

***Case No COMP/M.4082 -
CARGILL / PAGNAN II***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/02/2006

***In electronic form on the EUR-Lex website under document
number 32006M4082***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06/02/2006

SG-Greffe(2006) D/200530

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.4082 - Cargill / Pagnan II
Notification of 03/01/2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 03/01/2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Cargill Incorporated ("Cargill", USA) acquires, through one of its subsidiaries, within the meaning of Article 3(1)(b) of the Council Regulation control, of part of the undertaking Pagnan S.p.A. ("Pagnan", Italy) by way of purchase of assets.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of Council Regulation (EC) No 139/2004 and that it does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. Cargill is an international company active in a wide variety of business, including commodity trading, commodity processing, the marketing of non-branded food ingredients to the food and beverage industry, and the production and marketing of agricultural inputs to farmers.
4. Pagnan is active in the logistics of discharge and warehousing of cereals, derivatives and agricultural products. The part of Pagnan acquired by Cargill is active in inland water transport of dry bulk agricultural goods within Italy in the area of the Po river and the Fissero-Tartaro-Canalbianco canal system.

¹ OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

5. The transaction involves the acquisition by Cargill of the part of Pagnan business related to inland water transport services. The transaction is notifiable in application of Article 5(2) second paragraph of the Merger Regulation.
6. On 22 March 2005, the Commission adopted a decision in Case M.3725 Cargill/Pagnan, clearing Cargill's acquisition of Pagnan's activities relating to the import and trading of agricultural commodities. The Commission concluded that the risk of foreclosure was very limited as the proposed transaction did not have any adverse effect on competition stemming from actual or potential vertical relationships as a result of the small size of Pagnan and the fact that Pagnan had already been an importer of agricultural commodities from Cargill for 15 years.
7. The current transaction takes place between the same parties and within a two-year period of the first transaction.

III. CONCENTRATION

8. As a result of the operation, Cargill will acquire indirectly, through one of its subsidiaries Pagnan Commerciale, sole control of part of Pagnan, namely its activity related to inland water transport. The operation thus constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004.

IV. COMMUNITY DIMENSION

9. The transaction has a community dimension because it constitutes one and the same concentration together with the transaction notified on 22 March 2005 in Case M.3725 Cargill/Pagnan in application of Article 5(2) second paragraph of the Merger Regulation.
10. The undertakings concerned in both transactions have a combined aggregate world-wide turnover of more than EUR 5 billion². Each of Cargill and Pagnan had a Community-wide turnover in 2005 in excess of EUR 250 million (€[...] billion for Cargill and €[...] million for the parts of Pagnan acquired in both transactions, the business related to inland water transport having a turnover of only €[...]), but they did 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.

V. COMPETITIVE ASSESSMENT

Relevant product market

11. The parties submit that the transport of dry bulk cargoes of agricultural commodities on inland waterway (rivers, canals and/or lakes) might be considered as the relevant product market, but insist that in Italy road transport of dry agricultural commodities represents between some 80-85% of all transport of these commodities. A further segmentation into separate segments according to the different types of dry

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

agricultural commodities transported would not be appropriate as the equipment used for transportation of different products is largely the same and generally the providers of inland water transport services are able to transport any of these products.

12. The market investigation has shown however that barges and boats used for the transport of liquid bulk product cannot easily transport dry bulk products and do not exert therefore a competitive pressure on the transport of dry bulk products. This market definition corresponds with the Commission's view in *Stinnes/Haniel Reederei*,³ where it considered that transport of dry bulk cargoes by ships on rivers, canals and/or lakes constituted the relevant product market.
13. As the transaction does not give rise to competition concerns on any of the alternative market definitions considered, the exact delineation of the product market may be left open.

Relevant geographic market

14. The parties submit that the relevant geographic market is at least EEA-wide. When specific demand for transport of agricultural commodities by inland water arises in a given location, any company could easily relocate the necessary boats and barges in that location to provide the required transport services.
15. The view expressed by the parties is questionable as inland water transport of dry bulk commodities is done on a limited route in order to supply clients along this route. As for example, the inland water activity of Pagnan is limited to the Venice laguna, the Po River and the Fissero-Tartaro-Canalbiano canal system. The argument related to relocation of boats and barges should be assessed in relation with the incurred cost for such relocation, the existence of a chain of clients along the route to justify this relocation and the access to port infra-structures to load and/or unload the boats and barges.
16. However, since the transaction does not give rise to competition concerns on any of the alternative market definitions considered, the exact delineation of the geographic market may be left open.

