

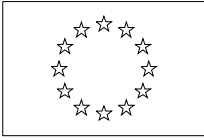
***Case No COMP/M.3175 -
BEST AGRIFUND /
DUMECO***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 02/07/2003

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02/7/2003

SG (2003) D/230394

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.3175 - Best Agrifund/Dumeco
Notification of 26.05.03 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 26.05.2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Best Agrifund B.V. ("Best Agrifund", The Netherlands) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Dumeco B.V. ("Dumeco", The Netherlands) 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 does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Best Agrifund is engaged in the production and trade of meat and meat products, agricultural products and processed consumer goods, mainly in Germany. Furthermore,

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).

group companies of Best Agrifund are active in the Netherlands and Belgium in the fields of industrial processing of abattoir by-products and cadavers and the production of gelatine.

4. Dumeco is mainly active in the Netherlands in the trade of live stock, the production and sale of breeding materials, the breeding and sale of pigs and cattle, the slaughter of pigs and cattle and the processing, production and sale of meat products (both fresh meat and processed meat products). The activities of the Dumeco group have been split into five groups: Farm&Supply Management, Operations, Industry Market Group and the Retail Market Group. The activities of Farm&Supply Management in the field of development and marketing of genetic solution are concentrated in Dumeco Breeding B.V. and its Italian and Hungarian subsidiaries. All production companies, engaged in pork and meat processing and bacon, are located in the Netherlands. Beef production takes place in the Netherlands as well.

II. THE OPERATION

5. The operation consists of the proposed acquisition by Best Agrifund of all issued and outstanding shares in the capital of Dumeco, by which the undertaking Best Agrifund acquires sole control of the whole of Dumeco.

III. CONCENTRATION

6. The operation thus constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation (EEC) No. 4064/89

IV. COMMUNITY DIMENSION

7. The parties' combined aggregate world-wide turnover exceeds EUR 2,500 million (Best Agrifund EUR 2,521 million; Dumeco: EUR 1,715 million); in each of the Netherlands, Germany, Belgium, United Kingdom, Italy, France and Greece the parties' combined aggregate turnover exceeds EUR 100 million; and in the Netherlands, Germany, Belgium, United Kingdom, Italy, Spain and France the aggregate turnover of each party is more than EUR 25 million; furthermore, the aggregate community-wide turnover of each of the parties is more than EUR 100 million. The two-thirds rule does not apply. It must be concluded, therefore, that the proposed operation has a Community dimension pursuant to Article 1(3) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

A. RELEVANT MARKETS

Product markets

8. The parties have indicated that the concentration will give rise to the following vertically affected markets: (i) the purchase and processing of *category 3 abattoir by-products*; (ii) the purchase and processing of *food grade blood*; and (iii) the purchase and processing of *bones*. In all these markets Best Agrifund is active in collecting and processing the products. Dumeco is engaged in the slaughtering of pigs and cattle and the further processing of meat products and it produces and supplies all of the above-mentioned raw materials.

9. The parties have identified separate markets for the processing of high risk abattoir by-products (High Risk Material, hereinafter referred to as "HRM") and the processing of low risk abattoir by-products (Low-Risk Material, hereinafter referred to as "LRM").
10. The parties have indicated that an equivalent distinction is made in Council Regulation 1774/2002 (effective as of 1 May 2003), which groups animal by-products into the following categories: category 1, category 2 and category 3 materials. As to the first two categories, the parties are of the opinion that the relevant material can be regarded as HRM, whereas the category 3 materials must be seen as LRM. A distinction between HRM and LRM has also been made in Dutch law, on the basis of the Dry Rendering Act ("*Destructiewet*").
11. According to the parties HRM consists of those parts of slaughtered animals which have not been veterinary-approved for that use after slaughter, such as blood waste, animals having died from natural causes, pig hair, floor waste and rejected carcasses.
12. HRM has to be made harmless, and operating a plant for the processing of HRM is subject to a license from the Dutch Minister of Agriculture, Nature Management and Fisheries. The tariffs charged for the processing of HRM are fully regulated. A subsidiary of Best Agrifund (Rendac B.V.) holds the only license for the processing of HRM in the Netherlands.
13. LRM concerns all material, which cannot be categorised as HRM. LRM, such as waste, head and fat, bones, rind and blood, has received veterinary-approval after slaughter and is among other things processed into ingredients for food, animal feed, fish meal or into technical or pharmaceutical products. The parties have furthermore pointed out that a license for the processing of LRM can more easily be acquired, and have indicated that companies processing LRM into pet food, pharmaceutical or technical products merely need to be registered.
14. The market investigation has generally confirmed the relevance of the distinction submitted by the parties between the market for the processing of HRM and the market for the processing of LRM. However, as one customer pointed out, the terminology of HRM and LRM is no longer valid since the entry into force of Council Regulation 1774/2002.
15. In its previous decisions in the cases IV/1313 (Danish Crown / Vestjyske Slagterier) and COMP/M.2662 (Danish Crown / Steff-Houlberg) the Commission has delineated a distinct market for the collection of high-risk abattoir by-products as this material may only be supplied to a high-risk renderer. The same applies to the Dutch market for the purchase and processing of HRM, and the Commission maintains its view that under the current legislation the processing of high-risk abattoir by-products constitutes a distinct product market.

