

***Case No COMP/M.3476 -  
CARGILL / SEARA***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 28/10/2004

*Also available in the CELEX database  
Document No 304M3476*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.10.2004

SG-Greffe(2004) D/205040

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3476 – Cargill/Seara  
Notification of 27.09.2004 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 27.09.04, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the “Merger Regulation”) by which the undertaking Cargill, Inc. (“Cargill”, USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the whole of the undertaking Seara Alimentos S.A. (“Seara”, Brasil) 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 the EEA Agreement.

**I. THE PARTIES**

3. **Cargill** is a privately-owned US company active world-wide (through its subsidiaries and affiliates) in a wide variety of businesses. Its principal operations include commodity trading, commodity processing, the marketing of non-branded food ingredients to the food and beverage industry, and the production and marketing of

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

agricultural inputs to farmers. It also has some poultry production, processing and marketing activities.

4. **Seara** is a Brazilian pork and poultry producer. Its operations include the breeding, growing and processing of poultry. It is the fourth largest producer of chicken in Brazil, accounting for approximately [ $<10$ ] % of total Brazilian production. All of Seara's production is located in Brazil. Seara exports to countries in Europe, the Far and Middle East, Africa and South America, and has three foreign sales offices in Singapore, Amsterdam and Buenos Aires. According to the notifying party, in 2003, Seara accounted for approximately [10-20] % of EU-imports (EU-15) of boneless chicken meat. A Dutch subsidiary of Mutual Investment Limited, Bevrexas B.V., holds a majority of the shares ([...]) % in Seara. The two largest shareholders of Seara after Mutual Investment Limited are the Brazilian funds Previ and Bradesco Templeton. The remainder of Seara's shares are owned by a large number of smaller shareholders.

## **II. THE OPERATION**

5. On 31 August 2004, Cargill through its Brazilian subsidiary Cargill Agricola agreed to purchase [...] % of the share capital of Seara from Bevrexas B.V., a Bunge Limited subsidiary Bunge Alimentos, and Seara's management.
6. Cargill will tender for the remainder of Seara's shares by way of a public offer in Brazil. Following completion of that public offer, Seara will be a wholly-owned subsidiary of Cargill.
7. The proposed operation constitutes an acquisition of direct sole control of Seara by Cargill by way of purchase of shares. The proposed operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup> (Cargill €[...] million, Seara €[...] million) however, the concentration does not meet the thresholds pursuant to Article 1(2) of the Merger Regulation since only Cargill (but not Seara) has EU turnover in excess of €250 million (Cargill €[...] million, Seara €[...] million). The concentration satisfies the alternative thresholds of Article 1(3) of the Merger Regulation since the turnovers of each of Cargill and Seara exceed €100 million in the EU, their combined turnovers exceed €100 in each of three Member States (Germany, the Netherlands and the UK) and in each of these three Member States, the turnovers of each of Cargill and Seara exceed €25 million. Neither Cargill nor Seara 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.

## **IV. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS**

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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, p25).

9. Cargill and Seara supply fresh and frozen chicken parts including breast meat products to customers world-wide and in the EU. The principal horizontal overlap between the parties within the EU relates to the supply of boneless chicken breast meat. Only Cargill is further active in the supply of further processed chicken products in the EU which is downstream of the supply of boneless chicken breast meat.

