsidiary company of the Applicant
[s9(2)(a)]	[s9(2)(b)(ii)]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Individuals with Control

22. We have determined that the 'individuals with control of the relevant overseas person' are:

Individual	Role
[s9(2)(a)]	[s9(2)(b)(ii)]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Does the Applicant meet the Investor Test criteria?

Business Experience s18(1)(a)

The relevant overseas person, or the individuals with control of the relevant overseas person, must have business experience and acumen relevant to the overseas investment. There is considerable flexibility in determining what is relevant and more or less specific expertise may be required depending on the nature of the investment. Business experience and acumen that contributes to an investment's success may be treated as relevant even though the investor may have to supplement its experience and acumen by utilising the experience and acumen of others to ensure the investment succeeds.

23. The Investment is the acquisition of companies that manufacture and export powdered milk formula.

24. We have reviewed the biographical information provided by the Applicant for each of the individuals with control and note that they collectively have qualifications and extensive business experience in corporate governance, finance, management, accounting and auditing. They have core competence directly relevant to undertaking the Investment.
25. Our open source background checks (together with information supplied by the Applicant) revealed a number of matters that could affect how we assess the Applicant's business experience. These matters include a 2017 salmonella contamination event at a French factory, fines for factory pollution discharge into a river, fines by European regulators for price-fixing and collusion, and non-compliance with French legal obligations to publish annual financial accounts. Due to the overlap of these matters with the good character assessment, we have reviewed these matters in more detail under the good character factor.
26. Overall, having regard to the above, we consider that the individuals with control of the relevant overseas persons collectively have business experience and acumen relevant to the overseas investment.

Financial Commitment s18(1)(b)

The financial commitment criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the overseas investment.

27. In this case we are satisfied that the relevant overseas person has demonstrated financial commitment by:
 - (a) entering into the GAA; and
 - (b) engaging professional advisers in relation to the preparation and negotiation of the GAA and the preparation of this application.

Good Character s18(1)(c)

The decision maker must be satisfied that the individuals with control are of good character. Section 19 of the Act specifies that the decision maker must take the following factors into account (without limitation):

- (a) offences or contraventions of the law by A, or by any person in which A has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
- (b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

Introduction

28. As part of the application ("**Application**"), several matters were disclosed about the Applicants and several of the individuals with control in their capacity as directors of the Applicant and B.S.A. ("**BSA**"). We also carried out standard open-source checks, which confirmed these matters and revealed some additional matters. We made enquiries about the relevant matters, and sought and received comment from the Applicant.
29. The purpose of this section is to outline the relevant matters, the Applicant's comments on these and our assessment of the good character criterion as it applies to the Application (section 18(1)(c) of the Act).

30. For completeness, it is noted that the Applicant is seeking consent to acquire significant business assets and not sensitive land. Therefore, the Applicant is not required to demonstrate the Investment will, or is likely to, benefit New Zealand or that that benefit will be, or is likely to be, substantial and identifiable (a requirement of section 16(1)(e)(ii)-(iii) of the Act¹). Accordingly, the decision of *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147, insofar as it found that benefits must be assessed using a with or without approach rather than a before and after approach, is not relevant to the Application.
31. For the purpose of this Application, the individuals with control of the relevant overseas person are set out in the report. We assessed each of the allegations and consider that, for the reasons set out below, the allegations do not prevent a finding that the individuals with control of the relevant overseas person are of good character.

Good character criterion

32. Section 18(1)(c) of the Act requires that Ministers, or in this case the Regulator, be satisfied that the relevant overseas person or, (if that person is not an individual) all the individuals with control of the relevant overseas persons are of good character.
33. The term "good character" is not defined in the Act. The majority of the Select Committee reporting back on the Bill in 2005 confirmed that the "good character" test was needed as it is important to ensure that all persons investing in New Zealand are people unlikely to act inappropriately and bring New Zealand into disrepute.
34. When undertaking the good character assessment, the Regulator must be satisfied that the character of all the individuals with control of the relevant overseas person is sufficient so that they should be granted the privilege of owning or controlling sensitive New Zealand assets.
35. Section 19(1) of the Act states that the following factors must be taken into account (without limitation) in assessing whether or not a person is of good character:
- (a) offences or contraventions of the law by the person, or by any person in which the individual has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
 - (b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.
36. All relevant matters must be weighed up and balanced before making a decision as to whether an individual is of good character. If the decision-maker wishes to rely on a matter to which the applicant has not had an opportunity to respond, then such an opportunity to respond needs to be given to the applicant.
37. How much weight should be given to a particular matter depends on a number of factors, including how closely linked the particular matter is with the investment being made. While submissions on weighting given by the relevant overseas person or individual with control may be considered, the ultimate

¹ The reference to this section of the Act is to a section in the version of the Act that was in force at the time that the Applicant entered into the contract for the transaction (i.e. prior to the Overseas Investment Amendment Act 2018). This is consistent with the transitional provisions in clause 1 of Schedule 1AA of the Act.

decision as to the weighting to be given to relevant matters is for the decision-makers.

