EN

Case No COMP/M.5449 - ABF / AZUCARERA

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 30/03/2009

In electronic form on the EUR-Lex website under document number 32009M5449

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30/03/2009
SG-Greffe(2009) D/1924
C(2009) 2570

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M.5449 - ABF/ Azucarera
Notification of 23 February 2009 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 23 February 2009 the Commission received a notification of a proposed transaction pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the “EC Merger Regulation") by which the undertaking Associated British Food Plc (“ABF”, United Kingdom) acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation sole control of the whole of the undertaking Azucarera Ebro S.L. ("Azucarera", Spain) by way of purchase of shares.

I. THE PARTIES

2. ABF is a diversified food, ingredient and retail group active on an international scale. It focuses on four main business areas: grocery, ingredients like yeast, retail and sugar. ABF's sugar operations are conducted through its wholly owned subsidiary British Sugar. British Sugar produces sugar from sugar beet grown in the UK for supply to the retail and industrial sectors and has operations in Europe, Africa and China. ABF's yeast operations are managed through its AB Mauri division which has a number of yeast production plants worldwide, including Spain and Portugal.

3. Azucarera, currently owned by the Spanish company Ebro Puleva S.A., produces sugar and sugar derivatives (including molasses) from sugar beet grown in Spain and supplies these products to the retail and industrial sectors in Spain and Portugal.

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1 OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

4. On 15 December 2008 ABF and Ebro Puleva signed a share sale and purchase agreement according to which ABF will acquire the entire share capital of Azucarera. Following the completion of the transaction, ABF will exercise sole control over Azucarera. Therefore, the proposed transaction constitutes a concentration according to Article 3(1)(b) EC Merger Regulation.

III. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[2] [ABF EUR 10 302 million, Azucarera EUR […] million]. Each of them have a Community-wide turnover in excess of EUR 250 million [ABF EUR […] million, Azucarera EUR […] million], but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension pursuant to Article 1(2) of the EC Merger Regulation.

IV. COMPETITIVE ASSESSMENT

1. Relevant Product Market

Sugar

6. Sugar (the proper term is sucrose[3]) is the most common sweetener. It can be found in many natural foods (e.g. fruits and vegetables) but can only be extracted economically from sugar beet and sugar cane. Sugar is also an important source of energy. A series of alternative products can also be used as sweeteners (e.g. isoglucose, inulin syrup, artificial sweeteners).

7. Sugar is produced either from sugar beet (which is grown in Europe and elsewhere and processed into sugar locally), or from sugar cane, grown in more tropical climates. The sugar cane is transformed in the place of origin into an intermediate product called cane raws and then transported overseas (e.g. to Europe) to be finally refined to sugar. Alternatively, cane raws can be refined into the final product locally.

8. In the EU, approximately 90% of sugar is currently produced from sugar beet grown in the EU, with the remaining 10% produced from cane raws. Cane is generally imported from the Least Developed Countries ("LDCs"), the African, Caribbean and Pacific countries ("ACP countries") and Brazil under certain EU preferential import arrangements. The imported cane raws are currently refined by sugar refiners within the EU. After 1 October 2009, cane raws will also be refined by beet sugar processors.

Background to the sugar industry and the impact of the sugar reform

9. The supply of sugar is regulated by the Common Market Organisation in agricultural products (the "Sugar Regime")[4]. The Sugar Regime was established in 1968 aiming to

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[2] Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

[3] Sugar further breaks down into two components - glucose and fructose.

[4] Council Regulation (EC) N0 1234/2007.

ensure fair incomes and self-sufficiency among EU producers. It traditionally provides for the allocation of sugar beet production quota to Member States, which in turn, allocate such quota to sugar beet processors. It also provides for a system of minimum prices to be paid to growers of beet and reference prices for the sale of standard quality white sugar.

10. The Sugar Regime was reformed in 2006 in order to increase the competitiveness in the sugar sector and improve the market orientation of the sector by reducing some of the regulatory barriers. Apart from compensating farmers with direct income payments, a decrease in guaranteed prices and the elimination of export subsidies for surplus sugar, the reform will result in a significant reduction of the sugar quota which is assigned for production in the EU.

11. Consequently, the Sugar Regime reform is leading to a significant restructuring of the supply of sugar in the EU. The reforms were designed to encourage high cost, less efficient producers to close down or to substantially reduce the scale of their activities. As a result: (a) Bulgaria, Ireland, Latvia, Slovenia and Portugal have closed their sugar beet production industries entirely; (b) Italy, Spain, Greece, Hungary, Slovakia and Finland have renounced in excess of 40% of their national sugar beet production quotas; (c) the sugar industries in all other Member States have renounced at least 13% of their national quotas; (d) approximately 12 firms have renounced entirely to their quotas and have therefore ceased production altogether (e) the upgrade and investment in refining capabilities and the diversification into biofuels.

12. The beet quota reduction imposed by the reform is gradual and will continue until 2010/2011 leading to a quota renunciation of approximately 5.23 million tonnes of sugar in the EU. As a result of the reform, the EU will become a net importer of sugar (or sugar raws which is the input material for sugar to be refined in the EU) mainly from LDCs and ACP countries.

13. The overall market situation for the production for the marketing year 2008/2009 broken down by Member State can be summarised as follows. Each year the excess sugar production above quota can be carried forward to the next marketing year.

Table 1: Estimate of the sugar production 2008/2009 (EU 27)

Tonnes white sugar equivalent	*QUOTA R 510/08*	Production of the campaign	*Carry forward from 07/08 to 08 / 09*	*2/3 withdrawal 2007/08*	Total production	Production QUOTA	*Out of quota (indust. , carry forward*
Be	*676.235*	677.609	*0*	*77.025*	754.634	676.235	78.399
Bg							
Cz	*372.459*	422.793	*6.6*	*5.579*	434.973	372.459	62.514
Dk	*372.383*	344.831	*0*	*0*	344.831	344.831	0

De	*2.898.256*	3.638.000	*178.456*	*325.701*	4.142.157	2.898.256	1.243.901
Gr	*158.702*	101.78	*0*	*0*	101.78	101.78	0
Es	*630.586*	417.834	*5*	*0*	417.839	417.839	0
F (met.)	*2.956.787*	3.778.433	*60.761*	*324.363*	4.163.557	2.956.787	1.206.770
F (DOM)	*480.245*	280	*0*	*0*	280	280	0
It	*508.379*	490	*28.792*	*0*	518.792	508.379	10.413
Lt	*90.252*	58.065	*21.848*	*7.319*	87.232	87.232	0
Hu	*105.42*	50.839	*0*	*0*	50.839	50.839	0
Nl	*804.888*	770	*0*	*66.981*	836.981	804.888	32.093
At	*351.027*	445.48	*14.036*	*12.052*	471.567	351.027	120.54
Pl	*1.405.608*	1.372.803	*26.801*	*157.928*	1.557.531	1.405.608	151.923
Pt (Cont)							0
Pt (Aç)	*9.953*	1.8	*0*	*0*	1.8	1.8	0
Ro	*104.689*	85.437	*78*	*413*	85.928	85.928	0
Sk	*112.32*	81.187	*0*	*0*	81.187	81.187	0
Fi	*80.999*	73.22	*12.014*	*1.925*	87.158	80.999	6.159
Sv	*293.186*	294	*0*	*23.255*	317.255	293.186	24.069
Uk	*1.056.474*	1.040.000	*0*	*108.833*	1.148.833	1.056.474	92.359
TOTAL	***13.468.847***	**14.424.111**	***349.389***	***1.111.375***	**15.884.876**	**12.855.734**	**3.029.141**

Source: European Commission based on Communication from Member States in accordance with Regulation 952/2006.

