EN

Case No IV/M.1227 - CARGILL / VANDEMOORTELE - JV

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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 parties

Dear Sirs,

Subject: Case No IV/M. 1227 – Cargill/Vandemoortele - JV
Notification of 18.06.1998 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 18 June 1998, Cargill Inc. ("Cargill") and Vandemoortele International n.v. ("VDM") notified their intention to create a joint venture composed of a set of 5 new companies, to which they will contribute or make available their European activities in the fields of packing and marketing of edible oils.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No. 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of 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.

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 seed oil 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, Cargill will acquire sole control over VDM's upstream business encompassing oilseed crushing and liquid oil refining activities[1]. With the second, subject to the present decision, the parties will create a 50-50 joint venture organised on the basis of 5 separate legal 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.

III. CONCENTRATION

A. Joint Control

7. Although there will be several legal entities, they all will be organised on the same model, having a board composed of an equal number of members representing each party. In order to facilitate decision-making, the Belgian JV will have the role of a sister holding company in relation to the other JVs. This Belgian JV will have a decisive influence on the board of the other entities, and will ensure that the latter comply with the strategic decisions adopted by the Belgian JV. The decisions on annual budgets, business plans, investments, appointment or dismissal of the respective managements will be taken on a parity basis between both parents. As a result, both parties have the possibility to block any decision on the business policy of each national joint venture, as well as of the Belgian JV. Therefore, Cargill and VDM will have joint control over their joint venture.

B. Autonomous full function entity operating on a lasting basis

8. The bottling and packing plants previously owned by one or the other party are concerned by the operation. They are located at seven sites: in Staden and Izegem (Belgium), Liverpool (UK), Château-Gontier and Marseille (France), Riesa (Germany) and Seville (Spain). In general, the relevant assets, such as production equipment, contract rights, technology, trademarks etc. will be transferred to the JV by means of a contribution in kind to the respective national JVs. In some cases, where the facilities are integrated in an industrial site with upstream activities to be operated by Cargill, the land on which the contributed assets are located will be made available to the JV on the basis of a lease agreement. In Riesa (Germany), the oil packing business (to be acquired by Cargill together with the upstream business) will not be contributed in

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kind to the capital of the JV but will be made available by means of a toll manufacturing agreement.

9. Notwithstanding the arrangements mentioned above, the JV will bring about a lasting change in the structure of Cargill and VDM in relation to their edible oil packing operations. The JV will have its own management and sufficient resources including finance, staff and assets.

10. Apart from […][2], all the seven packing facilities are currently sourcing all their refined oil requirements in-house (except for olive oil requirements), mainly by internal pipelines. This is due to the integration of refining and bottling activities on the same sites. Following the transaction, Cargill will operate the refineries and thus will supply almost all the oil used by the JV. However, Cargill will have an obligation to meet the JV's requirements for refined oil on an arm's length basis and at a fair market price based on a defined commodity market. Similarly to other non vertically integrated oil packers, the JV will buy oil on the so called "paper market" (mainly in Rotterdam). […][3]. Accordingly, such a mechanism will ensure the JV to control its sources of oil and to purchase crude oil at arm's length basis. Furthermore, Cargill will be required to grant the JV […][4]. Although the JV will not have access to Cargill's books, it will be entitled to have them checked by third party auditors.

11. As regards its sales, the JV will play an active role on the market, being responsible for the sales organisation, the marketing and the pricing of its packed oils. Although it will use VDM's sales force, the latter will merely act as an agent for the JV. On this basis , VDM will mainly distribute […][5].

12. Finally, the JV will add significant value to bulk refined oils by packing, blending and marketing the oil. It will have own equipment to blow PET bottles and develop new shapes. It will be able to blend oils according to customer's needs to reach a desired functionality. Based on VDM's average costs for 1997, the value added by packing is estimated to account for approximately […]%[6] of the crude oil costs. In general, the parties estimate that the value added by packing may vary between 25% and 40% of the price of refined oil.

13. As the joint venture is geared to play an active role on the market, the presence of the parent companies as supplier or distributor does therefore not call into question the full function nature of the joint venture. It can therefore be concluded that the joint venture will operate on a lasting basis and will perform all the functions of an autonomous economic entity.

IV. COMMUNITY DIMENSION

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2 Confidential information; deleted for publication

3 Confidential information related to purchasing and delivery policy of the parties; deleted for publication.

4 Confidential information related to commercial treatment of the JV by Cargill; deleted for publication

5 Confidential information related to distribution policy of the parties; deleted for publication

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14. The parties have a combined aggregate world-wide turnover in excess of ECU 5,000 million (Cargill alone achieved […][7] million in 1997). Cargill and VDM have a Community-wide turnover in excess of ECU 250 million (Cargill: […][8]million, VDM excluding the turnover attributable to the business to be sold: […][9]million). The parties 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, but does not constitute a co-operation case under the EEA Agreement.

V. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product market

15. Edible oils used for human consumption may be packed in bottles, tins or cans, either by oil producers operating from the "front-end" stage of oilseed processing, or by intermediate refiners of crude oils, or by independent packers which are not vertically integrated. Principal customers of packed oils are the major food multiple retailers, the catering and food services sector and bakeries. The main seeds used for edible oils are soybeans and sunflowers, rapes or groundnuts. Although certain consumer preferences are observed, all kinds of seed oils can normally be used for the main applications in the packed oil sector, and a large number of oil products are made out of blended oils, even if for certain purposes, specific oils are used rather than others. The prices of refined and packed oils are influenced by the fluctuations of the crude oil prices, which are in turn depending on the respective prices of seeds. Given the interdependency of the seed oil prices and the large supply-side substitutability all packed seed oils can be considered as belonging to the same product market. For the same reasons packed maize oil is also substitutable for seed oils, to a large extent. In a previous case[10], the Commission also noted that all seed oils have similar characteristics regarding production, marketing and market prices, but distinguished between olive oil and other edible oils. Although they submit that consumers increasingly view olive oils and other vegetable oils as substitutable, the parties do not provide any evidence supporting that these two groups of products could be included in one and the same relevant product market. According to most of the competitors or customers contacted by the Commission, taste preferences of consumers, uses and prices of olive oils still significantly differ from the ones of seed oils and supply-side substitutability is not applicable to the same extent. Therefore olive oils still appear to constitute a separate product market.

16. According to some third parties, premium brands cannot be substituted by distributor's own brands (DOB). Premium brands account for a minor part of the packed oils consumed but are significantly more expansive than DOBs. However, it is not necessary for the purpose of the present decision, to decide whether the market for packed oils should further be sub-divided into branded oils and DOB's, since on all alternative market definitions, the operation does not raise serious concerns.

B. Relevant geographic market

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9 Business secrets; deleted for publication

10 Case No IV/M.421 – Medeol/Elosúa – decision of 06.06.1994

17. In the Medeol/Elosúa case, the Commission considered that the relevant geographic market for packed vegetable oils remained in principle national, even though there was a certain amount of cross-border trade in bulk oil. The parties argue that there is now a more substantial level of trade between certain European countries, in particular the Benelux countries, France, Germany and the UK, and thus that the market is in the process of becoming Community-wide. According to the parties, sales of own label products are made at least at EC-level because the big supermarket chains have developed pan-European purchasing policies in recent years. Furthermore, national brands would be of relatively minor importance in the vegetable oil sector, compared to most fast moving consumer goods.

18. The investigation carried out by the Commission leads to the view that although national markets still constitute relevant geographic markets for edible oils, in certain areas, transborder regions mainly, a wider dimension of the geographical market is acceptable. Indeed, the view of a national dimension of the markets is in general shared by a number of competitors and customers. However, there are indications that in particular competitors operating in areas relatively close to Belgium, which is particularly affected by the concentration, are likely to enter or to easily increase their present sales in that country and can already be considered as actual competitors.

19. Notwithstanding the fact that the national nature of the markets for packed vegetable oils seems to be applicable to most European countries, Belgium shows specificities which makes it susceptible to be included in a wider relevant market covering other European regions such as the transborder regions of France and Germany, the Netherlands and Luxembourg, as well as some production areas in the UK.

20. In order to have a clear view of the market dimension it is important to focus both on the demand and on the supply side of the product market. From the consumers perspective Belgium has experienced a shift from branded to non-branded products. Branded products amount to approximately 1/3 of total sales in the Benelux. Nevertheless, taking into account that two thirds of the packed seed oil sales in the Benelux countries are accounted for by large retailers own brands (DOBs), it can be deduced that customers' choice in this area is largely based on price rather than on brands. This could explain the considerable development of sales of DOBs over the last years. When examining the national dimension of markets for consumer goods, the Commission bases its conclusion, among other facts, on consumer preferences for national brands. Although there are still national brands of seed oils in Belgium (all significant ones being owned by VDM), the Commission considers that this does not necessarily justify limiting the relevant geographic market to the strict boundaries of this country. In particular, specific regional factors simplify cross border imports of DOBs as well as of branded products, from the neighbouring countries to Belgium. Therefore, there are indications that, from a demand side perspective, the relevant geographical market can be considered as including cross border areas.