38. Matters which might be relevant include:
- (a) credible allegations of offending or contraventions of the law (assessing whether the allegation is sufficiently linked to an individual with control or relevant overseas person);
 - (b) investigations, prosecutions or other enforcement action by regulatory or professional bodies; and
 - (c) track record in New Zealand.
39. Matters which are unlikely to be relevant include:
- (a) adverse information that does not relate to an individual with control (for example, offences or contraventions by a relevant overseas person which occurred before the particular individual became involved with the relevant overseas person);
 - (b) where the decision maker is satisfied that allegations about a relevant overseas person or individual with control have been fully investigated by the relevant regulatory or other authority and the person or individual has been cleared of any wrongdoing; and
 - (c) adverse information that does not impact on the character of a relevant overseas person or individual with control.
40. The good character test is applicable to individuals, not entities such as body corporates. However, where the investment is to be carried out by a body corporate, the character of the relevant individuals who control the body corporate will need to be considered. Where an offence or contravention is committed by a person to which an individual had a 25% or more ownership or control interest, this is a mandatory consideration. Where the individual's interest in the person is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.
41. The onus is on applicants to satisfy the decision maker that all the individuals with control are of good character.
42. If the decision maker has doubts about the character of an individual with control which result in it not being satisfied that the test for good character has been met, then the application for consent must be declined.

Good character matters

43. As a result of the Applicant's disclosures and our open source background checks on the individuals with control, we are aware of the following good character matters:
- (a) In April 2019, the Applicant was fined a total of €160,000 for a **factory polluting a river** in Saint-Just-de-Claix in south-east France. The initial discharge event (of untreated industrial wastewater) occurred in 2011, prior to the Applicant's acquisition of the factory in 2014. Two individuals with control ([s9(2)(a)]) were aware of the initial discharge event before the Applicant acquired the factory, but immediately after acquisition sought a building permit to build its own sewage treatment plant.

Since acquiring the factory, further discharge occurred as the Applicant was unable to build its own sewage treatment plant as the local authority has declined to grant the necessary building consent, that was sought by the Applicant on at least four occasions. Two individuals with control ([s9(2)(a)] [REDACTED] [REDACTED] [REDACTED]) exercised control over the Applicant's involvement in the legal proceedings relating to the discharge event.

In April 2019 the local authority granted the Applicant a building permit to build its own sewage treatment plant to comply with environmental regulations. The construction of the new sewage treatment plant is expected to resolve the issue and prevent any further discharge into the river.

This type of matter is relevant to the Investment as it relates to the operation of a milk powder production factory. However, none of the individuals with control had any control over the operation of the factory at the time of the initial discharge.

- (b) In December 2017, a milk powder factory owned by the Applicant in Craon (north-west France) had a **salmonella contamination** event during which 35 children were taken to hospital. The Applicant implemented a progressive product withdrawal until all powder produced at the site was recalled. A judicial investigation began in October 2018 and is ongoing. The Applicant has now implemented further security and safety precautions to prevent this from happening again.

Two individuals with control ([s9(2)(a)] [REDACTED] [REDACTED] [REDACTED]) exercised control over the Craon salmonella contamination event since the order of the withdrawal-recall of products. [s9(2)(a)] has worked closely with all authorities involved in the management of the contamination since December 2017 and has closely monitored products withdrawal-recall and emergency security measures. [s9(2)(a)] has control over any legal matters as head of the Lactalis Group Legal Affairs department.

This type of matter is relevant to the Investment as it relates to the operation of a milk powder production factory. However, none of the individuals with control had control over the operation of the factory at the time of the contamination.

- (c) In 2015, two entities as part of a joint venture between the Applicant and Nestlé were initially fined €56.1 million and €4 million respectively by the French competition authority for **price-fixing** supermarket own-brand yoghurt and dairy products. Ten other dairy companies were also fined, with the total fines amounting to €193 million. The ruling found that the companies agreed on how and when to increase prices, and by how much, from 2006-2012. The Applicant appealed the decision and in 2017 the fines were reduced to €40.5 million and €2.9 million respectively.

This type of matter is relevant to the Investment as it relates to the sale of dairy products. However, none of the individuals with control held corporate offices in the joint venture entity and so none had any control over the activity of the joint venture entity.

- (d) In 2015, two entities owned by the Applicant were fined €11.6 million and €10.2 million respectively by the Spanish competition authority for **colluding with other dairy companies for the price of milk**. Ten other dairy companies were also fined, with the total fines amounting to €88.6 million. The process was struck down by the National Assembly over technical deficiencies, however the Spanish competition authority announced in December 2018 that the investigation has been resumed.

This type of matter is relevant to the Investment as it relates to the sale of dairy products. Except for the limited involvement of [s9(2)(a)], none of the individuals with control had any control over the subsidiary companies involved.

[s9(2)(a)] became Chairman in 2011 of one company alleged to have colluded from 2000-2012. The arrangements for the supply of raw cow milk are not considered by the board of directors, confirming that [s9(2)(a)] was not involved in these arrangements. The other company alleged to have colluded from 2001-2004 and 2006-2012 was acquired by Lactalis in 2010. As soon as [s9(2)(a)] (as head of M&A for the Lactalis Group) became aware of the anti-competitive practises of this company, the Applicant sought an indemnity from the vendor of this company.

- (e) In 2011, the Applicant acquired 83% of Parmalat (an Italian dairy company). In 2012, the Applicant sold Lactalis American Group to Parmalat at a **price that exceeded the true value**. The sale was approved by the Parmalat board of directors, however a court-appointed commissioner investigated the transaction, which resulted in a reduction in the purchase price of €130 million.

