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Case No COMP/M.2502 - CARGILL / CERESTAR

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.01.2002

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

Subject: **Case No COMP/M.2502 – Cargill/Cerestar**
Notification of 27.11.2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 27.11.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89[1] by which the undertaking Cargill, Incorporated ("Cargill"; USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Cerestar ("Cerestar"; France) by way of purchase of shares.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that, in as far as it relates to markets other than that for Glucose syrups and blends in the UK, the concentration does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

3. By a letter dated 20.12.2001, the Commission received a request from the UK for the referral to the competent UK competition authorities of the proposed concentration in as

1 OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, 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).

far as it threatens to create or strengthen a dominant position as a result of which competition will be significantly impeded on markets for the supply of Glucose syrups and blends in the UK, with a view to assessing it under their national competition law, pursuant to Article 9(2)(a) of the Merger Regulation. On the same date as this decision and in reply to that request, the Commission addressed to the UK Government a decision to refer the case as requested.

4. In order to ensure the compatibility of the transaction with the Common market and the EEA Agreement, […]. […] the Commission finds it appropriate to grant the request made by the Office of Fair Trading since the United Kingdom authorities are better placed than the European Commission to solve any potential competition concerns on the United Kingdom market for glucose syrups and blends […].

I. THE PARTIES

5. **Cargill** is a US company active internationally (through its subsidiaries and affiliates) in a wide variety of businesses. Its most significant businesses include commodity trading, commodity processing, the marketing of non-branded food ingredients to the food and beverage industry and the production and marketing of agricultural inputs to farmers.

6. **Cerestar** is a producer of starch and sweeteners made from maize, wheat and potatoes, including native and modified starches, maltodextrins and spraydried glucose, glucose syrups and blends, dextrose, isoglucose and polyols. Cerestar also produces vital wheat gluten, crude maize oil and raw materials for animal feed as by-products of its starch and sweetener processes.

II. THE OPERATION AND THE CONCENTRATION

7. The notified operation consists of the acquisition by Cargill of sole control of Cerestar currently under the control of the Italian Montedison group. The acquisition of sole control is to be achieved by the sale to Cargill of Montedison's majority (56.019%) stake in Cerestar. In addition, Cargill will after acquiring Montedison's majority interest make a follow-on offer for the remaining shares in Cerestar which are listed on the Euronext Stock Exchange. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Cargill EUR 56.5 billion and Cerestar 1.7 billion in 2000)[2]. Each of Cargill and Cerestar have a Community-wide turnover in excess of EUR 250 million (Cargill EUR […] […] and Cerestar EUR […] […] in 2000), 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.

[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.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product and geographic markets

9. Both Cargill and Cerestar are active in the manufacture and supply of starch and sweeteners, which are produced from agricultural inputs containing carbohydrates (in Europe: maize, wheat and potatoes) through wet milling into starch slurry and subsequent processing. The production process automatically results in by-products (corn or wheat gluten, germs and fibres) which starch producers are also selling.

10. Starch is used in various food and non-food applications, to adhere, bind, thicken, protect, strengthen and texturise. It can be sold unmodified or modified, depending from the application. The main customers are the pulp and paper industry and the food industry. Sweetener products made from starch include maltodextrins and spray-dried glucose, as well as glucose syrups and blends, crystalline dextrose, fructose and polyols. The market is affected by the EC sugar regime, because of isoglucose and inulin quotas, and sweetener products made from starch are, according to the parties, in competition with sugar. The main customers are in the food industry (confectionery, soft drinks, cider, beer and food applications).

<u>Market for starch</u>

11. The parties submit that, although limited supply-side substitutability exists, no distinct markets need to be identified according to the agricultural inputs (potato, wheat and maize) as customers are generally indifferent to the carbohydrates from which the starch is produced and switching costs are minimal. Starch customers operate for the main part in the paper and board industry and in the food industry. For the same reasons, the parties consider that both modified and unmodified starches can be considered to fall within one broad market. The market investigation has however not supported these submissions, indicating that the starches derived from the different carbohydrates are not interchangeable but product specific, and that modified and non-modified starches serve different applications. This relates, in particular, to the fact that the different carbohydrates have an impact on the physical and chemical properties of the starches, as well as on the taste of food products using starch as ingredients. In addition, some customers mentioned that their production facilities would require significant adjustment to accept starches made from other agricultural inputs. As such, six (6) separate markets can be identified according to the three possible inputs, which in turn is split into markets for modified and non-modified starches. In terms of geographical market, the parties submit that the relevant market is Community-wide, as customers are pan-European and cross-border trade flows are significant. Indeed, suppliers rather ship a product over large distances from a limited number of large plants (where economies of scale can be reached) than to face the capital cost of building additional plants. Imports into the EU are limited, due to import levies, but exports are significant. The market investigation has confirmed this submission for all relevant starch markets.

