EN

Case No COMP/M.3605 - SOVION / HMG

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 21/12/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.12.2004

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 :

Subject: Case No COMP/M.3605 SOVION/HMG
Notification of 18/11/2004 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 18/11/2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Sovion ("Sovion", The Netherlands) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Hendrix Meat Group ("HMG", The Netherlands) by way of purchase of shares.

2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that it does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES

3. Sovion (formerly known as Best Agrifund) is active in the slaughtering of pigs and cattle, the processing, production and sale of meat products and processing of abattoir by-products and the production and sale of products made from abattoir by-products. Sovion is mainly active in the Netherlands, Germany and Belgium.

4. All the shares in Sovion are (indirectly) held by Noordbrabantse Christelijke Boerenbond, Rooms-Katholieke Vereniging van Boeren en Tuinders-Ontwikkeling ("NCB"). This organisation has the same management and, through its participation in

1 OJ L 24, 29.1.2004 p. 1.

the regional chapters, the same members as the "ZuidelijkeLand-en Tuinbouworganisatie" ("ZLTO"). ZLTO is an association of farmers and agri- and horticulturalists, including approximately 3,000 pig farmers. Thus, the members of ZLTO through their representatives in the management of NCB and the general members meeting of NCB, ultimately control Sovion.[2] It is worth mentioning here that NCB has expressed its support for the proposed transaction[3].

5. Hendrix Meat Group is active in the slaughtering of pigs and the processing, production and sale of meat products. HMG's main geographic focus is the Netherlands[4].

II. THE OPERATION AND THE CONCENTRATION

6. The transaction consists of the proposed acquisition by Sovion of sole control of all issued shares of the corporate entities belonging to HMG. At closing, the Sovion group will own 100% of the shares in the HMG entities. The proposed corporate structure of the Sovion group is not yet known.

7. Therefore, the operation 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 (Sovion […] and HMG […] in 2003). Each of Sovion and HMG have a Community-wide turnover in excess of EUR 250 million (Sovion […] and HMG […] in 2003), 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. COMPETITIVE ASSESSMENT

A. Relevant markets

9. The parties claim that several stages can be distinguished during the processing of pigs. Once purchased on the market for live pigs (upstream market), the pigs are slaughtered. At this first processing stage ("Abattoir-stage") pigs are "divided" into carcasses and abattoir by-products (such as blood, bones, pigskin, fat and bowel

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[2] Sovion has four direct subsidiaries: two active companies, Bestmeat Company B.V. ("Bestmeat") and Sobel N.V. ("Sobel"), and two shell/holding companies, Chemson B.V. and Termochem Beheer B.V. Bestmeat is engaged in the meat activities through its three subsidiaries CG Nordfleisch A.G. ("Nordfleisch") and A. Moksel AG ("Moksel") in Germany and Dumeco B.V. ("Dumeco").

[3] […] Meeting of July 12, 2004.

[4] HMG consists of five companies: Smits Emmen B.V., Hendrix' Vlees Druten B.V., Murris Meppel B.V., Hendrixbacon UK Ltd.(UK) and Drucar S.r.l. (Italy). Hendrix' Vlees Druten B.V. has two subsidiaries: Hendrix Meat Group B.V. and Murris Varkens B.V. All the Dutch companies are member of the Hendrix Meat Group C.V. (a Dutch limited partnership), in which all the activities of its members are united.

packages). The carcasses may be sold to third parties or may be divided into "technical parts". Subsequently, the technical parts are either sold to a variety of customers – such as industrial processors (e.g. the sausage-industry, pre-packagers, etc.), de-boning companies, traders, butchers and also sometimes to retailer groups that de-bone the meat for own purposes – or used for further de-boning or processing by the slaughterhouse operators ("Processing-stage"). De-boned or processed pig meat is then sold to supermarkets, industrial processors, butchers or caterers.

10. Broadly speaking, the Parties are active in three sectors/markets:

    1. the upstream markets on which live pigs are purchased and slaughtered;
    2. the downstream markets on which fresh meat is sold; and
    3 the downstream markets on which the abattoir by-products are sold.

11. These sectors/markets can be further delineated into separate product markets, as described below.

1. Purchasing of live pigs and sows for slaughtering

12. Both Parties are active in slaughtering of live pigs, and are therefore active in the market for purchasing of live pigs for slaughtering. Sovion is active in slaughtering of pigs and sows through ten slaughterhouses located in the Netherlands or in the western part of Germany and slaughtered a total of [5-10] million pigs in 2003. HMG is active in slaughtering through two slaughterhouses located in the Netherlands (in Druten and in Meppel). A third slaughterhouse located in Emmen was closed in April 2003. Therefore the competitive assessment has not taken this slaughterhouse into account. HMG slaughtered a total of [0-5] million pigs in 2003.

a) Product market

13. The Commission has previously defined a separate product market for the slaughtering of live pigs[5]. Moreover, the Commission has in the past further delineated the market for slaughtering of live pigs into slaughtering of pigs on the one hand and slaughtering of sows on the other. This is based on the fact that pigs and sows for slaughtering differ greatly in weight. The Commission has found that the slaughtering of pigs and sows requires a different technical design of the slaughter line since sows are much heavier at the time of slaughter and therefore require different processing lines at the slaughterhouse. Switching from pigs to sows is in principle possible but generally takes time and implies non-negligible switching costs.

14. The Parties contest this further delineation and disagree that the slaughtering of live pigs and the slaughtering of sows constitute separate markets. They claim that, both from the perspective of the slaughterhouse and from the perspective of the downstream market customers, live sows and live pigs and meat from sows and pigs respectively are substitutes. In addition, they explain that recent technical developments have made it possible to use the same slaughter line for both live pigs and sows. The Parties also add that both meat from sows and pigs are suitable for the production of sausages made from pork. Sow meat is mainly used for the production of sausages but sow meat is also sold as fresh pork.

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5 Commission decisions COMP/M.1313 – Danish Crown/Vestjyske Slagterier; COMP/M.2662 – Danish Crown/Steff-Houlberg and COMP/M.3337 – Best Agrifund/Nordfleisch

15. The market investigation has nevertheless largely confirmed the market definition adopted by the Commission in past cases. Most respondents claim that pigs and sows constitute distinct markets, due to the characteristics of sows at time of slaughtering. Although very few slaughterhouses can use the same slaughter lines, thanks to recent technological improvements, in most cases switching costs remain high. They also claim that the downstream markets are different, as meat from pigs and meat from sows are mostly used for different meat end-products.

16. Therefore for the purpose of this case, the Commission has defined two different markets, one for the slaughtering of sows and one for the slaughtering of pigs.

b) Geographic market[6]

17. In previous decisions concerning the purchasing and slaughtering of live pigs, the Commission has considered the geographic market as national in scope. However, in a recent decision concerning the German market[7] the Commission left the precise scope of the geographic market open. In the same decision, the Commission also indicated that in the German market live pigs are generally transported over a distance of 200 to 300 km.

18. The Parties argue that this is also the case for the Netherlands. Consequently, the Parties argue, for a country like the Netherlands this would mean that the market is not national but – at least – regional and would include at least the western part of Germany, Belgium, Luxembourg and the northern part of France.

19. The parties also claim that the market may be even wider, as a considerable number of live pigs are transported from the Netherlands to Italy, Spain or Southern Germany for slaughtering. The parties also indicate that about 10-15% of Dutch live pigs are slaughtered outside the Netherlands. Besides, the parties highlight that purchasing prices of live pigs in the Netherlands are strongly linked to those in Germany and vice versa, which is considered as evidence of the fact the market is wider than national.

