

***Case No COMP/M.3401 -  
DANISH CROWN /  
FLAGSHIP FOODS***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 17/06/2004

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17/06/2004

SG(2004)D/202396

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6. 1(b) DECISION

To the notifying party

Dear Sirs,

**Subject: Case No COMP/M.3401 – Danish Crown/Flagship Foods**

Notification of 13.05.2004 pursuant to Article 4 of Council Regulation No 139/04

1. On 13.05.2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 139/04<sup>1</sup> by which the Danish undertaking Danish Crown Amba (“Danish Crown”), through its UK subsidiary Tulip Ltd. (“Tulip”), acquires within the meaning of Article 3(1)(b) of the aforementioned Council Regulation control of the whole of the UK undertaking Flagship Foods Ltd. (“Flagship Foods”), 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 139/04 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

### THE PARTIES

3. *Danish Crown* is a Danish cooperative slaughterhouse and its members (farmers) supply raw materials (pigs and cattle) to the cooperative. It is a vertically integrated company and its activities include slaughtering of pigs and cattle, meat processing and meat trading. It is based in Denmark but has activities world wide. Tulip (its UK subsidiary) is engaged in the purchase of meat for further processing, the processing of meat and the sale of processed meat products in the

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<sup>1</sup> OJ L 24 of 29.1.2004 p. 1

UK. Danish Crown is active on the market for the purchase and slaughtering of live pigs only in Denmark.

4. *Flagship Foods* is a private company. It wholly owns Dalehead Foods Limited (Dalehead), Flagship Fresh Meats Limited (Flagship Fresh Meats) and Roach Foods Limited (Roach). Dalehead is active in the slaughtering of pigs in the UK and in the supply of meat for direct human consumption and meat for further processing. It also has interests in the breeding and finishing of live pigs. Flagship Fresh Meats produces fresh meat products for direct human consumption and meat for further processing in the UK. Roach produces a wide range of processed meat products in the UK.

## **THE OPERATION**

5. The transaction involves the acquisition by Tulip Limited of sole control of Flagship Foods and its subsidiaries through the purchase of all the issued shares in Flagship Foods. Tulip is a UK subsidiary of Tulip International (UK) Limited whose ultimate parent company is Danish Crown. The operation therefore constitutes a concentration within the meaning of Art. 3 (1) (b) of Council Regulation (EEC) No 139/04.

## **COMMUNITY DIMENSION**

6. The undertakings concerned have a combined aggregate world-wide turnover of more than €5 billion<sup>2</sup> (Danish Crown €5.4 billion, Flagship Foods €637 million) and each have a Community-wide turnover in excess of €250 million (Danish Crown €3.5 billion, Flagship Foods €637 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.

## **RELEVANT MARKETS**

7. The proposed transaction will give rise to the following affected markets: 1) the sale of pig meat for further processing 2) the market for processed pork products and a number of its sub-markets.

### **(1) Sale of pig meat for further processing**

#### *Product Market*

8. The Commission has previously defined a separate product market for pig meat for further processing<sup>3</sup>. The parties submit that this market definition should be widened to include all meat types. They argue that there is full demand-side substitutability “since industrial processors demand various kinds of meat” and

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<sup>2</sup> 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, p. 25).

<sup>3</sup> Most recently COMP/M.3337 – Best Agrifund/Nordfleisch, paragraph 23.

“since different kinds of meat are substitutable in processed meats which often consist of a mixture of pork and beef”.

9. The Commission’s market investigation did not however support the parties’ view. In the view of both competitors and customers pork is a separate product to be distinguished from beef, lamb, poultry etc. Processors of pig meat take into account the fact that consumers clearly distinguish between the various types of protein contained in these products. Customers also have different diet preferences based on health and safety concerns as well as religious beliefs in some cases. Moreover, pig meat is used in the manufacture of British products which are pork based and for which no other meat could be substituted (cooked meats with pork ingredients, sausage, bacon, gammons, hams etc.). This was further confirmed by a SSNIP-based enquiry which tended to show that customers would not switch to other meats even if the prices were increased by for example 5-10%.