14. The current acquisition takes place in the context of the significant sectoral restructuring described above. Two main types of players can be identified on the sugar markets: traditional beet processors (e.g. ABF and Azucarera) and traditional full time refiners of cane raws (e.g. Tate & Lyle, RAR, DAI) who do not have any beet sugar production. In view of the reduced beet quota and the voluntary renunciation by beet producers, the traditional beet processors are trying to adapt to the new situation by adding refineries for the processing of imported cane raws. As of October 2009, all quotas which have previously applied to importing of cane sugar or cane raws from ACP and LDC countries will be lifted. These quotas were essentially assigned to the traditional refiners. Accordingly, traditional beet processers (as well as anyone else) will be allowed to refine sugar as well.

15. In Spain, the reform does not seem to have lead to an enormous turmoil on the market. The market leader Azucarera is closing four beet processing plants as it has its quota being reduced to around half, but it is in parallel building a cane refinery in the south of Spain with a capacity which offsets the volumes lost from quota renunciation. This refinery is expected to be operational soon after the import quota will have been lifted, i.e. October 2009. Similarly, ACOR, the second beet processing sugar supplier in Spain, announced to build a refinery in Olmedo (Valladolid) to refine imported raw sugar in a JV project with the French Tereos.[5] This suggests that the market structure pre and post reform will not change enormously as regards production capacities. Indeed, the notifying party itself indicates an estimation of the future market shares of Azucarera to remain roughly at pre-reform levels.

Production of sugar

16. Sugar production from beet involves extracting the beet sugar content with water into a raw juice solution which is then filtered, purified and evaporated to remove moisture and impurities and then concentrate the sugar content into a juice solution. This juice is in turn

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5 This transaction is currently under the scrutiny of the Spanish National Competition Authority.

put through a centrifugal process to which small crystals are added in order to act as a nucleus for the crystallisation process. At the end of this process, crystallised sugar is dried, stored and packed according to end-use markets, i.e. generally in bulk, 1 tonne and 50 kg bags for industrial and merchant customers, and in 1 kg packets or smaller for retail customers.

17. Conventionally, there are two principal co-products of the beet sugar production process - sugar beet pulp and molasses. Beet pulp is the fibrous material which remains once the sugar has been extracted. It is mainly sold for animal feed. Molasses, which is a brown sugar syrup, is sold to a variety of third parties including producers of animal feed, yeast and alcohol including ethanol (molasses are further discussed in recitals 35 ff).

18. As to the production of sugar from cane raws, once the initial raw material processing stage has ended in the country of origin and the partially refined or raw sugar has been shipped to the EU, the intermediary product – cane raws- are refined into the final sugar product.

Relevant product market definition

19. In its previous merger decisions, the Commission considered three separate markets for sugar according to its distribution channel: industrial, retail and private label.[6] Industrial sugar is sold in large quantities to industrial customers mainly in the food and beverage industry. Retail sugar is sold in small packages to end-consumers, in particular via retail chains, under the brand of the sugar producer. Sugar supplied to producers of private label is supplied by the producers to large retailers who sell it under their private labels.

20. Recent decisions by National Competition Authorities[7] have also considered that sugar to retail and to industrial customers constitute separate relevant markets.

21. The notifying party submits that for the purposes of this acquisition, the appropriate frame of reference is all types of sugar. It is the party's view that it is not necessary to segment the sugar market by distribution channels (retail and industrial), nor according to type of sugar (such as granulated, liquid, specialty etc.) or the origin of the sugar (beet or cane).

22. Concerning the need to further split the sugar market according to the type of sugar or the origin of the sugar, the notifying party submits that the overlap in Iberia (i.e. Spain and Portugal) concerns only standard white granulated sugar (except for an insignificant level of sales to retail customers of specialty sugar). Furthermore, it indicates there is no material difference between standard white granulated sugars produced from beet or from cane and that the vast majority of demand for sugar in Iberia and the EU as a whole is for standard white granulated sugar (approximately 80-90% of all sugar sales).

23. The Commission acknowledges that for different types of sugar there is limited substitutability from the customer's point of view since each type of sugar tends to fulfill a certain requirement and each type differs as to the texture, color and flavor. However, from a supply-side perspective, in the market investigation most sugar producers indicated

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6 M. 2530 - Südzucker/Saint Louis Sucre 2001. IV.F-3/M34.621 Irish Sugar 1997. IV/F-3/33.708 British Sugar 1999.

7 Anticipated acquisition of Illovo Sugar Limited by ABF Oversas Limited, OFT, 31 July 2006. Decision C 2005-113 du Ministre de l'Economie, des Finances et de l'Industrie en date du 18 janvier 2006. Decision N-07012 Azucarera Ebro/Negocio de azucar de DAI. 22 March 2007.

that they can easily switch production between different types of sugar without significant cost as well as within a short period of time (i.e. significantly less than one year) in order to meet the demands of customers.

24. Therefore in relation to any specific type of sugar or the origin of the sugar since the assessment of the impact of the merger does not change in any manner given that no horizontal issues are raised, the need to further split the sugar market according to the origin or the type of sugar may be ultimately left open.

25. As regards the split of sugar according to the distribution channel, the market investigation indicated that from a demand side there is limited substitutability between products sold to retail and industrial customers, given the generally higher quality requirements of retail customers. The differences in packaging, distribution and customer profiles are conductive to significant price differences structures between the two markets. From a supply side perspective there also seems to be limited substitutability given the switching costs involved. The investigation also provided indications that the split between industrial and retail customers is broadly in line with the market segmentation used by the sector.

26. Furthermore, as to the supply of sugar for private label considered in the case M. 2530 - Südzucker/Saint Louis Sucre, the market investigation confirmed that the relevance of this market segmentation is very much linked to the specificities of certain countries, such as Germany and its system of hard discount retailers.[8] Therefore and given that the parties do not overlap in this market segmentation, the Commission considers that for the case at hand it is not necessary to consider private label sugar as a distinct product market.[9]

27. However, since the impact of the merger on industrial and retail customers separately does not change in any manner the result of the assessment for the sugar sector as a whole, the need to split the sugar market according to the retail and industrial customers may be ultimately left open.