20. Finally, the parties claim that transportation costs are very low and have only marginal impact on the price of pigs for slaughtering. Consequently, farmers do not face high transport costs and can ship their pigs to various slaughterhouses within relatively long distances. Transport costs represents only 1% of the price of a pig (average 90 kg) purchased at a distance of 50 km. Each further 50 km transport costs € [0.15-0.25], which represents [0-0.2] % of the purchase price of a pig. These figures have been largely confirmed by the market investigation.

21. On the basis of the foregoing arguments, the parties submit that the geographic scope of the market for the purchase of live pigs for slaughtering is, at least, a radius of 200-300 km around each pig production area.

22. Whilst the Parties are convinced of the validity of this proposed market definition, they have also submitted evidence and data in support of an alternative geographic market definition.

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6 For the purpose of the geographic market definition, pigs and sows will be considered together, as the same analysis applies for both product markets. Throughout this section of the decision “live pigs” will refer to both pigs and sows.

7 See Case No Comp/M.337, *Best Agrifund/Nordfleisch*.

23. The Parties submit that, although pigs can be easily transported for longer distances, the vast majority of live pigs for slaughtering are purchased and transported to slaughterhouses within a radius of 150 km.

24. The Parties submit that pig farms (selling pigs for slaughter) are mainly concentrated in three regions in the Netherlands (Twente, the Achterhoek and Noord-Brabant and the northern part of Limburg).

25. The Parties have submitted calculations on the basis that one large pig farm is established in the centre of those regions. The cities in the middle of those regions represent the place of business of that large pig farm. For Twente this is Enschede, for the Achterhoek this is Doetinchem and for Noord-Brabant and the northern part of Limburg this is Eindhoven. The three 150km radii include also slaughterhouses located in the western regions of Germany and to a much lesser extent in northern Belgium.

26. While the market investigation has largely confirmed the 150 km radius and the concentration of pig farming in the three above mentioned regions of the Netherlands, very few respondents have claimed that German slaughterhouses lying within the 150 km radius only exert limited competitive constraints on Dutch slaughterhouses due to various factors, which would allegedly limit the amount of exports from the Netherlands into Germany and make them economically suboptimal and also more unpredictable.

27. These respondents, notably Dutch pig farmers and traders, have highlighted in particular three elements:

   – differing preferences on the Dutch and German market. Dutch pig farmers would breed different types of pigs, one destined for Dutch slaughtering and one destined for export to Germany. The German-oriented pig would be heavier and slightly differently shaped, so as to provide certain types of "cuts" suitable for the German market. This means, the argument goes, that it is not easy to export to Germany a pig originally destined for the Netherlands and vice versa.

   – exporting pigs to Germany would require a great deal of specific veterinary requirements which raise costs (blood sampling carried out at the farm rather than at the Dutch slaughterhouse of destination, mandatory presence of one veterinary when pigs are loaded on the trucks etc.). Moreover, it would appear that, due to regulatory requirements, traders exporting to Germany can only do one pick-up stop at one farm (or collecting point), rather than three as allowed for pigs destined for Dutch slaughterhouses. As a result, pigs to Germany proceed mainly from big farms, whereas small farmers sell most of their pigs within the Netherlands.

   – exports to Germany (or elsewhere) would be, to some extent, unpredictable, due to sudden disease outbreaks (porcine fever, MPA, Dioxin, FMD etc). During these outbreaks, borders are closed and exports prohibited.

28. According to these third parties, these factors contribute to raising barriers to export by raising switching costs. Although on average approximately 13 % of Dutch pigs are exported, switching is not possible and involves substantial risks and costs.

29. Moreover, recent trends would appear to indicate that slaughterhouses tend to negotiate longer supply deals with farmers, which would further reduce the possibility of easy switching for farmers.

30. With a view to assessing the validity and the relevance of these claims, the Commission has conducted a supplementary investigation with the Parties and with the relevant third parties (Dutch pig suppliers and traders and German pig suppliers and slaughterhouses).

31. In the course of the additional market investigation, the Parties have argued that the only difference between German-oriented pigs and Dutch-oriented pigs is their weight, German pigs being approximately 2 kg heavier than Dutch pigs. As pigs at the end of the fattening stage grow by approximately 750 grams per day, farmers would only have to wait for two more days before pigs reach the ideal weight for export to Germany. This was confirmed by German pig farmers and slaughterhouses.

32. The parties also stress that there is no significant genetic difference between pigs slaughtered in the Netherlands and those slaughtered in the Western and Northern part of Germany. This has been confirmed by third parties, among which Dutch and German pig suppliers and traders and German slaughterhouses and by Hypor, a leading pig genetics company.

33. As regards special veterinary requirements for exports, the parties have submitted that all live pigs for slaughtering have to be examined irrespective of where they are slaughtered. However, the presence of a veterinarian is required at the farm or at the export collection point when pigs are exported. The extra costs incurred as a result is on average €1-1.25 per pig, which represents approximately 1% of the purchase price of pig. These figures have been confirmed by third parties contacted by the Commission in the course of the investigation.

34. In practice, the Parties have argued and third parties have confirmed, these extra costs incurred for export-related requirements are compensated by the traditionally higher (owing mainly to shortage of pigs for slaughtering) purchasing price on the German market.

35. The Parties have confirmed the one-pick up stop rule, but have argued that the collection centres are geographically spread all over the relevant area in Neerkant, Lieshout, Nispen, Lemelerveld, Wijnjewoude, Lunteren en Weel. Bringing pigs to these collection points is easy. Thus, the fact that traders exporting to Germany can only do one pick-up stop and do not go to individual small farms, has a very marginal impact, if any, on pig farmers, as collection points are numerous and, furthermore, export certificates are issued for free at the various collection points.

36. As regards pricing terms, the Parties state that pig prices are solely determined by the price prevailing on the international meat market. If the Parties were to attempt to depress purchasing prices by a small but significant amount (i.e. 5 to 10%) they would immediately face a sharp decrease in the amount of pigs supplied to their slaughterhouses. A high percentage of those supplies would be exported to German slaughterhouses.

37. Furthermore, German prices for the purchasing of live pigs are traditionally higher than Dutch prices. However, the two are strongly correlated, i.e. they tend to move in parallel in the medium-long term. The Parties have submitted evidence and data showing that there exists a close relation between the German-Dutch price spread and the exports of pigs to Germany. When prices in the Netherlands decrease, or the price in Germany rises (i.e. the spread is wider), exports of live pigs to Germany increase. In other words, pig farmers can switch from Dutch slaughterhouses to German ones in the pursuit of the best pricing terms.

38. This has been confirmed by German and Dutch pig suppliers and traders and German and Dutch slaughterhouses, some of which have also provided evidence and data in support of this argument.

39. As regards the claim that slaughterhouses negotiate longer supply deals with farmers, thus reducing farmers flexibility to switch in response to changes in purchasing prices, the Parties have indicated that exclusive dealing and long-term contracts are not a feature of the market for pigs for slaughter.

