

***Case No COMP/M.3385 -
CARGILL / BCA***

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

Article 6(1)(b) NON-OPPOSITION
Date: 01/04/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01/04/2004

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.3385 – Cargill/BCA
Notification of 27.02.2004 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 10 February 2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Cargill PLC (“Cargill”), part of the Cargill group, acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of Banks Cargill Agriculture (“BCA”), currently a 50/50 joint venture between Cargill and SCB Holdings (Sandy) Limited (“Banks”), 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 Council Regulation (EEC) No 4064/89 and does not raise serious doubts to its compatibility with the common market and with the EEA Agreement.

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).

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. The proposed concentration involves a change from joint to sole control of BCA. Cargill and Banks currently exercise joint control over BCA, [...].² On 27 February 2004, Cargill exercised a call option, which will result in Cargill acquiring Banks' [...] interest in BCA. The concentration will bring about a durable change in the structure of the undertakings concerned so that BCA will come under sole control of Cargill.
4. Cargill, a wholly-owned subsidiary of the US group Cargill Inc, is active internationally in, amongst other, commodity trading, commodity processing, the marketing of non-branded food ingredients to the food and beverage industry, and the production of agricultural inputs to farmers.
5. BCA is active in agricultural merchanting business in the UK. BCA comprises the formerly independent UK agricultural merchanting businesses of Cargill and Banks.

II. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (Cargill, EUR 58,102 million; and BCA, EUR 539 million). Each of them has a Community-wide turnover in excess of EUR 250 million (Cargill, EUR [...] million; and BCA EUR [...] million), 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.

III. COMPETITIVE ASSESSMENT

A. Relevant product markets

7. Agricultural merchanting covers a range of activities: (i) the marketing and supply of seed, fertilisers, agro-chemical and animal feed ("agricultural inputs") to farmers, and (ii) the purchasing and trading of the farmers' crop ("agricultural outputs") to the market.
8. The parties argue that agricultural merchanting should be regarded as a single market and not further sub-segmented. However, in previous cases⁴, six segments within the sector of agricultural merchanting were identified: (i) the sale of agricultural seed, (ii) the sale of fertilisers, (iii) the sale of agro-chemicals, (iv) the sale of animal feed, (v) the purchase of grain and pulses, and (vi) the purchase of oilseed rape. However, the exact

² See Case No COMP/M.2330 Cargill / Banks of 09.03.2001.

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). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

⁴ See Case No COMP/M.2330 Cargill / Banks of 09.03.2001, and Case No IV/M.026 – Cargill / Unilever of 20.12.1990.

market definitions can be left open in the present case, since under any alternative market definition, no competition concerns would arise.

9. Furthermore, a number of markets, such as oilseed processing, may be regarded as related to agricultural merchanting. Oilseed processing consists of the crushing of oilseeds, which in turn produces oilseed meals and crude seed oils (mainly soya, rape and sunflower).
10. The markets for oilseed meals and crude seed oils have been considered in several previous cases⁵, however, the question of whether a distinction between the different types of oilseed meals and crude seed oils (such as soya, rape and sunflower) should be made has been left open. The exact definition of the product markets may be left open in this case as well, as under any alternative product market, no competition concerns would arise.

B. Relevant geographic markets

11. With regard to the geographic market, the parties argue that the relevant geographic market for agricultural merchanting is national, in this case the UK. In earlier cases⁶, no definite conclusion has been reached whether the market for agricultural merchanting is national, regional or local. The exact geographic market definition can be left open in this case as well, as the operation does not lead to competition concerns under any alternative market definition.
12. In relation to the geographic markets for oilseed meals and crude seed oils, they have been found to be at least Community- wide and probably even wider.⁷

C. Assessment

13. The only activities to be acquired by Cargill are those of BCA, which it currently controls jointly with Banks. Thus, BCA's share is already attributable to Cargill and therefore the transaction will not lead to any horizontally affected markets. In any event, Cargill is not active in agricultural merchanting in the UK outside the scope of BCA.
14. Cargill is, however, active in some other markets, such as oilseed meals and crude seed oils, which may be considered vertically related to agricultural merchanting. Cargill's estimated market share of oilseed meals is [20-30] % at the European level (and for the different types of oilseed meals: [25-35] % for soya bean meal, [20-30] % for rapeseed

⁵ See Case No COMP/M.2271 Cargill /Agribrands of 19.02.2001 and Case No COMP/M.3188 ADM / VDBO of 31.07.2003.

⁶ See Case No COMP/M.2330 Cargill / Banks of 09.03.2001 and Case No IV/M.026 Cargill / Unilever of 20.12.1990.

⁷ See Case No COMP/M.2271 Cargill /Agribrands of 19.02.2001 and Case No COMP/M.3188 ADM / VDBO of 31.07.2003.

meal and [20-30] % for sunflower meal). In the market for crude seed oils, Cargill has around [25-35] % at the European level (and for the different types of crude seed oils: [25-35] % for soya seed, [25-35] % for rapeseed and [25-35] % for sunflower seed). There are other strong suppliers, such as ADM and Bunge (Cereol), which have significant market positions in these two markets.

15. BCA is active in the upstream market for the purchasing of oilseed rape. BCA's share of this market is only [15-25] % in the UK and nowhere higher than [20-30] % at the local level ([15-25] % in Yorkshire & North, [20-30] % in Lincs & West, [15-25] % in Anglia, [15-25] % in Central & West, [15-25] % in South East, [20-30] % in South West and 0% in Scotland). In addition, BCA faces competition on the national and local level in the UK from, for example, Grain Farmers, Allied Grain, and Centaur. Therefore, no foreclosure effects are likely to arise.
16. In any event, the parties argue that the transaction will have little effect on the existing vertical relationship between Cargill and BCA, which will continue unchanged. Considering that BCA is already under joint control of Cargill, and Cargill does not have any agricultural merchanting activities in the UK outside the scope of the BCA, the acquisition of sole control of BCA by Cargill does not appear to have any impact on *either* the structures of the various relevant markets *or* the existing relationship between Cargill and BCA. Thus, it appears that the change from joint to sole control of BCA by Cargill will not have any adverse effects on competition.

Conclusion

17. In view of the foregoing, the Commission considers that the proposed concentration does not raise serious doubts as to its compatibility with the common market or with the EEA agreement.

IV. CONCLUSION

18. 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, signed
Mario Monti
Member of the Commission