(i) Purchase and processing of other category 3 abattoir by-products

16. With regard to LRM, the parties argue that it is correct to distinguish between *food/gelatine*-related raw materials and other *category 3* materials.
17. According to the parties the first category consists of raw materials, such as bones, blood, fat and skins, which are processed by the foodstuffs/gelatine industry into products, which can be used for human consumption. The processing plants can be

divided into gelatine grade bone processors, food grade fat melters; food grade blood processing plants, pigskin and bovine hides (spalt) processors. The parties have indicated that the abattoir by-products in this category are the top end products and, due to the greater value of such products for the processors, prices charged for processing are significantly lower than the prices charged for the processing of other category 3 materials.

18. The parties have specified that the second category, the other category 3 materials, concerns raw materials such as poultry abattoir by-products, mixed and *other abattoir by-products* that are used for the production of meat meal, fat production and destruction. These products are not fit for human consumption.
19. The market investigation has generally confirmed the relevance of the above-mentioned subdivision of LRM into *food/gelatine related raw materials* and *other category 3 materials*, due to the fact that the products used in the food/gelatine industry are suitable for human consumption, contrary to other category 3 materials. One large customer to Best Agrifund indicated that for pet food producers such a distinction is not relevant as the relevant products were considered to be substitutes. However, the relevant product market definition can be left open, as the operation does not seem to raise competition concerns.

(ii) Purchase and processing of food grade blood

20. As regards *food/gelatine* related raw materials, the parties have submitted that a further distinction can be made into the *purchase and processing of food grade blood* and the *purchase and processing of bones*.
21. According to the parties a distinction can be made between category 3 blood (included in the other abattoir by-products category) and food grade blood due to a difference in price, collection method, hygiene standard and use. According to the parties customers pay a much higher price for the processing of category 3 blood compared to the processing of food grade blood. Furthermore, food grade blood is collected at slaughterhouses through special, hygienic collection installations which processors install at slaughterhouses, whereas category 3 blood is collected through drains in the floors of slaughterhouses. Food grade blood is mainly used for the production of foodstuffs and in the pharmaceutical industry.
22. The results of the market investigation confirm that a distinction between the purchase and processing of food grade blood and category 3 blood is relevant. However, the exact product market definition may be left open, as the operation does not seem to raise competition concerns.

(iii) Purchase and processing of bones

23. The parties have identified a distinct market for the purchase and processing of bones. Bones are used for the production of gelatine, foodstuffs, meal, fat and porcelain. The parties are of the opinion that both *category 3 bones* and *gelatine grade bones* should be included in this market, as – despite different price levels - both types of bones can be used for the production of gelatine.
24. The market investigation has generally confirmed that there is a distinct market for the purchase and processing of all bones. One competitor has indicated that the distinction

according to the type of bones is indeed relevant as category 3 material also includes bones which cannot be used for the production of gelatine, thereby referring to Article 6, paragraph 1(b), of Council Regulation 1774/2002. The exact product market definition can be left open, however, as the operation does not seem to raise competition concerns.

Geographic markets

25. The parties have indicated that the relevant geographic market for the processing of HRM is at most national, as this material cannot be exported or imported and needs to be processed in the area of origin. The Commission agrees that the geographic scope of this market is limited to the Netherlands, in conformity with current legislation as well as the reasoning in both Danish Crown cases referred to above.