40. Specifically with regard to the Parties’ operations, the vast majority of HMG’s suppliers sell on the basis of the house price. As to the others, HMG has a one-year relationship with several suppliers on the basis of verbal gentleman’s agreements. With respect to Sovion, the majority of suppliers […] supply purely on the basis of the "house" price set weekly by Sovion. […] The rest of suppliers supply regularly to Sovion on the basis of the average house price, rolling over a […]-week period ("trend price") which gives them a more stable price than the weekly fixed house price. These latter suppliers have usually "one-year" delivery contracts with Sovion. This contract assures the payment of the trend price if a pig farmer commits to the delivery of […] to Sovion and if he submits forecasts for the next […] weeks. The pig farmer is granted a bonus of maximum […] per pig, when the forecasts prove accurate. Disrespect of the contract is not sanctioned in any way, the contract can be terminated at will at the end of the […]-week delivery period.

41. Against this background, the Parties argue that switching costs for suppliers are negligible (i.e. no fines are attached to disrespect or termination of the contract and the payment of the house price is guaranteed, even when the trend price is not due) and it is relatively common for suppliers to switch to exporting in response to higher prices in Germany.

42. This was confirmed by third parties. In particular the Parties’ claim as regards the close link between the Dutch and the German market, is also confirmed by the Central Organisation for the Dutch Meat Sector (Centrale Organisatie voor de Vleessector (COV), which has indicated that the Dutch and the German markets are strongly interrelated.

43. Finally, the Commission has concluded that export data indicate that sporadic (however frequent) disease outbreaks and the resulting border closures have not impeded large amounts of pigs from being exported from the Netherlands. Moreover, in case of animal diseases certain areas may be closed temporarily for the export of pigs. The closed areas can be municipalities, provinces which do not automatically coincide with national borders. Therefore, these situations also affect trade within the Netherlands, for example leading to the situation that a farmer cannot supply its regular Dutch slaughterhouse as a result of a transport prohibition. Therefore disease outbreaks cannot be the determining factor when defining the geographic scope of a market.

44. On the basis of all the foregoing, the Commission has concluded that, for the purpose of the competitive assessment of this case, the appropriate geographic market definition consists of the 150 km radii around the three main pig-farming areas in the Netherlands. As mentioned (see footnote 6), the same geographic market definition applies for the purchasing of live sows for slaughtering.

c) Competitive assessment

45. Pursuant to the transaction, Sovion would acquire control of the two slaughterhouses currently belonging to HMG: one located in Druten (capacity of [0.5-1 million] pigs per year), and one located in Meppel (capacity of [1-1.5] million pigs per year).

46. As mentioned, Dutch pig farms (selling pigs for slaughtering) are concentrated in three regions (Twente, the Achterhoek and Noord-Brabant and the northern part of Limburg) whose main cities are respectively Enschede, Doetinchem and Eindhoven.

47. The combined market shares of Sovion and HMG in the markets for the purchasing of live pigs for slaughtering constituted by these areas are shown in the table below:

Purchase and slaughter of pigs 2003			
	Sovion	**HMG**	**Total**
150 km range Enschede	[5-15]%	[0-10]%	**[10-20]%**
150 km range Eindhoven	[20-30]%	[0-5]%	**[20-30]%**
150 km range Doetinchem	[15-25]%	[0-10]%	**[20-30]%**

48. In these markets, the Parties purchase live pigs from farmers. Pigs are then processed at the parties' slaughterhouses. If the parties were in a position to exert market power, this would take the form of buying power vis-à-vis suppliers of live pigs. As a result, the parties may attempt to depress prices when purchasing live pigs for slaughtering.

49. Although the Parties would be, as a result of the transaction, the largest player in the Dutch market and one of the major players in the northern European market, the market shares within the geographical markets relevant for the assessment of the competitive impact of the case remain relatively low and far below market shares which may be indicative of dominance. Moreover, the markets remain sufficiently fragmented, with the Parties' main competitors (such as Dreckmann, Westfleisch and Hilckmann[8]) holding market shares ranging between 4% and 16% (depending on the area). The remainder of the market is covered by slaughterhouses with smaller but still significant capacity (such as Compaxo, Westvlees, Slachtuis Groenlo, Goossens, Tummel and Hofman, each with capacity of [500,000-1,000,000] pigs/year).

50. Moreover, the parties also submit that most of their competitors, both in the Netherlands and in Germany, operate below full capacity and have provided data in support of this claim. The average spare capacity appears to be 12% in the Netherlands, 14% in Belgium and 28% in the western regions of Germany. This was largely confirmed by the market investigation, both for Dutch and for German slaughterhouses. The market investigation has also confirmed that even those slaughterhouses which are currently working at or close to full capacity may, if

8 It has to be mentioned that Toennies, (Germany) has slaughterhouses with very large capacity lying beyond but very close the 150km radii. Its slaughtering capacity has not been taken into account in the calculation of market shares.

necessary, add extra shifts at relatively low cost, thereby effectively raising their slaughtering capacity.

51. It can therefore be reasonably argued that the margin for manoeuvre of the Parties to determine prices for the purchase of live pigs is greatly diminished, as pig farmers can readily find alternative outlets for their supplies by selling to other slaughterhouses, within the 150 km radius, both in the Netherlands and in Germany.

52. Concerning the market for the purchasing of sows for slaughtering , the combined market shares of the Parties in the relevant geographic markets are indicated in the table below:

Purchase and slaughter of sows 2003			
	Sovion[9]	**HMG**	**Total**
150 km range Enschede	[0-10]%	[0-5]%	**[5-15]%**
150 km range Eindhoven	[5-15]%	[0-10]%	**[15-20]%**
150 km range Doetinchem	[0-10]%	[0-5]%	**[5-15]%**

53. Therefore, in these markets, the combined market shares of the Parties are considerably lower than for pigs. The competitive assessment for pigs thus applies a fortiori for sows.

54. On the basis of the foregoing, notably the relatively low market shares in the relevant geographic markets, combined with the existing spare capacity, it can be concluded that the proposed transaction does not give rise to competition issues in the market for purchasing live pigs and sows for slaughtering.

2. Sales of fresh meat

55. Both Sovion and HMG are active in the sale of meat to various categories of customers. The Parties have identified four product markets to be considered affected as a result of the concentration. These markets are the (i) sale of fresh pork to supermarkets, (ii) the sale of fresh beef to supermarkets, (iii) the sale of fresh pork to industrial processors and (iv) the market for "convenience products". The Commission has investigated the affected markets identified by the Parties and in addition has decided to discuss certain aspects of (v) the processed pork meat market. No other affected market has been identified by the market investigation.

(i) Sales of fresh pork to supermarkets

Product market

9 Sovion's market share includes also 100% of sows slaughtered by Ballering, even though Sovion holds only a 50% of this slaughterhouse.

56. In its previous decisions[10], the Commission has defined separate product markets for the sale of fresh[11] pork and sales of fresh beef. In the Commission's understanding fresh meat includes both fresh and frozen meat, which is not processed in any way.

57. The markets for sale of fresh pork and beef have been further sub-segmented into retail markets (supermarket, butchers, farm sales) and catering market, The Parties' submission as regards the product market definitions is in line with past Commission decisions. The market investigation has not contested such definitions. Moreover, the market investigations has not contested the Parties' claim that sales to butchers, farms and caterers are not affected markets in this case.

Geographic market

58. In a previous decision[12], the Commission recognized that although pork meat is traded internationally, national preferences remain relevant. Therefore, although the Commission assessed the impact of imports on national markets, sales to supermarket have been considered to be national in scope.

