

***Case No COMP/M.3177 -
BASF / GLON-SANDERS
/JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/07/2003

*Also available in the CELEX database
Document No 303M3177*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.07.2003
SG (2003) D/231087

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3177 – BASF France / Glon-Sanders
Notification of 26.06.2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 26 June 2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings BASF France S.A.S. belonging to the BASF Group, Germany, and Glon Sanders S.A. acquire within the meaning of Article 3 (1) b of the Council Regulation joint control of BASF Nutrition Animale S.A.S. by way of contributing assets in a newly created company constituting a joint venture.
2. After examination of the notification, the Commission has concluded that the notified 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 and with the EEA Agreement.

I. THE PARTIES

3. BASF is active in the production of natural gas, oil, chemical and pharmaceutical products and, in particular with regard to this case, feed additives. Glon Sanders is active in the formulation and marketing of animal nutrition products and animal feeds, including premix.

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).

II. THE OPERATION

4. The proposed operation is the creation of a new legal entity, a 50:50 % full function JV under French law by BASF France and Glon Sanders, to be named BASF Nutrition Animale S.A. (BNA). The JV will continue to develop the business contributed by Glon Sanders. This business is the manufacture and trade of premix as well as the trade of feed additives. The JV's EEA activities are estimated to be less than EUR 100 million in the next years (target turnover in 2004: approximately EUR [...] million). The JV will mainly be active in France.

III. CONCENTRATION

5. The creation of the Joint Venture by BASF France and Glon Sanders is a concentration within the meaning of Article 3 (2) of the Merger Regulation. The JV will be jointly controlled by its parent companies. The president and the managing director of the JV company will be appointed by collective unanimous decision of the parties. BASF has the right to propose the president. The JV will perform on a lasting basis all the functions of an autonomous economic entity. BNA will be built from the contribution of assets of BASF France (including marketing activities, know-how on feed additives and manufacture of premix as well as four employees) and the premix Business of Glon Sanders, including its premix production site in Chateau Gontier, land, buildings and 19 employees. Whilst it is true that the JV will purchase a high proportion of its supplies of additives from BASF, it will sell the premix it produces not only to companies of the Glon group but also to third parties.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². Both BASF Group and Glon Sanders, have a Community-wide turnover in excess of EUR 250 million, and only the Glon Group achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension pursuant to the Article 1 (2) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

The Product Markets

7. Feed additives are products used in animal nutrition for the purpose of improving the quality of feed as well as for mast purposes. Additives are for example vitamins, carotenoids, amino acids, organic acids, feed phosphates, enzymes, growth promoters and minerals, which generally are not interchangeable with each other. The exact definition of the product markets in the additives sector can be left open, since on the basis of all alternative market definitions considered, the operation will not lead to the creation or strengthening of a dominant position.

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, p25).

8. Premix is a mixture of additives like vitamins, trace-elements etc., included in the final product between 0,1 and 1%. It is called basemix if it also contains minerals. The animal feed as final product is enriched with about 3% of basemix. Premix constitutes a separate product market. From a demand side perspective, it cannot be substituted by the unmixed additives, as the premixer takes over the functions of formulating the premix and mixing the different additives into a single product. It cannot be substituted by basemix either, because, contrary to basemix, it does not contain minerals.

Relevant Geographic Markets

9. The geographic market for the different additives has at least EEA-wide, if not world-wide dimension. The additives sold in the different EEA countries are chemically identical and traded internationally at relatively low transport costs.
10. The parties put forward that the premix market is at least EEA-wide, considering low transport costs. However, the customers' expectations for individual advice and technical service have led to close business relationships between the feed producers and the local premixers. This is why there is in fact only low cross-border trade. Thus the premix market could also be considered as national. Yet, the question of the relevant geographic market can be left open since even considering the market as national no competition concerns would arise.

Compatibility with the Common Market

11. Since Glon Sanders is only active in the premix market and BASF France only in the additives business, there is no horizontal overlap of market shares in France. The only additive distributed by a subsidiary of Glon Sanders is neither manufactured nor distributed by BASF France or the JV. If the market for premix is to be defined as EEA-wide, the concentration would lead to an addition of market shares, but the combined market share would be only in the order of [5% - 15%]. Therefore, from a horizontal point of view, no competition concerns arise.
12. The concentration does not lead to competition concerns from a vertical point of view either.
13. First, the concentration will not lead to the creation or strengthening of dominant positions on the upstream markets for additives. It is true that on some of these markets, BASF achieves high market shares, especially for carotenoides (in the order of [45% - 55%]). However, the vertical integration into a relatively small customer and distributor will not change significantly the market situation. On each of the concerned markets, strong competitors such as Roche or Adisseo are active.
14. Second, the merger will not lead to the creation or strengthening of a dominant position on the downstream market for premixes. It is true that the JV shall purchase [...] % of its requirements in additives from BASF at favourable purchasing conditions. However, even if this confers certain competitive advantages to the JV, in view of the market structure it cannot be expected that the strengthening of the JV's position derived from these advantages is such that it will lead to a dominant position. According to the data provided by the parties, which were confirmed as plausible by the market investigation carried out by the Commission, Glon Sanders achieves a market share in France of [10% - 20%]. Glon Sanders is the market leader, but is closely followed by other premix manufacturers such as Provimi, CCPA-Vétagri, Union in Vivo or Evialis.

15. The creation of the JV will not lead to a foreclosure of other premix manufacturers from the supply of additives. BASF has a strong position on the markets for certain additives, especially carotenoids. This could be a problem if the competitors in the premix market would depend on BASF for their purchase of additives. However, the market investigation has shown that customers are able to meet their requirements from other producers, such as Roche and Adisseo, who also achieve significant market shares (Roche for carotenoides; Roche, Adisseo and others for vitamins and other additives). Recently there has been a significant increase of available high quality additives and vitamins produced in China and India. As a result competitors in the premix market depend even less on BASF's supply. Instead, due to the lower production costs in those countries, there will continue to be intense competition on the vitamin markets. Furthermore, according to the parties, the additives markets are characterised by significant buying power of the customers.
16. The creation of the JV will also not lead to the creation of a dominant position in the premix market due to the foreclosure of other premixers from the supply of citranaxanthin. Citranaxanthin is an additive (a carotenoid) that delivers red pigmentation and is used exclusively for poultry, especially for egg yolk pigmentation. BASF is the only producer on the market. However, citranaxanthin is not only, albeit at higher cost, substitutable by Canthaxanthin produced by Roche, but also by natural red pepper derivatives offered e.g. by Lohmann which was also confirmed by the market investigation.

VI. CONCLUSION

17. 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 with the EEA Agreement.

For the Commission

(Signed)
Mario MONTI
Member of the Commission