

***Case No IV/M.1126 -
CARGILL /
VANDEMOORTELE***

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 20/07/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.07.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

**Subject: Case N° IV/M. 1126-Cargill/Vandemoortele.
Notification of 18.06.1998 pursuant to Article 4 of Council Regulation
(EEC) N° 4064/89¹**

1. On 18.06.1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N° 4064/89 by which the undertaking Cargill, Incorporated ("Cargill") will acquire within the meaning of Article 3 (1)(b) of the Council Regulation sole control of the business of Vandemoortele International ("VDM") in the field of oilseed crushing and oil refining.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) N°4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Cargill is a US company active worldwide in a wide variety of businesses including storage and trading of grains and oilseeds, marketing and transport of agricultural and non-agricultural commodities and food processing.

¹ As amended by Council Regulation (EC) N° 1310/97 of 30.06.1997 (O.J.L. 180/1,09.07.1997).

4. Vandemoortele (VDM) is a Belgium based integrated group of companies producing and marketing food products, mainly in the segment of edible oils and fats. Until the present operation, the group has been active at the various stages of the seed oil sector, from oilseed crushing to the processing of final products, such as packed oil, margarine, mayonnaise and related products.

II. THE OPERATION

5. The present operation forms part of a wider transaction between the parties, which is subject of a binding agreement, signed on 9th June 1998 (“Master Agreement”). According to this Master Agreement, the parties’ upstream activities in the seedoil sector (i.e. the crushing and refining businesses) will entirely go to Cargill, whereas the downstream activities (i.e. packing and bottling activities) will either be contributed to the JV - as regards edible oils, or continue to be operated by VDM - as regards packed fats and related products.
6. Three operations will result from this Master Agreement, of which two have been notified under the Merger Regulation. By the first, subject to the present decision, Cargill will acquire sole control over VDM’s upstream business encompassing oilseed crushing and liquid oil refining activities in Belgium and Germany. With the second² the parties will create a 50-50 joint venture organised on the basis of separate legal joint venture entities located in Belgium, France, Germany, Spain, and the UK. Both first and second operations have been simultaneously notified, although as separate cases. The third operation, by which the JV is intended to operate Cargill’s downstream packed fats business in the UK, pending exercise of an option granted to VDM to acquire this business, does not have a Community dimension. The operation concerning the acquisition by Cargill of sole control over Vandemoortele’s activities in the field of oilseed crushing and refining constitutes a concentration within the meaning of Article 3.(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The combined aggregate world-wide turnover of the undertakings concerned exceeds ECU 5.000 millions (Cargill, ECU [...] million; and VDM Upstream Business ECU [...] million). The undertakings have a Community-wide turnover in excess of ECU 250 million (Cargill ECU [...] million; and VDM Upstream business ECU [...] million). The parties do not have more than two thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension according to Article 1 (2) of the Merger Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant Product Markets

² Case No IV/M.1227 – Cargill/Vandemoortele – JV.

³ Business secrets, deleted for publication.

⁴ Business secrets, deleted for publication

⁵ Business secrets, deleted for publication

⁶ Business secrets, deleted for publication

Crude seed oil

8. Crude seed oil is obtained by crushing of oilseeds. The main oilseeds crushed in Europe are soya beans, rape and sunflower and, to a small extent maize. Crude oil is mainly subjected to further processing and refining, for direct use in human food consumption and in the food industry. It is also used to a lesser extent in the chemical industry. Most oilseed processors refine the crude oil as well, and some of them have bottling activities. The most important outlets for refined oils are the production of packed fats and packed oils. A small proportion of crude oil goes into animal feed. Another small proportion of crude seed oil is used in the chemical industry. The main oilseed crushed in Europe are soy, rapeseed and sunflower. Most oil seed processors refine as well the crude oil.
9. According to the parties all types of seed oils may be processed and refined to reach the same functionality for downstream uses and further processing. This is in line with the Commission decisions in previous cases⁷ given that nutritional value and usage on the one hand and production methods, marketing and sale prices on the other hand are comparable. Accordingly, the parties consider it appropriate to identify one single product market for crude seed oils. Nevertheless, the Commission can leave the question of the precise segmentation of the seed oils market open because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of this area.

Refined Oils and Fats

10. Crude oils can be refined for human consumption and traded either in liquid form (oils) or in hardened form (as fats) after being processed. The degree of substitutability between liquid refined oils and hard vegetable fats is high although it varies depending on the type of final products in which oils and fats are to be used (margarine, bakeries, dehydrated food products etc.). Animal fats compete also in some of these applications with vegetable oils and fats. However and for the purpose of this notification this question can be left open given that even on the narrowest possible definition, effective competition would not be significantly impeded.

