

***Case No COMP/M.3506 -
FOX PAINE / ADVANTA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/08/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20-VIII-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 (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 Where possible the information omitted has been replaced by ranges of figures or a general description.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. 3506 – Fox Paine / Advanta
Notification of 16.07.2004 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 16.07.2004, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which the undertaking Fox Paine & Company, LLC (“Fox Paine”, USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of parts, largely the European business, of the undertaking Advanta B.V. (“Advanta”, Netherlands), from Syngenta Crop Protection AG (“Syngenta CP”, Switzerland), belonging to Syngenta AG (“Syngenta”, Switzerland), by way of purchase of shares together with certain business assets.

I. THE PARTIES

2. Fox Paine manages investment funds, and its only activity in the seed industry is through its funds’ majority holding in Seminis, a US corporation. Seminis is jointly controlled by Fox Paine and Mr. Alfonso Romo Garza. Seminis is active in the

¹ OJ L 24, 29.1.2004 p. 1.

developing, growing and sale of fruit and vegetable seeds within the EEA and elsewhere.

3. Advanta and its subsidiaries are active in breeding, production, processing, packaging and sale of various kinds of seeds worldwide. Advanta was created by the concentration between Zeneca Limited and Cooperatieve Suiker Unie U.A.². The European Commission has recently authorised, subject to commitments, the acquisition of sole control of Advanta by Syngenta CP³.

II. THE OPERATION

4. The notified transaction is an acquisition of sole control of parts of Advanta from Syngenta CP. Following completion of the acquisition, Fox Paine, will acquire all of the business units of Advanta excluding the North American maize, soybean and cereals business units, which will be retained by Syngenta CP.
5. The Advanta business units to be acquired by Fox Paine includes Advanta's worldwide activities in sugarbeet, oilseed rape, sorghum, sunflower, grasses, as well as the maize and cereals business outside of North America.

III. THE CONCENTRATION

6. As Fox Paine will acquire sole control of parts of Advanta, the transaction constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The concentration does not meet the thresholds set out in Articles 1(2) and 1(3) of the Merger Regulation. As stated above, the case has been referred to the Commission upon a request under Article 4(5) of the Merger Regulation and is therefore deemed to have a Community dimension.
8. According to Article 8(3) of the EEA Agreement and Protocol 3 to that Agreement, seed products are among those that are not covered by the EEA Agreement. Consequently, this decision does not relate to the effects of the notified transaction with regard to the markets for seed products in Norway, Iceland and Liechtenstein.

V. THE RELEVANT MARKETS

A. Relevant product markets

9. The parties' activities overlap in areas of pea seeds and onion seeds.
10. The seed industry can in general be described as a two stage industry: breeding and commercial production of seeds. The first stage comprises the breeding and biotechnology programmes leading to the development of seed varieties that are produced as "parent seeds." Breeders attempt to develop new varieties with desirable

² See Case No. COMP/M.556 – Zeneca/Vanderhave, decision of 9 April 1996.

³ See Case No. COMP/M.3465 – Syngenta CP/Advanta, decision of 17 August 2004.

characteristics low production cost, high yield, low impurities, and resistance to disease.