59. The Parties argue in favour of a larger geographic market, within a driving distance of 1200-1500 km, which may even be considered EEA-wide in scope. The Parties also underline that due to the new pre-packaging techniques under the Modified Atmosphere Packaging (MAP), used by the parties and their competitors, foreign meat can be available for four days on the shelves of the supermarkets even after a-day-long transportation.

60. The present market investigation has confirmed the importance of international retail groups, as well as the presence of important trade flows, which may suggest a wider geographic market. On the other hand a number of respondents to the Commission investigation have pointed out that imported meat products may face a shorter shelf-life than the domestic products. Even those third parties who stated that the product market is national in scope have nonetheless emphasised that these markets are undergoing a process of rapid internationalisation, which appears to confirm the claims and the evidence submitted by the parties in this respect.

61. As a result, the Commission has conducted its investigation on the basis of three possible alternative geographic market definitions: national; regional (including the Benelux, Denmark, France and Germany) and EEA-wide.

62. For the purposes of the present case, however, the precise geographical market definition can be left open, as no competition concerns would arise under any possible market definition.

Assessment

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[10] See in particular Case No IV/M.1313 – Danish Crown/Vestjyske Slagterier, paragraph 22-38. Case No IV/M.2662 - Danish Crown/ Steff Houlberg, paragraph 15.

[11] "Fresh meat" means that the meat has not undergone further processing, i.e. no other ingredients or spices have been added, nor has the meat been cooked, smoked or dried. See COMP/M.1313 – Danish Crown/Vestjyske Slagterier, paragraph 34.

[12] See case No IV/M.1313 - Danish Crown/Vestjyske Slagterier.

63. At the EEA-wide level, the Parties hold a combined market shares of [0-10]% ([0-10]% for Sovion and [0-1]% for HMG) in 2003. Based on a regional market including the Benelux, Denmark, France and Germany, the parties combined market share would reach [10-20]%, while excluding France from the regional market the shares will be [15-25]%. In both cases, HMG's market share is below 1%, so the market share increment would be *de minimis*. Narrowing further down the geographical market, the parties' individual market shares on the Dutch national market would be of [15-25]% and [0-10]% respectively.

64. The Parties submit that […], one of the major supermarkets chains active in the Netherlands, has recently terminated its supply contracts with Sovion for the supply of fresh meat (effective termination […]). This has been confirmed by the market investigation. As a result the prospective combined market share would fall, […] after termination below [15-25]% on the Dutch market and would obviously also fall at the regional and EEA-wide level. Within the Netherlands, the market appears to be sufficiently fragmented, with competitors holding shares close to those of the Parties: Benedik holds a [10-20]% market share and Hilckman [5-15]%. Smaller groups with 5% to 6% market shares are also present on the market for sales of fresh pork to supermarkets.

65. Moreover, the investigation has confirmed that supermarkets negotiate their prices on weekly basis and alternative sources are always available. Prices and quantities purchased on weekly basis can vary quite substantially. Furthermore, supermarkets buyer and negotiating power are exemplified by […] the recent switch of one of the major supermarkets.

66. On the basis of the foregoing the Commission has concluded that no competition concerns are likely to arise on this market, regardless of the geographic scope.

(ii) Sales of fresh beef to supermarkets

Product market

67. As mentioned, sales of beef to supermarkets constitute a separate product market. The investigation in the present case has not contested this definition.

Geographic market

68. The Parties submit that the geographic market definition for this market should be considered as the same for the market for sales of fresh pork to supermarket. For the purpose of this case, however, the precise market definition can be left open, as no competition concerns would arise under any possible market definition.

Assessment

69. The parties are also active on the sales of fresh beef to supermarkets. However, HMG does not slaughter cattle itself, but only buys beef […] and pre-packages it for further sales to supermarket. On the basis of a EEA-wide scope, Sovion has a market share of [0-10]%, and HMG below 1%. On a potential regional market including the Benelux,

Germany and France[13] the combined shares of the parties remain below 15% (with increment below 1%), while excluding France the combined markets shares would be [25-30]% (with increment of around [0-2]%).

70. Based on a national market definition, in the Netherlands Sovion's market share is of [15-25]%, and HMG's [0-10]%, resulting in a combined market share of [20-30]%. Hilton, Groothedde and Benedik are the main competitors of the parties with market shares ranging from [10-20] to [0-10]%. The presence of some smaller competitors was also reported to the Commission. Considering the available imports in this sector, the ongoing internationalization tendencies and the weekly negotiations between supermarkets and their suppliers, the Commission has concluded that no competition concerns are likely to arise on this market, regardless of the geographic scope.

(iii) Sales of fresh pork to industrial processors

Product Market

71. Still in line with past Commission decision, the Parties have identified a separate market for the sale of fresh pork meat to industrial processors. Industrial processors buy meat from the slaughterhouses and transform it into different types of processed meat products, which are then sold to the retail market or the catering market as processed meat.

72. The Parties have indicated that the sales to industrial processors include as well the sales of technical parts and parts to be de-boned (e.g. pig heads). These parts are sold on to de-boning companies, processing plants (e.g. for sausages, etc.), pre-packaging companies and traders. Whether there exists a separate pig-head market within the industrial processing can be left open for the purpose of the present transaction, as there occur no competition concerns in the hypothetical market for pig-heads.

Geographic Market

73. In past cases[14], the Commission has considered the geographic scope of the market for sales of fresh pork to industrial processors as wider than national, although the exact scope of the geographic market definition was left open. The Parties argue that the market should be examined at the EEA level and stress that industrial processors source centrally from the whole of Europe. In support of this claim, the parties indicate that both Sovion and HMG for instance supply industrial processors in Greece (Sovion [25,000-75,000] tonnes and HMG [0-50,000] tonnes).

74. The market investigation has confirmed that the market is wider than national. Most third parties have supported the EEA-wide market definition proposed by the Parties. Only a few respondents have argued in favour of narrower geographic market definitions, some of them pointing to regional markets comprising the neighbouring countries of the Netherlands or within a transportation distance of 200 to 300 km. Only very few respondents have argued in favour of a national scope. Therefore, the Commission considers that the market is wider than national. However, the precise geographic market definition can be left open for the purpose of this case, as no competition concerns would arise under any geographic market wider than national.

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13 It is to be highlighted that HMG has no sales to supermarkets outside the Netherlands.

14 Case COMP/M.3337 – Best Agrifund/Nordfleisch

Assessment

75. Considering European-wide markets, the parties combined market shares would reach [5-15]%, Sovion with almost [5-15]% and HMG with only [0-5]%. As mentioned the vast majority of respondents to the market investigation have confirmed that the market is EEA-wide. However a few respondents have opted for regional markets. It is worth mentioning that a number of third parties have even mentioned that the concentration will have a positive impact on the evolution of the fresh meat markets, by increasing efficiency.

76. On a regional market comprising the Benelux, Germany and France, the parties combined market share would be [15-20]% with an increment of [0-5]%. On a narrower regional market definition, excluding France from the region, the parties would control [15-25]% of the market and the increment due to the acquisition of HMG's would rise to [0-5]%. The market is sufficiently fragmented with a number of differently sized competitors active both at national, regional and European level (such as Compaxo and Hilkmann in the Netherlands and Danish Crown, Toennies, Westfleisch, Sudfleisch and others at European level).

77. On the basis of this market structure, the Commission has concluded that no competition concerns are likely to arise for the market of sales of fresh pork meat to industrial processors considered as a whole.