This type of matter is relevant to the Investment as it relates to business activities involving large dairy companies. However, none of the individuals with control were members of the board of directors of Parmalat when the purchase was approved.

- (f) In 2012 Parmalat was fined €60,000 by an Italian authority for failing to meet its **reporting obligations** on its relationship with its controlling shareholder (B.S.A. – the parent company of the Applicant).

This type of matter is relevant to the Investment as it relates to regulatory compliance of business activities involving large dairy companies. However, none of the individuals with control were members of the board of directors of Parmalat when the failure occurred.

- (g) The Applicant's parent company (B.S.A.) has **failed to publish its annual financial accounts** in France since 2000 (a legal obligation) and is paying annual fines of €3,000 for this ongoing failure. The Applicant has claimed that this is done to protect proprietary information (that could prejudice its commercial activities), results in minimal harm (as there are no public shareholders who could be affected by the non-publication), and any prejudiced party has legal recourse (if harm from non-release can be shown). The Applicant, registered in Belgium, has submitted that it complies with all Belgian law requirements for filing annual financial statements.

This type of matter is relevant to the Investment as it relates to regulatory compliance of business activities involving large dairy companies. We consider it likely that the individuals with control are aware of the practice and allow its continuation. However, the Applicant submitted that the New Zealand companies will continue to be operated in compliance with New Zealand legal requirements.

- (h) The Applicant is part of group corporate structure that involves different **companies registered in different countries that provides tax advantages**. The allegations do not assert tax avoidance, and in general, the structuring of corporate entities to minimise tax obligations (including registration of companies in countries with more advantageous tax systems) is not illegal.

This type of matter is not specifically relevant to the Investment, as it involves business practices common to large multinational businesses, and is not particular to dairy companies. We consider it likely that the individuals with control are aware of the practice and allow its continuation.

44. A summary table showing the assessment of these matters, as well as their relevance and relationship to the individuals with control of the relevant overseas person is set out in **Appendix 3**.
45. In 2018 Lactalis was identified as the second largest dairy company internationally. An open source scan of incidents associated with four other large international dairy companies is set out in **Appendix 4**.

Assessment

46. We consider the assessment of good character to be finely balanced, as the matters above in paragraph 43 require consideration by the decision maker.
47. Our assessment shows that for most of the issues, the Applicant: addressed the incident, or attempted to do so; inherited the problem; or the IWCs did not have a close connection to the activity. However, there are three matters of primary concern:
 - (a) the 2018 fine for factory discharge relates to non-compliant operations unresolved five years after the Applicant acquired the factory;
 - (b) the judicial investigation into the 2017 Craon salmonella contamination began in October 2018 and is ongoing; and
 - (c) in November 2018 the Spanish competition regulator resumed its sanctioning procedure in relation to the milk price-fixing fine.
48. We requested additional information about the nature of the roles that individuals with control played in these matters. Their responses are summarised in paragraph 43. As a result, we consider that while these matters are serious and relevant to the transaction, the individuals with control acted in a way that does not prevent a finding that they are of good character.
49. If the good character assessment included an assessment of 'corporate character' this may have impacted our assessment of these matters. However, this is not a part of our assessment process and so is not considered.
50. We also considered, as part of our overall assessment, the risks to New Zealand's reputation. In this case, the companies being acquired own and operate milk powder processing factories in New Zealand. The factories currently Ministry of Primary Industry Risk Management Programme certification and ISO22000 accreditation. New Zealand food safety standards (including regulations, auditing processes, and product tracking) are at a level that suggests the risk of the milk powder produced in the factories becoming contaminated is very low.
51. The Applicant has provided statutory declarations stating that the individuals with control are of good character, have not committed an offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the Investment. We consider the statutory declarations can be relied on as they comply with the requirements of the Oaths and Declarations Act 1957.

Immigration Act s18(1)(d)

Section 15 of the Immigration Act specifies that certain convicted or deported persons are not eligible for a visa or permission to enter or be in New Zealand. Section 16 provides a power to deny a visa or permission to enter New Zealand for other specified reasons, such as if the individual is likely to be a threat or risk to security or public order.

52. The Applicant provided statutory declarations stating that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009. We are satisfied that the statutory declarations can be relied on as they comply with the requirements of the Oaths and Declarations Act 1957. We have also conducted open source background checks on those individuals and found nothing relevant to this criterion.
53. Therefore, we are satisfied that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

Provisional Recommendation

54. As detailed above, we consider that, taking into account the interests acquired, the Applicant has met the investor test. Our provisional recommendation is that consent is granted to the transaction.

Third party consultations

55. No third party submissions were sought or received.
56. We consulted with the Ministry of Primary Industries ("**MPI**") in relation to its Risk Management Programme certification and the ISO22000 accreditation for the factories owned by the Target Companies. MPI considers that New Zealand food safety standards (including regulations, auditing processes, and product tracking) are at a level that suggests the risk of the milk powder produced in the factories becoming contaminated is very low.
57. We consulted with New Zealand Trade and Enterprise ("**NZTE**") regarding its involvement in locating opportunities for organisations to invest in New Zealand. NZTE expects that the Investment is likely to invest a significant amount of capital into New Zealand following this transaction.

