

***Case No IV/M.1376 -  
CARGILL /  
CONTINENTAL  
GRAIN***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 03/02/1999

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.02.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

**Subject: Case No IV/M.1376 – Cargill / Continental Grain**

Notification of 22.12.98 pursuant to Article 4 of Council Regulation No 4064/89

1. On 22.12.1998, the American company Cargill, Inc. (“Cargill”) notified the proposed acquisition of Continental Grains’ Commodity Marketing Group (“CMG”) by way of an asset deal. Cargill will acquire substantially all of the assets of CMG excluding cash and receivables.

### **I. THE PARTIES**

#### **A) Cargill, Inc.**

2. Cargill is a US Company active internationally (through its subsidiaries and affiliates) in a wide variety of businesses. It is an international marketer, processor and distributor of agricultural, financial and industrial products. The company’s businesses include grain and commodity merchandising, oilseed and grain processing and refining, flour milling, meat processing, steel manufacturing and financial services.

#### **B) Continental Grain Company. (“Continental”)**

3. Continental is a highly diversified company, active in many areas. This transaction involves one division of Continental – the Commodity Marketing Group. CMG markets agricultural commodities (notably grains, oilseeds and derivative products (meals and oils)) in various countries world-wide. CMG does not include Continental’s poultry, pork, cattle, aquaculture, flour milling, animal feed and nutrition businesses, or its financial services businesses.

### **II. THE OPERATION**

4. Pursuant to the Purchase Agreement between Cargill and Continental, Cargill will acquire substantially all of the assets of CMG. All property, plant and equipment of

CMG, inventories of CMG on the date of sale and rights under contracts, agreements, leases, licenses, commitments and understandings primarily related to the operations of CMG are to be purchased, excluding cash and receivables. As a result of this purchase Cargill will acquire sole control of CMG, giving rise to a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### III. COMMUNITY DIMENSION

5. The combined aggregate world-wide turnover of the undertakings concerned exceeds 5.000 million EUR (Cargill [...] million EUR, CMG [...] million EUR)<sup>1</sup>. The parties' Community-wide turnover is in excess of 250 million EUR (Cargill [...] million EUR, CMG [...] million EUR), but they do not achieve more than two thirds of their aggregate Community-wide turnover in one and the same Member State. Therefore, this concentration has a Community dimension.

### IV. COMPETITIVE ASSESSMENT

#### 1. Relevant product markets

6. The parties have overlapping activities in the markets for origination, trading and marketing of harvested grains, oilseeds and intermediate oilseed products. Transport of the commodities is not considered since neither party owns any transportation assets in Europe.
7. **Origination** is the market for purchasing crops such as harvested grains and oilseeds directly from farmers. The only overlap occurs in Great Britain in the origination market for grains, since Cargill is active only on that market inside the EU. The combined market share of the parties in Great Britain for softwheat amounts to [ $<10$ ]%, for barley to [ $<10$ ]%.
8. Both parties are active in **trading**, which refers to the paper trade of grains, oilseeds and intermediate oilseed products between traders. Trading takes place both in open cash markets and in organised futures markets such as the Chicago Board of Trade (CBOT) or the MATIF in Paris. The products are commodities with prices quoted daily in newspapers' financial sections.
9. In terms of volumes traded the CBOT is by far the leading futures market in the world for grains and oilseed. For wheat futures, for example, the combined market share on an average monthly volume basis traded at the MATIF and the LIFFE in London amounts to 1,5% of that traded at the CBOT. Prices quoted at the CBOT are used as reference prices in Europe, and European traders write futures in Chicago.
10. According to a report drawn up by the US Commodity Futures Trading Commission (CFTC) there might be a competition concern in the CBOT futures market. The parties will control 37% percent of the delivery points in terms of capacity for the CBOT. Together with the competitor Archer Daniels Midland (ADM) they will account for more than 70% of these delivery points. Control over delivery points might give these

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<sup>1</sup> Figures calculated on the basis of average ECU exchange rates to the extent that they include turnover for the period before 1.1.1999 and translated into EUR on a one-for-one basis.

companies an opportunity to manipulate prices through a combination of long and cash positions resulting in a market squeeze.