78. During the investigation the issue arose of whether the purchasing/supplying of pig-head for de-boning should be considered as a separate market. In its previous decisions, the Commission has not defined a distinct market for pig heads. Two parties, active in the de-boning of pig heads in the Netherlands, have raised issues of possible shortages in the supply of pig heads post transaction.

79. According to them, it would appear that the hypothetical market for pig heads is wider than the Netherlands and comprises at least the Benelux and the United Kingdom, where "whole" pig heads are available, while in Germany pig-heads are split before de-boning. Under this definition the merged entity would hold a market share of [20-30]%. One of them has argued in favour of a larger market, including northern France, Luxembourg and the western part of Germany. The Parties have argued that Denmark and possibly Germany should fall within the appropriate geographic market definition of the hypothetical market for pig-heads. Under this wider market definition the merged entity would hold a market share of approximately [10-20]%. Therefore, the Parties' market shares for the hypothetical market for pig-heads are way below levels indicative of dominance.

80. Furthermore, it should be highlighted that that the Parties do not process pig-heads themselves, they sell all their pig heads to third-party de-boners and have no controlling stake in any of these de-boning company. Therefore it is very unlikely that a shortage of pig-heads would result from the transaction.

81. On the basis of the foregoing, the Commission has concluded no competition concerns would arise from the transaction on the hypothetical market for supplying of pig-head for de-boning.

(iv) Convenience products

Product Market

82. In line with past Commission decisions[15], the parties have defined convenience food as a fully or partially prepared dish or packaged food that can be prepared quickly and easily. The parties are active almost exclusively in convenience products with a meat content of 90% or more. This narrow market delineation would only include meat convenience food products which consist of at least 90% meat content, excluding pre-packed unprocessed meat and unprocessed minced meat. The competitive impact of the present transaction on such a meat based convenience segment has been based on the Parties' estimates, as no reliable data was available for this hypothetical market. The precise market definition can nonetheless be left open for the purpose of this case, as no competition concerns arise from the transaction.

Geographic Market

83. In the most recent case[16], the Commission's market investigation revealed that most customers purchase convenience products at national level, but there would be no significant obstacles to purchase from abroad. This is particularly the case for supplies to supermarkets.

84. The market investigation has not provided useful information as regards the geographic scope of this market. However, for the present case the geographical scope of the market can be left open, as no competition concerns arise.

Assessment

85. Based on the previous decisions, the market for convenience products may be defined as national in scope. Nevertheless, the transaction will only affect the Netherlands, where Sovion has a market share of [10-20]% and HMG of [0-10]%. The next competitor, Encko has a market share of [20-30]% which has been confirmed by the market investigation. The other players in convenience products are less important, they hold smaller market shares that are below 5%. The concentration will have a very marginal impact within the EEA, as parties' combined market share on the EEA-wide markets remains below 5%.

86. The Commission has thus concluded that no concerns are likely to arise on this market.

(v) Processed meat

Product Market

87. In line with past Commission decisions[17], the parties have identified the market for processed meat products as comprising all meat products from mammals or birds, containing external ingredients such as salt or spices, being raw, dried, smoked or cooked. The Commission also found that all processed meat products constitute a combination of the following seven dimensions: (1) the raw material used (pork, beef, poultry), (2) ingredients (spices), (3) water content, (4) heat treatment (smoked or boiled), (5) portion, (6) packaging, (7) temperature (chilled or canned).

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15 Case COMP/M.3337 – Best Agrifund/Nordfleisch,

16 Case *COMP/M.3337* Best Agrifund / Nordfleisch

17 Case COMP/M.3337 – Best Agrifund/Nordfleisch

88. On this basis, the Commission concluded that there were separate markets for (i) processed pork products, (ii) processed beef products and (iii) processed poultry products. Further possible delineation into (a) raw cured products, (b) processed meat for cold consumption, (c) canned meat, (d) sausages, (e) pâtés and pies and (f) ready prepared dishes and components for such (convenience products) were left open.

89. Overall, for the purpose of this case the precise product market definition(s) of the different processed meat products can be left open, as no competition concerns arise from the transaction. However, as the Parties' combined market share for sales of bacon in the UK will be above 15%, this hypothetical product market will be analysed separately.

Geographic market

90. In Case No IV/M.1313 Danish Crown/Vestjyske Slagterier the Commission found that the geographic scope of the market of processed meat was wider than national, but later decided in Case No IV/M.2662 Danish Crown/Steff Houlberg that due to suppliers' ability to price discriminate between different Member States the definition of the geographic market seemed to be justified to be national in scope. In case COMP/M.3337 Best Agrifund / Nordfleisch the Commission did not rule out that there were markets for individual product groups of processed meat which may be wider in scope than others. In all precedents, however the Commission left the precise market definition open, as no competition concerns arise.

91. The Parties argued that supplying from third countries appears generally unproblematic for customers. The market investigation has not contested this and has not raised any particularly relevant issue in this respect. The precise geographic market definition can nevertheless be left open for the purpose of this case, as no competition concerns arise.

Assessment

92. Post merger the combined entity will control less than 2% of the EEA-market. No national market constitutes an affected market as combined market shares remain way below 15% ([0-5]% in the Netherlands and [0-10]% in the United Kingdom).

93. However, within processed pork products, bacon may constitute a separate market. In the Commission previous decision, Case No IV/M.2662 Danish Crown/Steff Houlberg the UK market for bacon has been discussed extensively and since the parties are important players on this market, the consequences of the merger have been examined on this specific hypothetical product market.

94. The raw material used in the production of bacon comes from the back of the pig. The meat is treated with a mixture of salt and water, and then cured. The outcome of this process is the so-called "open bacon", which is sold for further processing to slicing companies. As HMG is not active in slicing, the analysis will focus only on the open bacon market.

95. Dumeco, a subsidiary of Sovion and HMG are both exporting open bacon to the UK. Dumeco supplied [25,000-75,000] tonnes, representing [5-15]% of the market, and HMG [0-50,000] tonnes, representing [0-10]%. In 2003, their combined market share for the UK open bacon was [10-20]%.

96. On the open bacon market, the parties' competitors are equally strong. Post transaction, Danish Crown will keep its leadership with [15-25]%, whilst post transaction the parties will only reinforce their position, as the second strongest player. The third and the fourth player would also control [5-15]% and [5-15]% of the market respectively. The smaller players would amount to less than 5%.

97. On the basis of the above, the Commission has concluded that the transaction will not raise competition concerns on the overall market for processed meat or any sub-segments of the processed pork meat market.

3. Abattoir by-product

Overview

98. During the slaughtering process, each slaughterhouse produces different abattoir by-products ("ABPs") which can either be further processed or have to be disposed of. All companies active in slaughtering produce by-products both for further processing or disposal. The volume of by-products supplied by a slaughterhouse to processing companies is directly proportional to the volume of animals slaughtered. Therefore both HMG and Sovion produce abattoir by-products.

99. However, only Sovion collects and/or purchases abattoir by-products, through its subsidiary Sobel and the subsidiaries thereof[18]. HMG is not active in the collection and processing of by-products[19]. Therefore, the various ABPs markets are not horizontally affected by this transaction.

100. There exists however a number of vertical relationships (downstream markets for HMG and upstream markets for Sovion) which give rise to a number of vertically affected markets, which will therefore be analysed in this decision.

101. Abattoir by-products produced by HMG and not processed by Sovion […][20] and processed by Sovion but not produced by HMG […] will not be mentioned as they are not vertically affected.