Appendices

APPENDIX 1 - PROPOSED DECISION	18
APPENDIX 2 - GUIDANCE	21
APPENDIX 3 - GOOD CHARACTER	22
APPENDIX 4 - INTERNATIONAL DAIRY INCIDENT SCAN	30

Released under

icial

Act 1982

Appendix 1 - Proposed Decision

Consent for Overseas Person to Acquire Significant New Zealand Business Assets

Read this consent carefully - you must comply with all the conditions. If you do not, you may be subject to fines or other penalties.

Consent

Decision date: [date]

The following people have been given the following **consent**:

Case	201810245
Consent	B.S.A. International may acquire the Assets subject to the Conditions set out below.
Consent holder/s	B.S.A. International Sanulac Oceania Pty Ltd We will also refer to each Consent holder and the Consent holders together as you .
Assets	<ul style="list-style-type: none"> • 100% of the shares in New Zealand New Milk Limited (Company number 3285329), • 100% of the shares in New Zealand New Milk Brands Limited (Company number 5418767), and • 100% of the shares in New Zealand New Milk Trading Limited (Company number 5463063).
Timeframe	You have until 31 March 2021 to acquire the Assets.

Conditions

Your Consent is subject to the conditions set out below. These apply to all overseas people who are given consent to acquire significant business assets, including you.

You must comply with them all. Be aware that if you do not comply with the conditions you may be subject to fines or other penalties.

In the Consent and the conditions, we refer to the Overseas Investment Office as **OIO, us or we**.

Details	Required date
Standard condition 1: acquire the Assets	
<p>You must acquire the Assets</p> <ol style="list-style-type: none"> by the date stated in the Consent. If you do not, your Consent will lapse and you must not acquire the Assets, and Using the acquisition, ownership and control structure you described in your application. Note, only you – the named Consent holder – may acquire the Assets, not your subsidiary, trust or other entity. 	As stated in the Consent
Standard condition 2: tell us when you acquire the Assets	
<p>You must tell us in writing when you have acquired the Assets.</p> <p>Include details of:</p> <ol style="list-style-type: none"> the date you acquired the Assets (settlement), consideration paid (plus GST if any), the structure by which the acquisition was made and who acquired the Assets, and copies of any transfer documents and settlement statements. 	As soon as you can, and no later than two months after settlement
Standard condition 3: remain of good character	
<p>You and the Individuals Who Control You:</p> <ol style="list-style-type: none"> must continue to be of good character, and must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. <p>These sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to be a threat or risk to security, public order or the public interest.</p> <p>The Individuals Who Control You are individuals who:</p> <ol style="list-style-type: none"> are members of your governing body directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you, and are members of the governing body of the 	At all times

<p>people referred to in paragraph (b) above.</p> <p>To avoid doubt, this includes the members of your governing body.</p>	
<p>Standard condition 4: tell us about changes that affect you, the people who control you, or people you control</p>	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about offences or contraventions that you are charged with or sued over and any investigation by enforcement or regulatory agencies or professional standard bodies. 2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Assets; or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (see standard condition 3). 3. You cease to be an overseas person or dispose of all or any part of the Assets. 4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You, hold (or at the time of the event held) a 25% or more ownership or control interest: <ol style="list-style-type: none"> (a) becomes bankrupt or insolvent (b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or (c) becomes subject to any form of external administration. 	<p>Within 30 working days after the change</p>

Appendix 2 - Guidance

1. The regulator must grant consent to this overseas investment if it is satisfied that all of the criteria in section 18 of the Overseas Investment Act 2005 ("Act") are met. It must decline to grant consent if it is not satisfied that all of the criteria in section 18 are met. The regulator must not take into account any criteria other than those identified in section 18.
2. For completeness, it is noted that the Applicant is seeking consent to acquire significant business assets and not sensitive land. Therefore, the Applicant is not required to demonstrate the Investment will, or is likely to, benefit New Zealand or that that benefit will be, or is likely to be, substantial and identifiable (a requirement of section 16(1)(e)(ii)-(iii) of the Act²). Accordingly, the decision of *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147, insofar as it found that benefits must be assessed using a with or without approach rather than a before and after approach, is not relevant to the Application.
3. In the attached Report the Overseas Investment Office identifies each of the criteria under section 18 that the regulator is required to consider in this case.

Conditions

4. Conditions may be imposed on any consent that is granted, under section 25. The attached Report recommends some conditions that you may wish to consider imposing in this case.

Decision

5. The decision that you are required to make should be based on information available to you that you consider is sufficiently reliable for that purpose. The information that the Overseas Investment Office has taken into account in making its recommendation is summarised in the attached Report.

Good character

6. Refer to paragraphs 28-51 of the Report for guidance about how to apply the Act to this criterion.

² The reference to this section of the Act is to a section in the version of the Act that was in force at the time that the Applicant entered into the contract for the transaction (i.e. prior to the Overseas Investment Amendment Act 2018). This is consistent with the transitional provisions in clause 1 of Schedule 1AA of the Act.

