

***Case No IV/M.1497 -  
NOVARTIS /  
MAÏSADOUR***

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: 30/06/1999

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.06.1999

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Dear Sirs,

**Subject: Case No IV/M.1497- Novartis/ Maisadour**

Notification of 28.05.1999 pursuant to Article 4 of Council Regulation 4064/89

1. On 17.05.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as amended by Council Regulation (EEC) No 1310/97, by which the undertakings Novartis Seeds S.A (“Novartis”) and Maisadour (“Maisadour”) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of Maisadour Semences S.A (“Maisadour Semences”) by way of purchase of shares in a newly created company constituting a joint venture.

**I. THE PARTIES' ACTIVITIES AND THE OPERATION**

2. Novartis Seeds S.A belongs to the diversified life sciences group Novartis International which is mainly engaged in healthcare, medical nutrition and plant protection. Novartis Seeds is active in the development, production and distribution of seeds for various crops. Maisadour which is mainly active in France, is an agricultural co-operative engaged in various activities, particularly in the development, production and distribution of seeds for maize and various other crops and the distribution of phyto-sanitary products.
3. The notified transaction, according to the General Agreement (“Accord de Partenariat”), involves the creation by the parties of a new company Maisadour Semences S.A (“Maisadour Semences”), with its place of business in France. Maisadour will transfer most of its maize and sunflower seeds activities, including assets valued at some Euro [...] million and accounting for approximately [...] % of its total turnover to the joint venture. The joint venture will be active in the main stages of the seeds business, from research and development to the marketing of seeds. Maisadour will hold 60% of the new company and Novartis will acquire the remaining 40% share.

## **II CONCENTRATION**

### **Joint control**

4. According to the Shareholder's Agreement ("Pacte d'Actionnaires") annexed to the General Agreement, both parent companies will be able to exercise decisive influence over Maisadour Semences although they will not own equal shares in the joint venture. Firstly, there will be a Steering Committee ("Comité de Pilotage") made up of an equal number of representatives of each party. According to the Shareholder's Agreement, strategic decisions such as investments, budget, business plan and strategic plan must be unanimously approved by the "Comité de Pilotage". Moreover, all operational agreements between the parent companies and the joint venture and all agreements with third parties susceptible of having a significant influence on the joint venture need the prior approval of the "Comité de Pilotage". Secondly, although the number of members of the Board of Directors reflects the parties' shareholdings in the joint venture, article 3 of the shareholding's agreement requires unanimity among directors or the approval of the Comité de Pilotage as far as strategic decisions are concerned. Thirdly, the appointment of the future Chairman and the future CEO must be approved by Novartis. Therefore Novartis and Maisadour will have joint control over Maisadour Semences.

### **Autonomous full function entity operating on a lasting basis.**

5. The new entity will take over all of Maisadour's seeds activities, except for the multiplication of seeds (field production) which will be subcontracted. This is however common practice in this sector. Maisadour Semences will have a management dedicated to its normal day to day operation and sufficient resources including finance, staff and assets in order to conduct on a lasting basis its business activities. Its existence is not limited in time. The creation of the joint venture will thus bring about a lasting change in the structure of the undertakings concerned. The joint venture will therefore carry out all the functions normally associated with companies operating in this field.

## **III. COMMUNITY DIMENSION**

6. Novartis and Maisadour have a combined aggregate world-wide turnover in excess of EURO 5000 million (Novartis: 19,54 billion, and Maisadour EURO 520 million). Each of them has a Community-wide turnover in excess of EURO 250 million (Novartis: 6,02 billion, and Maisadour EURO 520 million). Maisadour generates more than two thirds of its Community-wide turnover in France. This is not the case for Novartis which does not achieve more than two-thirds of its Community-wide turnover in any Member State. The notified operation therefore has a Community dimension.

## **IV. COMPATIBILITY WITH THE COMMON MARKET**

### *Product market*

7. In previous decisions<sup>1</sup>, the Commission considered that the development and breeding of seed varieties and the production and sale of seeds can in general be included in one single relevant product market, with the exception of propagation of seeds (field production). Propagation of seeds, consisting of multiplying the basic seeds, may

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<sup>1</sup> IV/M.737 – Ciba-Geigy/Sandoz. IV/ M.556. Zeneca/ Vanderhave. IV/M.1512 - DuPont/Pioneer

constitute a separate market, on which farmers and agricultural co-operatives are active on the supply side. Furthermore, as the various kinds of seeds are not mutually substitutable, they each constitute separate product markets. The same conclusion applies in the present case. Therefore, Maïsadour Semences' principal products, maize and sunflower seeds, constitute two separate relevant product markets.

#### *Geographic market*

8. The parties refer to previous cases<sup>2</sup>, where the Commission mentioned a number of facts suggesting that the relevant geographic dimension of markets for seeds might be national. However, it is not necessary to conclude whether the market for maize or sunflower seeds are wider than national in scope, since on the basis of the inquiry conducted by the Commission, the operation does not lead to the creation or the strengthening of a dominant position, even on a national basis.

