EN

Case No COMP/M.3968 - SOVION / SÜDFLEISCH

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 21/12/2005

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

To the notifying party

Dear Sir/Madam,

Subject: **Case No COMP/M.3968 – Sovion/Südfleisch**
Notification of 28.10.2005 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 28 October 2005, the Commission received a notification of a proposed concentration by which Sovion N.V. ("Sovion", The Netherlands) acquires control of Südfleisch Holding AG ("Südfleisch", Germany) 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 No 139/2004 ("EC Merger Regulation") and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. **Sovion** is a Dutch company active in the slaughtering of pigs and cattle, the processing, production and sale of meat products. Sovion is mainly active in The Netherlands, Germany and Belgium. The Vion branch of the company focuses on meat production with slaughterhouses in Germany (Norddeutsche Fleischzentrale and Moksel) and the Netherlands (Dumeco and HMG). The Sobel branch deals with the processing of

1 OJ L 24, 29.1.2004 p. 1.

abattoir by-products and the production and sale of products made from abattoir by-products (such as gelatine).

4. All shares of Sovion are held by the Noordbrabantse Christelijke Boerenbond, Rooms-Katholieke Vereniging van Boeren en Tuinders-Ontwikkeling ("NCB"). NCB is an association of farmers (including pig farmers) and agri- and horticulturalists and has no economic activity. NCB has no further subsidiaries apart from Sovion.

5. **Südfleisch** is active in the slaughtering of pigs and cattle, the processing, production and sale of meat products. Südfleisch's main geographic focus is Germany. Südfleisch's shareholders are the cattle marketing co-operatives from Bavaria (82.6%), with a minority share being held by producer co-operatives (6.2%) and German banks accounting for the remainder.

6. On 1 September 2005, Sovion and Südfleisch announced the proposed sale of all shares in Südfleisch. Under the proposed (not yet signed) Stock Purchase and Transfer Agreements, Sovion will indirectly, through its subsidiary BFU Beteiligungsgesellschaft für Food-Unternehmen mbH, acquire 59.5% of the shares. Following the transaction, Sovion intends to increase its indirect shareholding in Südfleisch to 100% in total.

7. As Sovion will own 59.5% of the shares in Südfleisch, this will provide it with sole control over Südfleisch. Therefore the operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

II. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Sovion EUR […] million, Südfleisch EUR 1,137 million). Each of Sovion and Südfleisch have a Community-wide turnover in excess of EUR 250 million (Sovion EUR […] million, Südfleisch EUR […] million). […]. The notified operation therefore has a Community dimension according to Article 1(2) of the Merger Regulation.

III. PROCEDURE

9. After having been informed that it could not be excluded at that stage of the procedure that the notified operation might raise serious doubts as to its compatibility with the common market with regard to certain markets for the purchasing of live pigs and cattle in Southern Germany, on 30 November 2005 the Parties offered commitments with a view to remove possible serious doubts. However, after being informed by the Commission that the operation would not lead to serious doubts, the Parties on 21 December 2005 withdrew the commitments offered.

IV. COMPATIBILITY WITH THE COMMON MARKET

10. The operation affects various markets relating to the slaughtering of pigs and cattle and the processing, production and sale of meat products.

11. Several stages can be distinguished during the processing of pigs and cattle. Once purchased on the market for livestock (upstream market), the pigs and cattle are slaughtered. At the slaughterhouse, the pigs and cattle are divided into carcasses and abattoir by-products (such as blood, bones and bowel packages). The carcasses are then

either sold to third parties or divided into "technical parts". The technical parts can be sold to a variety of customers, including butchers and industrial processors (e.g. the sausage-industry, pre-packagers, etc.), 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.

A. The purchase of live pigs and live cattle for slaughtering

1. Product market

12. The Commission has previously[2] defined, in particular on the basis of absence of supply-side substitutability, separate product markets for the purchasing of live pigs and cattle for slaughtering. As cattle are much heavier than pigs, slaughterhouses require dedicated lines for the processing of cattle and pigs. A number of slaughterhouses only process pigs or cattle. In the present case, the distinction between pigs and cattle is shared by the Parties and has been confirmed by the market investigation.

13. More specifically for the slaughtering of pigs, the Commission has in previous cases[3] further differentiated between pigs on the one hand and sows on the other hand. Sows are significantly heavier and therefore require special processing lines at the slaughterhouse. They account only for about 6% of all pigs (male and female) for slaughter in Germany. The Parties disagree that the slaughtering of pigs and sows constitute separate markets. They claim that, from the supply-side slaughterhouses can use the same slaughter line for both pigs and sows. Still according to the Parties, from the demand-side, sow meat is mainly used for the production of sausages but also sold as fresh meat.

14. The market investigation has, however, largely confirmed that sows and pigs are still perceived as belonging to distinct products markets, due to the fact that their product characteristics (weight, meat structure etc.) differ and that sows are mainly used for processed meat. The market investigation has also confirmed that still not all slaughterhouses are able to process both sows and pigs and that significant price differences exist between both pigs and sows (sows being nearly 50% more expensive). As the parties' market share for live sows is - irrespective of the geographic scope of the market - significantly lower than that for pigs and does not lead to affected markets (combined market shares below [5-10]%), the further assessment will focus on pigs only.

15. Also, the Commission has verified whether purchases of pigs by *small slaughterhouses* (e.g. those with an annual capacity of under 50,000 pigs) should be excluded from the market[4]. However, such a narrow market definition was not confirmed by the market investigation. Indeed, while it is likely that, taken individually, such small slaughterhouses will only exercise limited competitive pressure on the merged entity’s

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2 Case No COMP/M.1313 – Danish Crown/Vestjyske Slagterier, decision of 9 March 1999, Case No COMP/M.3337 Best Agrifund/Nordfleisch, decision of 19 March 2004, and Case No COMP/M.3605 Sovion/HMG, decision of 21 December 2004.

