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*Case No IV/M.0026 -
CARGILL / UNILEVER*

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

Article 6(1)(b) NON-OPPOSITION
Date: 20.12.1990

*Also available in the CELEX database
Document No 390M0026*



PUBLIC VERSION

MERGER PROCEDURE -
ARTICLE 6(1)b DECISION

Registered letter with
advice of delivery

Subject: Case No. IV/M.026 - Cargill / Unilever

1. On 20 November 1990 Cargill plc notified an operation by which it will acquire the entire issued share capital of United Agricultural Merchanting Limited (UAM) from Unilever plc. The economic sector directly affected by the operation is agricultural merchanting in Great Britain.
2. After full examination of the notification, the Commission has come to the conclusion that the operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. Parties to the concentration

Cargill plc is a wholly owned subsidiary of Cargill Incorporated, Minnesota, a US- company with worldwide activities primarily in commodity trading and the processing and distribution of foodstuffs. Its consolidated worldwide turnover in 1989/90 exceeded 5 billion ECUS, its Community wide turnover exceeded 250 million ECUS.

In the UK, Cargill operates in commodity trading and related businesses including agricultural merchanting in the North-East of England.

UAM is a wholly owned subsidiary of Unilever plc. Its business is agricultural merchanting throughout Great Britain. UAM's turnover amounted to 291 million ECUS in 1989.

II. Application of the merger regulation

The takeover of UAM by Cargill through acquisition of total share capital is a concentration in the sense of Article 3, para. 1 b) of the merger Regulation. The thresholds of Article 1 of Regulation 4064/89 are met and the two-thirds rule does not apply as Cargill's Community wide turnover is not primarily realised in the UK.

III. Compatibility

The acquisition does not raise serious doubts as to its compatibility with the common market. Both parties are active in the agricultural merchanting sector. Cargill operates only in the North-East of England whereas UAM is active throughout Great Britain.

As far as the horizontal effects resulting from the operation are concerned, it does not lead to significant market positions in the relevant markets. Cargill is also active in some up-stream and down-stream markets such as animal feed production, oilseed crushing and international grain trading. But the effect of the merger on the vertical side, such as better access to sales or supply markets in Great Britain, does not create or strengthen a dominant position in these markets nor in those in which horizontal consequences exist.

1. Relevant markets

a) Agricultural merchanting covers a range of different activities. It is a dual-function business. It comprises the supply of seed, fertilizers, agro-chemicals and animal feed to farmers, including an advisory service on all aspects of crop treatment. It also covers the trading of the farmers' crop to the market. In the agricultural merchanting sector seven different relevant product markets have to be distinguished:

- the production and sale of agricultural seed (cereals, oilseed, linseed, herbage and pulses)
- the purchase and sale of fertilizers
- the purchase and sale of agro-chemicals
- the purchase and sale of animal feed
- the purchase and sale of grain and pulses
- the purchase and sale of oilseed rape.

b) Agricultural merchanting in its various forms, being mainly a retail activity, is a locally orientated business. Traditionally farmers are served by local representatives of agricultural merchants within a radius of around 100 miles from the merchant's outlet station. Seed, feed, fertilizers and agro-chemicals are delivered to farm by the merchants within such radius and the same applies for cereals, pulses and oilseed rape, which are picked up from farms. Consequently farmers use the services of local representatives within the same radius from their farm.

Nevertheless the parties consider the relevant geographic market for the different product markets to be Great Britain and not local or regional markets. The relevant geographic market can be defined as the area where the undertakings concerned are involved in the supply and demand of

products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because conditions of competition are appreciably different in those areas.

