

***Case No COMP/M.4257 -
SMITHFIELD /
OAKTREE / SARA LEE
FOODS EUROPE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/07/2006

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Brussels, 28/07/2006

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No. COMP/M.4257 - Smithfield / Oaktree / Sara Lee Foods Europe
Notification of 22/06/2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 22/06/2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Smithfield Foods Inc. ("Smithfield", USA) and Oaktree Capital Management LLC ("Oaktree", USA) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Sara Lee Foods Europe ("SLFE", The Netherlands) by way of purchase of shares in a newly created company constituting a joint venture.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EC) No 139/2004 ("the Merger Regulation"), and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

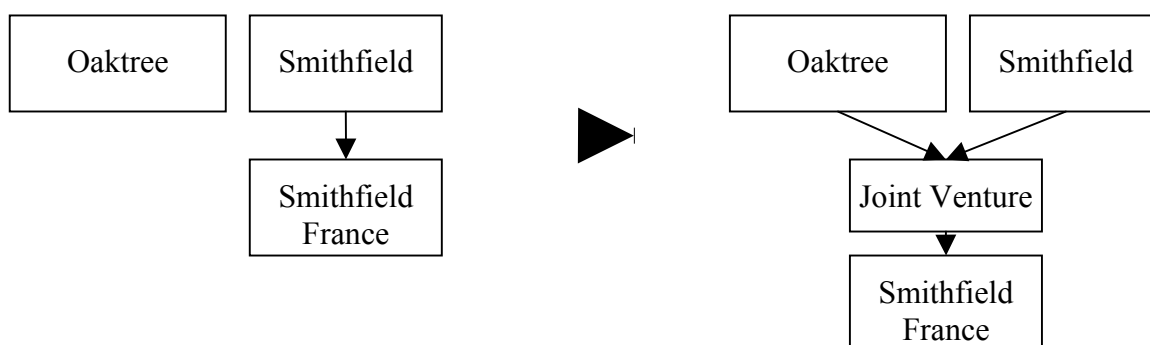
3. **Smithfield**, a company based in Smithfield, USA, is active in the production and supply of live pigs, fresh meat and processed meat products. While the majority of Smithfield's activities are in the United States, Smithfield is also active in Europe.

¹ OJ L 24, 29.1.2004 p. 1.

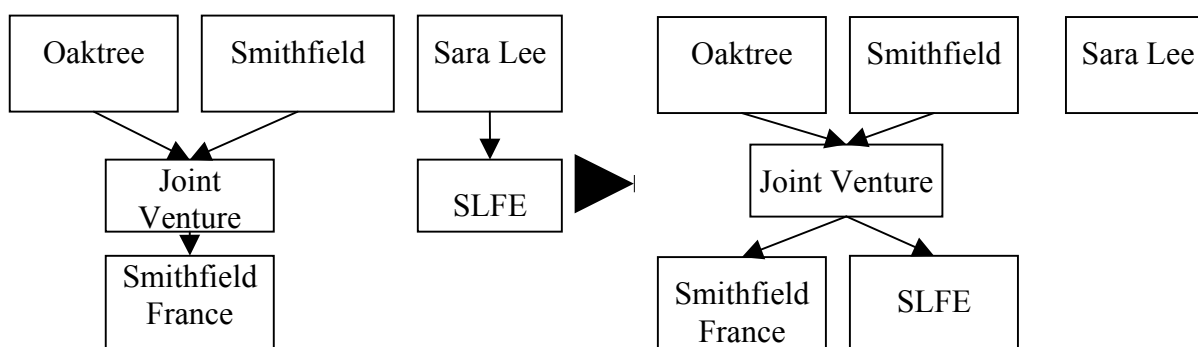
4. Smithfield France S.A.S. (“Smithfield France”) is the holding for Smithfield’s French operations. Jean Caby S.A. (“Jean Caby”) is the principal operating subsidiary and includes one plant for the production of processed meat products. The remaining three subsidiaries of Smithfield France (Charcuterie Imperator S.A., Jean d’Erguet S.A., Societe Bretons de Salaisons) are the holding companies for three meat processing plants which are all operated by Jean Caby. After the transaction, Smithfield France will be jointly owned by Smithfield and Oaktree.
5. **Oaktree** is a US-based investment company with shareholdings in a number of businesses, none of which is related to the processes meat business or any neighbouring product market. [...]
6. **SLFE** is the Dutch processed meat branch of the US-based consumer products company Sara Lee Corporation. SLFE’s processed meat brands in Europe include Aoste, Justin Bridou, Cochonou, Marcassou, Nobre and Meester Stegeman. After the transaction, SLFE will be jointly owned by Smithfield and Oaktree

II. THE OPERATION

7. The details of the transaction which consist of several steps are laid down in two separate agreements: In a first step, Oaktree will, through a newly created joint venture with Smithfield, acquire 50% of the shares in *Smithfield France* from Smithfield (see following chart). The parties agreed on this transaction in the so-called “Contribution Agreement”.