21. Distribution channels also play an important role for penetrating some segments of a national market. In Belgium VDM sales to caterers account for approximately […]%[11] of total sales while sales to retailers account for […]%[12]. This percentage is comparable in France and in the Netherlands, but is more balanced for other countries

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11 Business secret; deleted for publication

12 Business secret; deleted for publication

such as Germany and the UK. In general, the increasing importance of the retailing sector is confirmed by the Commission investigation in this case. Large retailers base their sales strategy for fast moving consumer goods on low prices and DOBs, and their purchasing policy is mainly based on tenders for the supply of their own-brand products for relatively short periods of time (contracts of 3 to 6 months' duration). Although retailers are still mainly organised on a national basis, there is a trend to internationalisation of this sector, in particular in Belgium. Amongst a few large-scale retailers operating in this country, one has already centralised purchasing in Germany and another one is establishing links with a French group. This leads also to the conclusion that, at least as regards Belgium, the relevant geographic market is not limited to its national boundaries.

22. If analysing the market from the supply side the main factor to be considered is the existence of no physical or commercial barriers to trade, which together with the limiting factor of transport costs will determine the sales policy of main producers of the product.

23. Transport costs may limit the possibility to export beyond a certain distance from the bottling plant. Delivery costs amount to approximately 2-4 % of the sales price and vary according to the distance of delivery and the price of the different types of oil, for instance: The parties estimate that the average delivery distance of their plants located in Belgium is 350-550 Km. This distance could be smaller for packed oils with lower added-value (i.e. a competitor states that cheaper oil like sunflower could not be delivered on a competitive basis beyond 300 Km). However the added value obtained at this stage by bottling and packing is high. This factor suggests a wider perspective for the geographical market delineation, provided other competitors to the parties (i.e. other bottling plants) are located within the average delivery distance.

24. For the above mentioned reasons the Commission considers that for the product market previously defined, the geographic market to be considered although still remaining national in principle for countries in the EEA, can encompass neighbouring regions, as well as other areas likely to supply without significant cost differences. In view of the special characteristics of the region mainly affected by the concentration, the relevant geographical market, for the purpose of the present assessment, is not limited to Belgium but also include at least certain neighbouring areas where bottling plants are located within a reasonable distance (at least 300 km).

C. Assessment

25. At EU level, the packed oil sector appears to be increasingly vertically integrated and follows a parallel concentration process as observed at the upstream stage. The total seed oils packing capacities of the parties amount to […] tons/annum[13], and are mainly concentrated in Belgium ([…] kt[14]) and France ([…] kt[15]). In terms of capacities as well as of sales, the JV willrank second at EU level with a share of 15-20%. Cereol/Lesieur will remain the first producer of packed oils with approximately […]%[16]. Unilever ([…]%[17]) will be the third player. The next competitors are

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Brökelmann and Acatos&Hutcheson. They have lower positions at EU-level (less than 5%). However, both are backwards integrated and enjoy stronger positions (above 20% market shares) in their respective domestic markets (Germany and UK). In the light of the above, it can be considered that no serious problems can result from the concentration at EU-level.

26. At national level, the parties will not have combined market shares exceeding 40% except in Denmark, Ireland and Belgium. In the first two countries, as far as they constitute relevant geographic markets, the concentration will not produce significant overlaps and strong competitors, such as Unilever or Cereol will still have a significant market share. However, in the Benelux and especially in Belgium/Luxembourg, the JV will be by far the first supplier with a combined market share of […]%[18] in the latter segment (VDM […]%[19]., Cargill […]%[20]). If one considers the whole Benelux area, the concentration would still produce a significant impact (combined market share of the parties exceeding […]%[21] i.e. more than 6 times the share of the next competitor, with an increment of almost […]%[22]).

27. In the Benelux, the next competitor will be Unilever. This producer has a market share of […]%[23] in Belgium/Luxembourg and […]%[24] at Benelux level. Unlike the parties, Unilever is not vertically integrated in the crushing business and has to […][25] for a significant part of its procurement of bulk oil. In the Benelux, the next vertically integrated competitor is the German company Brökelmann, which is second supplier in The Netherlands (with […]%[26]), but is not present in Belgium. Amongst the main competitors of the parties at European level, only Cereol/Lesieur is present, although with marginal market shares ([…]%[27] in Belgium and […]%[28]at Benelux level).

28. There are a few independent producers remaining active in the oil-packing sector in the Benelux, such as Burg, AOH, AOR, and Vandamme. According to the parties, their combined market share amounts to approximately […]%[29] of the Benelux market. However, they are essentially active in The Netherlands or in the export business outside Benelux.