#### *Geographic Market*

10. The parties claim that the market is at least EU-wide on the grounds that 63% of all pig meat used for further processing in the UK is imported. The Commission’s market investigation indicated that a large amount of pig meat is procured from outside the UK in a geographic area that comprises Denmark, the Netherlands, Germany, France, and Spain and, to a lesser extent, other countries such as Poland and Hungary. Respondents pointed out that when used in processed meat products the origin of the pork generally plays a less important role. This would tend to confirm the parties’ view that, at least in the case of the UK, the geographical scope of the market is larger than national. However, for the purposes of this decision the precise scope of the geographic market for the sale of pig meat for further processing can be left open as even on the basis of all alternative market definitions considered the proposed concentration will not significantly impede effective competition in the common market or a substantial part of it.

#### *Competitive Assessment*

11. If the market is regarded as being national the combined market share of the parties in the UK would be 25-35% (Danish Crown 20-25%, Flagship Foods 5-10%) in the supply of pig meat for further processing. Competitors in the UK include Grampian with 5-10%, Adams with 0-5%, Cranswick with 0-5%, Bowes with 0-5% and a large number of smaller competitors constituting the remaining 50-60% of the market. As a result of the concentration the combined entity will be the largest supplier of pig meat for further processing in the UK. However there remain a substantial number of other competitors, including Grampian which is a significant competitor in many other neighbouring markets. In addition there is still considerable excess capacity in this market, of at least 20%, which can be employed by producers at short notice and without incurring additional costs. It can therefore be concluded that the transaction does not raise competition concerns in this market and that it will not significantly impede effective competition in the UK in particular as a result of the creation or strengthening of a dominant position in that market.

## **(2) The Supply of Processed Meat**

### *Product Market*

12. The Commission has previously defined<sup>4</sup> the market for processed meat products as comprising meat from mammals or birds, containing external ingredients such as salt or spices, being raw, dried, smoked or cooked. The various processed meat products vary in several dimensions such as the raw material used (pork, beef, poultry), ingredients (spices), water content, heat treatment (smoked or boiled), portion, packaging, temperature (chilled or canned). All processed meat products constitute a combination of this 7-dimension scheme. However, the Commission noted that all processors are able to use all processing techniques (drying, smoking and cooking) on meat from all species.
13. In a later decision<sup>5</sup> (the Danish Steff/Houlberg Case) the Commission concluded that there were separate markets for (1) processed pork products, (2) processed beef products and (3) processed poultry products. It also discussed whether these markets could be divided further into (a) raw cured products, (b) processed meat for cold consumption, (c) canned meat, (d) cooked sausages, (e) pâtés and pies and (f) ready prepared dishes and components for such (convenience products). The foregoing scheme was also followed in a more recent decision<sup>6</sup> although the precise product market definition in that case was left open.
14. On the basis of a high degree of supply-side substitutability the parties submit that the relevant market should include all processed meat products and that it should comprise all types of processed meat including meat from pigs, cattle and poultry. The parties also contest the sub-division of this market and argue that all 7 sub-markets belong to the same market.
15. The Commission's market investigation confirmed that processed pork products constitute a separate product market from that of other processed meat or poultry products. Consumers tend to distinguish between the different protein types found in each meat category. Reasons include consumer diet preferences, food safety concerns (BSE and Avian Influenza) as well as religious beliefs relating to pork consumption. One respondent expressed the view that consumption patterns for processed pig meat can be distinguished from those of other processed meat categories. For example, bacon and sausages would tend to be more popular at breakfast meals, whereas consumption of chicken, turkey, lamb or beef processed products at such a time would be limited. In addition there is a wide range of original traditional products (e.g. bacon, gammon joints, hams) and pre-prepared products (e.g. Scotch eggs, sausage rolls, Melton pies etc.) for which processed pig meat is a distinct ingredient.

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<sup>4</sup> See case No IV/M.1313 - Danish Crown/Vestjyske Slagterier.

<sup>5</sup> See case No IV/M.2662 - Danish Crown/Steff Houlberg.