Oilseed meals

11. According to the parties there is a significant substitutability between oilseed meal and other products in animal feed. From a demand-side perspective the composition of the meal depends usually on the price of the various meals and the type of cattle to be fed, given that different seeds and grains have different degrees of protein content and are not subject to the same market conditions as grains for instance. Nonetheless, it is not necessary to delineate further the relevant product market because, even on the narrowest possible product market definition, effective competition would not be significantly impeded.

Protein Products

12. Protein products can be obtained from oilseed and from other sources. The oilseed-derived protein products include soy flour protein, textured protein, soy protein concentrates (SPC) and soy protein isolate (SPI). There is a considerable degree of

⁷ Cases IV/M.866-Cereol/Östat-Ölmuehle, IV/M.720-Cereol/Aceprosa, IV/M.941-ADM/A&H/Soya-Mainz, and IV/M. 1125-Cereol/Sofiproteol-Saipol.

demand-side substitutability between the different intermediates, SPC and SPI for instance, and downstream protein products. Depending on the applications there also certain substitutability with other products such as milk products, fish products, eggs, peas etc. According to the parties, customers in the food and feed industries have different interests: Feed customers highlight mainly the product's nutritional value and its price while food customers are more interested on specific functionalities such as texture or water binding ability. However, for the assessment of the present operation, it is not necessary further to define the relevant product market since on all alternative market definitions considered, the operation does not give rise to the creation or strengthening of a dominant position in the EEA or any substantial part of it.

B. Relevant Geographic Market

13. According to the notifying party the relevant geographic market for most of the above quoted products has to be considered as Community wide. The Commission has already treated this question in previous cases in the seed oil sector: For crude oil and oil meal products the geographical scope is probably wider given that prices for both meal and seed oil are determined on the international commodity markets of Chicago and Rotterdam and these commodities are traded internationally as there are no barriers to inter-state trade and the transport factor is not so decisive at this level of the oilseed market. However, and according to some customers and competitors of the parties, transport costs do play an important role for low-price products as crude seed oil and deflated flours or protein. Nevertheless, the fact that these products are traded world-wide and listed on commodity exchanges constitutes the main factor for homogeneous conditions of competition. Therefore, for the purpose of the present assessment, and in line with previous decisions already adopted by the Commission in these sectors, the geographic market for the relevant products can be considered as at least Community-wide.

C. Assessment.

14. The present situation in the seed oil business in the EEA shows a growing process of vertical integration of the main companies. Global players like ADM, EBS/Cereol and Cargill cover the whole process of processing seeds from trading and importing seeds, to crushing, refining, bottling and marketing to retailers. Further to the investigation carried out by the Commission in this case the current operation shows the different strategies of both parties and the reinforcement of vertical integration of Cargill in Europe. According to the notification, the operation is in line with Cargill's global strategy of adding added value to its upstream commodity business and also of expanding its oilseed crushing and refining capacity in Europe. The transaction is also in line with VDM's strategy of focusing on downstream value-added products. According to this strategy, VDM has recently transferred its upstream business of crushing and refining interests in France to its former partner Soprol⁸ The above mentioned transaction between the parties concerning the creation of a JV in the market of packing, bottling and marketing edible seedoils in Europe, which is treated separately, also illustrates both the VDM's strategy of focusing on the downstream segments of finished vegetable oil products and the reinforcement of the vertical integration of Cargill within the European markets.

⁸ Case N°IV/M.1125, Cereol/Sofiproteol-Saipol.

15. Both Cargill and VDM are active in the crushing of seedoils, in the production and marketing of refined oils and fats, the production and marketing of oilseed meals and some derivative protein products.

Crude seed oil

16. Crude seed oil is considered as a commodity. The prices of both seeds and crude oil itself are driven by the quotations on the Chicago and Rotterdam markets. This fact impedes crushing and refining companies to control prices of crude oil which is also influenced by the availability of raw materials (bad crops have a negative influence of prices all along the whole transformation process). Although most provisions of rapeseed and sunflower are obtained mainly within the EEA, there are imports from other parts of the world; Soya seeds and tropical oils have to be imported. Transport does not play a decisive role at this stage of the oil processing industry.
17. Cargill is at present the first producer of crude seed oil in the European market with a share by volume of [...] %⁹ followed by ADM ([...] %¹⁰) and Cereol ([...] %¹¹) as main competitors. Vandemoortele has a market share of [...] %¹², which will give Cargill an aggregated market share by volume of [...] %¹³. Although the number of competitors will be further reduced through this concentration, the two remaining competitors will keep significant market positions at European level. Both ADM and EBS/Cereol belong to large groups and appear to be able to successfully compete with Cargill. Moreover there are also some independent small crushers and refiners active in Europe, such as Thywissen and Broeckelmann in Germany or Aceites Borges in Spain and Karlshamns in Sweden.