Appendix 3 - Good Character

1. The Applicant is part of the Lactalis group which “*employs approximately 80,000 people and owns 246 industrial plants in 49 different countries*”. The **BSA Parent Company** had a book value in 2017 of €2.2 billion. Its turnover / gross revenue made directly from the sale of goods was €54.3 million, and gross revenue from Joint Ventures of €27.3 million, for a total turnover of €81.7 million (for 2017). Note for comparison to **BSA International Group**, its net profit after expenses was €73.8 million. For **BSA International Group**, the book value for 2017 was €3.3 billion, with turnover/gross revenue of €5.4 billion.
2. In brief, three of the things we consider when weighing up ‘good character’ include:
 - (a) connection to the Individuals with Control (IWCs) or Relevant Overseas Person (ROP): we assess the level of control between any of the IWCs of the ROP and the particular matter. For example, a breach of safety rules by an employee of subsidiary company where the company was fined would likely have a low (or no) connection with an IWC who was an executive director of the parent company, whereas an executive decision by a company to illegally collude with a competitor would likely have a high connection with that IWC.
 - (b) relevance to this investment: we assess how relevant the particular matter is to the nature of this particular investment. For example, a dangerous driving conviction by an IWC would have low relevance in connection with the acquisition of a dairy farm, whereas a conviction for discharging farm effluent into a waterway would have a high relevance to the acquisition of a dairy farm.
 - (c) what actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring.
3. Our preliminary assessment shows that for most of the issues, the Applicant: addressed the incident, or attempted to do so; inherited the problem; or the IWCs did not have a close connection to the activity.
4. However, there are three matters of primary concern:
 - (a) the 2019 fine for factory discharge relates to non-compliant operations in existence five years after the Applicant acquired the factory;
 - (b) the judicial investigation into the 2017 Craon salmonella contamination began in October 2018 and is ongoing; and
 - (c) in November 2018 the Spanish competition regulator resumed its sanctioning procedure in relation to the milk price-fixing fine.
5. The outcomes of these three matters could have an impact on our initial assessment that there is a low connection to the individuals with control in each of these matters. If the outcomes of these respective events do show a greater level of involvement or knowledge by the individuals with control than that submitted by the Applicant, this may affect our assessment of good character. We requested additional information about these matters that is reflected in paragraph 43 of the report.

Matter (sorted by most recent)	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant's response	OIO assessment
		Low	Med	High	Low	Med	High		
1. 2018 - Factory pollution discharge into river	<p>In April 2019, Lactalis was fined a total of €160,000 for a factory polluting a river in Saint-Just-de-Claix in south-east France.</p> <p>The initial discharge event (of untreated industrial wastewater) occurred in 2011, prior to Lactalis' acquisition of the factory in 2014.</p>	✓					✓	<p>Initial discharge event occurred in 2011 before Lactalis acquired the factory.</p> <p>Lactalis then sought consent from the local authority to build its own sewage treatment plant to comply with environmental regulations, but was declined multiple times by the local authority.</p> <p>On 8 April 2019 the local authority fined Lactalis a total of €160,000 for discharging wastewater into the river and operating a non-compliant establishment.</p> <p>In April 2019 Lactalis was granted a building permit allowing the factory to build its own sewage treatment plant so it can comply with environmental regulations.</p>	<p>This type of matter is relevant to this investment, although none of the IWCs had control over operation of the factory at the time of the initial discharge.</p> <p>Since acquiring the factory, the breach continued until Lactalis was granted building consent to build its own sewage treatment plant.</p>
		<p><u>Reason:</u></p> <p>No IWCs had control over operation of the factory at the time of the initial discharge.</p> <p>Two individuals with control [REDACTED] s9(2)(a) were aware of the initial discharge event before Lactalis acquired the factory. However, immediately after the acquisition Lactalis sought a building permit to build its own sewage treatment plant.</p>			<p><u>Reason:</u></p> <p>This related to the operation of a milk powder production factory, subsequently owned by the Applicant.</p>				

Released under the Official Information Act 1982

Matter (sorted by most recent)	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant's response	OIO assessment
		Low	Med	High	Low	Med	High		
2. 2017 - Craon Salmonella contamination	<p>In December 2017, a milk powder factory in Craon (north-west France) had a salmonella contamination event during which 35 children were taken to hospital.</p> <p>The Applicant implemented a progressive product withdrawal until all powder produced at the site was recalled.</p>	✓					✓	<p>A judicial investigation began in October 2018 and is ongoing. The investigating judge (<i>juge d'instruction</i>) has not yet made its decision available as to whether formal judiciary proceeding would be launched in the context of the Craon events.</p> <p>The Applicant has now implemented further security and safety precautions to prevent recurrence including:</p> <ul style="list-style-type: none"> a new performance obligation: improvement of the zoning, airlocks and associated protections, as well as a reinforcement of hygiene rules on the site; reinforcement of control plan; and collaboration with several independent analytical laboratories. 	<p>This type of matter is relevant to this investment, although none of the IWCs had control over production at the Craon factory at the time of the contamination. Measures have subsequently been taken to improve procedures.</p> <p>██████████ s9(2)(a) appeared at the judicial investigation following the contamination event in his capacity as Chairman of B.S.A and CEO of Lactalis. ██████████ s9(2)(a) has control over any legal matters, as head of the Lactalis Group Legal Affairs department. However, no IWC/ROP has been charged in relation to the event.</p>
		<p><u>Reason:</u></p> <p>No IWCs had control over production at the Craon factory at the time of the contamination.</p> <p>Two individuals with control ██████████ s9(2)(a) ██████████) had control over the Craon salmonella contamination event since the order of the withdrawal-recall of products.</p> <p>██████████ s9(2)(a) as control over any legal matters, as head of the Lactalis Group Legal Affairs department.</p> <p>██████████ s9(2)(a) has worked closely with all authorities involved in the management of the contamination since December 2017, as Chairman of B.S.A and has closely monitored products withdrawal-recall and emergency security measures.</p>			<p><u>Reason:</u></p> <p>This related to milk powder production by the Applicant.</p>				