102. Furthermore, the downstream markets on which Sovion sells the end-products (gelatine, plasma, haemoglobin etc.) made from abattoir by-products will not be addressed as they are not affected, since HMG does not process abattoir by-products and therefore is not active in the various downstream markets.

103. In line with past Commission practice, the Parties indicate that abattoir by-products should be delineated in several categories based on the applications for which they can

18 Sovion/Sobel is active in the various ABPs markets through a number of subsidiaries: Collection and disposal of cat 1 and 2 materials - Rendac Son B.V.; Food grade blood - Harimex B.V.; Cat 3 blood - Sonac Burgum B.V.; Cat 3 bones - Smits Vuren B.V. ;Cat 3 other (incl. hair) - Sonac Burgum B.V.; Pigskin - Rousselot S.A.S.

19 HMG processes and uses pigskins in some of its processed meat products. These pigskins are therefore not considered as ABPs. Furthermore, HMG does not purchase any pigskin from third parties to be processed. All pigskins processed by HMG in its meat products are to be considered as captive.

20 […]

be used. All animals are subject to an ante-mortem veterinary control which determines the category under which certain abattoir by-products will fall.

104. Non-food grade products cannot be used for further processing into products for human consumption. They are for example processed into pet food, used for other non-food grade applications or have to be disposed of. On the basis of EC Regulation 1774/2002 of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption, non-food grade products are classified under three different categories, which are the following:

105. Category 1 materials are all body parts of animals suspected of being infected by certain diseases (e.g. BSE). In addition, cattle bowels, cattle head, cattle vertebra (spinal cord) and perished cattle automatically fall under category 1. To date, pigs which died of typical "pig diseases" or general animal diseases and are considered less dangerous for human consumption still fall under category 1.

106. Category 2 materials cover dead animals not infected by dangerous diseases (such as those that die from other causes than by being slaughtered for human consumption (e.g. by natural causes)) as well as animals which are not admitted for slaughtering. All pigs which are not fit for human consumption fall within category 2.

107. Category 3 materials include all other abattoir by-products, which are not used in the food/gelatine-grade sector. These can be parts of slaughtered animals (e.g. blood, bones and pigskin) which could be fit for human consumption, but are not used for it for commercial reasons.

108. Food grade and gelatine grade abattoir by-products can be processed for further human consumption and for pharmaceutical applications. These products are e.g. blood, bones and pigskin.

109. The disposal and processing of category 1 and 2 materials is fully regulated. These materials have to be processed by an assigned processor. Through its subsidiary, Rendac B.V. Sovion holds that exclusive license in the Netherlands. The activities of and prices paid to Rendac are subject to governmental control. Category 3 and food or gelatine grade abattoir by-products can be also disposed under category 1 and 2[21].

110. The Parties argue, in line with past decisions, that it is appropriate to draw a distinction between the completely regulated category 1 and 2 material on the one hand, and the unregulated markets for category 3, food and gelatine-grade material on the other hand. The market investigation has largely confirmed this.

111. By way of general argument, valid for all types and categories of ABPs, the Parties stress that the costs for the disposal of by-products are insignificant compared to the total value of the slaughtering business. The ability of a slaughterhouse to dispose of its by-products in a particularly cost-effective manner therefore does not provide it with a significant competitive advantage. In this respect the Parties recall that, the Commission's investigation in Case COMP/M. 3175 Best Agrifund/Dumeco (para. 40) confirmed that the costs for processing abattoir by-products represented a maximum of 1.6% of the value of a slaughtered pig. The market investigation carried out by the Commission for the present case has not contested these estimates.

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21 As a general principle, each type of material can also be disposed and processed like material of the category below and below that, if any. For instance, food grade and gelatine grade can be processed as category 3 material, as category 2 material and as category 1 material.

112. The Parties also highlight that in the current situation i.e. pre-merger, HMG already supplies all or almost all of its ABPs to Sovion for rendering and/or processing. In practice, the Parties argue, nothing will change post-merger and the transaction will have no impact. This argument has been assessed by the Commission in the course of its investigation and will be addressed further, if relevant, when dealing with the various ABPs product markets.

113. The Parties have also provided, upon request by the Commission, data as regards the amount and value of the trade flows between HMG and Sovion for those ABPs products supplied by HMG to Sovion for processing.

114. These data indicate that the value of these flows compared to the total turnover of the Parties (separate and combined) is negligible. Moreover, the Parties stress that these markets, compared to the other markets relevant to the transaction, are insignificant. To put this into perspective, the Parties indicate that HMG achieves a total turnover of approximately […] euro. The turnover achieved by Sovion with the processing of all by-products delivered by HMG excluding the category 1 and 2 materials amounts to a maximum of […] euro. This represents not more than 0.2 to 0.3 % of the additional turnover achieved by Sovion as a result of the acquisition of HMG.

115. Although Sovion has high market shares on some of these markets, the Parties argue that there is no reason to expect that the transaction will significantly impair effective competition on any of those markets. In particular, it will not lead to foreclosure of competing slaughterhouses.

116. Foreclosure of competing slaughterhouses could in theory occur if Sovion was in the position to stop collecting and processing abattoir by-products of competing slaughterhouses or to raise the price charged for the collection and processing of abattoir by-products, thereby raising these competitors' cost or disrupting their operations. Under fully regulated prices, which are strongly cost driven, this risk is not present and such strategy cannot be followed.

117. First of all it is noted that Sovion has the statutory obligation to collect and process category 1 and 2 abattoir by-products against fully regulated prices. Therefore, a strategy not to collect category 1 and 2 by-products or raise prices for the collection of such materials cannot be pursued.

118. For other by-products (category 3 blood, food grade blood, bones, pigskin and other category 3 materials) such strategy would be counterproductive. As the processing of abattoir by-product is a capital-intensive industry, fixed costs are high. Therefore it is of vital economic importance to use the processing capacity to its full extent. Sovion therefore cannot afford to reduce its input.

119. Furthermore, competing slaughterhouses would always have the option to supply the relevant by-products to competing processors (bones, pigskin and other category 3 materials) or to start processing by-products themselves (e.g. Compaxo processes blood produced in its own slaughterhouse). Relevant in this context is also that EC Regulation 1774/2002 has opened the possibility for alternative processing methods for animal by-products, such as biogas and composting. This creates new options for slaughterhouses to supply their animal by-products. Biogas and composting are, for example, existing processing methods for various materials including slaughter by-products. Biogas and composting processing facilities are in place and directly

accessible for slaughterhouses. These new available outlets are already used by various slaughterhouses and are rapidly gaining market share.

120. Category 3 by-products can also be mixed with category 2 materials. In this case, the materials become category 2 materials (see Article 5(1)(f) of Regulation (EC) 1774/2002). Sovion's subsidiary Rendac has a legal obligation to collect these materials and can only charge the regulated tariffs for this activity. Although the prices charged for processing of category 2 materials are higher than prices charged by processors of category 3 materials, this mechanism puts a ceiling on the prices to be charged by Sovion for processing category 3 by-products. If prices charged for processing category 3 by-products increase above the level charged for the processing of category 2 materials, slaughterhouses will no longer deliver their by-products as category 3 materials and Sovion would not benefit from such situation. It would loose profits achieved with category 3 processing and such losses would not be compensated by additional profits gained from the processing of additional category 1 and 2 materials. The reason for this is that Sovion is only allowed to achieve a fixed return on investment with the processing of category 1 and 2 materials.