#### *Competitive assessment*

9. The joint venture will not be active as a supplier on the market for propagation of seeds. As regards production and sales of seeds, only Maïsadour intends to transfer its entire maize and sunflower seed activity to the joint venture. Novartis will pursue its own activities on this market as a seed producer. Therefore, the following assessment analyzes market share additions between Novartis and Maïsadour Semences.
10. The concentration leads to horizontal overlaps between the parties' activities on certain geographic markets for maize and sunflower seeds. At European level, the estimated combined market share of the parties will amount to approximately 15-20% for both maize and sunflower seeds, in both volume and value terms. On this basis, the market leader is Pioneer with a market share for maize seed of between 20-30% whereas Monsanto is the market leader in the sunflower seed market with a market share of approximately 25 %.
11. At national level, the operation produces combined market shares of [15-20]% for both maize and sunflower seeds in France, which accounts for 45%-50% of the total European market for maize. Higher market shares (25%-35%) are observed for maize seeds in Spain/Portugal and Greece and for sunflower seeds in Italy. On all these markets, the increment in market shares resulting from the operation amounts to less than [5-15]%.
12. Moreover, a number of competitors are active on these national markets and in none of them will the new entity be the largest supplier. On the French market the largest suppliers are Groupe Limagrain and Pioneer as regards maize seeds (with respectively 33% and 20%) and Monsanto and Pau/Euralis as regards sunflower seeds (with market shares between 20% and 30%). As far as Greece is concerned, Pioneer is by far the leader and there are a number of smaller competitors (Veterin, Spirou, Agribus, and Porfarm, with market shares of around 5% each). In view of the market positions of the parties and their competitor's, it can be concluded that the operation will not create or reinforce a dominant position neither at European level nor on any national market.

## **V. ANCILLARY RESTRAINTS**

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<sup>2</sup> IV/M.737 – Ciba-Geigy/Sandoz ; IV/M.556 - Zeneca/Vanderhave.

13. The parties have notified 6 agreements between the joint venture and its parent companies, which they consider to be necessary to the implementation of the concentration. Three of them (annexes 10 to 12 of the General Agreement) concern various licenses and co-operation arrangements in particular in the field of biotechnology. Two others (annexes 8 and 9 of the General Agreement) consist of a seeds propagation tolling agreement with Maisadour on the one hand and a supply agreement with Novartis on the other hand. Both production and breeding agreement will have a duration of ten years. The seeds propagation agreement concerns a substantial part of the field production of seeds to be carried out by the members of the Maisadour co-operative. According to the second agreement, the joint venture intends to supply Novartis with a volume of maize seeds sufficient for [...] hectares. These sales to Novartis are estimated to account for around [...]% of the current turnover achieved by Maisadour's seed business. The last agreement (annexe 13 of the General Agreement) provides a right for the joint venture to have access, on a non-exclusive basis, to new phyto-sanitary products developed by Novartis for the chemical treatment of seeds during the production process.
14. Since Novartis will remain active as a seed producer, it will retain its property rights in this sector. Therefore, the non-exclusive license and co-operation agreements, ensure the transfer of know-how necessary for carrying out the activities assigned to the joint venture and will serve as a substitute for the transfer of property rights. Thus these agreements are necessary for the implementation of the concentration.
15. The situation is different in relation to the other agreements. As concerns the two production and breeding contracts between the joint venture and its parent companies, the parties argue that they replace the existing commercial arrangements between Maisadour and Novartis. Therefore they would ensure the continuity of supply to one or the other of the parties, of products necessary to the activities of both the joint venture and its parent companies. However, the parties have not given any objective reason for the duration clause of 10 years. The only reasons mentioned are a close connection between the joint venture and Maisadour, and the time span necessary for the development of new varieties of maize seeds to be bred and multiplied for Novartis.
16. According to the Commission's notice regarding restrictions ancillary to concentrations, if the parent undertakings remain present in a market upstream or downstream of that of the joint venture, any purchase and supply agreements are to be examined in accordance with the principles applicable in the case of the transfer of an undertaking. Therefore, the duration of procurement and supply obligations must be limited to a period necessary for the replacement of the relationship of dependency by autonomy in the market. As an autonomous undertaking, the joint venture should be able to subcontract the propagation of its seeds to suppliers of its choice. The necessity to rely on experienced farmers and high quality of land can at most justify a transitional period which would have to be much more limited than 10 years. As regards the agreement to be concluded between the joint venture and Novartis, its long duration goes beyond what was agreed between Maisadour and Novartis prior to the concentration. This duration can therefore not be explained by the need for the replacement of the existing commercial relationships. Nor can it be explained by the fact that new seeds need certain development periods. The claimed need for a long term agreement in view of the time span necessary for the new development of seeds is in any event not directly caused by the setting up of the joint venture. Therefore, in view of the arguments put forward by the parties, the production and breeding agreements between the joint venture and its parent companies are not limited to a reasonable transitional period. Thus they are not covered by the present decision.

17. The non exclusive agreement (annex 13) granting the joint venture access to Novartis' new developed products for chemical seed treatment (phyto-sanitary products) appears not to be necessary for the implementation of the operation. The joint venture can procure its requirements from third parties. Moreover, although Maisadour does not produce chemicals for seed treatment, there was no commercial agreement of that kind prior to the concentration. This agreement is therefore not covered by the present decision.

## **VI. CONCLUSION**

18. 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,