### **Sale of chicken breast meat**

#### *Product market*

10. Cargill considers that the principal relevant product market is the supply of boneless chicken breast meat in the EU, whether frozen or fresh, bulk or individually portioned. The Commission has previously considered fresh meat to include both fresh and frozen meat which is not processed in any way.<sup>3</sup> In a previous decision the Commission determined that poultry (chicken and turkey) meat can be distinguished from other varieties of meat (especially pork and beef) since producers often specialise in processing one specific kind of meat, with the result that different producers are active in relation to the several varieties of meat.<sup>4</sup> In line with that Commission decision, Cargill confirms that there is little direct substitutability in practice between poultry products and other meat products (e.g. pork) from the perspective of customers in the food manufacturing, catering and retail sectors. The question arises whether the market for poultry (including chicken and turkey) can be subdivided in separate markets for chicken meat, turkey meat, or boneless chicken breast meat. This issue may be left open since on all alternative definitions considered, the proposed transaction will not significantly impede effective competition in the common market or in a substantial part of it.
11. In a previous decision the Commission sub-segmented the markets for sale of fresh meat to (i) retail markets (supermarket, butchers, farm sales); (ii) catering markets; and (iii) industrial processors. Industrial processors transform the meat into processed meat products which is then sold to the retail market or the catering market as processed meat.<sup>5</sup> Cargill considers that it would be inappropriate to make any distinction between customer segments since boneless chicken breast meat is a commodity product having identical properties irrespective of the form (frozen or fresh, bulk or individually portioned) in which it is supplied to the customer. However, also this issue may be left open in the present case because even on the basis of a narrower customer segmentation into the three categories enumerated above, the operation will not significantly impede effective competition in the common market or in a substantial part of it.

#### *Geographic market*

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<sup>3</sup> Case COMP/M.3337 – Best Agrifund/Nordfleisch, decision of 19.03.2004, recital 23.

<sup>4</sup> Case No IV/M.1262 – Cebeco/Plukon, decision of 24.09.1998.

<sup>5</sup> Case No COMP/M.3337 – Best Agrifund/Nordfleisch, decision of 19.03.2004.

12. Cargill considers the market for the supply of boneless chicken breast meat is at least EU-wide due to the existence of pan-European sourcing agreements of the leading food manufacturers and food service suppliers and the incidence of imports into the EU. However, for the purposes of this decision the precise scope of the market may be left open as even on the basis of all alternative market definitions considered the concentration will not significantly impede effective competition in the common market or a substantial part of it.

### **Sale of further processed chicken products**

#### *Product market*

13. Further processed chicken products include sandwich fillings, chicken nuggets, chicken sandwich, chicken goujons, chicken kiev and a range of other ready-to-eat dishes. Cargill only is active in the manufacture of further processed chicken products, which it sells into the retail and food service (including fast food) sectors. Since Cargill uses boneless chicken breast meat supplied by itself and Seara in the production of further processed products a vertical relationship arises.
14. Cargill argues that customers have non-substitutable requirements for processed products consisting of each type of meat product. As food manufacturers are typically active across a range of further processed chicken products, Cargill considers it is not appropriate to define product markets narrowly by reference to each type of further processed poultry product. Cargill also presented data on the basis of the following categories: coated and flavoured boneless; ready meals; deli meats; and bone-in rotisserie. In a previous decision the Commission considered it was reasonable to segment the product market for processed meats into processed pork products, processed beef products, processed poultry products.<sup>6</sup> However, the issue whether there are separate markets for different individual processed poultry products may be left open since on all alternative market definitions considered no competition concerns would arise.

#### *Geographic market*

15. Cargill submits the market for further processed chicken products is world-wide with certain large retail and food service customers ordering on a pan-European basis and significant intra-EU trade flows. In a previous decision the Commission has considered the markets for further processed meat products as national in scope on the basis of price variations and differing consumer preferences.<sup>7</sup> The issue whether the markets are world-wide or national may be left open since on all alternative market definitions considered no competition concerns would arise.

## **V. COMPETITIVE ASSESSMENT**

### **Horizontal overlaps**

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<sup>6</sup> Case COMP/M.2662 - Danish Crown/Steff-Houlberg, decision of 14 February 2002, recital 27.

<sup>7</sup> Case COMP/M.2662 - Danish Crown/Steff-Houlberg, decision of 14 February 2002.

