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Case No COMP/M.2980 - CARGILL / AOP

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 19/12/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19/12/2002
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2980 – CARGILL / AOP
Notification of 21 November 2002 pursuant to Article 4 of Council Regulation No 4064/89

1. On 21/11/2002, 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 Associated Oil Packers bvba ("AOP"), a company which is currently jointly controlled by Cargill and Vandemoortele n.v. ("VDM", Belgium), 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 Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Cargill is a US company active internationally in various businesses including 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. As such, Cargill is active in producing crude seed oil and seed oil refining.

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[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).

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4. AOP's only activities are in the packing (including bottling and canning) of edible vegetable oils. It sells a complete range of vegetable oils in a different number of formats. Most of these packed oils are sold to retailers which in turn sell them under their own brands. A few proportion is also directly sold to the retail and non-retail sector under brands belonging to VDM and licensed to AOP. Packing facilities are located in Belgium, France, Spain and, to a lesser extent, Germany.

5. AOP is a joint venture equally owned by Cargill and VDM. It was established in early 1999 in order to gather all European seed oil mixing and packaging activities of the 2 parent companies. This operation was notified[2] to the Commission under the Merger Regulation and cleared on 20 July 1998 through a 6(1)b decision. This decision confirmed that AOP was a full-function joint venture, jointly controlled by its two parent companies.

II. THE OPERATION

6. The proposed operation consists in Cargill acquiring all VDM's shares in AOP, i.e. all remaining AOP shares. Whilst disengaging from this Joint Venture, VDM shall also get back full ownership, control and operation of the brands that it licensed to AOP, through cancellation of the related trademark licenses.

III. CONCENTRATION

7. Through the acquisition of 100% of the capital of AOP, Cargill will gain sole control of the latter, which it has been jointly controlling with VDM, so far. The proposed operation, therefore, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[3] ([…] for Cargill and […] for AOP, in 2001). Each of Cargill and AOP has a Community-wide turnover in excess of EUR 250 million ([…] for Cargill and […] for AOP, in 2001), 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. ASSESSMENT

9. Further to past decisions[4], the parties identify a chain of vertically integrated product markets ranging from (i) Crude Seed Oils (crude oil produced by crushing seeds), (ii) Refined Seed Oils (refining of crude oils) down to (iii) Packed Seed Oils (packing of refined seed oils). Cargill is active on the two upstream stages whilst AOP is only

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[2] Case No COMP/M.1227 – Cargill / Vandermoortele – JV (20 July 1998)

[3] 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).

[4] Case No COMP/M.1227 – Cargill / Vandermoortele – JV, Case No COMP/M.2693 – ADM / ACTI and Case No COMP/M.2886 – Bunge / Cereol.

present on the downstream market, namely the packing of seed oils. The previous decisions covering these markets have not concluded on the geographic scope. There are however indications that the markets for Crude seed Oils as well as Refined Seed Oils is at least EEA-wide and that the markets for Packed Seed Oils could be national in scope with possible cross-border effects since these markets may comprise areas located within a reasonable distance from the bottling plant (300km). Also with regard to the present transaction, the exact geographic scope of the refined seed oil market can be left open as such would not materially affect the assessment of the notified transaction.

10. The relationships between Cargill and AOP are exclusively vertical ones, since Cargill is not active in packed oils (in fact, all Cargill's activities in this field were contributed to the AOP in 1999) and AOP sources virtually all of its refined seed oil requirements from Cargill.

11. Cargill's market share on the upstream refined seed oil market exceeds 25% when assessed on an EEA basis ([20%-30%]), whilst AOP's share of packed seed oils exceeds 25% in Belgium ([40%-50%]), Netherlands ([20%-30%]), Luxembourg ([40%-50%]), Denmark ([20%-30%]) and France ([20%-30%]). As a consequence, the proposed operation leads to vertically affected markets. Nevertheless, the operation is very unlikely to change the relationships between Cargill and AOP, which are already almost exclusive, and thus does not raise serious doubts about possible adverse impacts on the relevant markets.

VI. CONCLUSION

12. 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.

For the Commission