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*Case No COMP/M.3534
– Cargill-BCA/ABF-
Allied Grain/ JV*

Only the English text is available and authentic.

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

Article 4(4)

Date: 08/12/2004



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08/12/2004

SG-Greffe(2004) D/205635-37

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 4 (4) DECISION

To the notifying parties:

To Office of Fair Trading (UK Competition Authorities)

Dear Sir/Madam,

**Subject: Case No COMP/M.3534 – Cargill-BCA/ABF-Allied Grain/ JV
Reasoned submission pursuant to article 4(4) of Regulation No 139/2004
for referral of the case to the United Kingdom.**

Date of filing: 4.11.2004

Legal deadline for response of Member States: 26.11.2004

Legal deadline for the Commission decision under Article 4(4): 9.12.2004

1. On 4.11.2004, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004 (“EC Merger Regulation”) for referral of the above mentioned case in its entirety to the United Kingdom. A copy of this submission was transmitted to Member States on 5.11.2004.
2. In support of their referral request, the submitting parties have mentioned in the Reasoned Submission that the geographic focus of the proposed concentration is on the territory of the UK. This concentration consists in the creation of a 50/50 joint venture between Cargill’s UK agricultural merchanting activities, operated by its subsidiary BCA, with the UK agricultural merchanting operations comprised in ABF’s division Allied Grain. Outside the UK, BCA, Allied Grain have no physical presence and few sales. Approximately [85-95%] of BCA’s sales and [>90%] of Allied Grain’s sales are made to UK customers. The only market concerned by the

proposed concentration is the UK market for agricultural merchanting. The parties take the view that agricultural merchanting requires a presence close to the customer, i.e. the UK farmer. They submit that the concentration only gives rise to horizontally affected markets in UK agricultural merchanting, nationally and possibly regionally.

3. By letter of 16.11.2004, the United Kingdom Competition Authority informed the Commission that it agrees to the request to refer the case to the United Kingdom. The UK Competition Authority states that it seems very likely that a number of products falling within agricultural merchanting are national or even regional in geographic scope and can thus be regarded as distinct national markets. Since the JV would become the largest UK supplier in agricultural merchanting, the transaction may significantly affect competition in a distinct market or markets in the UK. The UK Competition Authority therefore agrees that it is appropriate for the transaction to be referred to the UK in its entirety for a fuller examination of its impact under UK competition law.

I. THE PARTIES

4. Cargill PLC (“Cargill”, UK) forms part of the Cargill group of companies, which is active internationally in a wide variety of sectors, including commodity trading, commodity processing, the marketing of non-branded food ingredients to the food and beverage industry and the production and manufacture of agricultural inputs to farmers. Banks Cargill Agriculture Ltd (“BCA”) comprises the UK agricultural merchanting business of Cargill.
5. Associated British Food plc (“ABF”, UK) is an international food, ingredients and retail group principally active in Europe, Australasia and the US. It is active in the production and manufacture of agricultural inputs to farmers as well as the purchasing of farm outputs such as grain, pulses and oilseeds through its wholly owned subsidiary ABNA Ltd (“ABNA”). Allied Grain, a division of ABNA, is active in agricultural merchanting in the UK.

II. THE OPERATION

6. The proposed concentration will combine (in a 50/50 joint venture between Cargill and ABF) Cargill’s UK agricultural merchanting activities, comprised in its subsidiary BCA, with the UK agricultural merchanting operations comprised in Allied Grain.
7. [...].The concentration will be effected by transfer of the parties’ businesses to a newly formed company in which each party will hold a 50% interest. BCA and ABNA will exercise joint control over the JV.

III. CONCENTRATION

8. The JV will perform all the functions of an autonomous economic entity, with its own management and sufficient resources, and will act independently in the market on a lasting basis. Thus, the proposed concentration concerns the establishment of a full-function joint-venture within the meaning of Article 3(4) of the Merger Regulation. The transaction therefore is a concentration within the meaning of Article 3(1)b of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion¹ (Cargill: EUR 52.5 billion, ABF: EUR 7.6 billion). Each of them has a Community-wide turnover in excess of EUR 250 million (Cargill: EUR [...] billion, ABF: EUR [...] billion). Only ABF achieves more than two-thirds of its aggregate Community-wide turnover within the UK. The notified operation therefore has a Community dimension.