3 See e.g. case No COMP/M.3605 Sovion/HMG, decision of 21 December 2004, paragraph 15.

4 See for a similar approach Bundeskartellamt, decision of 21 August 1997, B2 – 15111 U 13/97, paragraph 43.

slaughterhouses that can have a significantly higher capacity, small slaughterhouses do (notably in southern Germany, where the average pig farm consist of 55 animals) still absorb a considerable amount (between 10% and 15%) of livestock production and therefore exercise collectively significantly competitive pressure. As such, small slaughterhouses constitute a viable supply alternative in particular for small farmers.

2. Geographic market

a) Purchase of live pigs for slaughtering

16. In its previous decision practice, the Commission has used varying geographic market definitions, taking into account the specificities of the respective country/region. In the Danish Crown decisions[5], the Commission has considered the geographic market for the purchasing of live pigs for slaughter as national in scope on the basis of catchment areas for the delivery of pigs of about 120km, the cooperative structure of the Danish slaughterhouse industry (including farmers' obligation to have their animals slaughtered at specific slaughterhouses in which they have a stake), as well as the low level of exports and virtual absence of imports due to the strong customer preference for Danish pork. In the Best Agrifund/Nordfleisch decision[6], the Commission left the precise scope of the geographic market open, indicating that in the German market live pigs are generally transported over a distance of 200 to 300 km. In the Sovion/HMG case[7], the Commission defined a geographic market consisting of 150 km radii around the three main pig-farming areas in the Netherlands, thereby covering a substantial part of western Germany.

17. In a decision[8] dealing with the southern German market, the German *Bundeskartellamt* has defined South Germany (Baden-Württemberg and Bavaria) as well as the southern part of the eastern German *Bundesländer* as relevant geographic markets for the slaughtering of pigs.

18. The Parties advocate a wider geographic market approach – covering Germany, Benelux, Denmark and France, on the basis of live pigs being transported over large distances as Community legislation allows for uninterrupted transport of up to 8 hours. Still according to the Parties, transport costs have very little influence on the price of a pig as they are low compared to the overall purchase price and can be partially reimbursed by the slaughterhouse to the farmer in case of large volumes. In support of their statement that farmers can ship their pigs to various slaughterhouses at relatively long distances, the Parties submit that transport costs within an initial distance of 50 km represent only 1% of the price of a pig and that each further 50 km of transport represents less than 0.2% of the purchase price of a pig. These figures have been largely confirmed by the market investigation and are evidenced by the switching behaviour of farmers, who have stated that they would – or in some instances even already do -

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5 Cases COMP/M.1313 – Danish Crown/Vestjyske Slagterier, decision of 9 March 1999; and COMP/M.2662 – Danish Crown/Steff Houlberg, decision of 14 February 2002.

6 See footnote 3 above.

7 See footnote 3 above.

8 Decision of 21 August 1997, B2 – 15111 U 13/97.

transport pigs at distances in excess of 150 km in reaction to small price variations initiated by slaughterhouses. Traders are particularly well placed to exercise competitive pressure by purchasing livestock on offer, including from small farmers, and delivering them to slaughterhouses that pay the best price. As traders can offset transport costs by maximising the number of pigs delivered to a slaughterhouse using collection points, pigs are delivered at distances significantly beyond the 100 – 200 km indicated by individual farmers as the economically optimal distance. The market investigation has indicated that traders account for about 30% of pigs purchased from German farmers.

19. Also, the Parties submit that no particular problems (such as hygienic or veterinary regulations) or costs arise for cross-border trade of pigs as there exists a uniform set of rules in all Member States. The Parties also point to a very high degree of price transparency (most Member States publish prices on at least a weekly basis) which facilitates trade flows of pigs between Member States. As a result of that, the observed price patters of the Member States surrounding Germany are largely parallel, in particular with regard to Austria (although prices are generally higher in Germany). With regard to pricing terms, pig prices are determined by the price prevailing on the international meat market. The Parties state that if they were to attempt to depress purchasing prices e.g. in southern Germany 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 then be exported to other countries, e.g. Austria or Italy. In sum, the Parties state that day to day reality shows that pigs are transported over large distances within Europe in reaction to small variations of the price offered at the slaughterhouse.

20. Whilst the market investigation has confirmed that pigs can be transported over longer distances, and that such is facilitated by the presence of traders, collection points and uniform veterinary regulations, the fact remains that farmers seek to minimise transport costs and that the vast majority of live pigs are supplied to slaughterhouses nearby. The market investigation has indicated that farmers seek to limit transport distances up to 100 - 200 km. Unless compensated by the slaughterhouse through higher prices or transport costs compensation, local farmers are likely to sell their livestock to local or regional slaughterhouses. Therefore, the existence of a supranational market comprising Germany, France and the Benelux countries as suggested by the Parties has not been confirmed by the market investigation.

21. The concentration only leads to appreciable overlaps in Germany[9], with a focus in southern Germany and only marginal impact in northern and eastern Germany. However, several factors militate rather for regional than for a German-wide market.

22. In Germany, pig farming is concentrated in the North West of Germany (where Sovion but not Südfleisch is present) and in certain parts of the *Bundesländer* of Baden-Würtemberg and Bayern. Conditions of demand and supply are considerably different in the North and South of Germany. For example, both the livestock farming sector and the slaughterhouse industry are much more fragmented in Southern Germany than in the North Western region. Also, some respondents in the market investigation have pointed out that different breeds of pigs are prevalent in Northern and Southern Germany, due to

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9 Due to Südfleisch's negligible activities in the Netherlands, the competitive impact in the Netherlands is insignificant.

different consumer preferences (consumers in Southern Germany prefer pork with a higher content of fat).

23. Transfers between these regions are limited because of transport costs, price differences (prices are higher in South Germany) and abundant slaughtering capacity available in both the North and South of Germany. The market investigation has shown that the transport distances between the North and the South of Germany would go significantly beyond the transport distances that an individual farmer considers as economically optimal (100 – 200 km) and that southern farmers would use slaughterhouses in northern Germany only in exceptional circumstances. Therefore, the market investigation has indicated that slaughterhouses situated in Northern Germany do not exert competitive pressure upon slaughterhouses in the South of Germany.