<u>Market for vital wheat gluten</u>

12. Vital wheat gluten is a by-product of the starch production on the basis of wheat. The market is at least EEA-wide in scope and characterised by significant exports to the USA, it seems that all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Market for sweeteners

13. Sweeteners are obtained from starch through hydrolysis and can take different forms with varying sweetness. Maltodextrins and spray-dried glucose are sold in a powder form and have only moderate sweetness for food applications. Glucose blends are marketed with varying degrees of sweetness, by blending glucose syrups or dextrose (fully hydrolysed starch) with fructose (derived through isomerisation from dextrose) up to isoglucose, which has the sweetening equivalent of sugar. In consequence, production can be adjusted with negligible costs and in a short-time frame to obtain any given grade of glucose syrups and blends.

14. The market investigation has indicated that the various forms of glucose and its derivatives form distinct markets that are not substitutable with sugar, possibly and to a certain degree with the exception of the fermentation industry. Glucose, either spray-dried or syrups has, compared with sugar, specific characteristics (viscosity, mouth feel, colour and taste), limited sweetener power and shows a huge price disparity with sugar (the latter being twice as expensive as glucose). Isoglucose, as sugar and inulin syrup, is subject to an EC quota system, implemented on a national basis, which limits the possibility to substitute sugar to around 2% of the current European sugar consumption. As such, the parties' submission that glucose competes with sugar cannot be withheld.

15. As the market investigation confirmed that Cargill's presence in the spray-dried products is limited to a speciality product with a unique granulation and sweetness profile serving niche applications, and as Cargill does not produce fructose in the EEA nor holds isoglucose quota in any EC Member state, only glucose syrups and blends are relevant for further analysis in this case.

16. For the main part, glucose syrups and blends are used either as ingredients for the preparation of food products -in particular confectionery and soft drinks- or as a raw material for the fermentation industry. To that extent, specific applications require different grades of glucose syrups, with different sweetening effect. In addition, and when they use glucose syrups as ingredients, food manufacturers usually need to undergo testing before approving a specific glucose syrup from a given manufacturer. This is not the case for commodity grades, such as those used for the fermentation industry. However, the market investigation has shown that glucose syrups and blends form a spectrum, in relation to their sweetening effect, and that it is possible for food manufacturers to slightly change the grades they use without any noticeable impact on the taste or texture of the product to the final customer. In consequence, and on the basis of supply-side substitutability, the Commission's market investigation suggests that all glucose syrups and blends can be considered to form one market.

17. In terms of geographic market, the parties argue, for the same reasons as explained for starch, that the market is EEA-wide. Market investigation has confirmed the existence of significant intra-Community trade flows but has also indicated that countries located at significant distance from the Benelux / North of France / Germany triangle (where most of the sweetener production capacity is located) may be considered as national markets. Such would apply to the Nordic countries, Spain, Portugal, Greece, the UK, Ireland and Italy. Seen that glucose syrups and blends need to be kept at a constant high temperature to avoid crystallisation[3], the costs of transport are significant and the logistic issues (Just

[3] transporting glucose syrup is done by using isothermic food tankers which maintain the target temperature for two to four days, depending on the circumstances.

In Time delivery, supply of different glucose grades, limited storage capacities) are important. In addition, the consumer preferences with regard to the use of glucose in food applications and the concentration of food industries can vary in different countries affecting the demand for glucose. […] in the UK, leading to a higher consumption of glucose. Finally, and given the fact that glucose syrups and blends are low value products, crossing the English Channel or the Alps represent additional transport costs and logistical problems, which may not be viable options when delivery market prices are low.

18. Transportation costs (which can run up to [10-20]% of total costs for large distances such as from France to Portugal or Wales) are sufficiently important for producers in the peripheral countries to maintain higher prices than countries where production is concentrated. A number of customers in these peripheral countries have qualified the market as being national. The concentration will only lead to significant market shares and/or overlaps in the UK, Ireland, Denmark and Finland. Contrary to the UK, no glucose production is established in Ireland and imports are made from the UK plants or continental Europe plants. In as far as imports to Ireland are made from the UK, the competitive assessment of the UK market for glucose syrup and blend applies. Otherwise, deliveries to Ireland are made from the Benelux or France. Equally so, Cargill's deliveries to Denmark and Finland are made predominantly from the plant based in the Netherlands. In conclusion, Benelux, France, Germany and to a lesser extent also Austria and Denmark can be considered as one geographical market, because the chain effect most likely dismisses the possibility of national markets. It can be left open whether or not that peripheral countries, namely Finland, Sweden, Italy, Spain, Portugal, Greece, Ireland constitute national markets since even on the narrowest market definition the operation would not likely lead to neither creation nor strengthening of single or collective dominance. However, it can not be excluded that Great Britain constitutes a distinct market.

