

***Case No COMP/M.2662 -
DANISH CROWN /
STEFF-HOULBERG***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 14/02/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.02.2002

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.2662 - Danish Crown/Steff Houlberg
Notification of 21 December 2002 pursuant to Article 4 of Council
Regulation No 4064/89¹**

1. On 21 December 2001 the Commission received a notification of a proposed concentration by which the co-operative Danish Crown AmbA merges with the co-operative Steff-Houlberg AmbA.
2. By a letter dated 28 December 2001 as supplemented by the letter dated 8 February 2002 the Danish Competition Authority requested the proposed concentration to be referred to the competent Danish Competition Authority with a view to assessing it under Danish 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 Danish Government a decision partially referring the case.
3. 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

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).

relates to the markets outside Denmark for fresh pork for further processing and processed pork products, the concentration does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

4. On the same date as this decision and in reply to the request, the Commission addresses to the Danish Competition Authority a decision to partially refer the case as requested.

I. THE PARTIES

5. Danish Crown AmbA (Danish Crown) is the largest Danish co-operative slaughterhouse and has in total 20,525 members (farmers) who supply live animals to the co-operative. Danish Crown is active in the slaughter of pigs and cattle, meat trading and meat processing. Its main activities in the EU are in the UK, Denmark, Germany, France and Italy. Danish Crown is also active worldwide including USA, Japan and Eastern Europe. Danish Crown is the largest slaughterhouse in Europe.
6. Steff-Houlberg Amba (Steff-Houlberg) is the second largest co-operative slaughterhouse in Denmark. Steff-Houlberg has 2,366 members who supply live pigs to the slaughterhouse. The co-operative activities cover the slaughtering of pigs, purchasing of fresh beef, meat processing and meat trading. Its main activities in the EU are in the UK, Denmark, Sweden, Germany, France and Italy. Steff-Houlberg is the seventh largest slaughterhouse in Europe.
7. The parties are also active in Denmark in the collection of abattoir by-products through Daka Amba, the processing and sale of natural casings from animals slaughtered through DAT-Schaub, and the supply of spices and food ingredients, packaging material, workers' clothes and auxiliary tools for the meat and food industry through SFK. DAT-Schaub and SFK were already controlled by Danish Crown before the merger.
8. The parties are active in pig slaughtering in Denmark and do not slaughter any pigs abroad. Furthermore, the parties are not engaged in the collection of abattoir by products in any other Member States than Denmark. Finally, the parties market share for the sale of fresh pork for human consumption does not exceed 15% on any market outside Denmark.
9. Danish Crown is also active in the sale of hides from cattle through Scan-Hide and operates a marginal business slaughtering of lambs and horses.

II. THE OPERATION

10. On 28 November 2001 the Boards of Representatives of Danish Crown and Steff-Houlberg approved the proposed merger. The operation is conditional upon approval from all relevant competition authorities. Following the operation, Steff-Houlberg will cease to exist as a legal entity; Danish Crown will take over all its activities, assets and liabilities. The merged entity will be controlled by 23,000 members of whom no individual members will have a controlling interest. Control will be exercised through the democratically elected decision-making bodies of the merged co-operative – the Board of Representatives and the Board of Directors.

III. CONCENTRATION

11. The proposed concentration is a full merger within the meaning of Article 3(1)(a) of the Merger Regulation by which the Danish Crown merges with Steff-Houlberg.

IV. COMMUNITY DIMENSION

12. The undertakings concerned have a combined aggregate world-wide turnover of more than €5 billion² (Danish Crown €5.4 billion, Steff-Houlberg €709 million) and each have a Community-wide turnover in excess of €250 million (Danish Crown €3.5 billion, Steff-Houlberg €609 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. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

13. This decision concerns two product markets that are not covered by the Article 9(3)(b) decision regarding referral to Denmark.
14. For the purpose of this decision, the Commission has identified two product markets, where the parties are active. The markets are the supply of fresh pork for further processing and processed pork products.