24. While some market participants suggested defining a southern German market (encompassing Bavaria and Baden-Württemberg), the results of the market investigation based on actual trade flows in southern Germany rather support a market definition that includes at least the north-western part of Austria (*Land* of Oberösterreich). One possible delineation of the relevant geographic market would therefore be a *southern German (Bayern, Baden-Württemberg)/northern Austrian (Oberösterreich)* market. Such a market definition would in particular reflect the fact that at least to a certain degree pigs are transported over longer distances than 150km and that traders are active in the whole of southern Germany/northern Austria.

25. However, some elements of the market investigation, and in particular the impact of transport costs, militate for a narrower market definition, similar to the approach chosen in the Sovion/HMG[10] decision. In this decision, the markets were based on transport distances and consisting of 150 km radii around the 3 main pig farming areas in the Netherlands. Following this approach, areas of 150 km radii around the main pig farming areas could be defined (corresponding to concentrations of slaughterhouses of Sovion and Südfleisch[11]). Such a definition would lead to the following territories:

- Southern Bavaria (*Regierungsbezirke* of Oberbayern, Niederbayern, Schwaben and Oberpfalz) and parts of Northern Austria (Oberösterreich), centered around Südfleisch's slaughterhouse of Waldkraiburg (henceforth also referred to as the "Waldkraiburg area");

- Hesse / Thüringen/northern Bavaria (*Regierungsbezirke* of Unterfranken and Oberfranken);

- Baden-Württemberg and neighbouring parts of Bavaria (*Regierungsbezirk* of Mittelfranken).

26. It is thereby understood that all slaughterhouses lying within the 150 km radius exert competitive constraints on each other as they offer the farmer a possibility to select the slaughterhouse offering the best price without being adversely affected by additional transport costs.

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10 Case No COMP/M.3605 Sovion/HMG, decision of 21 December 2004.

11 As slaughterhouses are located close to supply, the concentration of the main slaughterhouses is situated where cultivation is most dense.

27. The market investigation has confirmed that even these narrow geographic markets are not limited to the German territory. Notably in the Waldkraiburg area, the 150 km radius covers parts of Northern Austria (Oberösterreich), where on the border with Bavaria (Niederbayern) significant slaughterhouse capacity is available. The market investigation has verified whether there are barriers to export related to switching costs or substantial risks that would exclude this Austrian capacity from the geographic area covered by a 150 km radius around Waldkraiburg, taking into account actual export figures, price and quality differentials and other export barriers (e.g. costs for veterinary certificates or export bans in case of diseases[12]). The investigation shows that the Austrian capacities have to be included into the Waldkraiburg area for the following reasons:

28. Firstly, the *level of exports* of pigs from Germany to Austria has strongly increased in the past five years. While in 2001 only 253.000 German pigs were slaughtered in Austria, in 2004 already 511.000 German pigs were exported to Austrian slaughterhouses. A further increase of exports by 10% is expected for 2005[13]. As the vast majority of pigs slaughtered in Austria originate from Bavaria, about 15% of the Bavarian pig production was slaughtered in Austria in 2004, with an increasing trend[14]. The price level for pigs in Austria and Bavaria is almost identical, with a price differential of 0-2% per kilo only.

29. Secondly, there are *no differing consumer preferences* for pig meat on the Austrian and German market that would limit exports to Austria. The pigs consumed in Austria are genetically similar to those cultivated in Germany and vice-versa. With regard to the average weight of the slaughter pigs, there are practically no differences between Bavaria and Austria (average weight is 94.7 kg in Bayern and 94 kg in Oberösterreich). Also the percentage of lean meat of pork is comparable: 58.6% in Bayern and 59.2% in Oberösterreich. It can therefore be concluded that the pigs consumed in Austria are identical to those in Germany.

30. Thirdly, the *veterinary requirements* for the export to Austria are uniform with those in Germany. Live pigs for slaughtering have to be examined irrespective of where they are slaughtered. While the presence of a veterinarian is required at the farm or at the collection point when pigs are exported, these additional costs represent only 0.6 cents/kg, or less than 0.5% of the price of a live pig, which cannot be regarded as a substantial barrier to export.

31. Fourthly, there is a longstanding *tradition of pig export* from Germany into Austria, facilitated by the absence of language barriers. Even those Bavarian farmers who stated that they currently do not export to Austria have not suggested reasons why they would not be able to do so when confronted with lower prices as a result of the merger. Quite the contrary, Austrian pig associations have expressed concerns that exports could increase and that such would absorb the idle capacity of the Austrian slaughterhouses.

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12 See for the Dutch/German border case No COMP/M.3605 Sovion/HMG, decision of 21 December 2004, paragraph 27-44.

13 Figures based on calculations of the "Bundesanstalt für Agrarwirtschaft", Austria.

14 This figure corresponds with the percentage of 10-15% of exports of slaughtering pigs from the Netherlands.

However, this concern is not founded as the degree of idle capacity in the relevant Austrian slaughterhouses (between 30% – 40%) is comparable to those in Bavaria, and sufficient to absorb a substantial part of Bavarian pig supply.

32. Finally, a closure of borders and prohibition of exports due to sudden *disease outbreaks* (porcine fever, MPA, Dioxin, FMD etc) is not a significant barrier. Whilst such disease outbreaks have occurred in the past, only certain areas are usually closed temporarily for the export of pigs, and such closed areas do not necessarily coincide with national borders. Therefore, limitation of pig transports can also affect trade within Germany and cannot be considered a determining factor for limiting the geographic market to the German borders[15].

33. On the basis of the above, it can be concluded that the relevant geographic market for the purchasing of live pigs for slaughtering consists either in a market covering southern Germany and northern Austria or in markets covering 150 km radii around the three main pig-farming areas in southern/eastern Germany. In both cases, Austrian slaughterhouses are part of the geographic market.

34. The exact delineation of the geographic market can, however, be left open, since no competition concerns are to be expected under either market definition.

b) Purchase of live cattle for slaughtering

35. With regard to cattle, the above geographic analysis for pigs is to be broadened in scope as transport distances for cattle are larger[16]. The market investigation has indicated that cattle can be economically transported up to 600km maximum, whereby 300km to 450km are the average distances over which cattle is transported in Germany. On the other hand, similar to pig farming, cattle farming in Germany is very much concentrated in the North West and in the South of the country, and only a limited number of respondents in the market investigation have indicated that they actually transport cattle between the North and South of Germany. This indicates at least separate markets for Northern and Southern Germany (comprising Baden-Württemberg and Bavaria[17]). With regard to the question whether the geographic market for cattle can be larger than national, it appears that consumer preferences for national products are more important with regard to beef than for pork. On the other hand, this preference does not necessarily exclude exports of livestock from Germany to neighbouring countries.

