

***Case No COMP/M.3522 -
DANISH CROWN / HK /
SOKOLOV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/09/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13/09/2004

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3522 – Danish Crown/HK Ruokatalo/Sokolów
Notification of 09.08.2004 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 09.08.2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Danish Crown A.m.b.A. (“Danish Crown”, Denmark) and HK Ruokatalo Oyj (“HK”, Finland) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Sokolów S.A. (“Sokolów”, Poland) 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 the EEA Agreement.

I. THE PARTIES

3. **Danish Crown** is a Danish cooperative slaughterhouse company with farmers as their members, who supply raw materials (pigs and cattle) to the cooperative. Danish Crown has a total of 19,799 members. Danish Crown is vertically integrated in the

¹ OJ L 24, 29.1.2004 p. 1.

slaughtering of pigs, cattle, meat processing and meat trading activities. Danish Crown has activities worldwide.

4. **HK** is a company controlled by LSO Osuuskunta, which is a Finish cooperative with farmers as their members. HK has approximately 7,000 members. HK is vertically integrated in the slaughtering of pigs, cattle and poultry, meat trading and meat processing.
5. **Sokolów** is a Polish company engaged in slaughtering of pigs, cattle, and in the processing of pig meat, beef and poultry. In addition, Sokolów is also active to a limited degree in the production of pigs for slaughter. Sokolów has production facilities in Poland and most of its products are sold in Poland.

II. THE OPERATION

6. The operation concerns the proposed acquisition of Sokolów by Danish Crown and HK. Danish Crown and HK will by way of purchase of shares acquire control of Sokolów, through a newly created holding company Saturn Nordic Holding AB. The shares in Saturn Nordic Holding AB will then be divided in equal parts between Danish Crown and HK, giving them a joint control over Sokolów. The proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation 139/04.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Danish Crown €5,434.1 million, HK €647.7 million, Sokolów €220.6 million) and both Danish Crown and HK have a Community-wide turnover in excess of EUR 250 million (Danish Crown €4,281.9 million, HK €620.9 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.

IV. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

8. The proposed transaction will give rise to a number of horizontal overlaps between Danish Crown, HK and Sokolów. In addition, the proposed transaction will result in overlaps between activities of the parents, Danish Crown/HK. For this reason, the proposed transaction will be assessed from two angles: (i) the assessment of horizontal overlaps, and (ii) the risk of coordination between Danish Crown and HK (“the parent companies”) under Article 2(4) of the Merger Regulation.
9. Based on previous Commission’s decisions³ the following affected product and geographic markets can be identified: (i) sale of fresh meat for direct human

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). 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.

³ COMP/M.1313 – Danish Crown/Vestjyske Slagterier, COMP/M.2662 – Danish Crown/Steff-Houlberg, COMP/M.3337 – Best Agrifund/Nordfleisch and COMP/M.3401 – Danish Crown/Flagship Foods.

consumption, (ii) sale of fresh meat for further processing, (iii) supply of processed meat.

Sale of fresh meat for direct human consumption

Product market

10. The Commission has in the previous cases defined separate product markets for the sale of fresh pig meat and beef, respectively.⁴ Fresh meat includes both fresh and frozen meat which has not undergone any additional processing. The sale of fresh meat can be sub-segmented into a (i) retail market (supermarkets, butchers, farm sales) and (ii) a catering market, constituting separate product markets. The parties submit there is an overall market for all fresh meat types for direct human consumption. Furthermore, the parties contest that the market should be sub-divided into a catering segment and a retail segment.

Sale of fresh meat for further processing

Product market

11. In addition the Commission has identified a separate product market for the sale of fresh meat to industrial processors for further processing. Industrial processors transform the meat into processed meat products, which is then sold to the retail market or the catering market as processed meat. The Commission has previously defined separate product markets for each type of meat used for further processing.⁵ Both customers and competitors consider pig meat to be distinguished from beef, lamb, poultry etc. Processors of pig meat take into account 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 on religious beliefs in some cases.⁶ The parties consider that there is an overall market for the supply of all meat types.
12. However, given the insignificant overlaps between the activities' of parties in each of the above-mentioned markets, the exact market definition can be left open as even on the basis of alternative product market definition proposed by the parties, the proposed transaction will not significantly impede effective competition in the common market or substantial part of it.

Geographic market

13. The Commission has considered the geographic scope of the market for fresh pig meat to the retail market to be national in scope whereas the market for the supply of fresh pig meat to caterers and industrial processors possibly could be wider based on large

⁴ COMP/M.3337 – Best Agrifund/Nordfleisch.

⁵ COMP/M.3401 – Danish Crown/Flagship Foods, paragraph 8-9.

⁶ COMP/M.3401 – Danish Crown/Flagship Foods, paragraph 9.

imports and exports.⁷ In addition and in relation to industrial processors the origin of the meat plays a less important role indicating a wider market than national.