Cane Raws

28. As already mentioned in recital 7, sugar can be produced from sugar beet or sugar cane. Azucarera will only be refining cane raws in its refinery in Guadelete (Spain) and does not grow sugar cane at all. ABF through its subsidiary Illovo grows sugar cane in several African countries and it also owns a refinery in Poland.

29. As a consequence, the transaction does not give rise to a horizontal overlap, but to a vertical relationship between ABF's cane raw sales and Azucarera's refining activities.

30. Cane sugar refineries produce sugar from imported cane raws. Sugar cane is a tropical grass which is harvested mechanically or by hand. According to the notifying party, once cut

8 Hard discounts retailers are e.g. Aldi or Lidl, which have a strong presence in Germany.

9 As to the possible distinction between branded label and private label, this question can be ultimately left open. In accordance with the information submitted, the parties do not overlap in private label or in branded label in those markets where the other is present (e.g. Portugal and France) or in markets where there is an overlap between the parties (e.g. Spain in branded label and Iberia) this overlap would in any event be below [0-5]% not leading to any competition concerns. Furthermore, in case the relevant geographic market where to be defined EEA-wide it would not result into an affected market under any alternative product market delineation (see recital 60).

cane must be processed quickly after harvesting to conserve the sugar. This first stage of processing is carried out in factories close to or in the growing area (i.e. in the country of origin of the cane). The cane is cleaned, crushed and shredded and sprayed with hot water in order to extract the juice. The juice is then further processed to create what is known as "cane raws", which is an off-white sugar that is partly purified and is in a concentrated, crystallised, microbiologically stable form suitable for bulk handling, storage and transport to refineries.

31. At the refinery, the remaining impurities in the cane raws are removed through a second onward processing/refining stage which in itself is a complex process comprising various distinct stages (including affination and melting; carbonation and filtration, decolourisation; evaporation and crystallisation; and separation and drying).

32. Sugar cane can only be grown in tropical climate, while sugar beet favours more temperate climatic conditions like those in the Northern Hemisphere. Because of these different growing conditions supply-side substitution is not possible. At the same time demand-side substitutability seems to be limited as cane raw sugar refiners would have to invest a significant amount of money and time to be able to refine beet as well. Beet refineries can adopt easier as their adjustment costs are lower.[10]

33. In addition, the supply/procurement of sugar beet within the EEA is strictly regulated by the Common organisation of markets in the sugar sector and a quota system which does not allow a production of sugar from beet beyond the allocated beet quota and consequently, there is no market for sugar beet (or sugar beet quota). Producers can only generate sugar from beet if they own the required quota.

34. In light of these arguments and for the purpose of the present decision, it is therefore considered that the supply of cane raw sugar represents a separate relevant product market to be distinguished from the one for sugar beet.

Molasses

35. Molasses is a by-product of sugar. It is a sticky liquid with around 45-50% sugar content which also contains a number of minerals and other elements. During the sugar production process, when sugar beet or sugar cane are processed into sugar, molasses are extracted as the remaining part of the raw material which is no longer economical to process into sugar. The volumes of molasses produced essentially correlate with the amount of sugar production when produced from beet. Cane molasses are primarily produced in the earlier stage of sugar production (which occurs in the country of origin), when processing sugar cane into cane raws. When the cane raws are then imported into Europe and refined into sugar, only limited volumes of molasses can be produced as by-product of this refining process.

10 No previous Commission decision dealt with sugar cane raws. However, the Office of Fair Trading in its Decision on the Anticipated acquisition of Illovo Sugar Limited by ABF Overseas Limited, 31 July 2006 came to the same conclusion.

36. Molasses are used as input material primarily for producing yeast, for distilleries (such as for alcohol production) and for animal feed production.[11]

37. The notifying party submits that molasses of cane and beet origin belong to one single market, as customers could readily substitute the two. The market investigation shows that there is a degree of substitution between the two types of molasses, but substitution depends on the types of customers involved. Animal feed producers typically are more indifferent as to the origin of the molasses and can readily substitute the two types when adding them into their final animal feed products. On the other hand, yeast producers (and also distilleries, who also use molasses in their fermentation process like yeast producers) have certain limitations to switch between the two types. In Europe, yeast producers have traditionally relied mostly on beet molasses. Although the investigation reveals that a number of yeast producers in Europe do use a mixture of cane and beet molasses[12], there are certain limitations for usage of cane molasses depending on the plants constitution. This is mainly due to differences in the composition of beet and cane molasses which has effects on the effluent water quality. Depending on the waste water arrangements of the yeast plant, additional investments would be required to switch to cane molasses. Yeast procurers also referred to additional equipment necessary for processing cane molasses (separator/centrifuges). In general, due to these constraints, yeast producers showed reluctance to switching from beet to cane molasses above a certain proportion (or even altogether), even considering that prices for cane molasses are generally lower than beet molasses.[13]

38. The investigation also reveals that molasses customers also use other substitutes to molasses. Animal feed producers indicated during the investigation that they can switch to materials like glycerol or sugar syrups without any investments, and they in fact tend to compare the prices of alternative materials and switch between substrates accordingly to price levels. Yeast producers also use alternative materials to molasses. In fact, due to a general shortage of molasses in the recent years (caused inter alia by reduction of sugar beet quota in the EU) and hence increased prices for molasses, yeast producers adapt to switching to industrial sugar (produced either off-quota in the EU or imported from third countries[14], industrial sugar can have liquid form). Several yeast producers in the EU already started to use industrial sugar as a substitute for molasses[15], after relatively minor investments to various pieces of handling equipment. As there are no negative implications

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11 According to the estimated figures provided by the notifying party, in Spain the split between molasses customers in 2008 was: animal feed producers around 40-45%, alcohol producers around 40%, and yeast producers around 10-15%.

12 Including ABF's yeast plants in Setubal (Portugal) using a significant proportion of […]% of cane molasses and in Casteggio (Italy) using [significant] % cane molasses

13 Prices of beet molasses and cane molasses have been broadly following similar trends with a fluctuating price differential, with beet molasses being generally higher priced than cane molasses. Currently, beet molasses are roughly around 15% more expensive than cane molasses.

14 Pursuant to the EU sugar regime, a quota scheme for 400 000 tonnes of industrial sugar for imports free of customs duty was made available to the fermentation industry.

15 Including yeast plats of ABF in Cordoba (Spain) who adapted the production process recently to a use of [significant] % industrial sugar next to beet molasses from May 2009 onwards, or in Casteggio (Italy) where ABF uses currently [significant] % of sugar syrups (industrial sugar) and plans to increase its usage to [significant] % this year.

on effluent treatment, industrial sugar is in fact preferred alternative to cane molasses for several plants. When industrial sugar reaches a certain proportion of the mix with molasses, additives have to be used which increase the cost of the primary material. Therefore, yeast producers prefer to keep the proportion of industrial sugar below a certain percentage. The notifying party explain that the optimum usage is around [20-40]% depending on the prices of industrial sugar relative to molasses (other yeast producers mentioning their optimums being in range from 30 to 50%), although technically it would be possible to run the plant with even higher proportions of industrial sugar.