<sup>6</sup> Case No IV/M. 3337 - Best Agrifund/Nordfleisch

16. The market investigation has also confirmed that it can be concluded that separate markets exist for (a) raw cured products, (b) processed meat for cold consumption, (c) canned meat, (d) cooked sausages, (e) pâtés and pies and (f) ready prepared dishes and components for such (convenience products). In addition raw cured pork can be divided into bacon and raw sausages. However for the purposes of this case it is not necessary to take a position on this possible further segmentation of the markets.
17. As for customer groups the sale of processed pork could be separated into a retail segment and a catering segment. This separation is based on the different demand characteristics of the retail trade and the catering segment. The characteristics differ especially in the size and packaging of the products: the catering market would in general terms use poorer cuts (quality standards and technical requirements are different to retail) and retail is often pre-packaged and priced; in addition distribution, marketing, advertising and new product development strategies are significantly different between the retail and catering.
18. However for the purposes of this decision the precise product market definition can be left open since even on the basis of all alternative market definitions considered the proposed transaction will not significantly impede effective competition in the UK in particular as a result of the creation or strengthening of a dominant position on that market.

#### *Geographic market*

19. In a previous case<sup>7</sup> the Commission found that the geographic market was wider than national, but decided later<sup>8</sup> that due to suppliers' ability to differentiate between different Member States the national geographic market delimitation was justified. However it was not ruled out, that there were markets for individual product groups of processed pork meat which were more wide ranging than others. In the later Best Agrifund Case the Commission found that there was no significant cross-border trade, but ultimately decided to leave the question open. The parties argue that the market is wider than national on the grounds that the level of trade between Member States is extensive, and import volumes to the UK are high.
20. According to the investigation carried out by the Commission, it would appear that geographical scope of the market depends on the products: on the one hand the market for traditional British sausages may be national in scope. On the other hand there are a number of instances where the same or similar pork products are traded beyond national markets (e.g. cured meats and pâtés). When acquiring these products, UK consumers seem to be influenced by factors such as quality, availability and price and in general there is recognition among consumers that imported pork products have high quality standards. Specifications of imported processed pig meat are based on the standards required by each importer which

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<sup>7</sup> Case No IV/M.1313 - Danish Crown/Vestjyske Slagterier

<sup>8</sup> Case No IV/M.2662 - Danish Crown/Steff-Houlberg.

differ in terms of quality and visual criteria and are less based on national tastes than on the brand image of the importer.

21. However, for the purposes of this decision the precise scope of the geographic market can be left open as even on the basis of all alternative market definitions considered the proposed concentration will not significantly impede effective competition in the common market or a substantial part of it.

#### *Competitive assessment*

22. Both parties have activities on the market for the production and sale of processed pork products. Flagship Foods is not active in relation to canned meats, cooked sausages, pâtés, and ready-prepared dishes and components.

##### *(1) The Market for Processed Pork*

23. According to the parties' data, the transaction would lead to an affected market only in the hypothetical retail market in the UK where their combined market share is 15-25% (Danish Crown 10-15 %, Flagship Foods 5-10%). The primary competitors are Grampian (15-20%), Kerry Foods (5-10%), Tican (0-5%), Farmers Boy (0-5%) and Best Meat/Key Country (0-5%). The rest of the market comprises smaller players with negligible market shares.

24. In view of the above it can be concluded that the concentration will not significantly impede effective competition in the UK in the retail market of processed pork, in particular as a result of the creation or strengthening of a dominant position in that market.

##### *(a) The Market for Raw Cured pork*

25. As a result of the concentration only a retail market in the UK could be affected by the concentration where the combined market share of the parties is 15-25% (Danish Crown 10-15%, Flagship Foods 10-15%).
26. There are however other strong competitors in this market such as Grampian with a 15-25% market share, Kerry Foods with a 5-10% market share, Tican with a 5-10% market share Best Meat with a 0-5% market share and Cranswick with 0-5% market share. The rest of the market comprises smaller competitors with negligible market shares.
27. In view of the market share of the combined entity and the number of other competitors it can be concluded that the concentration will not significantly impede effective competition in the UK in the retail market of raw cured pork, in particular as a result of the creation or strengthening of a dominant position.