11. The system of the agreed delivery points will, however, be changed in the year 2000. After the revision the number of delivery points and the total capacity for maize, soybeans and other commodities will increase considerably. As a consequence, the percentage of delivery capacity owned by the parties will decrease to below 30%. Moreover, no European competitor expressed concern.
12. The situation for the European futures markets is entirely different, since Continental does not own any delivery locations for futures contracts traded in Europe. Cargill owns around 6% of the grain storage capacity approved by the LIFFE.
13. The final step is the marketing to end-consumers. The parties refer to this as **consumptive sales**. Their combined market share for grains sold to third parties in the EU varies between [ $<10$ ] % for rye and barley and [ $<10$ ] % for maize. Both companies are marketing the three main oilseeds consumed in Europe, soya beans, rape and sun seeds. Market shares are [ $<10$ ] %, [between 10% and 20%] and [ $<10$ ] % respectively. For the intermediate products crude seed oil and oilseed meal the parties' share amounts to [between 20% and 30%] and [between 15% and 25%] respectively. All these figures exclude the in-house consumption of Cargill, who, unlike Continental, owns considerable processing and oilmilling capacities in Europe. Consequently, the markets for crude seed oil and for oilseed meal are affected markets.
14. According to the parties the different oilseeds are largely substitutable. What kind of oilseeds are crushed depends mainly on the availability of the seeds and the oil content. Soya, sunflower seeds and rape seeds all result in different yields of meal and oil, but all types of oil may be processed and refined to reach the same functionality for downstream use and further processing. Accordingly, the parties consider it appropriate to identify one single product market for crude seed oils, encompassing all crude oils extracted from the various different raw material origins.
15. The parties maintain, that there is also a significant substitutability between the different oilseed meals as well as between oilseed meal and other products such as grains and peas in animal feed. Accordingly, the parties consider it irrelevant to discuss the various types of oilseed meals separately.
16. The Commission has so far left open the question of the precise segmentation of both the oilseed meal and crude seed oil market.<sup>2</sup> In this case the precise product market definition can also be left open since even on the narrowest possible product market definition effective competition would not be significantly impeded.

## 2. Relevant geographic markets

17. The Commission has concluded in previous decisions, most recently in the Cargill/Vandermoortele case<sup>3</sup>, that the market for crude seed oil and oil seed meal is at least Community wide and probably even wider. The products concerned are

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<sup>2</sup> Cases IV/M.866 Cereol/ÖSAT-Öhlmühle; IV/M. 1225 Cereol/Sofiproteol-Saipol; IV/M.1126 Cargill/Vandermoortele

<sup>3</sup> Case IV/M.1126 Cargill/Vandermoortele

commodities traded internationally at the futures market in Chicago or on the spot market in Rotterdam. There are no barriers to trade for oil seeds and intermediate products. Therefore, for the purpose of this decision, the relevant geographic market for crude seed oil and oilseed meal is considered as at least Community wide.

### 3. Assessment

#### **A. Crude Seed Oil**

18. Cargill is currently the market leader in Europe for oilseed crushing with a market share of [between 25% and 35%]. Cargill's relatively strong position in the market of intermediate oilseed products for consumptive use is, therefore, a reflection of its position as a crusher of oilseeds rather than its position as a trader.
19. If one considers the market of crude seed oil for consumptive sales at the level of the different types of seeds the parties would attain the highest combined market for rapeseed oil, which amounts to [between 25% and 35%] in Europe in the crop year 1997/98. If one considers all crude seed oils to be in the same market the parties would have a share of [between 20% and 30%]. However, Continental adds only [<5%] to Cargill's market share of [between 20% and 30%]. Moreover, there are a number of important, internationally active competitors in this market such as the vertically integrated firms ADM and Cereol and pure traders such as Glencore and André & Cie.

#### **B. Oilseed Meal**

20. Since oilseed meals are made from the solid by-product of the crushing process, Cargill is also the leading European producer of crude oilseed meal with a share of [between 25% and 35%]. The combined market share of the parties in the market for consumptive sales is highest for sunflower meal, where it amounts to [between 25% and 35%] in the crop year 1997/98. If one considers all oilseed meals to be in the same market the parties would have a share of [between 15% and 25%], of which [<10%] can be attributed to Continental. Also in this market there are important, internationally active competitors such as the vertically integrated firms ADM and Cereol and pure traders such as Glencore, Toepfer and Louis Dreyfus.
21. Consequently, the proposed transaction does not create or strengthen a dominant position in the markets for crude seed oil or oilseed meal.

#### **V. ANCILLARY RESTRICTIONS**

22. The notifying parties have submitted one ancillary restriction:

Continental Grain has undertaken not to compete worldwide in the business area currently conducted by the Commodity Marketing Group for a period of 5 years. The transfer involves goodwill and to a certain extent know-how. However, the parties have not provided sufficient reasons to demonstrate that the know-how involved in the transferred activities is as substantial as to justify a restriction beyond 3 years. Therefore, the Commission considers this agreement by Continental Grain not to compete as an ancillary restriction only for a period of 3 years.

## **VI. CONCLUSION**

23. 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) No. 4064/89.

For the Commission,