36. For the purpose of the present decision, however, the exact delineation of the geographic market for the purchasing of live cattle for slaughtering can be left open, since no competition concerns are to be expected under either market definition.

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15 See case No COMP/M.3605 Sovion/HMG, decision of 21 December 2004, paragraph 43.

16 See already case COMP/M.3337 Best Agrifund/Nordfleisch, decision of 19 March 2004, paragraph 17-21.

17 This would be in line with the *Bundeskartellamt*'s geographic market definition in its Moksel/Südfleisch decision, see footnote 5 above.

3. Competitive assessment

37. The markets for the slaughtering of pigs and cattle are purchasing markets. Therefore, the Commission's market investigation has verified whether the concentration could confer significant buyer power on the merged entity in the upstream markets for the purchase of live pigs and cattle. The Commission's market investigation indicated that such is not the case. In any event, a merger that leads to increased buyer power is liable to significantly impede effective competition only under specific circumstances, in particular where it is likely to lead to a reduction in output of the final products or the foreclosure of competitors of the merged entity [18].

a) Purchase of live pigs for slaughtering

38. On the basis of a definition of three narrow pig farming / slaughtering regions in Germany (defined by radii of 150 km), the operation would create significant overlaps only in the 150km area around Waldkraiburg.

39. In *Baden-Württemberg/Mittelfranken*, the concentration does not lead to an increment as Südfleisch has no significant presence there.

40. In *Hesse/Thüringen/Northern Bavaria*, pig cultivation is low, with no pig farms in Hesse and only very few in Thüringen and Northern Bavaria. The Parties' two slaughterhouses (one Sovion and one Südfleisch slaughterhouse) are located at the border of Thüringen to the *Länder* of Saxony and Saxony-Anhalt. If all competing slaughterhouses in the relevant area of 150 km around Südfleisch's Altenburg plant (located in the north-eastern edge of Thüringen) were included, the Parties would have a combined market share of around [30-40]% in this area. They would continue to face strong competition from other slaughterhouses, such as the German-wide meat producer Tönnies, which runs a slaughterhouse in Weißenfels (Saxony-Anhalt, close to the state line with Thüringen) which has an output of 1.800.000 pigs (2004) and an additional capacity of 448.000 pigs. This volume represents double the output of the Parties' slaughterhouses combined in that area.

41. The most important horizontal overlap of the Parties' activities would occur in the *Waldkraiburg area*, where the most important part of the Bavarian pig production is concentrated.

42. The Parties' combined market share in the Waldkraiburg area is [20-30]% (Sovion [10-20]%, Südfleisch [10-20]%)[19], taking into account all slaughterhouses within that area, including Austrian slaughterhouses. The market investigation has verified that calcultating market shares based on capacity would lead to lower market shares of the Parties. With regard to capacity, the market investigation has confirmed that farmers will continue to find alternative slaughterhouses even within an area of 150 km and that at almost all alternative slaughterhouses have sufficient spare capacities that will continue to be available. Indeed, the spare capacities available to competing

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18 See the Commission's Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004, p. 5, paragraphs 61-63.

19 All market shares as provided by the Parties for the year 2004. Market shares provided are that for the slaughtering of pigs which are slightly higher than market shares calculated on the basis of the purchase of live stock and therefore represent the worst case scenario.

slaughterhouses in the market are estimated by the Parties to amount to at least 1.48m pigs (based on a conservative assumption whereby no additional investments need to be carried out in a single 40 hours working shift) whilst the increment generated by the merger is only [< 1 million] pigs.

43. If the geographic scope of the market for the slaughtering of pigs were larger than the above defined areas, the Parties' market shares would be lower. For example, in a possible market comprising all of Southern Germany, the combined market share would be [20-30]% (Sovion [10-20]%, Südfleisch [10-20]%). Market share overlaps in a hypothetical all-German market would be even lower, due to Südfleisch's very limited presence outside Southern Germany.

44. Through the market investigation, some pig farmers' associations, a minority of farmers in the relevant areas and some competitors have stated that the combined entity would dominate the market for slaughtering of live pigs, as a result of which farmers would suffer from increased buyer power with resulting depressed pricing. They point out that suppliers of pigs and cattle depend on constant and reliable supply relationships and that the merger reduces the number of sufficiently large alternative slaughterhouses that farmers can select from.

45. However, even if the parties' market share might come up to about [30-40]% under a narrow geographic market definition, the Commission has not found sufficient reasons for serious doubts in terms of increased buyer power of the merged entity in the present case for the following reasons:

46. The assumption of a significant increase in the Parties' buyer power has been contradicted by the capacity data provided above. Indeed, also most of the competitors, a significant number of farmers and downstream customers have pointed out that sufficient alternative slaughterhouses remain accessible to them. Moreover, many farmers and associations welcomed the fact that the transaction will rationalise overcapacity and increase efficiency in the Southern German slaughterhouse industry to the levels already reached in Northern Germany and Benelux, possibly also to the benefit of the farmers.

47. In order to assess the above described negative comments of the market, the market investigation has also verified whether the merged entity would have the ability to unilaterally *reduce purchasing prices*. It appears that such ability is limited by a number of factors.

48. Firstly, the very *transparent pricing system* (according to EU regulations slaughter prices must be published on a weekly basis)[20] leads to relatively uniform prices throughout Germany, with price differentials below 5% between slaughterhouses in

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[20] See Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pig meat as amended and Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal as amended. Under the Common Agricultural Policy, there has never been a price intervention by the Community in the pig market, and in the cattle market the intervention price was substantially reduced by the recent reform so that it is now significantly below market prices. It is expected that prices for pigs and cattle will go down in the next years as a result of international liberalisation of agricultural markets. Beef production is expected to further decrease in the next years since the EU does not pay volume subsidies anymore. For pork a stagnating to slight further growth of the market is foreseen.

different areas. Historic data shows that slaughterhouses rarely deviate from this published price at all and when they have done so, even a relatively small downward price correction leads to a dramatic fall of supply in the days following the correction, as farmers and traders turn to rival slaughterhouses. Individual slaughterhouses have, therefore, little power to influence prices, and as explained further, the merger will not change that.