V. ASSESSMENT

A. Relevant product markets

10. On the basis of the information submitted in the Reasoned Submission, the following are the relevant markets: agricultural merchanting as a single service market, not further segmented by product type, or, alternatively and more in line with Commission decisional practice, the merchanting for six distinct product types: the sale of agricultural seed, the sale of fertilizers, the sale of agrochemicals (“crop protection”), the sale of animal feed, the purchase of grain (wheat, barley and oats) and pulses (peas and beans), and the purchase of rape seeds. In these segments, the activities of the parties overlap in the supply of agricultural seed, the supply of fertilizers, the purchase and supply of grains and pulses, and the purchase and supply of oilseed rape.

B. Relevant geographic markets

11. According to the parties, the market for the agricultural merchanting activity as a single service is national in scope. In this case and on this basis, the parties have overlapping activities in the UK only. The parties state that the relevant geographic market is certainly not wider than the UK. From the parties’ statements in the Reasoned Submission, it can also be concluded that most of the transactions are made between merchants and local farmers, that there is regional presence of the major merchants, local farm visiting by sales teams still occurs, input processing is still largely local and storage is likely to be local. This makes it likely that a more profound assessment may lead to consideration of regional markets within the UK. It therefore appears that the relevant geographic market is national, possibly regional.

C. Assessment

12. According to the Reasoned Submission, the proposed concentration only gives rise to horizontally affected markets in UK agricultural merchanting if one focuses on market shares in different segments, whether nationally or by region. The combined shares in the three *prima facie* affected sub-markets at the national level would be [10 - 20%] (purchase of grain and pulses, both BCA and Allied Grain [$< 10\%$]), [10 - 20%] (sale of fertilisers, BCA [10-20%] and Allied Grain [$< 10\%$] and [15 - 25 %] (purchase of oilseed rape, BCA [10 - 20 %] and Allied Grain [$< 10\%$]).

¹ 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.

13. At the regional level, the combined shares in the 21 *prima facie* affected sub-markets would range from 15% to 35%. Affected regional markets where activities overlap would be Yorkshire and North (agricultural seed [10 - 20 %] , grain and pulses [10 - 20 %] and oilseed rape [25 - 35 %]), Lincolnshire and West (fertilizers [10 - 20 %], grain and pulses [10-20%] and oilseed rape [15-25%]), Anglia (fertilizers [25 - 35 %]), agricultural seed [10 - 20 %] grain and pulses [10 - 20 %] and oilseed rape [10 - 20 %]), Central and West (fertilizers [15 - 25 %] , grain and pulses [10-20%] and oilseed rape [10-20%]), South East (fertilizers [15 - 25 %], grain and pulses [10 - 20 %] and oilseed rape [15-25%]) and South West (fertilizers [15-25%] and oilseed rape [15-25%]). The JV would become the largest UK supplier in the agricultural merchanting sector. Therefore, the preliminary assessment suggests that the principal effects of the operation will be only on markets where activities of the parties overlap horizontally in the UK.
14. According to the Reasoned Submission, the proposed concentration could give rise to vertically affected markets (market for crude seed oil and oilseed meal) at an EU level. However, after further assessment the Commission considers that the transaction cannot be expected to give rise to any significant change in position of Cargill or ABF/Allied Grain on these markets.

VI. REFERRAL

15. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the EC Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations² (point 17) indicates that, in seeking a referral under Article 4(4), “*the merging parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*”, and that “*such indications may be no more than preliminary in nature...*”. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition, if any, of the concentration is liable to take place on distinct markets in the UK, and that the requested referral would be consistent with point 20 of the notice.

VII. CONCLUSION

16. For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the United Kingdom. This decision is adopted in application of Article 4(4) of Council Regulation (EC) No 139/2004.

For the Commission
(*Signed*)
Neelie KROES
Member of the Commission

² http://europa.eu.int/comm/competition/mergers/legislation/consultation/case_allocation_tru.pdf