Released under the Official Information Act 1982

Matter (sorted by most recent)	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant's response	OIO assessment
		Low	Med	High	Low	Med	High		
3. 2015 - French price-fixing fine	<p>In 2015, two entities as part of a joint venture between the Applicant and Nestlé were initially fined €56.1 million and €4 million respectively by the French competition authority for price fixing supermarket own-brand yoghurt and dairy products.</p> <p>Ten other dairy companies were also fined, with the total fines amounting to €193 million. The ruling found that the companies agreed on how and when to raise prices from 2006 to 2012, and divided up volumes. The Applicant appealed the decision and in 2017 the fines were reduced to €40.5 million and €2.9 million respectively.</p>	✓					✓	<p>No IWCs held corporate offices in the joint venture entity at the time of the mentioned wrongful acts or were involved in any way in the mentioned wrongful acts.</p>	<p>This type of matter is relevant to this investment, although none of the IWCs had control over the activity of the joint venture entity.</p>
		<u>Reason:</u> No IWCs had control over the activity of the joint venture entity.			<u>Reason:</u> This related to the sale of dairy products.				

Released under the Official Information Act 1982

Matter (sorted by most recent)	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant's response	OIO assessment
		Low	Med	High	Low	Med	High		
4. 2015 - Spanish price-fixing fine	<p>In 2015, two entities owned by the Applicant were fined €11.6 million and €10.2 million respectively by the Spanish competition authority for colluding with other dairy companies for the price of milk. 10 other dairy companies were also fined, with the total fines amounting to €88.6 million.</p> <p>However, the process was struck down by the National Assembly over technical deficiencies. The Spanish competition authority announced in December 2018 the resumption of the investigation.</p>		✓				✓	<p>s9(2)(a) became Chairman in 2011 of one company alleged to have colluded from 2000-2012. s9(2)(a) was not involved with, or sanctioned, any anti-competitive practices. The arrangements for the supply of raw cow milk are not considered by the board of directors.</p> <p>The other company alleged to have colluded from 2001-2004 and 2006-2012 was acquired by Lactalis in 2010. As soon as s9(2)(a) (as head of M&A for the Lactalis Group) became aware of the anti-competitive practises of this company, the Applicant sought an indemnity from the vendor of this company.</p>	<p>This type of matter is relevant to this investment, although none of the IWCs (except s9(2)(a)) had any control over the companies involved.</p> <p>The colluding activity occurred prior to any IWC/ROP involvement, and ended within 1-2 years afterwards. s9(2)(a) was not involved with any of the anti-competitive practices and is not personally subject to any sentence or fine in relation to the event. s9(2)(a) sought an indemnity from the vendor of this company once he became aware of the anti-competitive practises of this company.</p>
		<p><u>Reason:</u></p> <p>Two individuals with control s9(2)(a) had some involvement with companies involved. s9(2)(a) became Chairman of an involved company in the final years of the alleged colluding activities. s9(2)(a) receives general commercial and financial reports from the company but does not have any particular influence in determining how the company structures and implements its raw cow milk supply.</p> <p>The Applicant purchased another involved company in the final years of the alleged colluding activities. As soon as s9(2)(a) became aware of the anti-competitive practises of this company, the Applicant sought an indemnity from the vendor of this company.</p>			<p><u>Reason:</u></p> <p>This related to the sale of dairy products.</p>				

Released under Act 1982

Matter (sorted by most recent)	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant's response	OIO assessment
		Low	Med	High	Low	Med	High		
5. 2012 - Sale of Lactalis American Group	<p>In 2011, Lactalis acquired 83% of Parmalat. In 2012, Lactalis sold Lactalis American Group to Parmalat at a price that exceeded the true value. The sale was approved by the Parmalat board of directors.</p> <p>A court-appointed commissioner investigated the transaction, which resulted in a reduction in the purchase price of €130 million.</p>	✓				✓		<p>The purchase was approved by the board of Parmalat, which involved none of the IWCs at the time of the transaction. The matter was subsequently settled, which ultimately completed the civil proceedings.</p> <p>A criminal investigation into aggravated embezzlement and failure to protect corporate assets began in 2012 and focused on former directors of Parmalat, the Chairman, and an executive, however the Applicant has confirmed that these proceedings were dismissed.</p>	This type of matter is relevant to this investment, although none of the IWCs were members of the board of Parmalat when the purchase was approved.
6. 2012 - Failure of Parmalat to publish financial accounts	<p>In 2012 Parmalat was fined €60,000 by an Italian authority for failing to meet its reporting obligations on its relationship with its controlling shareholder B.S.A.</p>	✓				✓		<p>The Parmalat board of directors did not include any of the IWCs. The Applicant submitted that Parmalat appealed the decision, but did not confirm the outcome.</p>	This type of matter is relevant to this investment, although none of the IWCs were members of the board of Parmalat when the failure occurred.