49. Secondly, while the production of pigs has increased in recent years, the number of pig farmers is decreasing as pig *farms become fewer but larger*. It should also be noted that only a minority of pigs are sold directly from single farmers to slaughterhouses. The majority of farmers act through co-operatives and individual farmers can turn to traders, which have larger possibilities of arbitrage, thereby increasing the overall countervailing power of suppliers. Small scale or organic farmers rely on small slaughterhouses or supply directly to butchers rather than to the Parties.

50. Thirdly, it remains possible for farmers to *switch to alternative slaughterhouses*. As suppliers are not bound to slaughterhouses by supply obligations (such as it was e.g. the case in Denmark) or long-term contracts, switching can be done instantaneously. In fact, the loyalty to slaughterhouses seems to be based on existing relationships and lack of experiences with other slaughterhouses rather than on contractual or structural links. It also appears that these relationships are not maintained when the farmer can obtain better prices from competing slaughterhouses. Historic data shows that decreasing the Sovion slaughterhouse price with 1 eurocent/kg leads to an immediate loss of […]% of supply to the slaughterhouse in question. Decreasing the Sovion slaughterhouse price with 2 eurocent/kg has led a shift of supply of up to […]%, whereby farmers are willing to look for alternative slaughterhouses significantly beyond the 150 km supply area.

51. Forth, *traders* exercise significant competitive pressure by purchasing livestock on offer, including from small farmers, and delivering them to slaughterhouses that pay the best price, including those located outside the relevant 150km catchment area. The arbitrage possibilities by traders are particularly relevant for the South of Germany where they account for 30% of pigs sold by farmers. Therefore, traders are an important element to be taken into account when assessing the dynamics of the market.

52. Finally, given the *purchasing power of food retailers* (in particular after discounters Aldi and Lidl entered the fresh meat market two years ago), it could be even in the interest of farmers to have stronger and more competitive slaughterhouses. Several respondents have raised this comment which also needs to be seen in the context of increasing imports of pig meat from outside the EEA (i.e Brazil). […] Respondents have stated that the transaction will allow more efficient structures that are capable of meeting the stringent hygienic and quality standards in southern Germany.

53. The market investigation has also verified whether the concentration could negatively affect *quality* of the slaughterhouse output or consumer choice. There are, however, no indications or third party comments that quality could suffer as a result of the concentration. As indicated above, small scale or organic farmers rely on small slaughterhouses or supply directly to butchers rather than to the Parties, so their production is not affected by the operation.

54. In any event, and quite apart from the conclusion that the merger will not lead to a significant impediment to effective competition for the reasons provided above, increased buyer power in the markets for the purchasing of live pigs for slaughtering in

Southern Germany would only be problematic in specific circumstances, in particular – as stated in the Commission's Horizontal Guidelines – if it were to result in a reduction in output of the final products or the foreclosure of competing slaughterhouses following the merger.

55. As to a reduction in output, statistics show that the on-going concentration of the German slaughterhouse market has so far not lead to a reduction of the output of pigs. Output has, on the contrary, increased considerably in recent years. A similar development can be shown on the Danish market: even the very high slaughterhouse concentration in the Danish market – where Danish Crown has a market share close to 90% - has not led to a reduction in output, but, on the contrary, to an increase in the total production. Therefore, it does not seem likely that a possible increase in buyer power of the merged entity would result in a reduction of output of final products. There are also no indications that a possible increase in buyer power would result in foreclosure of competitors.

56. Therefore, the operation does not raise serious doubts with regard to a significant impediment to effective competition in the markets for the purchasing of live pigs for slaughtering in Southern Germany.

b) Purchase of live cattle for slaughtering

57. For cattle, if the market were to be regarded as the EEA, the Parties would hold a combined market share of [0-5]% (Sovion [0-5]% and Südfleisch [0-5]%).

58. Considering a German market, the new entity would have a combined market share of [20-30]% (Sovion [20-30]% and Südfleisch [5-10]%). Several strong competitors are active on this market, such as Tönnies ([10-20]%), Westfleisch ([10-20]%), D&S Fleisch ([5-10]%), Gausepohl [0-5]%. If the Northern and Southern part of Germany were considered separately, the merged entity Sovion / Südfleisch would have a market share of [30-40]% in Southern Germany ([10-20]%, for Sovion and [10-20]% for Südfleisch) and [10-20]% for Northern Germany ([10-20]% Sovion and [0-5]% Südfleisch). Other than the above mentioned competitors, Müller and Unifleisch are present in this region.

59. The above assessment for the market for the purchase of live pigs for slaughtering applies *mutatis mutandis* to the market for the purchase of live cattle for slaughtering, taking into account that the intrinsic value of cattle is significantly higher than for pigs which allows farmers to look for alternatives outside Southern Germany. If Sovion were to depress prices to German cattle suppliers, these would switch their deliveries to other slaughterhouses outside Southern Germany (such as Müller Fleisch, Gausepohl, Unifleisch, Tönnies and Westfleisch), to livestock traders which purchase on a European scale and account for 50% of cattle purchased in the South of Germany, or to other slaughterhouses in Austria, Belgium or the Netherlands. Few respondents have indicated that the merged entity would be in a position to behave independently in this market.

60. Therefore, the operation does not raise serious doubts with regard to a significant impediment to effective competition in the markets for the purchasing of live cattle for slaughtering.

C. The sale of fresh meat

Product market

61. The Commission has in the previous cases[21] defined separate product markets for respectively the sale of fresh pork and fresh beef. Fresh meat includes both fresh and frozen meat which is not further processed[22]. Fresh meat includes minced meat.