39. However, due to absence of competition concerns, it is not necessary to reach a conclusion on the precise scope of the relevant product market, and the questions of whether beet and cane molasses belong to the same market, and whether the market also comprises alternative materials such as industrial sugar, can be left open in this case.

Yeast

40. In a recent case ABF/GBI Business[16], the Commission concluded after an in-depth investigation that there are three separate products markets for yeast, being dry yeast, compressed yeast and liquid yeast. The notifying party in this case does not contend this market definition. The market investigation did not provide any elements which would speak against such a market delineation. However, for the purpose of this case it is not necessary to conclude o the relevant product markets as there are no competition concerns.

2. Relevant Geographic Market

Sugar

41. In a number of previous decisions[17], the Commission considered that the relevant geographic market for the supply of sugar was national in scope or even a narrower regional segmentation at least as Germany was concerned. As regards decisions from other National Competition Authorities, the UK Office of Fair Trading in a recent merger decision[18] recognises that the regulatory changes affecting the EU sugar market may cause imports to be a stronger competitive constraint in the future. In a recent decision[19], the Spanish NCA, the "*Dirección General de Defensa de la Competencia*", although ultimately leaving open the definition of the relevant geographic market, conducted its assessment under different alternative geographic delineations which included national as well as the regional market integrated by Iberia (Spain and Portugal) and France.

42. The notifying party considers that the relevant geographic market is, at the very least, wider than national, and is increasingly becoming EEA-wide in scope. It argues that the dynamics of competition in the supply of sugar in the EEA have changed following

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16 Commission's decision of 23 September 2008 in the case M.4980 *ABF/GBI Business.*

17 M. 2530 - Südzucker/Saint Louis Sucre 2001. M.O62 - Eridania / ISI.

18 Acquisition of Illovo Sugar Limited by ABF Overseas Limited. OFT. 31.07.2006

19 Case N 07012 Azucarera Ebro/Negocio de azucar de DAI. 22.3.2007.

reforms to the Sugar Regime and the anticipated removal of quotas and tariffs on imports from ACP countries and LDCs, together with the elimination of restitution payments for exports to non-EU countries. It submits that the reforms to the Sugar Regime have led and will continue to lead, to an intensification of intra-EEA trade with sugar producers increasingly selling across national borders and a significant increase in non-EU imports

43. The results of the market investigation have generally not confirmed this view. Most customers still get their supply from sugar producers located close by, only within deficit areas like Spain or Italy, cross-border sales can be observed. Whether the regulatory changes in the EU sugar market may result in a broadening of the scope of the geographic market cannot be said on the basis of the present market investigation.

44. In any event, for the purpose of the present transaction, the exact geographic market definition can be left open, inasmuch as even if the narrowest definition of the market, that is national, were to be retained the conclusions of the competition assessment would remain unchanged.

Cane Raws

45. The analysis of the relevant geographic market for the supply of cane raw sugar has to take into account the current regulatory environment and its future development.

46. The Sugar Regime was reformed in 2006 in order to increase the competitiveness of the EU sugar industry and to improve the market orientation of the sector by removing some of the regulatory barriers. Apart from a decrease in guaranteed prices and elimination of export subsidies for surplus sugar, the reform will result in a significant reduction of the sugar beet quota which is assigned for production in the EU. Member States with a less competitive industry like Portugal or Ireland do no longer have beet sugar industries or have significantly reduced their sugar producing capacities (as for example Spain, Italy, Greece, or Finland). This beet quota reduction is gradual and will continue until 2010/2011. As a result of the reform, the EU is expected to become a net importer of sugar (or sugar raws which is the input material for sugar refined in the EU) mainly from LDCs and ACP countries. This change on the demand side is complemented by liberalisation of imports as of 1 October 2009 removing the import quotas for established refiners.

47. From 1 July 1995, supply quotas have been set for each of the Member States that has a cane raw sugar refining industry. These quotas are called ‘Traditional Supply Needs’ (TSN’s), and represent their annual requirements of raw sugar for refining.[20] From 2009/10, TSN’s by Member State will no longer be specified, but only the EU total.

48. During a transitional period (2006/07 to 2008/09 inclusive) full-time refiners have a monopoly on import licences for sugar for refining, so long as imports are less than TSN’s. This measure is intended to protect the position of the refiners during the transition, by preventing beet sugar processors bidding against them for raw cane sugar supplies. From

20 The TSN's for the campaign year 2008/09 amount to 2.4 million tonnes. See Annex 6.3 Form CO, page 36.

October 2009 onwards, however, there will be unrestricted access for LDC and ACP sugar cane raws, so this protection will no longer be necessary.[21]

49. Imports of sugar cane raws originating from non-ACP countries and non-LDCs beyond the limited amount set by the quota are in theory possible, but unlikely to occur in practice because of additional fixed charges. Thus, only imports from countries like Brazil, Australia, Cuba covered by quotas conceded to them after enlargement as compensation for the increase in sugar duty at the border of acceding countries or for the suspension of TRQs[22] are expected to be imported into the EEA.

50. These developments in combination with the quota reduction within the EEA should according to the notifying party and widely confirmed by the market investigation[23] lead to an increase in imports of cane raws, in particular from the ACP countries and LDCs.

51. As a result, the relevant geographic market for the procurement of sugar cane raws covers at least the ACP and LDC countries who are allowed to have quota-free and duty-free access to the EEA. The question whether the market could be even wider – eventually world-wide – can be left open as in any event the present transaction does not raise serious doubts irrespectively of the exact scope of the relevant geographic market.

Molasses

52. The notifying party argues that due to the significant level of molasses imports, the relevant geographic market for molasses is worldwide. As regards specifically cane molasses, there is no EEA production and all is imported from outside Europe. The investigation shows that purchasing scope of beet molasses seems to be more limited, whereas the majority of beet molasses are still supplied locally where beet production still exists (like in Spain), although imports of beet molasses (via specialized traders) are increasing significantly in regions where beet quota reduction lead to less domestic production. However, due to absence of competition concerns the precise scope of the relevant geographic market can be left open in this case.

Yeast

53. In the recent merger ABF/GBI Business the Commission concluded that the market for compressed and liquid yeast were national markets for the territory of Spain, Portugal and France, while for dry yeast it is at least EEA-wide. [24] The notifying party in this case does

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21 The Sugar Regime has ensured preferential access at guaranteed prices for certain ACP sugar export countries under successive preferential agreements (beginning with the Lomé Conventions, and, finally the Contounou Agreement). These are now being replaced by Economic Partnership Agreements (EPAs) between the ACP countries and the EU. Insofar as sugar is concerned, the result is that all of the ACP countries will have quota-free and duty-free access to the EU market on the same terms as the LDCs.