121. Finally, it should be noted that the cost of processing and disposal of abattoir by-products accounts for a very small percentage of a slaughterhouse total costs. As already mentioned, such costs represent a maximum of 1.6% of the value of a slaughtered pig. This percentage includes the costs of processing of the regulated category 1 and 2 materials, for which the prices cannot be raised by Sovion, as they are fixed by the Dutch Ministry of Agriculture. Thus, even if Sovion was able and willing to increase its cost of processing of non regulated materials by 10%, this would only raise the slaughterhouses' costs by far less than 0.16%. There is no reason to expect that such a limited cost increase would affect competition between slaughterhouses to an appreciable extent.

122. The transaction gives rise to the following vertically affected markets:

(i) Collection and disposal of category 1 and 2 materials;
(ii) Purchase and processing of food grade pig blood;
(iii) Purchase and processing of category 3 pig blood;
(iv) Purchase and processing of bones;
(v) Purchase and processing of pigskin;
(vi) Purchase and processing of other category 3 abattoir by-products.

(i) Collection and disposal of category 1 and 2 materials

Product market

123. In line with past Commission decisions, the Parties identify a product market for the collection and disposal of category 1 and 2 material. Both under EU and national law, the two groups are strictly regulated. The market investigation has not contested the proposed market definition.

Geographic market

124. Again in line with past decisions, the Parties identify a geographic market that is at most national in scope as the materials may not be exported and need to be processed in the area of origin. National regulations require slaughterhouses to supply category 1 and 2 material for disposal to a specific rendering plant that holds an exclusive license. The market investigation has not contested the proposed geographic scope of this market.

Assessment

125. Sovion's subsidiary Rendac B.V. holds an exclusive license for the processing of category 1 and 2 material in the Netherlands, and therefore has a statutory monopoly with a market share of 100% on the product market for the collection and disposal of category 1 and 2 materials. Pursuant to section 12 (2) Destructiewet (Dutch act on the destruction of animal by-products), Rendac has the statutory obligation to collect, transport and process all category 1 and 2 material originating in the Netherlands.

126. Its tariffs are subject to strict governmental control. According to section 21 of the Destructiewet, Rendac may charge slaughterhouses at most the "actual costs" of its services. Section 21(3) Destructiewet stipulates that the tariffs must be approved by the Minister of Agriculture on a yearly basis. In practice, Rendac sends the Ministry a proposal, which is based on its budgeted costs. This proposal is accompanied by a declaration of an auditor[22] and is verified by a government auditor. The Ministry may approve that proposed tariffs at the earliest four weeks after the First and Second Chamber of Dutch Parliament have received the tariff proposal.

127. The consequence of the statutory monopoly of Rendac is that it has a 100% market share in the Netherlands. Thus all category 1 and 2 material is collected and processed by Rendac. The position of Sovion on this market will thus not change as a result of the transaction.

128. A few respondents to the market investigation have however raised the issue of possible cross-subsidisation, within the merged entity, from "monopoly profits" obtained for Category 1 and 2 ABPs on the one hand towards category 3 on the other.

129. In this respect, it appears that there are no possibilities for cross-subsidisation, as the regulated activity of category 1 and 2 processing is in all aspects fully separated from all other activities (separate plants and separate transportation). Auditors appointed by the government control that all financial flows are kept separated as well and that only costs related to category 1 and 2 processing are covered through the fixed tariffs. As the market for category 1 and 2 is fully regulated, competition cannot be affected as a consequence of the acquisition[23].

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22 See section 21(5) of Destructiewet.

23 Pursuant to article 21 of the Destructiewet the tariffs charged by Rendac may only cover its costs and are fixed by the Minister of Agriculture. As costs are not specified by the Destructiewet, the Minister has interpreted costs as operational costs and a compensation for the company's own funds and working capital which are dedicated to the regulated activities related to Cat 1 and 2 abattoir by-products. For 2003, the fixed return on investment was 10.5%.

130. A limited number of respondents have also raised the issue of the allegedly ongoing review of the legislative and regulatory regime for the ABPs markets. According to these respondents, the argument would imply that, in the absence of the merger, HMG could be the main potential entrant/challenger in this market.

131. However, the additional investigation carried out by the Commission has indicated that there are no firm proposals for amendments of the current legislation and regime which may abolish Sovion's statutory monopoly. The issue is however being discussed. For example, in a recent letter dated 11 November 2004 to the President of the Dutch Parliament[24], the Minister of Agriculture indicated that he had assessed the legislation concerning rendering (*Destructiewet*). However, this letter does not provide any indication that amendments will be proposed in the short term. It is also indicated therein that the letter reflects only some ideas as a possible direction of the rendering legislation.

132. However, it appears to the Commission that any statement and reflection on the future developments of the legislative and regulatory regime as well as the possibility of new entrants as an outcome of the regulatory changes are highly speculative.

133. On the basis of the foregoing, the Commission has concluded that the transaction does not give rise to competition concerns on this market.

(ii) Food grade blood and category 3 blood

Product market

134. According to past Commission decisions[25] food grade blood and category 3 blood constitute separate product markets and food grade blood and category 3 blood should be further split according to species from which the blood has been collected, i.e. cattle and pigs. Although food grade blood from both species are processed into plasma and haemoglobin and used for the same applications, there are certain applications for which blood coming from ruminants (i.e. cattle) has to be separated under the existing regulatory regime.

135. Whilst the Parties agree with the further delineation according to species as far as category 3 blood is concerned, they disagree as regards food grade blood. It is argued that there are no relevant technical differences between pig and cattle blood, since both pig and cattle blood have the same physical properties. Blood products are functional proteins and the functionality of proteins are identical, regardless of the species. These proteins are used as water and fat binder, colouring agent and protein source. Therefore there are no material separate production lines for the types of plasma and haemoglobin coming from different species. They are produced in batches and the equipment is cleaned before a batch of another type is produced. According to the Parties, a specific type of blood is required only in a limited number of cases where customers demand blood of a specific origin.

136. Only Sovion, through its subsidiaries Harimex and Sonac Burgum, is active in the purchasing and processing of blood. HMG only supplies the market with the blood

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24 Available at http://overheid-op.sdu.nl

25 COMP/M.3337 Best Agrifund / Nordfleisch

originating from its activities. Currently, HMG already supplies 100% of its food grade and category 3 blood to Sovion for processing.

137. The precise market definition can be left open for the purpose of this case.

Geographic market

138. In line with past Commission decisions[26], the Parties argue that the geographic scope of the market is the same for the different blood types and categories. Food-grade blood and category 3 blood are transported over similar distances because the value of the blood is more or less similar. It is argued that the market is wider than national and comprises at least Germany, the Netherlands and Belgium. In support of their claim the Parties cite the Commission decision on Best Agrifund / Nordfleisch where it was acknowledged that blood purchasers source most of their blood within a radius of 200-300 km from the processing plants[27]. Besides, the Parties also indicate that at certain occasions Sovion sources blood from a distance of 600 - 800 km.

139. In any event, the precise geographic market definition can be left open for the purpose of this case, as no competition concerns arise from the transaction.

Assessment

140. Regardless of the product and geographic market definition, as mentioned in the product market definition, HMG already supplies 100% of its food grade and category 3 blood to Sovion for processing. Moreover, Sovion already collects and process between [90-100]% and 100% of the various types of blood in the Netherlands. As a matter of fact, Sovion is the only party within the Netherlands which processes category 3 blood and food grade blood for third parties (it appears that Compaxo processes internally food grade blood produced in its own slaughterhouses).