14. The parties consider the market for the supply of fresh meat for further processing and the market for fresh meat for direct human consumption is EU wide and probably covers the whole WTO membership area based on the substantial level of trade flow.
15. However, for the purpose of this decision the precise scope of the market for fresh pig meat, beef and poultry for direct human consumption or for further processing can be left open as even on the basis of all alternative market definitions considered the proposed transaction will not significantly impeded effective competition in the common market or a substantial part of it.

The supply of processed meat

Product market

16. The Commission has defined a separate product 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. Processed meat products can vary in the raw material used (pig meat, 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.
17. The Commission considers that there are separate product markets for a) processed pig meat products, b) processed beef products and c) processed poultry products.⁸ In addition the Commission has considered whether the processed meat products should be separated 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). As for customer groups the sale of processed meat can be separated into a retail segment and a catering segment.⁹
18. The parties consider that the relevant product market comprises all types of processed meat including meat from pigs, cattle and poultry based on the processors ability to use the same processing techniques, i.e. drying, smoking and cooking for different types of meat.
19. However, for the purpose of this decision the precise delineation of the product market can be left open since on the basis of all alternative market definitions considered the proposed transaction will not significantly impede effective competition in Finland or in the EU in particular as a result of the creation or strengthening of a dominant position on these markets.

Geographic market

⁷ COMP/M.2662 – Danish Crown/Steff-Houlberg, paragraph 51-52.

⁸ COMP/M.3401 – Danish Crown/Flagship Foods.

⁹ COMP/M.3401 – Danish Crown/Flagship Foods, paragraph 17.

20. The Commission has considered the geographic market to be wider than national¹⁰, but decided later that due to suppliers ability to price discriminate between different Member States the national geographic market delimitation was justified.¹¹ However, it was not ruled out that there were some markets for individual product groups of processed meat which were more wide ranging than others. The parties consider the geographic market for processed meats is EU-wide whether or not it is sub-divided into product categories.
21. However, for the purpose of this decision the precise scope of the geographic market can be left even on the basis of all alternative market definitions considered the proposed transaction will not significantly impede effective competition in Finland or in the EU in particular as a result of the creation or strengthening of a dominant position on that market.

V. COMPETITIVE ASSESSMENT

Supply of fresh meat for direct human consumption

Retail market – fresh pig meat/fresh beef

Pig meat

22. The parties' combined market share on an EU wide basis on the sale of fresh pig meat for direct human consumption would be [<10]% in 2003.
23. On the retail market for the sale of fresh pig meat the proposed transaction will give rise to a horizontal overlap in Finland between the parent companies Danish Crown and HK. Danish Crown is active on the retail market and has no sales on the catering market in Finland. HK holds a market share of [25-35]% in Finland on the retail segment and Danish Crown's market share is [<10]% resulting in a combined market share of [30-40]% on the retail segment. The competitors on the retail segment are Atria with an estimated market share of [25-35]%, Snellman [5-15]%, Järvisuomen Portti [5-15]%, Pouttu [<10]% and other with a combined market share of [15-25]%.

Beef

24. On an EU wide basis the parties' combined market share for fresh beef for direct human consumption would be [<10]%. On the market for the sale of fresh beef in Finland Danish Crown conducts small sales amounting to a market share of around [<2]% and HK holds a market share of [15-25]%. Sokołów is not active in Finland.
25. From the above it can be seen that the proposed transaction will not significantly impede effective competition in the EU, in particular as a result of the creation or strengthening of a dominant position on the markets for the sale of fresh pig meat or fresh beef for direct human consumption.

¹⁰ COMP/M.1313 – Danish Crown/Vestjyske Slagterier.

¹¹ COMP/M.2662 – Danish Crown/Steff-Houlberg.

26. In relation to the risk of coordination between Danish Crown and HK it can be seen from the above that the proposed transaction will only on the retail market for the sale of fresh pig meat and on the market for the sale of fresh beef give rise to small horizontal overlaps in Finland. As the combined market share of Danish Crown and HK will remain at [30-40]% and the increment to the total market share is small, no coordination concerns between Danish Crown and HK can be identified under Article 2(4) of the Merger Regulation.

Sale of fresh meat for further processing/industrial processors

27. The parties have overlapping activities on the market for the sale of fresh beef, pig meat and poultry for further processing. The parties' activities overlap to a certain extent in Poland, Denmark and Finland.