22 The tariff-rate quota resulted from the Uruguay Round Agreement on Agriculture. Certain countries agreed to provide minimum import opportunities for products previously protected by non-tariff barriers. This import system established a quota and a two-tier tariff regime for affected commodities. Imports within the quota enter at a lower (in-quota) tariff rate while a higher (out- of-quota) tariff rate is used for imports above the concessionary access level.

23 See reply to question 39 to sugar producers.

24 Commission's decision of 23 September 2008 in the case M.4980 *ABF/GBI Business.*

not contend this market definition. The market investigation did not provide any elements which would speak against such a market delineation. However, for the purpose of this case it is not necessary to conclude on the relevant product markets as there are no competition concerns.

3. Competitive Assessment

Sugar

Overlap between the parties is minimal

54. For the affected markets the notified transaction would lead to minimal overlaps and therefore to no significant change in the conditions of competition. Irrespectively of how the relevant market is defined, the acquisition does not lead to any substantial increment in market share of the merged entity (see table below) and therefore does not give rise to concerns.

Table 2: Market share of the merging parties

Product	Geographic market	ABF Market share (%)	Azucarera Market share (%)	Merging parties combined market share (%)
All sugar	EEA	[5-10]%	[0-5]%	[10-20]%
	Iberia	[0-5]%	[30-40]%	[30-40]%
	Spain	[0-5]%	[40-50]%	[40-50]%
	Portugal	[0-5]%	[10-20]%	[10-20]%
	France	[0-5]%	[0-5]%	[0-5]%
Industrial sugar	EEA	[5-10]%	[0-5]%	[10-20]%
	Iberia	[0-5]%	[30-40]%	[30-40]%
	Spain	[0-5]%	[40-50]%	[40-50]%
	Portugal	[0-5]%	[10-20]%	[10-20]%
	France	[0-5]%	[0-5]%	[0-5]%
Retail sugar	EEA	[5-10]%	[5-10]%	[10-20]%
	Iberia	[0-5]%	[40-50]%	[40-50]%
	Spain	[0-5]%	[40-50]%	[40-50]%
	Portugal	[0-5]%	[20-30]%	[20-30]%
	France	[0-5]%	[5-10]%	[5-10]%

Source: Information compiled from the form CO

55. Azucarera is the market leader in the supply of sugar in Iberia (Spain and Portugal) with a market share of [30-40]% in 2008 ([40-50]% in Spain, [10-20]% in Portugal). The notified transaction will result in a minimal overlap since ABF in Iberia has a market share on the sugar market of [0-5]% ([0-5]1.8% in Spain and with virtually no sales in Portugal). Moreover, around half of the sugar supplied into Iberia from ABF is done via just one

trader and ABF has no local presence in the region. The overlap would remain below or around [0-5]% on alternative market definitions according to customer types, i.e. industrial or retail sugar customers (ABF is absent from private label sugar in Iberia altogether). Azucarera share would be [30-40]% for industrial sugar and [40-50] % for retail sugar in Iberia ([40-50]% and [40-50]% accordingly in Spain).

56. The market position of the parties does not change as regards any alternative split of the sugar market, as the parties only minimally overlap in the supply of certain speciality sugars (icing sugar and demerara) supplied to retail customers in Iberia.[25]

57. In addition to the minimal overlap, in Iberia as well as in Portugal or Spain, as noted in the table below, the parties will continue to face competition from a range of sugar processors and sugar refiners. The main sugar competitors in Iberia will be Tate & Lyle ([10-20]%), Tereos ([10-20]%), ACOR ([10-20]%), Saint Louis Sucre ([5-10]%), RAR ([5-10]%) and Eurosugar ([5-10]%). In Spain, the merged entity would face the Spanish producer ACOR ([10-20]%) and the French producers Tereos ([10-20]%) and Saint Louis Sucre ([5-10]%), the Portuguese refiner Tate & Lyle ([5-10]%) and Eurosugar[26] ([5-10]%). In the case of Portugal, the market share of the merged entity [10-20]% will not appreciably change, while the market will continue to be led by two other companies, Tate &Lyle and RAR which together will account for about [80-90]% of the Portuguese market.

[25] Even if a separate market for granulated sugar were to exist, since granulated sugar represents up to 90% of the overall sugar market, the market shares would be similar to those presented in tables 3 and 4 and the overlap between the parties is below [0-5]% in Iberia, Portugal and Spain. In case the relevant geographic market for granulated sugar was to be defined EEA-wide the combined market share would be below the relevant threshold to be considered an affected market.

[26] Composed of Nordzucker, Crystal Union and the trader ED&F Man.

Table 3: Market shares of sugar producers (by volume) 2008 - Iberia, Spain and Portugal

Producer	Iberia	Spain	Portugal
British Sugar	[0-5]%	[0-5]%	[0-5]%
Azucarera	[30-40]%	[40-50]%	[10-20]%
Merged entity	**[30-40]%**	**[40-50]%**	**[10-20]%**
Tate & Lyle	[10-20]%	[5-10]%	[40-50]%
RAR	[5-10]%	-	[40-50]%
ACOR	[10-20]%	[10-20]%	-
Tereos	[10-20]%	[10-20]%	-
Saint Louis	[5-10]%	[5-10]%	-
Eurosugar	[5-10]%	[5-10]%	-
Others	[0-5]%	[0-5]%	[0-5]%

Source: Information compiled from the form CO.

58. Given the very small presence of ABF in the Iberian markets, this transaction does not trigger any significant change. This was widely confirmed by respondents in the market investigation who argued that the merger would hardly alter the competitive landscape in Iberia.[27]

59. ABF is mostly present in the UK and in Poland where it has a subsidiary. Within the EEA, the merging parties combined market share would be around [10-20]% ABF, [0-5]% Azucarera). The merged entity will be the third largest player in the EU after Südzucker ([10-20]%) and Eurosugar/Danisco ([10-20]%)[28]. Other large European players include Tereos ([5-10]%), Pfeifer & Langen ([5-10]%). Other smaller players account for approximately [20-30]% market share.

60. In case the relevant geographic market where to be defined EEA-wide it would not result into an affected market since the combined market share of the merging parties would not exceed the applicable threshold under any alternative product market delineation.

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27 Except for a third party which raised the concern that the market in Spain and Portugal is a highly concentrated oligopolistic market and that the transaction could lead to enhanced coordinated behaviour between the players. However, as explained before the merger ultimately does not change the structure of the market under consideration, therefore it is difficult to see how coordinated effects could be triggered or significantly enhanced as a result of the present transaction.

28 The Bundeskartellamt in its decision of 17 February 2009 has cleared the acquisition of the sugar activities of Danisco by Nordzucker. Market share estimate of combined entity, does not take into account divestiture committed.