##### *(i) Bacon*

28. In relation to the bacon segment the parties have a combined UK market share of 15-25% (Danish Crown 5-10%, Flagship Foods 10-15%). If this bacon sector is further segmented into retail and catering only the retail market would be affected by the transaction: the parties' combined market share would be 20-30% (Danish Crown 5-10%, Flagship Foods 15-20%). For this sector there are several other

competitors such as Grampian with a 20-25% market share, Tican with a 5-10 % market share, Best Meat with 0-5% and Farmers Boy with 0-5%. The rest of the market comprises smaller competitors with negligible market shares.

29. In these circumstances it can be concluded that the concentration will not significantly impede effective competition in the UK, in particular as a result of the creation or strengthening of a dominant position in the UK bacon market.

(ii) Raw Sausages

30. For the sub-group raw pork sausages the only affected market would be a retail product market in the UK where the parties' combined market shares would be 10-20% (Danish Crown 10-20%, Flagship Foods 0-5%) There are several other competitors with market share levels above 5% such as Grampian with 15-20%, Kerry Foods with 15-20%, Cranswick with 5-10%, Turner with 5-10% and Tranfield with 5-10%. In view of the limited addition of market share resulting from this transaction and the number of other strong competitors it can be concluded that the concentration will not significantly impede effective competition in the UK, in particular as a result of the creation or strengthening of a dominant position in the raw sausages market.

(b) Processed pork meat for cold consumption

31. This market would be affected by the transaction if the market is defined as the UK where the parties' combined market shares in 2003 was 20-30% (Danish Crown 20-25%, Flagship Foods 5-10%). There are several other competitors with market share levels above 5% such as Grampian 25-30%, Kerry Foods 5-10% and Farmers Boy 5-10%. The other competitors accounting for the remaining 25-35%.
32. If a further segmentation is made into retail and catering the parties' market share for catering is 15-25% (Danish Crown 10-15%, Flagship Foods 0-10%). For the retail segment the combined market share is 25-35% (Danish Crown 20-30%, Flagship Foods 0-10%). The market shares of the most important competitors are 25-30% for Grampian, 5-10% for Kerry Foods and Farmers Boy, 0-5% for Cranswick and 0-5% for Adams. The remaining competitors have a market share of 15-25%.
33. As a result of the merger the two largest suppliers of processed pig meat for cold consumption (the merged entity and Grampian) will have a combined market share of around 55-65% (55-65% for the overall market and 55-65% in the retail segment). However, this does not presently raise competition concerns. There are a large number of other competitors on this market and according to the parties' estimates, which have been confirmed by the market investigation, there is substantial excess capacity (at least 20%). Moreover, many of the customers who responded to the Commission's market investigation said that they expected to benefit from the economies of scale resulting from the transaction. In the light of these market characteristics it can be concluded that the concentration will not significantly impede effective competition in the UK, in particular as a result of the creation or strengthening of a dominant position in that market.

*Vertical Aspects*



34. The market for sale of fresh pork for further processing is vertically integrated with the market(s) for processed pork meat. Given the market shares of the parties, the transaction will give rise to vertically affected markets in the market for fresh pork for further processing (combined market share 25-35%), the possible retail bacon market (combined market share 20-30%), possible market for processed pork meat for cold consumption (combined market share 25-35% in the overall segment and 25-35% retail segment). However, in view of the number of strong competitors in each of these markets, as mentioned above, and the level of the market shares of the parties, it can be concluded that the concentration will not significantly impede effective competition in the common market or in a substantial part of it in any of these possible affected vertical markets, in particular as a result of the creation or strengthening of a dominant position.

## **CONCLUSION**

35. It can therefore be concluded that the concentration will not significantly impede effective competition in the common market or in a significant part of it, in particular as a result of the creation or strengthening of a dominant position.
36. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and the EEA Agreement. This decision is adopted in application of Article 6(1) (b) of Council Regulation (EEC) No 139/04.

For the Commission,  
(signed) Mario Monti  
Member of the Commission