11. The second stage comprises production of commercial quantities of the seed, including cleaning and processing, chemical treatment and pelleting, marketing and distribution. These activities are less specialised and can be successfully carried out on a smaller scale by producer firms under licence agreements or contracts with breeders. In some instances, parent seed is licensed by breeders to other seed companies which may reproduce the original seed or produce their own hybrids. Most seed breeders, including Seminis and Advanta, are active as producers as well.
12. In previous decisions⁴, the Commission has considered that the development and breeding of seed varieties and the production and sale of seeds can in general be included in one single relevant product market. The market investigation in the present case has also confirmed this.
13. Furthermore, as the various kinds of seeds are not mutually substitutable, seeds for different crops have been held to constitute separate product markets. The same conclusions apply in the present case. The transaction affects the seeds markets for peas and onions.
14. As explained below, a further sub-segmentation of pea seeds and onion seeds might be possible.
15. Pea seeds: there are two types of pea crop: vining peas (also called garden peas) and combining peas. Vining peas are smaller and sweeter varieties containing less starch and more sugar. They are mainly sold to large food processors for commercial freezing and canning; for that reason they need to be grown and harvested at a short distance from the processing factories where they will be taken immediately after harvesting by farmers. Combining peas are harvested dry and at full maturity and are mainly used for animal feed and pet foods.
16. The market investigation has indicated that also the pea seeds market could be subdivided into vining pea seeds and combining pea seeds. Suppliers tend to focus on specific segments of the market and it does not appear that all or the majority of the pea seed producers are present in both segments or are able to produce both varieties. For instance, Seminis does not produce combining peas. From the customers' perspective, the sowing and harvest conditions are different. Further, end-customers are also different and there is no indication that the final use of both varieties overlap. Thus, the market for vining pea seeds, where both parties to the concentration are active, can be regarded as a distinct product market for the assessment of the competitive effect of the proposed transaction.
17. Onion seeds: There are two main types of onion crop: spring onions (also called bunching onions) and common or ordinary onions. Spring onions do not form a real bulb and have a green leaf part and a blanched part. They are normally sold fresh to end consumers. Common onions have a single large bulb, and there are a number of variations in terms of size and colour. They are sold to food processors as well as to supermarkets. There are thus strong indications that spring onions constitute a

⁴ See Case No. IV/M.556 - Zeneca/Vanderhave, decision of 9 April 1996, Case No. IV/M.1497 - Novartis/Maïsadour, decision of 30 June 1999, and Case No. IV/M.1512 - DuPont/Pioneer Hi-Bred International Commission, decision of 21 June 1999.

separate market, but for the purpose of this decision, this question may be left open as only Seminis supplies such seeds.

18. There are different varieties of common onions. Seminis and Advanta are both active in the supply of long day onions and intermediate variety onion seeds. The length of day corresponds to the amount of daylight required to grow the onion variety. The distinction is not clear cut with long day varieties requiring 15+ hours of sunlight and intermediate requiring 14-16 hours of daylight. These varieties are planted in Northern Europe where there is more daylight in the spring/summer.
19. So for example, in the countries where there is an overlap between Seminis and Advanta, the majority of onion seed sold is for long day varieties. Accordingly, the parties estimate that 100% of the onion seeds sold in Belgium and Sweden are long day varieties, in the Netherlands and in the United Kingdom the proportion is approximately 98% (with the remaining 2% in each case being intermediate varieties, in France the proportion is 90% long day (10% intermediate) and in Austria and Germany the proportion is approximately 80% long day (20% intermediate).
20. The parties do not consider that the different varieties, except from spring onions, should constitute separate product markets as from an end-user perspective the onions are fully substitutable. Furthermore, in some countries given the overlapping coverage of long day and intermediate varieties there is also supply-side substitutability between them. In such countries, it is therefore particularly unlikely that long day and intermediate onion seeds would constitute separate markets.
21. However, the question whether the market for onion seeds should be further subdivided into different varieties can be left open as the notified transaction would not raise serious doubts on any possible market definition
22. Advanta also has some sale of seeds for onion sets which are small onions sold to seed production companies for the purposes of obtaining seeds for multiplication. However, for the purpose of this decision, the question whether seeds for onion sets constitute a separate market may be left open as only Advanta supplies such seeds.

B. Relevant geographic markets

23. In a previous decision⁵, the Commission has held that there are indications that the markets for seeds are national markets. In particular, it was pointed out that prices and supply conditions to final consumers differ in various Member States, and that commercial seed is, to a substantial degree, customised (e.g., disease resistance, chemical treatments, size of seeds, etc.) to suit the conditions of each country or regional area.
24. In addition, official trials are conducted in the respective Member States to assure quality control. Before seeds can be sold, they must pass two series of tests: (i) DUS: distinctness, uniformity and stability; and (ii) VCU: value for cultivation and use. The statistical results of these trials are made available to national industry associations which will (on behalf of farmers) carry out further trials from which they produce "Recommended Lists" indicating preferred varieties based on their performance

⁵ Case No. IV/M.556 - Zeneca/Vanderhave, decision of 9 April 1996.

characteristics. As a result, customers normally buy seeds that are adapted to local soil and climatic conditions from producers operating in their own Member State.