(i) Purchase and processing of other category 3 abattoir by-products

26. According to the parties the geographic scope of the market for the purchase and processing of other category 3 abattoir by-products is limited, due to the significant influence of transport costs on the price of these products. Due to the small margins on the sale of these products, parties consider it unlikely that rendering plants will purchase abattoir by-products over greater distances. However, some cross-border trade takes place with Belgium and Germany.

27. On the basis of the Commission's investigation no clear delineation of the relevant geographic market could be made, although the information received seems to support the parties' views. The exact geographic market definition may be left open, however, since in all alternative market definitions, the operation does not seem to raise competition concerns.

(ii) Purchase and processing of food grade blood

28. The parties are of the opinion that the market for the purchase and processing of food grade blood is a national market, although they acknowledge that the geographic market is potentially larger, as cross-border trade is allowed and can be a viable alternative. In general the market investigation has confirmed that the relevant geographic market for the purchase and processing of food grade blood is limited to the Netherlands.

29. It appears that the exact geographic market definition may be left open, since in all alternative market definitions, the operation does not seem to raise competition concerns.

(iii) Purchase and processing of bones

30. As to the purchase and processing of bones, the parties hold the view that the relevant geographic market is at least equal to the Netherlands, Belgium and Germany; France could possibly be included. The parties stated in this context that they purchase significant amounts of bones in the Netherlands, Belgium and Germany for processing in their plant in the Netherlands. In total Best Agrifund processes [...] tonnes of bones in the Netherlands, out of which Dumeco supplied [...] tonnes whereas [...] tonnes came from Belgium and [...] tonnes were purchased in Germany.

31. From the market investigation it must be concluded that uncertainty exists as to the precise scope of the relevant geographic market. However, there are indeed indications that the scope of this market may be wider than national, as some cross-border trade with

Germany and Belgium does take place. Furthermore, third parties have confirmed that pigbone collection is done in a range varying from 250-400 kilometres around the processing plant, and a great many slaughterhouses - in particular in the Netherlands and Germany - are located relatively close to the border, thus facilitating cross-border trade.

32. It appears that the exact geographic market definition may be left open, since in all alternative market definitions, the operation does not seem to raise competition concerns.

B. ASSESSMENT

33. As regards HRM, Dumeco already supplies 100% of its HRM abattoir by-products to Best Agrifund as the statutory monopolist in the Netherlands. The position of Best Agrifund on the market for the purchase and processing of HRM will therefore not change due to the concentration. The Commission accepts this argumentation and concludes that the operation does not seem to give rise to competition concerns on this market.

(i) Purchase and processing of other category 3 abattoir by-products

34. With regard to the purchase and processing of other category 3 abattoir by-products, a vertical relationship exists in the Netherlands. The total market for the processing of other abattoir by-products is 475,000 tonnes. Of these Best Agrifund processes approximately [...] tonnes or approximately [90-100]%. In 2002 Dumeco produced [...] tonnes of category 3 abattoir by-products, of which Best Agrifund processed [...] tonnes ([90-100]).
35. Currently, Dumeco only accounts for [<10]% of the supply of other category 3 abattoir by-products to Best Agrifund. Should Dumeco also deliver the rest of its other abattoir by-products to Best Agrifund, the increment would only be [...] tonnes. Best Agrifund's market share would therefore increase by only [<5]% (from [90-100]% to [90-100]%). The supplies from Dumeco would account for [<10]% of Best Agrifund's total supplies. The increment would therefore be *de minimis*.
36. In general, no competition concerns have been raised in the market investigation. However, a few third party processors have raised concerns that the transaction might have a negative impact on competition in the Netherlands and in Belgium. However, having verified such concerns it appears that foreclosure of the market to Best Agrifund's competitors is unlikely. Such competitors to Best Agrifund have indicated that – although supply of other category 3 abattoir by-products might be limited due to the transaction - they would continue to be able to purchase other category 3 abattoir by-products on the Dutch respectively the Belgian market.
37. From the above, it must be concluded that the operation does not seem to raise any competition concerns on this market.