Table 4: Market share of sugar producers (by volume) 2008. EEA-wide

Producer	EEA-wide share (%)
British Sugar	[5-10]%
Azucarera	[0-5]%
Merged entity	**[10-20]%**
Südzucker	[10-20]%
Eurosugar	[10-20]%
Tereos	[5-10]%
Pfeifer & Langen	[5-10]%
Danisco	[5-10]%
Krajowa Spolka Cukrowa	[0-5]%
Cosun	[0-5]%
Others	**[10-20]%**
Total sugar beet supplied in EU	[80-90]%
Sugar refined from cane raws	[10-20]%
Sugar imported from Balkans	**[0-5]%**

Source: Information compiled from the form CO.

Conclusion

61. In view of the above the Commission concludes that no serious doubts as to its compatibility with the Common market will result from the horizontal overlap of the parties in the sugar market.

Cane Raws

Complaint – Input Foreclosure

62. Because Azucarera does not supply cane raw sugar, there is no horizontal overlap between the parties to the transaction. However, a third party[29] voiced the concern in the market investigation that ABF through its subsidiary Illovo will after 2009 be able and have the incentive to hamper or prevent the access to cane raw sugar to its competitors in the sugar market. ABF could for example only supply sugar refineries belonging to the ABF group, namely Azucarera in Spain and British Sugar in Poland or restrict access to this crucial input thereby raising its rivals' costs.

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[29] See non-confidential reply of 13 March 2009.

63. According to the complainant, the following elements would allow ABF to foreclose other sugar producers, in particular cane raw refiners: ABF through its subsidiary Illovo controls a significant amount of cane raws in Malawi, Zambia, Swaziland, Mozambique and Tanzania, countries from which the complainant is sourcing a part of its needs. These countries will benefit from the liberalisation of the sugar market in October 2009 and are likely to increase their share of imports. In addition, an increase in refining capacity within the EEA and a delay in the expansion of cane raws will result in a shortage of this crucial input for a period of 2-4 years. It will therefore be difficult to source cane raws from other sources than from Illovo. ABF after the merger will own Azucarera, a direct competitor to the complainant in the production and supply of sugar. Azucarera has its own refinery in Spain with a capacity of 400 000 tonnes of cane raws. It already had contracted […] tonnes from Illovo. The competitor expects that ABF will not only redirect its supplies to Azucarera, but in addition will not provide cane raws to him anymore, thereby eliminating a competitor in the market, leading to higher prices in the downstream market rendering the foreclosure profitable. Because cane raws represent a crucial proportion of the overall costs, partial or total foreclosure would result in upward pressure on prices, which ultimately would harm final customers.

No ability to foreclose

64. The market investigation has not been able to identify a significant degree of market power by ABF's subsidiary Illovo on the market for the supply of cane raw sugar to the EEA. Table 5 shows the current and forecasted production and export volumes for ACP countries/LDCs and ABF's Illovo for the campaign years 2008/09 and 2009/10 based on analysis done by the International Sugar Organisation for the production volume and DG Agriculture for exports[30].

Table 5: Production and Export by ACP/LDC countries

in thousand tonnes	**2008/09**		**2009/10**	
	Production	**Exports to EU 27**	**Production**	**Exports to EU 27**
All ACP/LDC	6426	1700	n.a.	2200
Illovo's share	[10-20]%	[10-20]%	n.a.	[20-30]%

Source: Form CO and Market Investigation

65. For the campaign year 2008/09, total imports into the EEA are estimated at 3.3 million tonnes; 1.7 million tonnes of it originating from ACP countries or LDCs. It is expected that these volumes will gradually increase to 3.9 million tonnes in 2010 before reaching 5.1 million tonnes in 2015. The ACP/LDC share of these imports will grow to 2.2 million tonnes in 2010 and 3.5 million tonnes in 2015.

[30] See "EU policy reform – Ramifications for preferential exporters", International Sugar Organisation (ISO), October 2008 and "Comité de Gestion for sugar", 12 February 2009.

66. Illovo is active in several Sub-Saharan African countries covered by the tariff free imports (Zambia, Malawi, Tanzania, Mozambique and Swaziland). ABF estimates[31] that cane raw production of Illovo in these countries amounts to 1 million tonnes (expected to increase to […] by 2012). The volume of cane raws imported by Illovo into the EU[32] in 2008/09 were […] or [10-20]% of all ACP/LDC imports. The cane raws were mainly supplied to […]tonnes), all EEA sugar producers/refineries were among the customers. The imported quantities have significantly increased from […] tonnes in 2007/08 and […]tonnes in 2006/07.

67. ABF estimates that from October 2009 (when quota will be lifted) the anticipated sales of cane raws by Illovo will increase to […] tonnes or [20-30]% of all imports. Azucarera will represent […] tonnes, […]. However, Illovo's share in overall imports – taking into account […] tonnes of cane raws from non-ACP/LDC countries – will only be [10-20]% in 2009/10.

68. Not only is Illovo's market share well below 20%, but even the complainant does not source a significant proportion of its supply from Illovo.[33] It follows a multi-sourcing approach and imported raws from a changing portfolio of countries since 2006. In his latest submission the complainant indicated that it was able to enter into a new supply contract and that it is still in contact with several potential suppliers and countries in which Illovo is not present at all. Thus, there is no reason to assume that the complainant would not be able to secure additional volumes in the future. This might at the moment be difficult, but seems not related to the merger, but rather to overall developments in supply and demand.[34]

69. The market investigation confirmed that in anticipation of the fall of import quotas in October 2009, traditional refiners as well as beet producers have started to build up additional refining capacity to be able to fill the deficit resulting from the beet quota renunciation. This is in particular the case for deficit regions like the Iberian Peninsula, where for example beet sugar producers like Azucarera or Acor (in a joint venture with Tereos) have built new refineries.

70. This additional capacity has increased demand for cane raws and respondents to the market investigation confirmed that competition for long-term contracts has intensified. Some also argued that the increase in demand is currently not matched by a similar increase in supply as projects in LDCs have been delayed. However, the majority of respondents were of the opinion that an increase in the volume of cane raws is to be expected in the coming years. In their view this should allow European refiners to secure their cane raw needs in the medium term.[35] Even the complainant submitted that up to 2012 there will be a major increase in production in ACP/LDC amounting to 6

31 Annex 2 of notifying party’s submission of 9 March 2009.

32 Annex 1 of notifying party's submission of 9 March 09.

33 The figure might be even lower as the complainant receives its sugar through a centralised agency of the exporting country. Based on ABF's figures the share would be below [10-20]%.

34 […]

35 See reply to question 38 questionnaire to competitors sugar.

million tonnes, in particular in those countries in which Illovo does not have any cane raw production facilities such as Ethiopia and Sudan.

71. Finally, the fact that other sugar companies are adding refining capacity shows that market operators expect to be able to source cane raws from ACP/LDC. Some of them like ED&F man, Tate & Lyle, DAI or Tereos have established relationships to ACP/LDC countries.