29 Given the presence of strong competitors, as well as several smaller bottlers in the Netherlands, it can be excluded that the concentration will lead to the creation of a dominant position in this Member State. Indeed, the strong position of the parties in the Benelux essentially results from their position in Belgium, which constitute the core of the relevant market to be assessed. It has to be noted that the bulk of the relevant product consists of DOBs, purchased by multiple retailers. These customers usually buy large quantities of oil covering their needs for a relatively short period (3-

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6 months), by means of tender processes. Therefore, as the retail sector in Belgium is quite highly concentrated, market positions are likely to fluctuate according to the purchasing policy of a few large customers. Nevertheless, a careful examination of the Belgian segment has been carried out.

30. In Belgium/Luxembourg, the new joint venture will benefit from VDM's "quasi monopoly" on the branded segment for seed oils, as well as from its large range of products in the neighbouring market for packed fats. However, there will be no overlap on this segment since Cargill does not market any brand in Belgium. The main brands likely to compete with VDM's are currently owned by the competitors Cereol/Lesieur and Unilever. Therefore, the concentration will not have a significant impact on this segment, but only on the DOBs segment.

31. The situation in the relevant regional market notably reflects the fact that, after the acquisition of the Debeil oil bottling plant in Staden by Cargill in 1995, the parties became the two largest domestic producers in Belgium, with comparable capacities, considerably exceeding the demand of this Member State. Recently, the last small vertically integrated producer (Vandamme) decided to concentrate on its maize-oil business for export and to withdraw from Belgium. Therefore Cargill and VDM became the main suppliers of the retail sector, which account for approximately 70% of the total demand on the Belgian segment. According to customers and competitors, the competition between both companies on the main segment for DOBs dissuaded other competitors to enter the market.

32. After the operation, this competition between Cargill and VDM on the segment for distributors own labels will disappear. However, the specific characteristics of the present case have to be taken into account for a proper assessment of the consequences of the concentration. Given the location of the ports of Antwerp and Rotterdam, where considerable volumes of crude and refined oils are traded, the relevant market is an important region of production for bottled oils (in particular Belgium accounts for 14% of total EU capacity), which is mainly devoted to export markets. This provided until now little incentive for the customers to purchase from other producers, as long as competition between them, as well as the strongly concentrated retail sector ensured good market prices.

33. As already mentioned, there are no barriers to importing packed oils from outside Belgium and cross border trade is likely to increase after the concentration. On a relevant regional market delimited by an average delivery distance for packed oils of 300-350 km, there are 10 bottling sites of third parties, able to meet the demand of Belgian customers. The investigation carried out by the Commission demonstrate that amongst them, several important packing plants are operated by competitors which are relatively close to Belgium and can also produce for this segment of the relevant market, without being limited by transport costs. Those competitors are likely to supply the parties' main customers without delay, thus preventing the creation of a lasting dominant position. In particular Cereol/Lesieur appears to be in a position to easily develop its presence on the relevant regional market. This competitor has sufficient capacity to meet any switch of the demand coming from Belgium. Another competitor (A&H), linked to the major crude oil producer ADM has also considerable bottling capacities in Kent, from which it can supply Belgium at low transport costs. Indeed,. Unilever already sells olive oil in Belgium and is also able to easily supply this area from its plants in the Netherlands. Beside these competitors, smaller bottlers like Vandamme (which already has a packing unit in Belgium) may

also constitute alternative sources of supply within the relevant regional market. Some of them have already been approached by Belgian retailers, as the present concentration was known.

34. In any event, the investigation shows that the main Belgian retailers are able to purchase from competitors of the parties. Some of them are already considering reviewing their purchasing policy in order to keep alternative sources of supply. Therefore, even though Cargill becomes the first producer of crude and refined oil in Europe and becomes a major player in Rotterdam, the JV will not be able to impede competition on the relevant regional market. The evidence shows that important competitors like Cereol, Unilever or Acatos&Hutcheson will maintain a sufficient degree of potential or actual competition, so as to prevent any possible adverse effects of the concentration. Therefore it can be excluded that the concentration will lead to the creation or strengthening of a dominant position on any of the relevant markets.

VI. ANCILLARY RESTRAINTS

35. The notified agreement contains three non-competing clauses of which one concerns the present concentration. By this clause, Cargill and VDM each undertake not to compete with the JV on the downstream market for packed oils. This arrangement is ancillary to the implementation of the concentration as it reflects the parties' lasting withdrawal from the packed oil market.

VII. CONCLUSION

36. 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,