62. As most meat in Germany is sold through supermarkets, sales to supermarkets and butchers constitute distinct product markets. The Commission has previously[23] also defined a distinct market for the sale of fresh meat to caterers, including restaurants, canteens, government institutions, ship and airport chandlers[24]. Caterers prepare the meat to serve it to the final customer as part of a ready-cooked meal and do not sell the fresh meat as such. Industrial processors buy meat from slaughterhouses and turn it into different types of processed meat products, which are then sold to the retail market or the catering market as processed meat. Industrial processors of fresh meat include producers of sausages, ham, hamburgers, canned food and convenience products. The market investigation has confirmed the above market definition.

Geographic market

63. In past decisions, the Commission considered the sale of fresh pork and beef to the supermarkets on a national level. Due to butchers' lower volumes of individual demand, and resulting higher transport costs, an alternative relevant geographic market could be considered as sub-national, which in this particular case would be of the level of the individual *Bundesländer*. Sales of fresh meat to caterers and industrial processors was considered possibly wider (i.e. EEA-wide) than national on the basis of significant imports and exports[25].

64. Specifically with regard to supermarket sales, in the recent Sovion/HMG case[26], the Commission's market investigation indicated that these markets are undergoing a process of rapid internationalisation and that this could lead to considering the markets larger than national. Ultimately, the geographic market definition was left open. The Parties argue in favour of geographic markets that are EEA-wide in scope, on the basis of limited transport costs, new pre-packaging techniques that prolong the shelf-life of meat products in supermarkets, significant imports/exports (up to 25% of pork meat sold

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[21] Case COMP/M.1313 – Danish Crown/Vestjyske Slagterier, Case COMP/M.3337, Best Agrifund/Nordfleisch (see footnotes 3 and 4 above).

[22] The meat has not undergone further processing, meaning that no other ingredients or spices have been added, nor has the meat been cooked, smoked or dried.

[23] Case COMP/M.1313 – Danish Crown/Vestjyske Slagterier, Case COMP/M.3337, Best Agrifund/Nordfleisch and Case No COMP/M.3605 Sovion/HMG (see footnotes 3 and 4 above).

[24] COMP/M.2662 – Danish Crown/Vestjyske Slagterier

[25] COMP/M.2662 – Danish Crown/Vestjyske Slagterier, Case COMP/M.3337, Best Agrifund/Nordfleisch (see footnotes 3 and 4 above).

[26] See footnote 3 above.

in Germany is imported), international sourcing by supermarkets, identical veterinary regulations and uniform European quality standards.

65. The market investigation in the present case has confirmed the presence of important trade flows due to the importance of international retail groups, and such may suggest a wider geographic market. On the other hand, a number of respondents to the market investigation have pointed to a certain degree of consumer preference for beef of German origin, but not for pork which is generally retailed without reference to its origin. As a result, and consistent with the approach in Sovion/HMG, 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, taking however into account that the observed sourcing behaviour of retail groups increasingly rules out the likelihood of national markets.

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

Competitive assessment

67. Fresh meat sales, for each of pork and beef, to supermarkets, butchers, caterers and industrial processors, are affected markets when considered on the basis of national markets.

<u>A) Sale of fresh meat to supermarkets</u>

i) fresh pork

68. The majority of meat (both beef and pork) is sold through supermarkets. At the EEA-wide level, the Parties hold a combined market shares for fresh pork of [5-10]% ([5-10]% for Sovion and [0-5]% for Südfleisch). Based on a regional market including the Benelux, Denmark, France and Germany, the Parties combined market share would reach [10-20]%, with Südfleisch's market share being around [0-5]%.

69. When considering the Parties' market shares on the basis of national markets, the concentration would lead to an affected market in Germany (combined market share of [20-30]% with [20-30]% for Sovion and [0-5]% for Südfleisch). In the Netherlands, Südfleisch adds around [0-5]% to Sovion's current market share of [20-30]%. Considering the level of buyer power of the supermarkets – see further - and the relatively limited increment caused by the operation in a market narrowly defined as national, this level of concentration is not likely to cause competition concerns. The market appears relatively fragmented, with competitors such as Tönnies [10-20]% and Westfleisch [10-20]% holding shares close to those of the Parties. Smaller groups such as D&S Fleisch [5-10]% and Karl Vogler [0-5]% are also present on the market for sales of fresh pork to supermarkets.

ii) fresh beef

70. For fresh beef, the new entity will have an EEA market share of [5-10]% ([5-10]% for Sovion and [0-5]% for Südfleisch). Based on a regional market including the Benelux, Denmark, France and Germany, the Parties combined market share would reach [10-20]%, with Südfleisch's market share being around [0-5]%.

71. From the perspective of national markets, the new entity would have a significant market share of [50-60]% in Germany ([30-40]% Sovion and [10-20]% Südfleisch). The Parties' main competitors in this market are Westfleisch [5-10]%, Müller-Fleisch [5-10]%, Färber [0-5]%, Gausepohl [0-5]% and Danish Crown [0-5]%.

72. Apart from indications of respondents that some customers have a certain degree of preference for beef of German origin, the above described ongoing internationalisation tendencies and the significant trade flows make that imports of beef from other Member States are increasingly important. The market investigation has shown that supermarkets increasingly source beef on an international scale and purchase fresh beef from the Netherlands (10% of German beef consumption) and France (5% of German beef consumption). Imports from Argentina, Brazil and Belgium account for a further 15% of German beef consumption and this mutes the importance of consumer preferences for German beef. The market investigation has indicated that retail chains could easily increase imports of beef to counter any attempt of the parties to raise prices. Apart from that, the Commission can conclude that no competition concerns are likely to arise even when considering the parties' strong position on the basis of a national German market for the following reasons.

73. Indeed, the market investigation has indicated the supermarkets' significant degree of buyer power. Sovion's top five customers[27] account for [>50]% of its beef sales to supermarkets, which have over time increased their buyer power through internationalisation and concentration. Large food retail chains are able to exercise considerable buyer power even vis-à-vis suppliers with a relatively high share of the market for a specific product (such as fresh meat) due to their broad product portfolio and the resulting relatively low weight of each product category for their overall sales. Further pricing pressure is being exercised by the entry of discounters Aldi and Lidl in the pre-packed beef sales, as evidenced by all major competitors who responded to the Commission's requests for information. This buyer power is evidenced by competitive bidding and frequent supplier switching. Supermarkets have the capacity to buy meat internationally and to a certain degree actually do so. The investigation has confirmed that supermarkets negotiate their prices on weekly basis and move to alternative sources, both national and international, when a supplier is not capable of meeting the lowest price presented. Prices and quantities purchased on a weekly basis can vary quite substantially and internet auctions are launched in view of peak demands. In the market investigation only few customers or competitors raised concerns based on possible market power of the merged entity vis-à-vis supermarkets.