(i) The supply of fresh pork for further processing

Product market

15. Fresh pig meat (including frozen pig meat) is either sold for fresh meat consumption or sold to processors. In the case COMP IV/M.1313³ Danish Crown/Vestjyske Slagterier the ("Previous Case"), the Commission concluded that fresh pork constitutes a relevant product market separate from fresh beef. In the Previous Case, the Commission also defined a separate product market for the sale of fresh pork meat to industrial processors.⁴ The parties do not contest this definition in the notification.

Geographic market

16. In the Previous Case, the Commission's investigation showed that, in general, meat processors could and do source their meat regardless of its origin. The geographic market was, therefore wider than national. In the present case, the parties submit that the geographic market is not less than EU-wide. This is based on the large trade flows in the EU.

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, p. 25). 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.

³ Commission's decision COMP/M.1313 of 9 March 1999, Official Journal L 020, 25/01/2000 p. 1-36.

⁴ Case COMP/M.1313, decision of 9 March 1999, paragraph 49.

17. The market for fresh pork for further processing differs in a number of ways from the market for the supply of fresh pork for human consumption. Firstly, the market is characterised by larger trade flows across borders. Secondly, as the meat is further processed into a finished product before being sold to consumers, the origin of the meat seems to be of less importance to the final consumer.
18. However, in order to examine the magnitude of the market, the parties were asked to provide price information on pork products sold in various countries for further processing. According to the parties, a direct price comparison of the several hundred products for each party and each country is impossible to produce in practice.
19. Given that the supply of fresh pork for further processing is produced according to buyers' specifications and since there is no possibility to compare the prices on different cuts, the market could be national in scope. However, imports of fresh pork for further processing do take place. The parties have not been able to estimate the size of such imports. Based on the statistics from Danske Slagterier the imports of pork carcasses and cuts for direct human consumption or further processing was 36,257 tonnes in 1999 and 43,874 tonnes in 2000. However, imports also include pork for direct human consumption and imports for the catering market. These import amounts to 11,200 tonnes in 1999/2000 and to 11,500 tonnes in 2000/2001. Based on a total market of 329,600 tonnes in 2000/2001 the import share could be estimated to be just below 10%. This figure has to be compared to the large Danish surplus of pig meat, the majority of which is exported.
20. Some processors are importing fresh pork from abroad for further processing. The imports are primarily from Germany and other EU-countries. However, it is not possible to measure to which extent Danish and foreign processors use non-domestic pork in the supply of processed meat to the national markets. This will be of importance in evaluating the down stream market of the supply of processed meat to these markets.
21. Despite the fact that the large cross-border trade for pork for further processing compared to fresh pork for human consumption could indicate that the market is wider than national, the Commission investigated whether consumer preferences for meat of a particular origin could extend to processed products. If this were the case, processors would need to purchase pork of a particular origin to satisfy their consumers' demand. This is because the demand for pork for processing is derived from the downstream demand for processed meat products. The Commission found some evidence of consumer preference or regulatory rules, which make the origin of meat for processed products important.
22. However, the precise scope of the geographic market can be left open, since the merger does not threaten to create or strengthen a dominant position on any markets outside Denmark, even when defined as national markets.

(ii) The supply of processed pork products

Product market

23. Processed meat products can be defined as meat from mammals or birds containing external ingredients such as salt or spices, being raw, dried smoked or cooked. This was the definition adopted in the Previous Case. The parties agree to this definition of the product market.