72. In view of Illovo's modest market share with [10-20]%, the expected growth of cane raws in the medium term as well as the fact that the current scarcity is not merger specific and the complainant does not depend on Illovo, it is concluded that ABF doe not have the ability to foreclose competitors in the sugar market.[36]

Conclusion

73. In view of the above it is concluded that no serious doubts as to its compatibility with the Common Market result from the vertical relationship of the parties in the supply of cane raws.

Yeast /molasses

74. Molasses have been traditionally the primary input material for yeast production. ABF is a global player in the yeast markets and it has also a strong presence in Spain and in Portugal[37]. Azucarera is a supplier of beet molasses in Spain.[38]

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[36] Even if the ability and the incentive to foreclose were given, consumers would in all likelihood not be harmed as a significant number of additional suppliers would still be available. These competitors have already secured their cane raws or could enter the Iberian market with beet sugar. In particular, Südzucker has secured until 2015, 400 000 tonnes of refined sugar from Mauritius. According to its annual report Südzucker intends to increase its presence in Spain and Italy, deficit areas in the EEA. The merger may also lead to significant efficiencies arising from the vertical integration in terms of elimination of double marginalisation, internally setting of transfer prices and alignment of incentives. The gains would most likely be passed on since there are currently significant imports steaming from France and Sudzücker can make available around 400 000 tonnes from Mauritius.

[37] According to the recent decision in M.4980 ABF/GBI Business, ABF had in 2007 a market share of 30-40% in Spain and 20-30% in Portugal on the compressed yeast market, and 30-40% in Spain and 90-100% in Portugal for liquid yeast market. Dry yeast markets are at least EEA-wide in scope, ABF accounting for 10-20% both EEA-wide and worldwide.

[38] According to the notifying party's estimates for beet molasses Azucarera had a market share in Spain of [50-60]% in 2008, followed by Acor with [10-20]% and imports by traders of [20-30]%. ABF does not supply any beet molasses into Spain. The merged entity would produce less than [10-20]% of the beet molasses produced within the EEA.

Complaint – Input Foreclosure

75. During the investigation, a competitor of ABF active in the yeast markets[39] in Spain and in Portugal expressed its concern that as a result of the merger it could face input foreclosure of beet molasses from Azucarera.[40] Currently, this yeast producer is in its Spanish plant sourcing a part of its beet molasses requirements from Azucarera. The complainant argues that following the merger of ABF and Azucarera, ABF may cut it off from Azucarera's supplies or increase the price, with the effect of driving the company out of the Spanish market by inflating its costs base. The Commission carefully investigated the issues raised and the results of the investigation clearly indicate that the complaint is unfounded.

No ability to foreclose

76. From the outset, it has to be stressed that the complainant's requirements of beet molasses which it seeks to obtain from Azucarera ([…] tonnes), represent only a part of its primary input needs for the current year. On top of Azucarera, the complainant buys its molasses from other source(s). In a similar way to other yeast producers in Europe including ABF, the complainant also started to use industrial sugar in its yeast production to replace a part of its molasses requirements.

77. Assuming that Azucarera would not wish to supply the complainant with its beet molasses following the merger, the complainant would face a situation where it would have to replace the entire amount of beet molasses solicited from Azucarera (total foreclosure). The investigation reveals that there are viable alternative sources for Azucarera's beet molasses.

78. First, the complainant explained that it could in its Spanish plant replace a certain further proportion of molasses by industrial sugar without any technical investments. As it is already using industrial sugar, these investments independently of the merger would allow it to increase its proportion of industrial sugar and thus reducing some of the volumes needed from Azucarera.

79. Second, the complainant could increase volumes of beet molasses purchased from its other current supplier(s) thus further reducing significantly the volumes needed from Azucarera. In the course of the market investigation, the supplier(s) in question confirmed its capacity to supply additional volumes to the complainant, and also confirmed a willingness and incentive to do so. In fact, the investigation shows that yeast producers represent an attractive clientele for beet molasses suppliers as they are less flexible to switch between different primary material sources (to cane molasses or to alternative material) than animal feed producers. Also, yeast producers would typically enter into longer supplier relationships and require more stability, and are also more stringent as to the quality. This translates into a higher willingness to pay for beet molasses. […] As the complainant is the

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39 The company is active in all three yeast markets, ie compressed, liquid and dry yeast and is the only other yeast supplier apart from ABF with a local production in Spain or Portugal. For the purpose of the present analysis, these three products will be collectively referred to as yeast, as the procurement of molasses and the initial stages of production of all three products are similar, and the vertical competition analysis would not be affected by this simplification. This is also consistent with the submissions of the complainant.

40 See the complainant's submission of 6 January 2009 and reply to Commission's questionnaire submitted 13 March 2009. The case team also heard the complainant during a meeting held on the same day.

only yeast producer beside ABF in Spain, beet molasses suppliers would arguably prefer it to other customers in Spain.

80. Next, the complainant can rely on imports of beet molasses from traders. There are essentially three main traders active across Europe, including in Spain, who import molasses (both beet and cane): ED&F Man, Peter Cremer and Tate&Lyle. Imported beet molasses offered by these traders mostly come from countries such Poland, the Baltic countries, Russia, Ukraine, Morocco, Egypt, Sudan and others. In the EU as a whole, the volumes of beet molasses imported from third countries amounted to 379 000 tonnes per annum in 2007/2008 campaign according to the notifying party. In Spain, beet molasses in the past typically originated from the traditional beet sugar processors, i.e. Azucarera and ACOR. However, due to gradual beet quota reductions and hence a lower production of beet molasses, imports via traders increased substantially in the last few years: from 5000 tonnes in 2006 to around 30 000 tonnes per annum in 2008.[41] Azucarera itself was importing […]tonnes beet molasses into Spain from traders in 2008 (with these imports, Azucarera complemented its own production of beet molasses to meet all volumes required by its alcohol distillery in the South of Spain). The amount of cane molasses imported into Spain and into EU is significantly higher, as there is no EU cane production.

81. It is not uncommon for yeast producers to source imported beet molasses for their production from these traders, particularly in the current situation when in many countries there is a shortage of domestically produced beet molasses due to quota reductions. For example, the Portuguese yeast plant of ABF in Setubal is relying […] on molasses delivered by traders, both as regards cane molasses and beet molasses.[42] Similarly, ABF's yeast plant in Casteggio, Italy purchased significant volumes (more than […] tonnes) of imported beet molasses from traders in 2008. The complainant also relies on imported beet molasses (and cane molasses) from the major traders for some of its European yeast plants. This demonstrates that yeast producers have experience with imported beet molasses that those molasses are indeed suitable for their yeast production and represent a viable sourcing option.

82. All three major traders confirmed during the investigation that there are sufficient volumes of beet molasses available in third countries to increase imports into the Iberian Peninsula significantly in case of increased demand (in any event the volumes would be sufficient to cover additional volumes which could be required by the complainant to offset a possible loss of Azucarera's supplies).[43] The Commission also inquired about prices of beet molasses which the traders would currently offer and got quotes in the range of EUR 140 to EUR 160 per tonne ex ship[44].