B) Sale of fresh meat to butchers

74. The Parties' activities only overlap in Germany. For sales of pork to butchers, the Parties' market shares would be around [10-20]% when a national market (Germany) is considered. Considering sub-national markets, i.e. Bundesländer, the Parties' combined market share would still be lower than [20-30]% apart from Bavaria ([20-30]%) and Brandenburg ([30-40]%). Only in Bavaria is the market share overlap substantial ([10-20]% for Sovion and [10-20]% for Südfleisch). In the other regions, the Parties' activities are complementary.

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27 Including Edeka/SPAR, Metro, Rewe, Kaufland and Lidl Discount.

75. For beef sales of pork to butchers, the Parties' combined market share would also be around [10-20]% market. Above [10-20]% market shares would arise in the different Bundesländer Bavaria ([20-30]%), Berlin ([20-30]%), Saarland ([20-30]%), Saxony ([20-30]%), Saxony-Anhalt ([20-30]%) and Brandenburg ([20-30]%). Only in Bavaria ([10-20]% for Sovion and [10-20]% for Südfleisch) and Saxony ([5-10]% for Sovion and [10-20]% for Südfleisch) do substantial increments result from the transaction. In the other regions, the Parties are complementary.

76. The market investigation has indicated that the Parties will continue to face a large number of strong competitors with excess capacity that supply butchers. Also, butchers can slaughter themselves and increasingly also rely on caterers and cash and carry markets for the supply of meat. Finally, whilst individual butchers do not have the degree of buyer power that supermarkets have, butchers can and do bundle demand through purchasing cooperatives.

<u>C) Sale of fresh meat to caterers</u>

77. The Parties' activities only overlap in Germany. For pork, the Parties' combined market share would be [0-5]% on an EEA-level and [10-20]% in Germany (Sovion [10-20]% and [5-10]% for Südfleisch). For beef, the Parties would have a combined market share of [0-5]% on an EEA-level and [20-30]% in Germany (Sovion [10-20]% and [5-10]% for Südfleisch). On the basis of these market shares, and considering that a wide number of alternative suppliers remain, competitive concerns can be excluded.

<u>D) Sale of fresh meat to industrial processors</u>

78. In the EEA, for pork, the Parties' combined market share would be [5-10]% (Sovion [5-10]% and [0-5]% for Südfleisch). For beef, the Parties would have a combined market share of [5-10]% on an EEA-level (Sovion [5-10]% and [0-5]% for Südfleisch). On the basis of these market shares, and considering that a wide number of alternative suppliers remain, competitive concerns can be excluded. Only when considered on the basis of national markets would the merger lead to affected markets. For pork in Germany, the Parties' combined market share would be [10-20].% (Sovion [10-20]% and [0-5]% for Südfleisch). In the Netherlands, the new entity would have a [60-70]% market share, but with Südfleisch only adding [0-5]%, the increment is sufficiently low to exclude competition concerns. For beef, the Parties would have a combined market share of [20-30]% in Germany (Sovion [20-30]% and [5-10]% for Südfleisch). In the Netherlands, the new entity would have a [20-30]% market share (Sovion [10-20]% and [5-10]% for Südfleisch). As confirmed by the market investigation, industrial processors will continue to find alternative suppliers with ample spare capacity as they can source from small slaughterhouses that do not focus on supermarket sales. As supermarkets, industrial processors also exercise significant pricing pressure and countervailing buyer power, as evidenced by competitive bidding and internet auctions.

<u>E) Conclusion</u>

79. Therefore, the operation does not raise serious doubts with regard to a significant impediment to effective competition in any of the markets for the sale of fresh meat.

D. Convenience products

Product market

80. In line with previous Commission decisions[28] 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 a convenience food segment, where the meat content of the product amounts to 90% or more. As a worst case scenario, the Parties therefore propose a narrow market delimitation only including meat convenience food products which consist of at least 90% meat content, excluding pre-packed unprocessed meat. Ultimately it can be left open, whether this narrow product market definition applies, as under all possible alternative market definitions no competition concerns arise.

Geographic market

81. As for the processed meat market, the Parties propose an EEA-wide market, but do not exclude the possibility of national markets for convenience food since the Parties are mainly active in their home countries Germany and the Netherlands. Ultimately the geographic market delimitation can be left open, as due to the present transaction neither on an EEA level nor on the narrower national levels do any competition concerns arise.

Competitive assessment

82. In the EEA the Parties' combined market share in a possible market for meat convenience food products with at least 90% meat content would be [5-10]% (Sovion [5-10]% and [0-5]% for Südfleisch).With regard to the sale of convenience foods considered on a national basis, only Germany ([10-20]%) and the Netherlands ([40-50]%) are affected markets. For the latter market however, the increment of [0-5]% is insignificantly low. The Parties' market shares would be considerably lower if all convenience food products were to be included in the relevant product market. On the basis of these market shares, and considering that a wide number of alternative suppliers remain (such as Wiesenhof, Sprehe, Aia, Doux, Barilla, Langnese-Iglo), competitive concerns can be excluded.

83. Therefore, the operation does not raise serious doubts with regard to a significant impediment to effective competition in any of the markets for the sale of convenience products.

