EN

Case No COMP/M.2330 - CARGILL / BANKS

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 09/03/2001

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6.1(b) DECISION

To the notifying parties

Dear Madam/Sir,

Subject: Case No COMP/M.2330 Cargill/ Banks
Notification of 08/02/2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 08/02/2001, the Commission received a notification of a proposed concentration whereby the undertakings Cargill Plc. ("Cargill") controlled by Cargill Inc. and SCB Holdings (Sandy) Ltd. ("Banks") combine their agricultural merchanting activities in the United Kingdom ("UK") in a full-function 50/ 50 joint venture (the "JV").

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Cargill**,** a wholly-owned subsidiary of the US group Cargill Inc., is active in commodity trading, the processing and distribution of foodstuffs and in agricultural merchanting.

4. Banks is the holding company of the agricultural merchanting business of the Banks group of companies. Banks' most significant business is agricultural merchanting in the UK, including the marketing of cereals, oilseeds and pulses grown in the UK and the supply of inputs to farmers in the UK for the production of cereals, oilseed and pulses, root crops, salads and other vegetables.

II. THE OPERATION

5. The operation concerns the creation of a full-function joint-venture including all of Cargill and Banks' agricultural merchanting activities in the UK with the exception of Gleadell Banks, a joint-venture company active in agricultural merchanting in which Banks holds a 50% share. Banks will in addition contribute its Usborne Grain business.

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Joint control

6. The JV will be owned 50/ 50 by Cargill and Banks, giving each party the possibility to block any major decision. […]. The JV is therefore controlled jointly by Cargill and Banks.

Full-functionality

7. The JV will, according to the parties, perform on a lasting basis all the functions of an autonomous economic entity, with its own management and sufficient resources including finance, staff and assets. Sales to the parent company mainly include grain and oilseeds to Cargill's trading business, currently accounting for approximately […] of Cargill's UK Agricultural Merchanting division turnover (parties' data). These sales will be on normal commercial terms.

III. CONCENTRATION

8. The transaction is a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million[1] (Cargill Inc. € 52,300 million and Banks €[…] million). Each of the undertakings concerned have a Community-wide turnover in excess of EUR 250 million (Cargill Inc. € […] million and Banks € […] 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. It does not constitute a co-operation case under the EEA Agreement.

V. COMPETITIVE ASSESSMENT

A. Relevant Product Markets

10. Agricultural merchants purchase grain, oilseeds and pulses from farmers and supply seed, fertiliser, crop protection and animal feed products to farmers. Produce purchased from farmers is supplied primarily to millers, maltsters, animal feed producers and international grain traders.

11. The parties submit that the relevant product market is agricultural merchanting, without any further sub-division, e.g. according to the traded products. By contrast, the Commission has in previous cases (e.g. M.026 Cargill/ Unilever) considered different traded commodities as separate relevant product markets. In Cargill/ Unilever, the following markets were identified:

    - Production and sale of agricultural seed

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1 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.

- Purchase and sale of fertilisers
- Purchase and sale of agrochemicals
- Purchase and sale of animal feed
- Purchase and sale of grain and pulses
- Purchase and sale of oilseed rape

12. The operation leads to an horizontally affected market in only one of these markets, the purchase and sale of oilseed rape. However, the exact product market definition can be left open, because the operation does not create competition concerns even if the markets for the purchase and sale of oilseed rape are considered separately.

13. Furthermore, a vertically affected market exists for the crushing (processing) of oilseeds, i.e. the production and sale of crude seed oil and oilseed meal, which is a downstream market to oilseed purchasing and sale.

B. Relevant Geographic Market

14. The parties submit that for the purchasing of oilseed rape a national (UK) market should be considered. Although most farmers interact with their agricultural merchant(s) on a local basis, the parties argue that, in line with the Commission's findings in M.026 Cargill/ Unilever, the conditions of competition do not vary appreciably throughout the UK. In particular, according to the parties, two firms (Dalgety and Allied Grain) compete throughout the UK, while several others are active in multiple regions. The parties, furthermore, claim that increasing centralisation of merchanting functions through the use of the telephone, travelling staff and the internet has reinforced the national market structure.

15. However, the parties' market share varies significantly between various regions, with Cargill/ Banks' combined market share ranging from [5-15%] (Hull/ Yorkshire) to [20-30%] (South East). In addition, the Commission has found in its market investigation that farmers prefer to interact with merchants that have local representatives. Personal contact is preferred over telephone contacts or new media (such as the internet). It can, therefore, not be excluded that the geographical market for oilseed rape purchasing is smaller than national.

16. As concerns the sale of oilseed rape, the relevant geographic market is at least the UK and probably the EEA, since there is extensive trade in and out of the UK. About 20% of oilseed rape produced in the UK is imported, and about 16% exported.[2]

17. The exact geographic market definition can be left open in this case, because the operation does not lead to competition problems even if the market is analysed on a regional (i.e. sub-national) basis for the purchase of oilseed rape and on a national basis for the sale of oilseed rape.