25. Nevertheless, the parties recognise an increasing “Europeanization“ of the seeds business and state that that seeds markets are (at least increasingly) Community-wide, which has also been expressed in a Commission decision⁶. The reason being that once the seed producer has obtained a national registration in a Member State, the new variety will be included in the “European list”. Inclusion in the European list allows the producer to sell the respective variety in all EU Member States. There are no indications that the relevant markets would be worldwide in scope.
26. The market investigation carried out in the present case widely agrees with the national market definition, although certain respondents also recognize a certain further Europeanization of the seeds markets. However, it can be concluded that there are still strong indicators, in particular the existence of national registration and/or national recommendation lists, that the relevant geographic market for seeds should still be viewed as national.

VI. PRELIMINARY ASSESSMENT

27. The parties’ activities only overlap in the market for pea seeds (vining peas) and onion seeds.

Pea seeds

28. In the market for all pea seeds (comprising both vining and combing peas), the parties’ combined market shares (in value 2003) in the EU would be [10-20]%. The parties’ combined market share would result in affected markets in Finland ([10-20]%), Greece ([10-20]%), Italy ([60-70]%), Spain ([10-20]%), and in the United Kingdom ([20-30]%).
29. In three countries (Finland, Greece and Spain) the combined share would be less than [15-25]%, and in Italy the increase in share would only be [0-5]%. In the United Kingdom the parties combined share would be [20-30]% (Semini [5-15]%, Advanta [10-20]%). The parties claim that they would continue to face strong competition from a range of competitors including Limagrain, Van Waveren, Nunhems, Syngenta and Danisco, as well as wide range of smaller competitors in the overall market for pea seeds.
30. If considering market shares based on volume, the parties combined market share would be lower in all of the above mentioned countries.
31. In the area of direct overlap, i.e. the market for vining pea seeds, the parties’ combined market shares (in value 2003) in the EU would be [30-40]% (Semini [30-40]%, Advanta [0-5]%). The increment would be relatively minor (less than [0-10]%). The parties’ combined market share would lead to affected markets in Denmark ([20-30]%), Finland ([30-40]%), France ([40-50]%), Greece ([10-20]%), Italy ([70-80]%), Spain ([40-50]%), and in the United Kingdom ([35-45]%).
32. In Denmark, France, Italy and Spain, the increase would be less than [0-5]%, and in Greece the parties’ combined share would be less than [15-25]%. In Finland, the

⁶ Case No. IV/M.1420 - BASF/Svalöf Weibull, decision of 3 March 1999.

parties' combined share would be [30-40]% (Seminis [20-30]%, Advanta [10-20]%), and in the United Kingdom, the combined share would be [35-45]% (Seminis [10-20]%, Advanta [20-30]%).

33. If considering market shares based on volume, the parties combined share would remain essentially the same or lower in Denmark ([10-20]%), France ([30-40]%), Greece ([0-10]%), Italy ([40-50]%), the United Kingdom ([35-45]%), and in the overall EU market ([25-35]%). In Finland, the parties' combined share would rise to [35-45]% (Seminis [20-30]%, Advanta [10-20]%) and in Spain to [50-60]% (Seminis [50-60]%, Advanta [0-5]%). The increment in Denmark, France, Italy and Spain is again minor (around [0-5]% or less).
34. On an EU level the main competitors are Syngenta ([10-20]%), Van Waveren [5-15]%, Agro Seed ([0-10]%), Nunhems ([0-10]%), and Limagrain ([0-10]%). The parties also submit that there are several strong competitors active in both Finland and in the United Kingdom.
35. In Finland, the main competitors are Nunhems ([10-20]%), Danisco ([0-10]%), Syngenta ([0-10]%) and Pureline ([0-10]%). Thus, in Finland there are four competitors which together have around the same market size as the parties. In the United Kingdom, the main competitors include Syngenta ([20-30]%) and Van Waveren ([15-25]%).
36. The parties submit that customers exert strong countervailing buyer power, as food processors represent the main driving force behind demand. The processing industry features a number of large players with significant buyer power, upon whom the seed producers are reliant for the majority of their sales. Moreover, the parties claim that customers in general follow multi-sourcing strategies and are able to switch supply easily on a short term notice. This seems to be particularly the case in Finland.
37. The Commission concludes that, despite their significant combined market shares in Finland and the United Kingdom, the parties will continue facing competition from other important players, mainly in the United Kingdom. In addition, in Finland, the countervailing buying power of customers seems particularly strong. Further, the market investigation has not indicated any particular competition concerns with regard to either the overall market for pea seeds or for vining pea seeds, and it has been indicated that customers tend to multi-source their supplies and that there are no switching costs for changing suppliers. Thus, considering the above, the proposed concentration is not likely to raise any competition concerns on any possible market for pea seeds.