Possible impact on slaughterhouses

38. Furthermore, the Commission has looked into any potential negative effects of the operation for Dumeco's competitor slaughterhouses. Considering that Dumeco has a strong position in the market for the purchase of slaughter pigs in the Netherlands ([40-50]%), the combined entity could use its position on the processing market to the

detriment of competitor slaughterhouses, for example by imposing a price change to their disadvantage for the collection and processing of abattoir by-products.

39. The parties have indicated that this risk is unfounded, as the total cost of processing of abattoir by-products generally represents less than 1% of the total average proceeds per slaughtered pig. A 10% price increase for the processing of abattoir by-products would lead to an increase of 0.1% of the total slaughtering cost. As a result, the parties argue, it can be excluded that a price increase of such a low cost factor in the slaughtering of animals significantly alters the position of Dumeco's competitors. Furthermore, the parties reiterated that the tariffs for the processing of HRM are fixed due to government regulation. Hence, no price effects can arise where the processing of HRM is concerned. The parties emphasise that – with the exception of the markets for other category 3 abattoir by-products and food grade blood where they have strong positions – alternative processors are available to Dumeco's competitors on the various submarkets.
40. Third party slaughterhouses have indicated that there might be an incentive for the combined entity to discriminate against competitor slaughterhouses, but for the moment they did not have any major concerns. The more constraining factor was considered to be the monopoly position of Rendac in HRM processing. The market for the processing of HRM, however, is not affected by the proposed concentration (see also paragraph 32 above). Furthermore, competitors have confirmed that some alternative processors would be available in the Netherlands, should discrimination take place. The Commission's market investigation has confirmed that the costs for processing abattoir by-products derived from slaughtered pigs are small in relation to the total value of the slaughtered animal (maximum: 1.6%). However, this percentage concerns the processing costs of processing of all abattoir by-products, regardless of category. Information from the parties suggests that the costs relating to the processing of category 3 abattoir by-products are even smaller, amounting to less than 0.5% of the total average selling price per slaughtered pig.

(ii) Purchase and processing of food grade blood

41. As regards *the purchase and processing of food grade blood*, Best Agrifund already processes approximately 100% on the Dutch market and Dumeco provided almost all of its food grade blood to Best Agrifund. Therefore, the concentration is unlikely to lead to any negative effects on this market in the Netherlands. Moreover, no concerns have been raised by third parties.

(iii) Purchase and processing of bones

42. On a regional market, consisting of the Netherlands, Belgium and Germany Best Agrifund processes some [10-20]% of all bones. Dumeco already supplies almost all its produce to Best Agrifund. Should Dumeco start to supply all its produce to Best Agrifund, the latter's market share would increase by only [<5]%.
43. Supposing that the market for the purchase and processing of bones were considered to be national, only the Dutch market would be affected, as Best Agrifund's market share on this market is approximately [55-65]%. Potentially Dumeco could supply all its bones to Best Agrifund as a result of the proposed operation, which would mean an increase in Best Agrifund's market share of approximately [<10]%. However, such a potential increase does not seem to raise competition concerns, particularly in view of the

insignificance of the processing costs in relation to the total average selling price per slaughtered pig, as is further set out below.

44. According to the parties Dumeco slaughtered approximately [...] million pigs in 2002, with a total average selling price (including cutting and deboning) of EUR [...]. Main costs were EUR [...] for raw material, transport and packaging, and approximately EUR [...] for labour costs, thus resulting in a margin of EUR [...] per pig. The total average cost per slaughtered pig for the processing of bones amounted to EUR [...]; i.e. [...]% of the total average selling price per slaughtered pig. If the combined entity were for instance to implement a price increase in the costs of bone processing of 10%, this would lead to a total average cost for the processing of bones per slaughtered pig of EUR [...]. Assuming similar cost structures for all slaughterhouses, potential price discrimination would not have a significant effect on Dumeco's competitors. Furthermore, Dumeco's competitors have access to other processors in the Netherlands, Belgium and Germany, should discrimination take place.
45. In addition, as there are indications that the geographic market is wider than national, potential competitors in this market are likely to exercise a competitive constraint on the parties. Furthermore, based on the market investigation, the proposed transaction will not be a problem for Best Agrifund's competitors in the meat processing business, as alternative sources of supply would continue to be available.

VI. CONCLUSION

46. 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

Mario MONTI
Member of the Commission