Pig meat

28. Danish Crown, HK and Sokołów are active in the supply of pig meat for further processing. On an EU wide market Danish Crown, HK and Sokołów combined market shares would be [5-15]% in 2003. On a national basis Sokołów's and Danish Crown's activities overlap in Poland. However, the parties' combined market share will be [<10]% in Poland and therefore it will not lead to competition concerns. Based on this it can be concluded that the proposed transaction will not significantly impede effective competition in the EU or in Poland on the market for the supply of pig meat for further processing.
29. In relation to coordination issue under Article 2(4) of the Merger Regulation, Danish Crown and HK have activities in the supply of pig meat for further processing which will overlap on a national basis, in particular, in Denmark and Finland. In Denmark, Danish Crown holds a strong position on its home market. Danish Crown's market share is [55-65]% in Denmark in 2003. However, HK's activities on the Danish market are very limited and only accounts for a market share of [<2]%. Based on such a small overlap the proposed transaction is not likely to create coordination concerns on the Danish market or wider EU market.
30. Considering coordination issue on the Finnish market, HK holds a market share of [30-40]% on the market for fresh pig meat for further processing in Finland. Sokołów is not active on the Finnish market and Danish Crown holds a market share of [<5]% in 2003. The next biggest competitor is Astri Oyj with a market share of [25-35]%, followed by Järvi-Suomen Portti with [<10]%, Oy Snellman Ab with [<10]% and Saarioinen Oy with [<10]%. Considering the combined market share of the parties ([35-45]%) together with a limited overlap ([<5]%) and the presence of strong competitors, the proposed transaction is not likely to create coordination concerns on the Finnish market or wider EU market.

Beef

31. On the market for fresh beef for further processing the proposed transaction will on an EU wide basis result in a combined market share of Danish Crown, HK and Sokołów of [<10]% in 2003.
32. From the above it can be concluded that the combined market shares of Danish Crown, HK and Sokołów on an EU wide market for the sale of fresh beef for further

processing will not significantly impede effective competition, in particular as a result of the creation of strengthening of a dominant position.

33. Considering coordination issues at the level of national markets, which might be a too narrow market definition, Danish Crown and HK's activities will overlap in Denmark and Finland. Danish Crown is by far the most important supplier of fresh beef for further processing in Denmark and holds a market share of [85-95]%. HK only has sporadic sales in Denmark and does not have regular customers in Denmark. HK's market share amount to [<2]% in 2003. The remaining competitors are primarily Århus Slagtehus A/S and Skare Meat Packers each with approximately [<10]%.
34. On the Finnish market HK holds a market share of [15-25]% and Danish Crown in 2003 held a market share of no more than [<2]%.
35. Considering the limited sales of HK in Denmark and Danish Crown's limited sales in Finland the proposed transaction will not create competition concerns under Article 2(4) of the Merger Regulation in respect of coordination between the parent companies.

Poultry

36. On the market for the supply of poultry for further processing, only the two parents, Danish Crown and HK are active. Therefore, only coordination issues have been considered in this market.
37. On the EU-wide basis, Danish Crown and HK will hold a combined market share of [<10]%. In addition, both Danish Crown and HK conducts sale of fresh poultry for further processing in Poland. However, their combined market share in Poland will only be [<10]%. Likewise in Denmark, Danish Crown and HK's activities will overlap resulting in a combined market share of [<10]%. In Finland, HK holds a strong position with a market share of [35-45]%. Danish Crown has small sales in Finland with a market share of around [<2]% in 2003. The two largest competitors on the Finnish market are Astria Oyj with [30-40]% and Saarioinen Oy with [10-20]%. Taking into account the small overlap of [<2]% and the market structure with a presence of two strong competitors, no coordination concerns will arise.
38. Based on the above it can be concluded that the proposed transaction does not raise competition concerns under Article 2(4) of the Merger Regulation, neither on an EU wide basis nor on national markets in Denmark, Finland or Poland.

The supply of processed meat

39. Considering a market for processed pig meat products, the combined market share of Danish Crown, HK and Sokołów on the EU-wide basis would be [<10]% in 2003. On the retail segment in the EU the parties combined market share would be around [<10]% and on the catering segment [<10]%. Considering an overall market for all processed meat in the EU, the parties would hold an EU-wide market share of [<10]% (retail segment [<10]% and catering segment [<10]%). Based on the above it can be concluded that the proposed transaction will not significantly impede effective

competition in the EU on the market for processed meat, in particular as a result of the creation or strengthening of a dominant position.

40. Considering the risk of coordination between Danish Crown and HK, this could be a possibility in Finland where Danish Crown and HK's combined market share exceeds [10-20]%. On an overall market for processed pig meat in Finland the Danish Crown and HK's combined market share would be [20-30]% (retail [35-45]% and catering [<10]%). Danish Crown only has limited activities in processed meat in Finland. Even considering a separation of processed pig meat into the subgroups identified above under a-f Danish Crown's market share on the subgroups separated into retail and catering would at most be [<2]% on the supply of cooked sausages for the catering segment in Finland. Based the insignificant overlap between the activities in processed pig meat between Danish Crown and HK, it is not possible to identify any risk of coordination between Danish Crown and HK in processed pig meat in Finland. Based on this the proposed transaction will not result in coordination concerns under Article 2(4) of the Merger Regulation on the Finnish market or on the wider EU market.

VI. CONCLUSION

41. 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 (EC) No 139/2004.

For the Commission

(Signed)

Franz FISCHLER
Member of the Commission