Onion seeds

38. On the basis of an overall market for common onion seeds, the parties' combined market share in the EU would be [5-15]% (value 2003) and [5-15]% (volume 2003). The clear market leader in the EU is Bejo with a share of around [50-60]% (based on volume).
39. The parties' combined market share (value 2003) would result in affected markets in Germany, Sweden and the United Kingdom. The parties' combined share would be [15-25]% in Germany (Seminis [5-15]%, Advanta [5-15]%), [15-25]% in Sweden (Seminis [10-20]%, Advanta [0-10]%), and [15-25]% in the United Kingdom (Seminis

[5-15]%, Advanta [0-10]%). Thus, in none of the affected markets, the parties' combined share would be above [15-25]%.

40. If considering market shares based on volume, the combined share of the parties would be [25-35]% in Germany (Seminis [5-15]%, Advanta [15-25]%), [15-25]% in Sweden (Seminis [10-20]%, Advanta [0-10]%) and [10-20]% in the United Kingdom (Seminis [0-10]%, Advanta [5-15]%). In Germany, the main competitors are Bejo with a share of around [30-40]% and Takii with around [10-20]%. In Sweden, the main competitor is again Bejo with a share of approximately [35-45]%, followed by Syngenta with [10-20]%. In the United Kingdom, the parties are facing competition from Bejo ([25-35]%), Limagrain/Nickerson ([20-30]%) and Syngenta ([5-15]%).
41. Moreover, both Seminis and Advanta are active in long day and intermediate varieties. The parties' activities would result in affected markets with regard to long day onion seeds in Germany, Sweden and in the United Kingdom. With respect to intermediate varieties, no affected markets would arise. In the United Kingdom and Sweden all or virtually all seeds sold are long day, whereas in Germany around 80% is long day and 20% intermediate.
42. For long day onion seeds, the combined market shares (in value 2003) of the parties would be [20-30]% in each of Germany, Sweden and the United Kingdom. By volume, the market shares would be similar or only slightly higher in Sweden ([25-35]%) and in the United Kingdom ([25-35]%), and in Germany the parties' combined share would increase to [35-45]%.
43. The overall market share data for onion seeds provided by the parties do not include seeds for spring onions. The market investigation has indicated that seeds for spring onions might constitute a separate market, and if so no overlaps would occur (only Seminis supplies seeds for spring onions). If seeds for spring onions were to be included in the overall onion seeds market, given the small amount of seeds for spring onions sold, the parties combined market share would be similar or slightly lower in Germany ([15-25]% by value, [20-30]% by volume) and Sweden ([15-25]% by value, [15-25]% by volume), and in the United Kingdom, the parties combined share would be substantially lower ([5-15]% by value, [0-10]% by volume).
44. In addition to onion seeds, Advanta (but not Seminis) also supplies seeds for onion sets, and the overall market shares for onion seeds provided by the parties include seeds for onion sets. Thus, if seeds for onion sets were to be taken separately, no overlaps would occur.
45. Post merger, the parties will continue facing strong competition from important players in the above-mentioned markets. Further, the market investigation has not indicated any particular competition concerns on any possible market for onion seeds. It has been indicated that customers have bargaining power vis-à-vis their suppliers and tend to multi-source their supplies. In addition, there are no switching costs for changing suppliers. In the light of the above, the Commission concludes that the proposed transaction is not likely to raise any competition concerns on any possible markets for onion seeds.

VII. CONCLUSIONS

46. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission

Signed
Franz FISCHLER
Member of the Commission