

***Case No COMP/M.2956 -  
CVC / PAI EUROPE /  
PROVIMI***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 28/10/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Competition DG

Director-General

Brussels, 28/10/2002

SG (2002) D/232332/3

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties*

Dear Sir/Madam,

**Subject: Case No. COMP/M.2956 – CVC / PAI EUROPE / PROVIMI**

**Date of notification: 26.9.2002**

**Legal Deadline: 28.10.2002**

1. On 26<sup>th</sup> September 2002 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89,<sup>1</sup> ('the Merger Regulation') whereby the CVC Group and the PAI Group acquire joint control, within the meaning of Article 3(1)(b) of the Merger Regulation, of Provimi S.A. ('Provimi') by way of purchase of shares through a special purpose holding company, Provimlux Investments S.A. ('Provimlux').

## **I. THE PARTIES**

2. There are eight CVC Funds of the CVC Group of funds involved in the acquisition ("the CVC Acquiring Funds"), which are based in England, the USA and the Cayman Islands and are advised by CVC Capital Partners SA. The CVC Group invest in and provide advice to investment funds. The CVC Group is involved in the animal feed business through their control of Adisseo, a vitamins and premix producer.
3. There are five PAI Funds of the PAI Group of funds involved in the acquisition ("the PAI Acquiring Funds"), which are based in France and are advised and/or managed by PAI management SAS. PAI management SAS is currently owned by BNP Paribas, but it has

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<sup>1</sup> 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).

been announced that the management of PAI management SAS is to purchase 51 % of the corporation from BNP Paribas. The PAI Group provide investments and management advice to, and manage investments on behalf of, investment funds. The PAI Group is involved in the animal feed business through their control of Evialis, which produces premix and complete feed, and Diana Ingredients and CEVA – Santé animale, which are involved in pet food and animal health products.

4. Provimi is a French undertaking which is active in the manufacture and sale of animal feed, pet food, and aqua feed products.

## **II. THE OPERATION AND CONCENTRATION**

5. Edison S.p.A. has agreed to sell its interest in Provimi, amounting to 53.66 % of the corporate capital and 53.96 % of the voting rights, to Provimlux. Pursuant to a Shareholders' Agreement, the CVC Acquiring Funds and the PAI Acquiring Funds each hold 44.9 % of Provimlux with the remaining 10.2 % held by two Dutch foundations, Stichting Management (10 %) and Stichting Administratiekantoor Benelux Investments (0.2 %).
6. Under the Shareholder's Agreement, both the CVC Acquiring Funds and the PAI Acquiring Funds have veto rights over key decisions made by Provimlux and therefore have joint control over Provimlux and, by extension, over Provimi. The transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

7. The undertakings concerned had a combined aggregate world-wide turnover in 2001 of more than €5,000 million (the CVC Group €17,542 million, the PAI Group €61,032 million and Provimi €1,501 million). The aggregate Community-wide turnover of all three undertakings exceeds €250 million (the CVC Group €12,287 million, the PAI Group €45,765 million and Provimi €555 million). The PAI Group achieves more than two-thirds of its aggregate Community-wide turnover in France, but neither the CVC Group nor Provimi achieves more than two-thirds of its aggregate Community-wide turnover within one of the Member States. The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

## **IV. COMPETITIVE ASSESSMENT**

8. The parties have horizontal overlapping activities in the markets for production and marketing of animal feed. They have vertical overlapping activities in the market for vitamins and amino acids for use in animal feed and in the market for palatability enhancers for use in pet food.

### **1. Relevant product markets**

#### A. Animal feed

9. Both Provimi and Evialis are active in the production of animal feed. In general, animal feed is made up of two main ingredients: agricultural raw materials (mainly grains) which comprise on average over 98 % of total feed volume; and premix (i.e., feed additives). Premix contains feed additives of a higher nutritional value than agricultural raw materials and constitutes between 0.5 and 2 % of total feed volume. A mixture ready for

consumption is referred to as complete feed and different types of complete feed are used to feed various types of farm animals and fish (known as aqua feed). A distinctive segment of the animal feed market is pet food, which distinguishes itself from other animal feed through different production processes, different customers (the public rather than feed distributors) and different distribution channels.