24. A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer by reason of the products' characteristics, their prices and their intended use.
25. The various processed meat products vary in several dimensions such as the raw material used (pork, beef, poultry), ingredients (spices), water content, heat treatment (smoked or boiled), portion, packaging, temperature (chilled or canned). All processed meat products constitute a combination of these seven-dimensions.
26. From a demand side the products for this market satisfy a demand for a meal either as a full meal or meal ingredients (in a sandwich or salad). The parties contend, that the complete inter-substitutability of different meals and also on meals within or outside the home based on individual subjective criteria makes it without any meaning to try to narrow this market into segments. The Commission does not agree with this argument.
27. Processed meat products vary over a large range of different products from pre-packed bacon to ready-prepared dishes and components. From a demand side, consumers are not willing to substitute pork processed products with beef or poultry processed products. In addition, there is clearly no supply-side substitutability between pork-processed products and processed products using other meat. A supplier of sliced bacon cannot obtain its supplies for raw pork from beef producers or poultry producers, as these suppliers are unable to switch their production. Thus, a wide range of the processed sandwich meat products produced for the Danish market and other national markets are traditionally made with pork meat. This includes products such as salamis, cooked ham and fillet. Producing the products with meat other than pork is not a viable alternative. It is therefore reasonable to conclude that the product market for processed meats should be subdivided in processed pork products, processed beef products, processed poultry products etc. There is therefore a distinct product market for processed pork products.
28. This market could be further divided into particular processed products such as pork sausages or sliced bacon. From a demand side perspective consumers may be unwilling to substitute sausages with raw bacon at 5-10% permanent price increases. The characteristics of processed products make such substitutability unlikely. Normally, supply-side substitutability would indicate the absence of separate sub-markets and would dictate a single market for all pork-processed products as a supplier of pork products could easily change his production to supply bacon, ham etc. However, in some instances supply-side substitutability may not change the above conclusion due to different consumer preferences and perceptions for different categories of products. The meat's origin may be more important when a consumer considers buying liver paste than ham (Danish origin may be particularly prized for traditional Danish delicacies). Thus, the meat's origin may be less important when buying a pâté, which is normally regarded as a foreign speciality, in comparison to buying traditional Danish delicacies
29. Therefore, it may be necessary to sub-divide the processed pork market into separate product markets. The product market definition can, however, be left open, as no competition problems arise regardless of whether the product market is defined as processed pork products or split further in sub-segments.

30. In the Previous Case, as in the product market of pork for further processing, the geographic definition of the market for processed meat products was defined as wider than national. It was argued that consumer preferences seemed to be, less important than those relating to fresh meat. Also the origin of the meat product was normally not indicated, and was therefore not known to the final consumer. This was unlike fresh pork products where origin was found to be important.
31. The parties maintain that the market for production and sale of processed meat products (which the parties define as including processed products from all types of meat such as pork, beef, poultry etc.) is at least EU-wide.
32. In order to assess the geographic market in the present case, the parties were requested to provide price data from different national markets, where they sell their processed meat products. This, they claimed, was not possible due to the fact, that the products sold on the different markets are not comparable, because of differentiation in products. The parties claim, due to differentiation in products (raw material dimension, fat content, water content etc.) it is very difficult to identify similar products, which are sold in the member states. The parties stressed those small differences in fat or water content will make the price fluctuate and provide misleading figures. The parties provided the Commission with an example of the direct (variable) production cost for cooked sliced ham. The index figure show that the cost of ham supplied to UK retail is index 100 compared to index 72 for cooked ham supplied to a major Danish retail chain. In addition there are many products, which are only produced for sale in one country, since the products differs in spicing, presentation and other minor process features.
33. The parties were however able to produce price comparisons on a few products including sliced bacon. Even these comparisons were said to involve products, which were not sufficiently similar to allow a true comparison. These (incomplete) price comparisons however show that considerable price variations exist on different markets.
34. The Commission disputes based on the information supplied by the parties, that the geographic market is EU-wide. However, it can not be ruled out that there are markets for individual product groups within the processed pork category, which are more wide ranging than others are. This may be due to different consumer preferences and perceptions for different categories of products. However, within each product category the manufacturer of a product will differentiate the product based on the preferences of the national market where the product is sold. This may be by simply adding more water or fat or it may be a separate recipe altogether supplied with reference to specific national consumer preferences.
35. Furthermore, some processed meat products are only sold on one national market. As above for fresh pork this allows the suppliers to differentiate between national markets. There are separate identifiable markets with different tastes and preferences, which can be identified at the point of sale, and arbitrage is unlikely to take place, as the products do not satisfy the taste or other requirements of neighbouring markets. This indicates that the markets are national in scope.
36. The importance of consumer preferences is, however, difficult to assess. Consumer preferences seems to be of some importance and the products have to be supplied according to national preferences.