## **Whole chickens, poultry meat, chicken meat**

16. The parties' activities give rise to insignificant overlaps in the supply of whole chickens, poultry meat and chicken meat.
17. *Whole chickens.* The parties' activities do not overlap in the supply of whole chickens in the EEA. Seara does not sell any whole chickens in the EEA whereas Cargill has a [ $<10$ ] % share of the supply of whole chickens in the UK (via its Sun Valley subsidiary) and has no sales of whole chickens in the EEA outside of the UK.
18. *Poultry meat (chicken and turkey).* Cargill has an estimated [ $<5$ ] % share in the EU whilst Seara share EU share is [ $<5$ ] % (the latter is not active in the supply of turkey). In the UK, Cargill has a share of [ $<10$ ] %. In the Netherlands, Seara's largest destination country, its share is [ $<10$ ] %. Cargill and Seara's combined share do not exceed 10% in any single EEA Member State.
19. *Chicken meat.* Cargill estimates its share of the EU market for chicken meat (including breast meat, leg meat, thigh meat, wings, drumsticks, and offal) as [ $<5$ ] % and [ $<10$ ] % at UK level with shares being significantly lower in other Member States. Seara's share of the EU market is estimated to be approximately [ $<5$ ] % and its share of the Netherlands is [ $<5$ ] %. In the other Member States in which it trades, Seara's share would only be [ $<10$ ] %.

## **Boneless chicken breast meat**

20. The parties' combined market share for the supply of boneless chicken breast meat is [ $<10$ ] % at EU level. Other important competitors are Perdigao ([ $<5$ ] %), Grampian Country Food Group ([ $<5$ ] %) and Groupe Doux ([ $<5$ ] %). At EU level the parties would have the following shares of the markets for fresh boneless chicken breast meat: (i) retail [ $<5$ ] %; (ii) catering [5-10] %; and (iii) industrial processors [10-20] %.
21. At national level and based on Cargill's best estimates the Netherlands is the only Member State in which the parties' combined share would exceed 15% (Cargill [ $<5$ ] %, Seara: [10-20] %). In addition, within the Netherlands the parties' combined share of supply to the food manufacturing customer segment would be [10-20] % (Cargill: [ $<5$ ] %; Seara: [10-20] %). On this segment within the Netherlands, other competitors such as Nutreco ([10-20] %), Plusfood ([10-20] %) and Perdigao ([5-10] %) are active and present a significant competitive constraint.
22. In the UK catering segment, the parties' estimated combined share would be [10-20] % (Cargill: [5-10] %; Seara [5-10] %). However, given that other players are active in the UK with significant shares (Grampian Country Food Group [10-20] %, OSI Group [10-20] %, L&M Group [5-10] %) this overlap does not give rise to concerns. The foregoing market structure is broadly confirmed by the Commission's market investigation. On the German market, the notifying party estimates the combined share of Cargill and Seara share as [5-10] %.

## **Vertical issue: further processed chicken products**

23. On the basis of a broad market definition of processed poultry products (sandwich fillings, chicken nuggets, chicken sandwich, chicken goujons, chicken kiev and a range of other ready-to-eat dishes) Cargill's share does not exceed 25% in any Member State.
24. On the basis of a hypothetical segment definition of processed coated and flavoured boneless chicken products, which would include chicken nuggets, Cargill would have a share of approximately [30-40]% in France (where Cargill estimates its share of chicken nuggets as [40-50]%). Approximately [>50]% of Cargill's sales in the French processed coated and flavoured boneless chicken product segment comprise sales of chicken nuggets and [>80]% sales of chicken nuggets are sold to [...]. Given that Seara's share of supply of boneless chicken breast meat is relatively low, its integration to Cargill's operations will have no foreclosure effect since industrial customers (who purchase boneless chicken breast meat for further processing) will be able to obtain boneless chicken breast meat from alternative suppliers. In addition, customers for further processed boneless chicken products will also have the possibility to purchase from alternative suppliers on the market such as Gastronom ( [25-35]%), Moy Park ([5-15]%) and Farmor ([5-15]%). The concentration is therefore not likely to give rise to competition concerns under any alternative market definitions considered.

## **VI. CONCLUSION**

25. 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 the Merger Regulation.

For the Commission

*(Signed)*

Mario MONTI

Member of the Commission