10. The parties submit that the relevant product markets should be complete feed, premix, aqua feed and pet food. For both complete feed and premix, market investigations confirm the parties' claim that each appears to be a separate market with a high degree of supply-side substitutability within each market. However, in this case it is not necessary to further define the relevant product market since the transaction will not result in the creation or strengthening of a dominant position on any of the alternative product market definitions considered. .
11. With respect to aqua feed, the production processes, ingredients, distribution channels and customers are very different from those of other types of animal feed. In this case it is not necessary to further define the relevant product market since the transaction will not result in the creation or strengthening of a dominant position on any of the alternative product market definitions considered.
12. With respect to pet food, the Commission has found, most recently in *Masterfoods / Royal Canin*<sup>2</sup>, that industrial (or prepared) dry cat food, wet cat food, dry dog food and industrial (or prepared) wet dog food all constitute separate relevant product markets. However, in this case it is not necessary to further define the relevant product market since the transaction will not result in the creation or strengthening of a dominant position on any of the alternative product market definitions considered. On this basis, the relevant product markets of this transaction are complete feed, premix, aqua feed and pet food.

#### B. Palatability enhancers

13. Palatability enhancers are added to pet food in order to increase its attractiveness. The enhancers are added to the pellets with fat in order to coat them or added to the cans directly. According to the parties, palatability enhancers constitute a single relevant product in view of their unique functionality. However, for the purpose of this decision it is not necessary to define the relevant product markets since the transaction will not create or strengthen a dominant position in any of the possible alternative markets.

#### C. Vitamins

14. Adisseo, controlled by the CVC Group, is active in the production and distribution of various vitamins used in animal feed. The parties submit that vitamins A, B2, B12, D and E are used for animal feed purposes and that each constitutes a separate product market since they are not interchangeable with one another. Market investigation generally confirmed this view; however, it is not necessary to define the relevant product markets since the transaction will not create or strengthen a dominant position in any of the possible alternative markets.

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<sup>2</sup> Case COMP/M.2544, *Masterfoods/Royal Canin*, 15 February 2002.

#### D. Synthetic methionine

15. Adisseo is also active in production and distribution of synthetic methionine, an essential amino acid, which is a major component of body tissues, used in animal feed. Synthetic methionine is, to a large extent, used to add methionine to feedstuffs that do not contain sufficient amounts of natural methionine. An alternative to synthetic methionine is fish meal, which has a high level of natural methionine. Fish meal however, is more expensive than synthetic methionine and may affect the taste of the final product. Whether fish meal and synthetic methionine are interchangeable can be left open since the transaction will not result in the creation or strengthening of a dominant position regardless of the market definition used.

### **2. Relevant geographic markets**

#### A. Complete feed

16. The parties claim that the market for complete feed is national as suppliers compete on a national basis through supply points, demand is strongly influenced by national demand characteristics, and transport costs are high which limit the distance over which complete feed can be economically transported. Although market information confirms that the market is likely to be at least national for these reasons, in this case it is not necessary to further define the relevant geographic market since the transaction will not result in the creation or strengthening of a dominant position on any of the alternative geographic market definitions considered.

#### B. Premix

17. The parties submit that the premix marked is world-wide due to low transport costs, the absence of tariff barriers and the relative homogeneity of the products. Market investigation confirmed significant cross-border trade of premix within the EEA such that the relevant geographic market is likely to include at least the EEA. It is, however, not necessary in this case to further define the relevant geographic market since the transaction will not result in the creation or strengthening of a dominant position on any of the alternative geographic market definitions considered.

#### C. Aqua feed

18. The parties claim that the market for aqua feed is at least the EEA due to significant trade between EEA States. It is, however, not necessary in this case to further define the relevant geographic market since the transaction will not result in the creation or strengthening of a dominant position on any of the alternative geographic market definitions considered.

#### D. Pet food

19. The parties submit that the market for pet food (dry/wet and cat/dog) is national in scope, both from a demand side and from a supply side perspective, consistent with the Commission conclusions in the Masterfood / Royal Canin case.<sup>3</sup> However, in this case it is not necessary to further define the relevant geographic market since the transaction will

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<sup>3</sup> Case M. 2544 Masterfood / Royal Canin.

not result in the creation or strengthening of a dominant position on any of the alternative geographic market definitions considered.

#### E. Palatability enhancers

20. The parties claim that the market for palatability enhancers is world-wide. However, in this case it is not necessary to further define the relevant geographic market since the transaction will not result in the creation or strengthening of a dominant position on any of the alternative geographic market definitions considered.