Refined oils and fats.

18. Oil refineries are normally located close to crushing facilities and most crushers are refiners at the same time. This is a capital-intensive industry although technology is not too sophisticated and know-how is easily available. Prices of refined edible oil depend mainly on crude oil given that crude oil prices are subject to quotations at Chicago and Rotterdam commodity markets.
19. Cargill is also first refiner of oils and fats with a market share by volume of [...] %¹⁴ followed by ADM ([...] %¹⁵), Cereol ([...] %¹⁶) and Unilever ([...] %¹⁷). Combined market shares of VDM and Cargill will give Cargill a [...] %¹⁸. By excluding captive sales the market share of Cargill after the operation could amount up to [...] %¹⁹. Even with such market position Cargill will be unlikely to exert a decisive influence on this market given that their closest competitors, Cereol and ADM mainly, are also

⁹ Business secret, between 15 and 25

¹⁰ Business secret, between 15 and 25

¹¹ Business secret; between 10 and 20

¹² Business secret; between 5 and 10

¹³ Business secret; between 25 and 35

¹⁴ Business secret; between 15 and 25

¹⁵ Business secret; between 10 and 20

¹⁶ Business secret; between 10 and 20

¹⁷ Business secret; between 10 and 20

¹⁸ Business secret; between 20 and 30

¹⁹ Business secret; between 25 and 35

vertically integrated. At this stage of the oil process there are also some other non-backwards-integrated refiners such as Anglia Oils and Unilever.

Oilseed meals

20. Oilseed meals are made from solid by-product after the crushing of the seeds, so its price is directly linked to commodity prices in the upstream process and to other components of the final mixture made by animal feed manufacturers. Cargill is second producer of oilseed meal at a European level (ADM goes first with a [...] %²⁰ market share in volume and Cereol is third with a [...] %²¹). After the acquisition Cargill will become first with an increase of around [...] %²².

Protein market

21. In this market Cargill and VDM respectively rank 5th. and 4th. with a combined share resulting from the acquisition of [...] %²³. ADM has [...] %²⁴ %, Cereol [...] %²⁵ and PTI [...] %²⁶.
22. In view of the foregoing, it appears that the positioning of the main companies in the market as wholly integrated companies controlling all phases of the seed oil process is limiting the number of companies able to freely compete in this sector. Gradually the smaller groups are disappearing or establishing joint ventures with the big three, namely Cargill, ADM and EBS/Cereol. Therefore in the near future the possibility of new entrants at any of these markets levels appears to be limited unless they are also integrated firms. However, given the respective market positions of the parties and their main competitors, and in view of the factors influencing the demand (notably orientated by price quotations on main markets), as well as the supply (depending for instance on seasonal results of crops), the notified operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of this area.

V. ANCILLARY RESTRAINTS

23. The notified agreement contains three non-competing clauses. First a general non-competing clause relating to VDM not entering [...] ²⁷ in the following [...] ²⁸ years. However in view of the Commission assessment of the long duration of this clause the parties have formally agreed to modify this point by establishing a shorter period of [...] ²⁹ years. This clause as reduced by the parties is ancillary to the concentration. The second one concerns Cargill not entering the [...] ³⁰; this restriction is not necessary to the implementation of the concentration and therefore it cannot be

²⁰ Business secret; between 20 and 30

²¹ Business secret; between 15 and 25

²² Business secret; between 1 and 10

²³ Business secret; between 15 and 25

²⁴ Business secret; between 15 and 25

²⁵ Business secret; between 10 and 20

²⁶ Business secret; between 1 and 10

²⁷ Confidential information related to the market concerned by the non competing clause and/or its duration

²⁸ Business secret; deleted for publication

²⁹ Business secret; deleted for publication

³⁰ Business secret; deleted for publication

considered as an ancillary restraint. The third one is related to the Joint Venture company and has to be assessed under case IV/M.1227.

VI. CONCLUSION

24. For the above reasons, the Commission decides 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 (EEC) N° 4064/89.

For the Commission,