141. In the light of the above, the transaction is unlikely to lead to any negative effects on this market, even if the assessment was limited to the Dutch market. The option for slaughterhouses to process their own materials remains open and can be seen as an option as the technology is readily available and accessible.

142. On the basis of the foregoing, the Commission has concluded that the transaction does not raise competition concerns on this market.

(iii) Purchase and processing of bones

Product market

143. Bones can be used in the production of gelatine, foodstuff, meal, fat and technical glues, colloidal products and bone ash. In principle, both pig and cattle bones can be used for all applications even though cattle bones are better suited for certain applications. The parties claim that there is full supply side substitutability as the

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[26] COMP/M.3337 Best Agrifund / Nordfleisch

[27] The Commission in the same paragraph stated: "This is especially true for those slaughterhouses situated close to the Dutch border, however, for other slaughterhouses the market should be regarded as strictly national in scope."

processing method is identical for pig bones and cattle bones and both are processed in the same facilities. Processors can therefore easily switch.

144. In past cases[28] the Commission indicated (but left the precise definition open)that there is one single product market for all bones, regardless of the fact that bones are also categorised as food grade, category 1, 2 and 3 materials[29]. Non category 1 or 2 bones of both pigs and cattle are used for the production of gelatine. The Parties agree with the market definition adopted by the Commission in past cases. Only Sovion, through its subsidiary Smits Vuren, is active in the purchase and processing of bones. HMG only produces bones.

Geographic market

145. The Parties argue that the relevant geographic market comprises at least the Netherlands, Belgium and Germany, but may be wider in scope. This is in line with the Commission's previous decision in case COMP/M.3175 Best Agrifund / Dumeco where the Commission acknowledged that the geographic scope may be wider than national as cross-border trade takes place between Belgium and Germany. The market investigation has not contested this definition. The market is therefore defined as at least comprising the Netherlands, Belgium and Germany, with the possible inclusion of France.

Assessment

146. Sovion purchases [15-25]% of the bones processed in the Netherlands in Germany and Belgium. HMG represents approximately 1% of the bones supplied in the Netherlands in Germany and Belgium. The market is sufficiently fragmented, with a large number of competitors (such as Gelita, Fischermanns, Ensotec, SARIA, H.Hoven, Van Pollaert and PB Gelatins) with market shares ranging from [10-20]% down to [0-5] %. In the light of this, the Commission has concluded that the transaction does not give rise to competition concerns on this market[30].

(iv) Purchase and processing of pigskin

Product market

147. Pigskins are mainly used for the production of gelatine, but can also be used for other purposes. Only Sovion is active in the purchasing and processing of pigskin through its subsidiary Rousselot. HMG only produces pigskin.

Geographic market

148. The Parties argue that pigskin is sourced (fresh or frozen) from all over Europe. For example, Sovion, through its subsidiary Rousselot, purchases for their plant in Gent

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28 COMP/M.3337 Best Agrifund / Nordfleisch

29 Category 1 and 2 bones are included in the Collection and disposal of Category 1 and 2 by-products (e.g. bones from cows which were infected by BSE) and are not used for the production of gelatine.

30 On the basis of the adopted market definition, this market is not vertically affected by the transaction, within the meaning of the Merger Regulation.

(Belgium) pigskin from the Netherlands, Germany, France, Spain, the United Kingdom, Italy and Ireland. It is argued that competitors of Rousselot in Germany, in Belgium and in Italy also purchase throughout Europe.

149. Even though the Parties believe that the market is EU-wide, they claim that the market for the purchase of pigskin comprises at least the Netherlands, Germany and Belgium. The precise market definition can nevertheless be left open for the purpose of this case, as no competition concerns arise from the transaction.

Assessment

150. Sovion purchases [10-20]% of the pigskins processed in the EU, [5-15]% of the pigskins processed in the Netherlands in Germany and Belgium and [15-25]% of the pigskin processed in the Netherlands. In 2003 HMG put [0-1000] tons of pigskins on the market. This represents only [0-0.5]% of the pigskins supplied in the EU, [0-0.5]% of the pigskins supplied in the Netherlands in Germany and Belgium and [0-5]% of the pigskins supplied in the Netherlands. It is to be mentioned that HMG currently supplies no pigskins to Sovion. Furthermore, the amount of pigskins sold by HMG to third parties is very limited, due to the fact that HMG uses most of its pigskins captively, for its own meat production activities.

151. On the basis of the foregoing, the Commission has concluded that the transaction does not give rise to competition concerns on this market.

(v) Purchase and processing of other category 3 abattoir by-products

Product market

152. Other category 3 abattoir by-products are the lowest value abattoir by-products. Although these products could be fit for human consumption, for commercial reasons they are not used in food applications. The abattoir by-products in this category are processed into meat meal and fat which are in turn used for pet food, compound feed and technical applications. Only Sovion is active in the purchase and processing of other category 3 abattoir by-products, through its subsidiary Sonac Burgum. HMG only produces these ABPs as a result of its slaughtering activities. The precise product market definition can be left open for the purpose of this case.

Geographic market

153. The Parties indicate that the relevant geographic market is national due to high transport costs compared to the low value of the products. The precise geographic market definition can be left open for the purpose of this case.

Assessment

154. Sovion purchases and processes [90-95]% of other category 3 abattoir by-products in the Netherlands. In 2003 HMG put [0-50,000] tons of other category 3 abattoir by-products on the market. This represents [5-15]% of the other category 3 abattoir by-products supplied in the Netherlands.

155. As mentioned, this category consists of the lowest value abattoir by-products. Sovion processes these products in low value meat meal and fat to be used for pet food, compound feed and technical applications.

156. However, in some cases specialist companies are able to process certain types of other category 3 by-products separately. Both Sovion and HMG make use of such specialist processors. As these players can add a higher value to specific abattoir by–products than Sovion due to their specialised processing method, they charge prices which are lower than Sovion's net processing cost, or often they even pay for the by-products.

157. HMG supplies almost all of its category 3 ABPs to Sovion for processing. However, limited amounts ([0-1000] tons out of [0-50,000]) of its supplies are sold to specialised processors, which can extract higher value from the processing and therefore are prepared to pay to acquire these ABPs rather than charge slaughterhouses. One respondent to the market investigation has raised the issue of the possible risk of foreclosure for third parties processors, as Sovion, it is argued, may decide to process itself also the marginal quantities of other category 3 ABPs originating from HMG and currently not processed by Sovion. However, the Parties stress that it would be commercially unsound for Sovion to process, in its own rendering plants, HMG's materials which are currently processed by specialised third party processors. As a matter of fact Sovion itself sells [0-10,000] tons out of the total [0-50,000] tons of other category 3 ABPs it produces to third party processors. As long as specialised processors can process these volumes of materials, it is commercially attractive for Sovion to continue supplying these materials to these third parties. If these materials were to be processed by Sovion together with all other category 3 materials, Sovion would forgo the income stemming from the sale of these ABPs to third parties. Therefore, foreclosing is not likely to occur as a result of the transaction.

158. On the basis of the foregoing, the Commission has concluded that the transaction does not give rise to competition concerns on this market.

V. CONCLUSION

159. 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

Neelie KROES
Member of the Commission
(*signed)*