Competitive assessment

17. There are no horizontal overlaps between the parties as, prior to the transaction, Cargill does not own any assets relating to inland water transport of agricultural commodities in Italy or anywhere in the EEA.
18. Since Cargill is active in numerous upstream and downstream markets the transaction may result in certain markets being vertically affected. Cargill is present on the market for the import and trading of agricultural commodities. However, according to the parties, Cargill exceeds 25% of EEA sales only in sunflower oilseed meal. The latter market has been systematically defined by the Commission as at

³ *Stinnes/Haniel Reederei*, Case No. IV/M.897, Decision of 11 August 1997.

least Community-wide.⁴ In addition, [...] % of the inland water transport activity of Pagnan regards [...]. Cargill represents only [15-25] % of EEA sales of soybean oilseed meal.

19. Pagnan is believed to have been the first business in Italy to start developing inland water transport of dry bulk cargo as an alternative to road/rail transport and is currently the only operator on this hypothetical narrowly defined market. The parties do not have detailed information of the size of the total market for inland water transport of dry bulk cargo in the EEA, but estimate that Pagnan's share would be substantially less than [0-10] %.
20. Although Pagnan is the only business operating inland water transport services for dry bulk cargo in Italy, there is no real demand for these services in Italy according to the parties. Indeed as regards the inland transport of oilseed meal in Italy, the Parties estimate that only 5-10% is transported by waterway. The vast majority (90-95%) is transported by road or by rail. Should demand emerge from other customers in Italy, companies wishing to enter the market would only need to have the assets as currently possessed by Pagnan. Cargill considers that there are not significant sunk costs or regulations that would obstruct entry into the business. In addition, other companies competing with Cargill in the trading of agricultural commodities would have the necessary capabilities and incentives to either invest directly in inland water transport or sponsor the emergence of a new supplier.
21. As a matter of fact, the market investigation showed that the inland water transport in Italy is currently not competitive with the road transport in terms of prices. It is not a financially viable business. The only exception is a vertical integration of both the transport and manufacturing/trading activities of transported products as it is the case for Cargill and its direct competitors.
22. In addition, the parties submit that Pagnan has been providing inland water transport services exclusively to Cargill. Currently, Pagnan uses its barges [...] in providing services dedicated to Cargill and, therefore, it is not in the position to provide inland water transport services to third parties. The transaction would have as a consequence no impact on this activity. Moreover, the transaction is of a *de minimis* size. Cargill is paying €[...] for the business. The turnover of Pagnan's transport business in 2005 is €[...] (derived from its only customer, Cargill) and its assets consist of 13 barges, two pushing boats, one tug boat, one pilot boat and employees.
23. Considering the above, the transaction is not likely to change the competition structure of the market for inland water transport services for dry bulk cargo or to have any appreciable foreclosure effect in relation to any market considered.

⁴ *ADM/VDBO* (Case No. COMP/M.3188, Decision of 31 July 2003); *Cargill/Agribands* (Case No. COMP/M.2271, Decision of 19 February 2001); *Cargill/Continental Grain* (Case No. IV/M.1376, Decision of 3 February 1998); *Cargill/Vandemoortele* (Case No. IV/M.1126, Decision of 20 July 1998); *Cereol/Sofiproteol-Saipol* (Case No. IV/M.1125, Decision of 19 March 1998); *ADM/Acatos & Hutcheson-Soya Mainz* (Case No. IV/M.941, Decision of 11 August 1997); *Cereol/Ösat-Ölmühle* (Case No. IV/M.866, Decision of 2 April 1997); *Cereol/Aceprosa* (Case No. IV/M.720, Decision of 7 June 1996).

VI. CONCLUSION

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

For the Commission
Signed by Neelie KROES
Member of the Commission