#### F. Vitamins

21. The parties have argued that the relevant geographic market for vitamins is worldwide as they are chemically identical, traded internationally in considerable quantities, have low transport costs and are subject to few tariffs or quota restrictions. The market investigation has tended to confirm that the relevant geographic market is worldwide for these reasons. However, , in this case it is not necessary to further define the relevant geographic market since the transaction will not result in the creation or strengthening of a dominant position on any of the alternative geographic market definitions considered.

#### G. Synthetic methionine

22. The parties consider the market to be world-wide in scope due to considerable international trade, low transportation costs, and no import tariffs and quotas. Market investigation has tended to confirm this submission. However, in this case it is not necessary to further define the relevant geographic market since the transaction will not result in the creation or strengthening of a dominant position on any of the alternative geographic market definitions considered.

### **3. Assessment**

#### A. Complete feed

23. In respect of the market for complete feed, Provimi and Evialis have no geographical overlap as they do not compete in the same countries; Provimi is only active in Portugal where its market share is at most [10-20]% while Evialis produces and distributes complete feed in France and Spain with market shares of [5-15]% and [<5]% respectively. Due to the lack of geographic overlap, the concentration does not give rise to significant competition concerns with respect to complete feed.

#### B. Premix

24. The parties submit that there is no reliable source of market data to estimate market shares in the premix sector; because there are no statistics on tonnage and value, the inclusion rate of premix in complete feed varies between 0.5 and 2 % and the different inclusion rates used by competitors are not known. Instead, premix is usually measured by Complete Feed Equivalent ('CFE'), a widely used industrial measure for all categories of feed. Using the CFE measure, the market share of Provimi is [0-10]% in the world and [0-10]% in Europe while Evialis' market shares are [<5]% in the world and [<5]% in Europe. Adisseo has a market share of [0-10]% on the European market. Based on these figures, the market shares of the combined entity would be slightly more than [5-15]%. On this basis, the concentration does not give rise to competition concerns.

### C. Aqua feed

25. In the market for aqua feed Provimi holds a market share of [0-10]% in the EEA, whilst Evalis has a market share of [<5]%. On this basis, the concentration does not give rise to competition concerns.

### D. Pet food

26. On any national market, each of Provimi and Evalis have [<5]% market share in any pet food product. Due to the low aggregate market share of the parties, the operation will not give rise to any competition concerns in any national market.

### E. Palatability enhancers

27. According to the parties, Diana Ingredients has a market share of [25-35]% world-wide of the market for palatability enhancers. However, there are no vertical competition concerns because the combined entity will have a small market share of only [<5%] in the downstream markets for pet foods.

### F. Vitamins

28. Adisseo is one of the main suppliers of vitamins for use in animal feed in the world. Its market shares for the EU are for vitamin A [15-25]%, for vitamin E [10-20]%, for vitamin D [5-15]%, for vitamin B2 [5-15]% and for vitamin B12 [10-20]%. Adisseo does not produce B 12 itself, but only acts as a distributor for Aventis.
29. The Commission's market investigation indicates that vertical competitive effects are unlikely following the transaction: Adisseo faces competition from Hoffman-La Roche, BASF and a number of smaller producers from China, Hungary and Russia; the main competitors of Adisseo have sufficient excess capacity to constrain any potential negative effects; and the market investigation has tended to confirm the entry of a number of new competitors on the vitamin markets in recent years, so the barriers to entry into the vitamin market do not appear to be significant. Given the combined entity's small downstream market share, the operation is not likely to give rise to competition problems in either vertical markets.

### G. Synthetic methionine

30. Adisseo has a market share of [25-35]% world-wide according to the parties. However, there are three reasons why this does not give rise to vertical competition concerns for producers of feed products. First, Adisseo faces strong competition from Novus and Degussa who, according to the parties, respectively supply [25-35]% and [25-35]% of the world market for methionine. In addition there are a number of smaller Japanese competitors. Secondly, there are no significant barriers to entry to the synthetic methionine market. Thirdly, synthetic methionine only accounts for a small proportion of the total methionine market and it may be expected that the possibility of using natural methionine will have a restraining effect on the market for synthetic methionine. Based on the foregoing, the operation is not likely to give rise to competition problems either in the upstream market or in the downstream market.
31. 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.

#### **IV. CONCLUSION**

32. 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 Mario MONTI  
Member of the Commission