Because of the following specificities of the agricultural merchanting business in Great Britain the national market could be considered as the relevant geographical market:

- the different local areas in which each outlet of the parties concerned provides services to the farmers are so strongly interlinked that a segmentation into different markets with significantly different conditions of competition is difficult to be shown. On the facts of the case the Commission has no indication that appreciably different conditions of competition exist in the various agricultural areas of Great Britain.
- There are two other agricultural merchants, Dalgety and Kenneth Wilson, who are, together with UAM, equally represented throughout Great Britain. Furthermore several competitors such as Allied Grain, Lilloco and Usbourne are active in a significant number of localities. The parties compete with the abovementioned competitors in a large number of different localities, Dalgety and Wilson being located in practically every agricultural area where UAM or Cargill are represented.
- The absence of appreciably different conditions of competition in the various regions of Great Britain in the affected product markets can further be explained by the low barriers to entry existing on these markets (see below). As barriers are low, suppliers who are already acting on a local or regional level can with ease extend their activities into other areas. The ability of merchants to move into other areas without difficulty reduces the possibility that different conditions of competition can be established.

The question of the definition of the relevant geographic market can remain open in this case. Even if one looks at the local areas in which each outlet of the parties provides services to farmers, thus considering the narrowest possible definition of the relevant geographic market, the merger does not raise serious doubts as to its compatibility with the common market.

2. Market shares

The region where both parties to the concentration are involved in agricultural merchanting and where as a consequence the concentration has horizontal effects covers the North-East of England (Lincolnshire, Leicestershire, Northamptonshire, Bedfordshire, Nottinghamshire, Yorkshire, Northumberland, Durham and Humberside).

In this region the aggregate market shares of the parties in the different product markets are all below 12 % except for the oilseed rape market where the aggregate market shares amount to 26 %. On the basis of the information available to the Commission, there are no indications that the aggregate market shares of the parties in the local areas referred to above could lead to the conclusion that the parties have a dominant position in a substantial part of the common market.

This conclusion is reached in particular in the light of the following:

3. Market structure

The market is characterized by low concentration in the affected markets. There are about 200 agricultural merchanting businesses operating in Great Britain. In practically every important agricultural area farmers have the choice between at least 8 - 10 agricultural merchants, including the 3 national players. This holds as well for the areas directly affected by the merger.

4. Barriers to entry

The significance of the market shares achieved by the parties through the merger is further weakened by the fact that entry barriers to the relevant product markets are very low. It is possible to start up in this business on a small scale and to subsequently expand because of low capital start-up costs, the absence of any need for technical know-how, the small scale of operations, and the local character of the business. Furthermore, suppliers who are already acting on a local or regional level can easily move into other local areas if conditions of competition change. The most recent important entry was Allied Grain in 1983. In spite of the maturity of the relevant markets, Allied Grain succeeded in becoming one of the most important players in the grain, retail seed and fertilizer markets.

5. Vertical integration

On the vertical scale the improved access of Cargill to the UK grain and oilseed rape market does not lead to an impediment of effective competition on down-stream markets.

In the oilseed rape crushing market, Cargill has about 23 % of UK crushing capacity, competing with Archer-Daniels-Midland company (ADM) and BEOCO (both between 30 and 40 %) and BOCM (Unilever). Furthermore, oilseed rape crushers compete with other oilseed processors like soya bean or corn processors.

In international grain trading, Cargill, covering 20 % of total UK exports, competes with other big international grain trading organisations like Mark Rich, Toepfer, Dreyfus, Ferruzzi and Soufflet. The improved access to British grain and oilseed rape markets does not therefore raise any serious doubts as to the creation or strengthening of a dominant position which significantly impedes effective competition on the down-stream market.

IV. Comments of third parties

The notification of the proposed operation was published in the Official Journal of the European Communities on 23.11.1990⁽¹⁾. No comments of third parties were received following this publication.

For the above reasons the Commission has decided not to oppose the notified operation and declares it compatible with the common market. This decision is adopted pursuant to Art. 6 para. 1(b) of Council Regulation No. 4064/89.

Signed

**TEXTE RECONSTITUÉ ÉLECTRONIQUEMENT / ELECTRONICALLY RE-CREATED
TEXT / ELEKTRONISCH NACHGEBILDETER TEXT**

⁽¹⁾ OJ No. C 293 of 23.11.1990.