Released under

Matter (sorted by most recent)	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant's response	OIO assessment
		Low	Med	High	Low	Med	High		
7. Ongoing since 2000 - Failure to publish financial accounts in France since 2000	<p>The Applicant's parent company (B.S.A.) has failed to publish its annual financial accounts in France since 2000 (a legal obligation) and is paying fines for this ongoing failure.</p> <p>The Applicant has claimed that this is done to protect proprietary information that could prejudice its commercial activities, and results in minimal harm as there are no public shareholders who could be affected by the non-publication.</p> <p>The Applicant, based in Belgium, has submitted that it complies with all Belgian law requirements for filing annual financial statements and that the New Zealand companies will continue to be operated in compliance with New Zealand legal requirements.</p>			✓		✓		<p>Applicant claims:</p> <ul style="list-style-type: none"> the breach is minor (level of fine reflects the seriousness); this is done to protect proprietary information that could prejudice the Applicant; minimal harm involved (no external shareholder that could be affected); and third parties 'harmed' by non-release can sue if can show prejudice (no prejudice of harm has yet been claimed by another party). <p>Applicant otherwise complies with all Belgian law for filing statements and will comply with NZ requirements for filing financial statements.</p>	<p>This type of matter is relevant to this investment, and relates more broadly to regulatory compliance of business activities.</p>

Released under

icial

Act 1982

Matter (sorted by most recent)	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant's response	OIO assessment
		Low	Med	High	Low	Med	High		
8. Tax structure of companies	<p>Tax structure of companies involving the registration of companies in different countries to obtain more favourable tax conditions.</p> <p>Lactalis has a corporate structure that involves different companies registered in different countries that provides tax advantages.</p>			✓	✓			<p>The Applicant has submitted that it operates in strict compliance with all the regulations of the countries in which it operates, starting with France, where it operates in 70 production sites and 15,000 employees (<u>Note</u>: the non-filing of financial accounts noted in matter 7 is an exception). Lactalis and the Besnier family have always paid their taxes in France.</p> <p>The Applicant has confirmed that neither the Applicant or B.S.A. have received a tax inspection notice in the last five years, and none of the entities involved in the global transaction have received a tax inspection notice.</p> <p>None of the ROP/IWC individuals have contravened the law or otherwise acted improperly through their involvement with the Applicant or B.S.A.</p>	<p>This type of matter is not specifically relevant to this investment, as it involves business practices common to large multinational businesses.</p> <p>The claims do not assert tax avoidance, and in general, the structuring of corporate entities to minimise tax obligations (including registration of companies in countries with more advantageous tax systems) is not illegal.</p>

6. We considered the following matters were of lesser importance or relevance, and have not conducted a full assessment for each of these matters:

- 2019 – Salmonella contamination in milk powder products manufactured by a third party in Spain.
- 2018 – Ukrainian fine for incomplete product labelling.
- 2018 – UK recall for faulty glass product that can break when heated.
- 2017 – Lactalis recall of yoghurt due to risk of glass shards.
- 2014 – Spanish union accusation of underpayment for milk supply.
- 2012 – Italian investigation regarding Italian subsidiaries of Lactalis and Parmalat for embezzlement (dismissed without conviction).
- 2010 – French investigation into false advertising regarding heated sterilised milk vs pasteurised fresh milk.

Appendix 4 - International Dairy Incident Scan

Act 1982

icial

Released under

International Dairy Incident Scan

The information below is an open source scan of incidents, which could be regarded as significant, associated with dairy companies; Danone, Dairy Farmers of America, FrieslandCampina and Yili.

The information has been created to assist the overseas investment application for Lactalis (201810245). This is not a comparison chart. The companies were selected based on similarities in annual turnover and market share of the dairy industry to Lactalis. No other factors were considered during the selection process, and it is almost certain each company is unique in its scope of operations, products produced and wider market activity.

COMPANY INFORMATION

COMPANY	LOGO	INTERNATIONAL DAIRY COMPANY SIZE	ANNUAL RETURN 2018 (NZD Billion)	Country of Headquarters
Danone		3 rd	26.5	France
Dairy Farmers of America (DFA)		4 th	22.2	United States
FrieslandCampina		6 th	20.5	Netherlands
Yili		9 th	14.9	China