B. Competitive assessment

Starch

19. Concerning starch, the only market affected by the transaction is that of non-modified Maize based starch, where the combined entity would have a EEA-wide market share of [40-50]% (Cerestar [30-40]% and Cargill [0-10]%), against [20-30]% for Roquette, [10-20]% for Tate&Lyle Amylum and [10-20]% for others (Agrana, National Starch…). However, the assessment of this strong position is not likely to lead to neither creation nor a strengthening of single or collective dominance. First of all, it needs to be taken into account that even though Cerestar is currently the largest European starch producer, its market share has been particularly stable, if not decreasing over the years to the benefit of the smaller but production expanding players in a growing market. These smaller players, like Avebe, Emsland or Agrana are financially strong firms[4], which have sufficient resources to invest and expand, in case the merged entity would attempt to restrict output or increase prices. Secondly, in the unmodified starch market, R&D are not important and the main customers, the paper industry, can be attributed with a certain degree of buyer power. The paper segment represents around […]% of the total demand and it is made of a limited number of large companies [(…}]. The starch business is capital intensive and requires firms to achieve a high capacity utilisation for

4 Avebe is the largest potato starch producer in the world while Agrana is part of Südzucker, the world's largest sugar producer.

them to be profitable. The need to secure large supply volumes gives therefore some buyer power to the large customers. Thirdly, the market is not capacity constrained and is characterised by exports to East-European countries which could be easily redirected to the EEA and would, then, neutralise any independent pricing behaviour of the merged entity. Finally, a number of customers have described the operation with respect to this market as pro-competitive, as Cargill intends to increase the efficiency of the Cerestar plants (e.g. better capacity utilisation, better management of purchasing and of by-products).

Vital wheat gluten

20. In regard to vital wheat gluten, the competitive impact of the operation is *de minimis*, seen the limited presence of Cargill in wheat based starch production.

Sweeteners

21. Regarding sweeteners, as indicated above, the only overlap created by the proposed concentration is on glucose syrups and blends. When analysed on the basis of an EEA-wide market, the new entity would have a market share of [30-40]% ([20-30]% for Cerestar and [10-20]% for Cargill) against [20-30]% for Tate & Lyle Amylum, [10-20]% for Roquette, [0-10]% for Syral and [0-10]% for Pfeifer & Langen. It does not seem likely that the transaction might result in the creation of either single or collective dominance: the market has been growing by 5% during the last five years and the fringe players have been able to exert competitive pressure. Indeed, over a period of six years, Syral has been able to capture [0-10]% of the market whilst Pfeifer & Langen has doubled its market shares. During the same period, Cerestar has continuously been losing market shares whilst Amylum, Roquette and Cargill have remained relatively stable over time. An analysis of the production costs shows Cargill as the best placed, although the difference with the other players is limited. Any co-ordination in this market would be effectively countered by fringe, expanding and financially strong competitors such as the French Syral (linked to Nordzucker). Single dominance on the basis of an EEA-wide market is not likely in this case either, as the merged entity will become partly dependent on its competitors for the provision of fructose (Cargill currently does not have isoglucose quota and buys its fructose from third parties).

22. As, with the existence of national glucose syrups and blends markets located at a significant distance from the main European productions sites (France – Benelux – Germany), and other than in the UK, cannot be ruled out, the transaction would lead, to high market shares in Ireland with [60-70]% (Cerestar [30-40]% + Cargill [20-30]%), Denmark with [40-50]% (Cerestar [20-30]% + Cargill [10-20]%) and Finland with [50-60]% (Cerestar [40-50]% + Cargill [0-10]%). However, Cargill's sales in Finland and Denmark are made from its production unit in the Netherlands which is in competition with plants from other companies, located in the same region. The operation does not create any barriers to entry or to expansion in these markets. It is therefore not likely that competition within these countries would be affected by the transaction. In addition, and specifically with regard to Ireland, it is to be noted that Cargill's sales in Ireland depend to a very large extent on one single customer with significant international buyer power [(…)], the competitive impact of the concentration on the Irish market would not be significant.

23. The concentration therefore does not threaten to create or strengthen a dominant position neither in the markets for starches or in the markets for glucose syrups and blends outside the UK.

V. CONCLUSION

24. For the above reasons, the Commission has decided not to oppose the notified operation in as far as it relates to markets other than that for glucose syrups and blends in the UK 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