37. In conclusion, the geographic scope of an overall product market for the supply of processed pork products is considered as national in scope on the basis of the suppliers' ability to differentiate between Member States. This is based on the fact that products are produced with reference to the specific national consumer preferences. The geographic market therefore is national in scope. The merger, based on national markets, does not threaten to create or strengthen a dominant position in any markets outside Denmark.

VI. COMPETITIVE ASSESMENT

(i) The supply of fresh pork for further processing

38. The parties have submitted data showing the production and sale of fresh meat for further processing in the EU. The figures are submitted on a national basis. The parties combined market share can be seen from Table 1.

Table 1: Production and supply of fresh pork for further processing, parties estimate 2000/2001.

2000/2001	Market share volume	Volume 1,000 tonnes product weight
Germany		
Danish Crown/Steff-Houlberg	[0-10]%	[...]
UK		
Danish Crown/Steff-Houlberg	[20-30]%	[...]
Italy		
Danish Crown/Steff-Houlberg	[10-20]%	[...]
France		
Danish Crown/Steff-Houlberg	[0-10]%	[...]

39. It can be seen from Table 1, that the parties will have a market share of [20-30]% on the UK market for fresh pork for further processing. However, according to the parties [10-20]% of this is processed internally in the group. The figures are accordingly lower on the UK market. Steff-Houlberg contributes with a [0-10]% market share to Danish Crown's [20-30]% market share. The parties have informed the Commission that the parties combined market share on the Swedish market for the supply of fresh pork for further processing is approximately [10-20]%.

40. It can be concluded that the transaction does not threaten to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in any national markets outside Denmark.

(ii) The supply of processed pork products

41. The parties have informed the Commission that their combined market share on all EEA markets in general do not exceed 15% with the below mentioned exceptions.

National markets

42. The parties have provided data showing their market share of processed pork products on national markets within the EEA. Only on the hypothetically narrow geographic segments in the UK, Germany and Sweden do the parties have a combined market share of more than 15% within certain product groups.

United Kingdom

43. On the UK market for bacon the parties have a combined market share is [20-30]%. Danish Crown has a [20-30]% market share and Steff-Houlberg has [0-10]%. However, the parties have recently divested Steff-Houlberg's bacon business to Tican leaving no overlap on the market.
44. The parties furthermore note that they will have a market share above [10-20]% on pizza toppings and pepperoni in the UK. However, pizza toppings compete with a number of other products such as other meats, cheese, vegetables etc. The same could be said about pepperoni competing with other types of dried sausages. Furthermore, it is the view of the Commission, that supply and demand side substitutability with regard to pizza toppings and pepperoni remove any possible competition concerns. In conclusion, the merger does not threaten to create or strengthen a dominant position on the UK market.

Germany

45. The parties sell pre-sliced bacon in Germany. The market for pre-sliced bacon is estimated to be 4,000 tonnes. On the German market for pre-sliced bacon (if a market for pre-sliced was defined as a separate product market), the merger would increase the parties' market share with no more than [0-10]% since Steff-Houlberg only adds [...] tonnes pre-sliced bacon to Danish Crown's market share. Steff-Houlbergs market share has remained stable over the past years ([...] tonnes) with its German pre-sliced bacon activities being minimal. Despite the parties having a combined market share of more than [50-60]%, since the overlap is de minimis, the merger is not likely to create or strengthen a dominant position on the German market.

Sweden

46. The parties have informed the Commission, that the merger will increase Danish Crown's market share on the market for pre-sliced bacon in Sweden. The parties estimate their combined market share to be below 20%. The overlap is [0-10]% or [...] tonnes a year. The total market is estimated to be 6,000 tonnes. It can therefore be concluded, that the overlap is de minimis, and that the merger does not threaten to create or strengthen a dominant position on the Swedish market.
47. In conclusion, the merger does not threaten to create or strengthen a dominant position on any national markets outside Denmark as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

VII. CONCLUSION

48. For the above reasons, the Commission has decided not to oppose the notified operation in as far as it relates to markets for the supply of fresh pork for further processing outside Denmark and the market for processed pork products outside Denmark or possible sub-segments of that product market outside Denmark, 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. It is to be noted that this Decision is without prejudice to the commitments made in the Previous Case, which remain valid.

For the Commission

Mario MONTI
Member of the Commission