E. Abattoir by-products ("ABP")

Overview

84. During the slaughtering process, each slaughterhouse produces different ABP (blood, bones, skins etc.) which can either be further processed or which have to be disposed. ABP can be divided into several categories based on the applications for which they can be used. All animals are subject to an ante-mortem and post-mortem veterinary control

[28] Case No IV/M.1313 - Danish Crown/Vestjyske Slagterier, Case No IV/M.2662 - Danish Crown/ Steff Houlberg and Case COMP/M.3337, Best Agrifund/Nordfleisch.

which determines the category into which the abattoir by-products fall. As the Commission pointed out in previous decisions[29], ABP can be split into :

- ABP that can be further processed for human consumption and pharmaceutical applications (food grade and gelatine grade), e.g. blood, bones and pigskin, and

- ABP that can be further processed for other purposes such as pet food or other non-food grade applications or have to be disposed of (non-food grade). These can be further classified into three different categories: category 1, 2 and 3. The disposal and processing of category 1 and 2 materials is fully regulated. These materials have to be processed by an assigned processor. The activities of and prices paid to this processor are subject to governmental control. Category 3 and food or gelatine grade abattoir by-products can be disposed of to any processor which processes those products.

85. The Parties state that the following Sovion activities are relevant with regard to this transaction : 1) collection and disposal of category 1 and 2 materials 2) processing of blood used for category 3 applications 3) and for food-grade applications 4) purchase and processing of bones 5) pigskin 6) bovine hides 7) bowel packages and 8) other category 3 ABP. The Parties state that only the markets for processing of blood for category 3 applications and food grade blood constitute vertically affected markets.

86. Sovion collects and/or purchases ABP, through its subsidiary Sobel. Südfleisch does not purchase and process ABP. However, it produces in Germany as a slaughterhouse ABP for both further processing and disposal. It appears that no horizontal overlap occurs, as only Sovion is active in the purchase and processing of ABP. Nevertheless, there exist a number of vertical relationships, as Sovion purchases ABP from Südfleisch for processing.

87. With regard to the collection and disposal of category 1 and 2 materials, Sovion holds a statutory monopoly in the Netherlands and in Germany in the geographic area in which it is active. Sovion has a strong and monopoly position in relation to respectively the purchase and the processing of category 1 and 2 material in Belgium. However, these statutory monopolies are subject to strict regulation concerning their activities and, in particular, concerning prices they charge to customers. As Südfleisch, neither produces, disposes nor processes category 1 and material in Belgium and the Netherlands, the transaction does not have any impact in this field. In Germany, each slaughterhouse has to supply dead animals and risk materials to a specific local rendering plant, which is generally located closest to the slaughterhouse. As a consequence, each rendering plant has a statutory monopoly in its catchment area. The fees of the German rendering plants are set by regulation of the Federal State in which the plant is located.

88. Generally, the transaction will have no impact on Sovion's activities in the area of ABP. In particular, Sovion will continue to process other companies' ABP. Sovion is not in a position to raise prices charged for the collection and processing of ABP and even high market shares for some of Sovion's ABP activities will not lead to the foreclosure of competing slaughterhouses.

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[29] M.3337-*Best Agrifund/Nordfleisch* and M.3605-*Sovion/HMG*

Vertically affected markets : processing of blood

Product market

89. In previous decisions the Commission stated that blood used food grade applications and blood used for category 3 applications constitute separate product markets[30]. Furthermore, blood used for food grade applications and blood used for category 3 applications could be further split into segments according to the species (pig, cattle) from which the blood is collected. However, as the transaction does not give competition concerns on this market, the exact definition of the relevant product market can be left open.

Geographic market

90. The Parties argue that blood is transported over long distances (up to 600 km for category [3] blood and up to 1000 km for food grade blood). In Sovion/HMG[31] it was argued that the relevant geographic market comprises at least Germany, the Netherlands and Belgium. However, the Commision has stated in previous decisions[32], that most blood purchasers source most of their blood within a radius of 200-300 km. The Parties state that none of Südfleisch's sites is within 300 km from a relevant Sovion site and there are multiple examples where blood is sourced by Sovion and competitors form a distance of 600-800 (or even 1000) km. However, as the transaction does not give competition concerns on this market, the exact definition of the relevant geographic market can be left open.

Competitive assessment

91. The Parties state that the markets for processing of category 3 blood and food grade blood constitute vertically affected markets. Sovion has a market share (2004) of [40-50]% on market for blood used for food-grade applications in an area covering Belgium, the Netherlands and Germany. On the narrower German market, Sovion's market share is lower (approximately [30-40]%) and other competitors such as Tönnies ([10-20]%), Westfleisch ([5-10]%), Barfus and others are active. On the market for blood used for category 3 applications in the area Belgium, Germany, Netherlands Sovion has a market share (2004) of [40-50]%. On the narrower German market, Sovion's market share amounts to [30-40]% and other competitors such as Günter Badenhop Fleischwerke ([20-30]%), Biogas plants ([30-40]%) and others are active on the market.

92. [more than 50]% of the blood produced by Südfleisch is currently processed by Sovion. Even if Sovion chooses to process Südfleisch's entire output, this would therefore not significantly change Sovion's market position. […] The Parties state that slaughterhouses could easily switch to other competitors and to biogas plants[33].

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30 M3337 Best Agrifund/Nordfleisch (see footnote 3 above).

31 See footnote 3 above.

32 M3337 Best Agrifund/Nordfleisch (see footnote 3 above).

33 Slaughterhouses can supply by-products to competing processors like biogas plants or composters as set out in the EC Regulation 1774/2002. According to the parties, the new available outlets are already used

93. The transaction does not raise major concerns in this area, mainly for two reasons. Firstly, the total cost of the processing and disposal of ABP accounts for a very small share of a slaughterhouse's total costs (around 1.6%). As a consequence, even if Sovion was in the position to raise costs of collection and/or purchase of ABP by 10%, this would only raise the cost of slaughtering by 0.16%. Secondly, practically no change appears to result from the transaction, as Südfleisch already supplies its ABP partly to Sobel. To the extent that other options are less costly, the Parties state that Südfleisch slaughterhouses will continue to use Sovion’s competitors post transaction. Sovion will continue to process other companies’ ABP.

94. Therefore, the operation does not raise serious doubts with regard to a significant impediment to effective competition in any of the vertically affected markets.

IV. CONCLUSION

95. For the above reasons, the notified operation does not raise serious doubts as to its compatibility with the common market.

96. The Commission has therefore 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)
Neelie KROES
Member of the Commission

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by various slaughterhouses and are rapidly gaining market shares." (see also M3605 Sovion/HMG, para. 119)