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41 Figures provided by notifying party.

42 ABF is the only yeast supplier with a local production in Portugal. Azucarera does not supply any molasses to yeast customers in Portugal.

43 See minutes of telephone calls and correspondence with traders Peter Cremer, ED&F Man and Tate&Lyle.

44 CIF price delivered to a port in the north of Spain (Santander, Bilbao or La Coruna), the closest to the complainant's yeast plant. Traders indicated that the price would be same or slightly lower for other ports in Spain. Prices correspond to sugar content of around 48%.

83. When adding all costs for handling and storage at the port, and transport costs to the complainant's plant, the final delivered price is comparable to the price it currently pays to Azucarera (even lower when taking the lowest quote offered by a trader and transport from the nearest port, and not more than 25% higher when taking the worst quote and a least conveniently located port).[45] In fact, it seems that Azucarera's prices for its beet molasses have been in the recent past following prices of imported beet molasses offered by traders and Azucarera increased its prices several times in 2008 as a reaction on increased prices of imported molasses.

84. As was explained above in recitals 78 and 79, the complainant could rely on additional volumes of industrial sugar and on additional beet molasses from its current supplier(s), thus reducing significantly the volumes needed from Azucarera. Even if one were to assume the worst case scenario, if the complainant would have to source the full amount of the additional […] tonnes potentially to be foreclosed by Azucarera from traders for the worst price offers and from one of the least conveniently located Iberian ports, the effect on the cost base of the complainant would be very modest.[46] The Commission also analysed how this potentially increased cost base would translate into increase of yeast prices offered by the complainant and, even assuming the complainant would preserve the current margin, the price increase of its yeast would be insignificant.[47] Given that the complainant is the market leader enjoying a market share in the range of 40-50% in compressed yeast market and 60-70% in liquid yeast in Spain in 2007[48], it is extremely unlikely that even if such price increase would occur, this would have a significant impact on the competitive position of the complainant on the market.[49] On the contrary, even in the case of a total foreclosure from Azucarera's beet molasses, the complainant could substitute these volumes with beet molasses purchased by traders at a cost which would still allow it to compete on the market.

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[45] According to he market investigation, fees for vessel off-loading, port handling and storage at the port would amount to additional costs in the range of EUR 6-16 a tonne, which would translate into a price of about EUR 146-176 per tonne ex port. Depending on the location of the port, the complainant would have to pay additional EUR 20-45/tonne for truck transport into its plant, arriving at a final delivered price in the range of EUR 166/tonne (best option) – EUR 221/tonne (worst option). The price of beet molasses currently paid by the complainant to Azucarera is […] per tonne ex works (48% sugar content). The notifying party estimates transport costs of additional EUR 7-8 per tonne into the complainant's plant (according to the notifying party's estimates, broadly confirmed by investigation), coming to […] per tonne final delivered price. This is a possible price difference in the range of minus EUR [10-20] (best option) to plus EUR [40-50] (worst option).

[46] The potential merger-specific increase would only relate to a portion of the complainant's total input needs, represented by the […]tonnes solicited from Azucarera. The worst-scenario price increase of 25% of beet molasses sourced via traders would thus be only applicable to a part of primary input costs, the remaining part sourced from other sources than Azucarera being unaffected. This reduces the 25% significantly, when calculated over total costs of molasses and alternative primary input materials paid by the complainant. Due to confidentiality reasons, no precise figures of Commission's detailed analysis are provided.

[47] The Commission took into account the proportion of molasses costs in the final yeast price of the complainant.

[48] According to Commission's decision of 23 September 2008 in the case M.4980 *ABF/GBI Business*.

[49] This conclusion applies equally to Portuguese yeast markets.

No softening competition effect in the downstream yeast market

85. The vertical integration of ABF and Azucarera leads to a structure of the market where ABF's competitors in the yeast market are also likely to be ABF/Azucarera's molasses clients. This, in turns, increases the level of interdependency between the yeast competitors. The Commission also analysed whether, following the merger, the prevailing price in the yeast market might increase due to a softening competition effect between ABF and its yeast competitors.

86. Compared to the pre-merger situation, this increased interdependency (upstream and downstream) may change not only the ABF/Azucarera pricing strategy in the molasses and the yeast market but also the rivals' incentive to select the input supplier. On one hand, ABF/Azucarera will benefit from a molasses at lower costs (molasses is a by-product thus production cost is likely to be close to zero) and hence more incentive to act more aggressively in the yeast market (perhaps lowering yeast prices). On the other hand, an aggressive behaviour in the yeast market might hurt profit in the molasses market. An aggressive behaviour in the yeast market of ABF/Azucarera might imply a reduction of the needs of the competitors' molasses supply and ABF/Azucarera would forego some profits. Thus ABF/Azucarera might have less incentives to behave aggressively in the yeast market Consequently, ABF's yeast rivals anticipating this behaviour might want to choose ABF/Azucarera as their molasses suppliers (or to increase molasses purchases), and ABF/Azucarera in turn may be able to charge higher molasses prices. If the latter effect prevails, the merger may soften competition in the downstream yeast market. This effect crucially depends on to which extent ABF/Azucarera can raise the downstream competitors' cost knowing that downstream competitors might revert to alternative suppliers. Ultimately the switching costs of the unintegrated downstream competitors and whether ready alternative input are available are key elements that would prevent a softening competition effect from arising in the yeast market.

87. The assessment of the level of the cost of switching between molasses suppliers (and to other alternative inputs) is one relevant parameter in order to understand the post-merger outcome in the yeast market. Based on economic theory, the lower ABF/Azucarera yeast rivals' switching costs are, the less likely that competition in the yeast market will be softened. The investigation confirmed that yeast producers have not incurred into specific investments to receive Azucarera's molasses. Thus yeast producers can purchase from all beet molasses suppliers. Furthermore, as already explained in paragraphs 79, 80 and 81, currently yeast downstream competitors relies on several alternatives. This is also consistent with low switching costs[50] In addition, the molasses market shows some spot transactions readily available for unintegrated downstream competitors. This puts additional constraint on the likely ability of ABF/Azucarera to significantly raise the rivals' input costs during a given negotiation period or, in other words, on the likely willingness of downstream competitors to buy molasses from ABF/Azucarera at higher price post merger.

50 See footnotes 10, 11 and 13.

Conclusion

88. Therefore, it is concluded that that ABF/Azucarera has no ability to foreclose the complainant from its beet molasses. The above evidence also allows concluding that, even though the multimarket interdependence between yeast competitors is enhanced, the merger will not soften competition in the downstream yeast market. In view of the above it is concluded that no serious doubts as to its compatibility with the Common Market result from the vertical relationship of the parties in the supply of molasses.

V. CONCLUSION

89. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
(signed)
Günter VERHEUGEN
Member of the Commission