



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.08.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M.2029 Tate & Lyle/ Amylum

Notification of 07/07/2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On the 7th July 2000 the Commission received a notification of a proposed concentration pursuant of Article 4 of Council Regulation (EEC) No. 4064/89¹, whereby Tate & Lyle PLC proposes to acquire sole control of Amylum UK Limited and Amylum Europe NV, which are both jointly controlled by Tate & Lyle PLC and Compagnie Industrielle er Financiere des Produits Amylaces S.A.
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. **Tate & Lyle PLC (T&L)**, a UK company, is primarily involved in the processing of carbohydrates. It produces cane and beet sugar and refines cane sugar. Through its subsidiary A.E. Staley Holdings Inc (Staley) is also produces sweeteners, starches and fermentation products. Staley is 90% owned by T&L (directly and indirectly through Amylum), the remainder is held by Compagnie Industrielle er Financiere des Produits

¹ OJ L 395, 30.12.1989 p.1 corrigendum OJ L 257 of 21.09.1990, p.13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p.1, corrigendum OJ L 40, 13.2.1998, p 17)

Amylaces S.A. (CIP). T&L also operates a world-wide sugar and molasses trading and bulk storage business, including animal feed activities.

4. **Amylum UK Limited**, UK, and **Amylum Europe N.V.**, Belgium, (together referred to as Amylum) produces cereal sweeteners and starches. It is jointly controlled by T&L and CIP holding 63.3% and 36.7% respectively, each company has 50% of the voting rights.

II THE OPERATION

5. T&L proposes to acquire 100% ownership of Amylum by purchasing from CIP its 36.7% shareholding. CIP is a private investment group based in Luxembourg. This acquisition represents a shift from joint control of Amylum to sole control by T&L. Part of the same transaction is the acquisition by T&L of the remaining shares (10% attributable) in Staley from CIP. Since Staley is already under T&L sole control this acquisition is not a concentration for the purposes of the Merger Regulation. In addition to cash for its sale of its interests in Amylum CIP will also receive a non-controlling 5% interest in T&L.

III CONCENTRATION

6. The operation is a concentration in the sense of Article 3(1)(b) of the Merger Regulation since T&L will acquire sole control of Amylum.

IV COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than €5 billion² [T&L (*Deleted for publication; business secret*) million, Amylum (*Deleted for publication; business secret*) million]. The aggregate Community-wide turnover of each party exceeds €250 million [T&L (*Deleted for publication; business secret*) million, Amylum (*Deleted for publication; business secret*) 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.

V COMPETITIVE ASSESSMENT

8. Three product markets have been identified where the activities of T&L and Amylum overlap. These are sweeteners, starches and corn gluten animal feed.

The relevant product market

(A) Sweeteners

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). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

9 The Commission has previously (Eridania/ISI M.062) considered the market for sugar produced from sugar beet and sugar cane distinct from the market for sweeteners such as glucose, saccharin, aspartame etc for reasons including limited substitutability and large price differentials. The notifying party argues that this is still the case and that sweeteners should be considered separately. In this case, however, the precise market definition can be left open as it will not affect the analysis.

10 The geographical market for sugar is said by the parties to be Community wide based on the fact that production of isoglucose and sugar fall within the EU sugar regime which sets country-wide production quotas. Other sweeteners have no quota system or any other regulatory or commercial barriers. The geographic market for sweeteners is therefore considered to be EU-wide. In this case it is not necessary to decide on the geographic market as even when national markets are considered the concentration does not give rise to competition concerns.

(B) Starch

11 The notifying party suggests that starch and starch derivatives are within one market, because despite limited demand substitutability in some instances, there is high supply side substitutability. For completeness the parties also consider further segmentation of the market into native and modified starches separately. The market definition in this case can however be left open, as even under the narrowest definition the concentration does not give rise to competition concerns.

12 The market for starches is considered to be Community-wide as there are no significant regulatory or other barriers to trade, with the exception of potato starch which is subject to the EU potato starch regime. National market shares are also considered. As above the geographical scope of the market can be left open.

(C) Animal feed

13 The parties overlap in the supply of corn gluten feed which is a by-product from starch and sugar production primarily used for animal feed although other uses are developing. The market is considered, by the parties, to be greater than the corn gluten feed market comprising of all animal feed products including corn gluten feed. The precise decision, however, can be left open as the analysis of this case would be the same irrespective of the market definition used.

14 The market is considered to be national although there are no trade barriers and trade flows are significant. However, transport costs are high and suppliers compete on a national basis through supply points. With the exception of the UK there may be a chain effect across the EU. It is, however, not necessary for the Commission to decide on the precise market definition as even when national markets are considered the concentration does not give rise to competition concerns.

Assessment

15 This is an acquisition of sole control by T&L over Amylum and is unlikely to change the market position of Amylum substantially. T&L already holds a controlling interest in Amylum and CIP does not have any other interest in the starch and sugar industry.

(A) Sweeteners

16 The only overlap in sweeteners occurs between Staley and Amylum in relation to maltodextrins (used for example in baby food, sports drinks and instant foods). The combined EU market share of Staley and Amylum for sweeteners is [20-30]% (Staley [<1]%) and for sugar and sweeteners it is [5-15]% (Amylum [1-10]%, Staley [1-10]%).

17 If markets were considered to be national the following affected markets are identified: (i) For sweeteners; France [15-25]% (Staley [<1]%) and Italy [20-30]% (Staley [<1]%). (ii) For sugar and sweeteners Greece [10-20]% (Staley [<5]%), Portugal [35-45]% (Staley [35-45]%) and UK [30-40]% (Amylum [1-10]%, Staley [25-35]%). Only if the market is considered to be wide, including both sugar and sweeteners, and national does a substantial overlap in activities occur and then only in the UK market. The incremental increase to T&L market share will, however, not change its market position or the market structure significantly, the market is characterised by two large producers T&L and British Sugar and four other medium sized firms. On the basis of the above the Commission concludes that for sweeteners the concentration does not raise serious doubts as to its compatibility with the common market.

(B) Starch

18 On an EU wide basis the combined market shares of the parties would be [5-15]% for all starch products and [1-10]% for modified starch products. In both cases the incremental increase is minimal ([<1]%). On a national basis Belgium, the Netherlands and Spain are affected markets for starch as a whole and for modified starch. The largest combined market share of [25-35]% occurs in Belgium, however in all cases the increment is [<1]% or less. The Commission therefore concludes that for starch the concentration does not raise serious doubts as to its compatibility with the common market.

(C) Animal feed

19 The combined market shares for animal feed on both EU and national basis does not exceed [5-15]% in any market and the largest increment is [<5]% (in the UK). For the corn gluten feed market the combined EU market share is [10-20]% (Amylum [<5]%). On a national basis the Netherlands and Spain are identified as affected markets with shares of [25-35]% (Amylum [1-10]%) and [20-30]% (Amylum [1-10]%) respectively. Given the relatively small incremental increases and the existence of potential competition (on-farm mixing, other meals and overseas suppliers) the concentration does not give rise to serious competition concerns for animal feed or any segment thereof.

21 On the basis of this information the Commission concludes that the concentration does not raise serious doubts as to its compatibility with the common market.

VI CONCLUSION

22 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 (EEC) No 4064/89 and Article 57 of the EEA Agreement.

For the Commission,
Signed by P. Solbes Mira
(Member of the Commission)