PRICE FIXING

COMPANY	INCIDENT DETAIL	JURISDICTION ----- SERIOUSNESS
DFA	In August 2018 Dairy Farmers of America (DFA) were required to pay dairy farmers 40 million USD (60.4 million NZD) for allegedly boosting profits by underreporting milk prices.	United States Significant litigation
DFA	In 2017 a lobbying group, Cooperatives Working Together, which DFA are a partner of, paid 52 million USD (78.5 million NZD) in an antitrust class-action lawsuit. The lawsuit detailed how the lobbying group advocated and led to the killing of 500,000 cows to manipulate the price of milk.	United States Significant litigation
Yili	In 2016 Yili Jieneng, a subsidiary of Yili Chemical, was fined 20.609 million Yuan (4.6 million NZD) for fixing the price of PVC with two other companies.	China Litigation
Danone	In 2014 Danone successfully appealed a 23 million EUR (38.9 million NZD) fine from the Spanish National Commission for Markets and Competition (CNMC). The fine detailed multinational price fixing of milk products across Europe.	Europe Dismissed significant litigation
FrieslandCampina	In 2013 FrieslandCampina was one of six international companies fined 166 million NZD by the Chinese government for price fixing and anti-competitive practice of baby formula.	China Significant litigation
DFA	In 2013 Dairy Farmers of America settled a lawsuit for 46 million USD (69 million NZD) for allegedly boosting profits by underreporting milk prices.	United States Significant litigation
Danone	In 2013 Danone were fined 172 million yuan (38 million NZD) by the Chinese National Development and Reform Commission following an investigation into price fixing and anti-competitive practices by foreign formula makers.	China Significant litigation
DFA	In 2012 Dairy Farmers of America agreed to pay 158.6 million USD (239.5 million NZD) to settle a 2007 Lawsuit that alleged it conspired with Deans Foods and others to suppress raw milk prices across 14 Southeast US states.	United States Significant litigation

FOOD SAFETY

COMPANY	INCIDENT DETAIL	JURISDICTION ----- SERIOUSNESS
Yili	During Chinese national food safety monitoring and testing in 2012, it was found that individual batches of newborn and infant formula products from Yili contained mercury. At the same time, Yili discovered the same problem in the risk monitoring conducted for these products.	China Significant litigation
FrieslandCampina	In 2009 FrieslandCampina was required to halt milk production in Vietnam after 12 toddlers in Ho Chi Minh City and Hanoi were hospitalised with skin rashes, breathing problems and stomach issues linked to their products. FrieslandCampina self-initiated the halt in production. However the Government took samples and set guidelines for production to begin again.	Vietnam Allegation
Yili	Yili was one of 22 Chinese firms implicated in China's milk-powder contamination scandal in 2008, which was linked to killing four infants and making over 6,000 ill. Yili products were recalled.	China Significant litigation

ENVIROMENTAL

COMPANY	INCIDENT DETAIL	JURISDICTION ----- SERIOUSNESS
Yili	Angel Yeast (Yili) Co., Ltd., a subsidiary of Yili, received penalties totalling 1150000 Yuan (25,000 NZD) in 2018 for exceeding the permitted level of discharge of atmospheric and water pollutants.	China Litigation
FrieslandCampina	In 2017 a FrieslandCampina Factory in Leeuwarden allegedly leaked 70,000 litres of milk into the sewer.	Europe Allegation
Danone	In 2016 Danone was fined 15,000 EURO (25,000 NZD) and a further 4001.36 EUR (6766 NZD) for damages for a spill of untreated water from its plant causing pollution in a river (la riviere d'Auchy).	Europe Litigation

FRAUD

COMPANY	INCIDENT DETAIL	JURISDICTION ----- SERIOUSNESS
Danone	In 2017 PT Tirta Investama (TIV) a subsidiary of Danone was fined 13.84 billion Indonesian Rupiah (2.8 million NZD) for monopolistic practice and unfair business competition for bottled water.	Indonesia Litigation
FrieslandCampina	In 2017 FrieslandCampina were 1 of 63 companies investigated by the Nigeria Government for illegal financing within the country. It is reported that the collective actions of these companies cost the Nigerian economy 30 trillion Naira (4.2 billion USD).	Nigeria Allegation
DFA	In 2008 the U.S. Commodity Futures Trading Commission (CFTC) fined the Dairy Farmers of America, Inc. (DFA), its former Chief Executive Officer Gary Hanman, and its former Chief Financial Officer Gerald Bos 12 million USD (18 million NZD) for attempting to manipulate the Class III milk futures contract and exceeding speculative position limits in that contract.	United States Significant Litigation
DFA	In 2001 a former chief executive transferred 1 million USD (1.5 million NZD) to the then chairman for undisclosed reasons. In 2008 the president of Dairy Farmers America described the transaction publicly as "improper" and a "breach of trust".	United States Allegation

FALSE ADVERTISING

COMPANY	INCIDENT DETAIL	JURISDICTION ----- SERIOUSNESS
Yili	In 2014, the Chinese State Food and Drug Administration announced the results of 133 infant formula milk powder companies in China which participated in the product license review. 82 passed the test successfully, and 51 failed for various reasons. Yili Group and 3 of its subsidiaries were among the companies on the "Fail list". Yili Group's share price dropped by 7.75% to a 10-month low.	China Litigation
Danone	In 2013 Danone was fined an undisclosed amount by the UK Advertising Standards Authority (ASA) for exaggerating infant follow-on formula claims.	European Litigation
Danone	In 2011 Danone was fined 250,000 EUR (420,000 NZD) by the Italian Competition Authority for misleading advertising with the claim "reduces cholesterol in three weeks" in commercialising its product	European Litigation
Danone	In 2009 Danone settled a class action lawsuit outside of Court for 1.3 million USD (1.9 million NZD) relating to the adverse effects of their products.	Canada Litigation
Danone	In 2008 Danone were accused of spending 100 million USD (151 million NZD) on promoting the clinical benefits of yogurt products which Danone's own testing allegedly disproved. Danone settled the lawsuit for 35 million USD (52.8 million NZD).	United States Significant litigation