18. The market for crude seed oil and oilseed meal has been defined as at least EEA-wide in scope in previous decisions.[3]

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[2] 1999 figures. Source: Oil World statistics update

C. Assessment

Horizontal Issues

19. Horizontal overlaps exist in the product markets listed above. However, only the purchasing and sale of oilseed rape gives rise to an affected market. At the national (UK) level, the parties and their main competitors achieve the following market shares in the market for purchasing oilseed rape (parties' data):

Dalgety	Allied Grain	Cargill	Banks	Gleadall Banks	**Combined**	Others
[20-30%]	[10-20%]	[10-20%]	[0-10%]	[0-10%]	**[10-20%]**	[40-50%]

20. The market investigation has broadly confirmed the data provided in the Form CO. On a regional basis, the parties' achieve the highest combined market share in the South East region (approximately [20-30%]).

21. The operation combines two significant competitors to form the second largest oilseed merchant in the UK. Two competitors, Dalgety and Allied Grain have similar nation-wide coverage as Cargill/ Banks. These three firms would account for [50-60%] of the UK market. Several additional merchants each operate in several locations. The remaining market is shared between approx. 200 smaller companies.

22. Supply-side substitution (i.e. existing merchants adding oilseed rape to their product range) is likely to be feasible. Large firms benefit from economies of scale, however, the importance of personal contact in interaction with farmers leaves scope for smaller, regional competitors and co-operatives. Merchants' profit margins at present appear to be low, so that most firms try to rationalise their operations and no significant market entry has recently taken place. However, given the relatively low barriers-to-entry to the merchanting market, threat of entry can be expected to restrain incumbents' pricing decisions.

23. Even in those regions where Cargill/ Banks achieve their highest combined market shares, farmers will after the operation still have several merchants available locally to market their produce. In addition barriers-to-entry are relatively low, as explained above.

24. Concerning the sale of oilseed rape for consumptive use, i.e. crushers, producers of compound feed etc., the market share of the parties would be roughly the same as for purchasing (around [10-20%]) in the UK and less than 15% in the EEA. However, [>50%] of Cargill's purchases and [>5%] of Bank's purchases in the UK are for consumption in the two oilmills of Cargill in Great Britain. Therefore, the combined market share of the parties excluding internal consumption would be less than 10% of all third party sales in the UK.

25. The operation will therefore not lead to the creation of a dominant position as far as horizontal effects are concerned.

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3 e.g. Case M.026 Cargill/ Unilever

Vertical Issues

26. Cargill is active in Europe in the processing of oilseed, a downstream activity to oilseed rape purchasing, to produce, among others, crude seed oils and oilseed meal, the latter used mainly as an ingredient for animal feed. According to the parties, Cargill’s EEA-market share is [between 20% and 30%] in soya bean meal, [between 20% and 30%] in rapeseed meal and [between 20% and 30%] sunflower meal. The share of Cargill in the crude seed oils market in the EEA is [between 20% and 30%]. If one considered distinct markets for different types of crude seed oils, Cargill's market position would not be significantly different

27. Cargill has two crushers in Liverpool and Hull accounting for [40-50%] of all soft oilseed, crushed in the UK. Softseeds comprise rapeseeds, linseeds and sunflower seeds. However, in the case of the UK, it is predominantly rapeseed which is crushed. The crusher of American company Archer Daniels Midland (“ADM”) near London accounts for [40-50%], the remaining [<10%] being held by Unitrition. If as a result of the proposed transaction the new entity were to direct all its purchased rapeseeds towards the Cargill mills, ADM would still be able to secure alternative supplies in the UK, given that the remaining [>80%] of the British market for the purchasing and sale of rapeseed not controlled by the JV represent [>1] times the needs of ADM’s UK mill.

28. In any event, since the market for the sale of crude seed oil and oilseed meal is EEA-wide and the parties‘ combined market share for the sale of oilseed rape for consumptive use is below 15%, no foreclosure effects arise.

VI. ANCILLARY RESTRAINTS

29. The parties have agreed […] non-compete clauses restricting both parties from carrying out agricultural merchanting businesses in the UK for a duration of […] years from completion of the JV […].

30. The first (i) non-compete clause ensures that the full value of the assets included in the transaction is transferred to the JV. It can, thus, be considered as related to and necessary for the implementation of the concentration. However, to the extent the second (ii) non-compete clause extends beyond the […] year period from completion of the JV covered by the first (i) competition clause, it cannot be considered as related to and necessary for the implementation of the concentration.

VII. CONCLUSION

31. 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, as amended by Regulation 1310/97, and of Article 57 of the EEA Agreement.