8. By way of a second agreement (“Sale & Purchase Agreement”), Sara Lee Corporation (“Sara Lee”, USA) will, in a second step, sell 100% of the shares and assets of SLFE to the newly created joint venture (see the following chart):



9. After the completion of both transactions, Oaktree and Smithfield will jointly own Smithfield France and SLFE through their newly created joint venture, in which each party will hold a 50% share.
10. The following European assets of Smithfield will not be contributed to the joint venture and will remain under Smithfield's sole control: (i) Smithfield UK, a company which sells – but does not produce – processed meat products exclusively in the UK ([...] % of the sales) and Ireland; (ii) Animex Sp. z.o.o., a company based in Poland which sells fresh meat and processed meat products in several Member States, (iii) Prima Farms Sp z.o.o., a Poland-based company which is active in raising live pigs and poultry, and (iv.) Comtim and Smithfield Processare, two companies located in Romania which raise live pigs and poultry and sell fresh meat solely within Romania.

III. CONCENTRATION

11. Although the operation takes place in two separate transactions and technically by way of two separate agreements, both transactions are closely linked and interrelated so that they have to be regarded as one concentration for the purposes of the Merger Regulation.
12. Indeed, both transactions are intended to take place *at the same time*, with just a “logical second” in between. Furthermore, both steps are part of the *same economic transaction* (i.e. creating a joint venture holding SLFE and Smithfield France). Also the *acquirer*, Oaktree, is the same in both transactions.
13. Both transactions are also *legally* interrelated: The acquisition of SLFE is made conditional upon the acquisition of Smithfield France in the respective agreements. Since the acquisition of SLFE is the main purpose of the transaction, also the acquisition of Smithfield is de facto conditional upon the acquisition of SLFE.
14. Since neither Smithfield nor Oaktree will have specific veto rights or other rights that could confer them sole control over the acquired undertakings, Smithfield and Oaktree will exercise joint control over SLFE and Smithfield France. The operation therefore constitutes a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

15. The parties have a combined worldwide turnover of more than EUR 5 billion. Each of the undertakings concerned has a Community-wide turnover in excess of EUR 250 million but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The concentration therefore has a Community dimension within the meaning of Article 1 of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

16. The Joint Venture will be active in the markets for *processed meat*, particularly processed meat products derived from pork and – to a far lesser extent – from poultry. The parties' activities do not overlap in any other area. However, contrary to SLFE Smithfield does have operations upstream from the joint venture in the production and sale of fresh meat for industrial meat processing.

1. Processed meat products

a) Processed pork, poultry and beef products

17. The Commission in previous decisions defined a *market for processed meat* products as “*comprising meat from mammals or birds, containing external ingredients such as salt or spices, being raw, dried, smoked or cooked*”².
18. The various processed meat products vary in several dimensions such as the raw material used (pork, beef, poultry), ingredients (spices), water content, heat treatment (smoked or boiled), portion, packaging, temperature (chilled or canned). All processed meat products constitute a combination of this dimension scheme. However, the Commission noted that all processors are able to use all processing techniques (drying, smoking and cooking) on meat from all species.
19. In later decisions the Commission concluded that there were separate markets for processed *pork*, *beef* and *poultry* products³. The market investigation conducted in the present case again confirmed this view. The overwhelming majority of customers involved in the investigation (more than 85%) indicated that – as a first step – the different markets for processed meat products have to be separated according to the type of fresh meat used for their production.
20. In previous decisions the Commission also discussed whether these markets should be further divided into several *sub-markets for typical meat products*, such as raw cured products, canned meat, ready prepared dishes, cooked sausages and pâté and pies⁴. However, finally the Commission could leave open in its recent decisions whether and to which extent such a detailed sub-segmentation is adequate⁵.
21. The parties agree with the Commission’s previous conclusion that three separate product markets have to be distinguished according to the raw material used for processed meat products, i.e. the markets for (i) processed pork products, (ii) processed poultry products, and (iii) processed beef products.
22. However, Smithfield (including Smithfield France) does not produce and sell processed beef products and therefore no horizontal overlap will occur in this particular market. Therefore, the question whether different relevant product markets for processed beef products should be distinguished can be left open for the purpose of this decision.
23. Due to the minor activities of the parties in the field of processed poultry products also the exact delineation of this market and the question whether and to which extent different sub-market have to be distinguished can be left open for the purpose of this decision.

² See COMP/M.1313 - Danish Crown/Vestjyske Slagterier.

³ See COMP/M.2662 - Danish Crown/Steff Houlberg; COMP/M.3401- Danish Crown/Flagship Foods; COMP/M. 3337 - Best Agrifund/Nordfleisch.

⁴ See COMP/M.3401- Danish Crown/Flagship Foods, paragraph 16.

⁵ See COMP/M.3337 - Best Agrifund/Nordfleisch; COMP/M.3605 - Sovion/HMG.

b) Processed pork meat products

24. As regards processed pork meat products, the parties submitted that these products are made from raw, dried, smoked or cooked meat which is then typically mixed with salt and spices. Although the products manufactured and sold by the parties can be used as part of a cooked meal, they do not require any further cooking before consumption and are often consumed as a snack or as part of a sandwich. The products are sold by the parties to retail outlets such as supermarkets (mostly pre-packaged, either whole or sliced) and traditional butchers (again whole or sliced) for sale to the ultimate consumer. The products are also supplied to the food service industry for use in the production of, among other things, sandwiches and meals.
25. Taking into account the product-portfolio of both companies, the parties submitted that for both supply-side and demand-side reasons the different types of processed pork meat products should be divided into the following relevant product markets: (i) dry sausage, (ii) cooked sausage, (iii) dry ham, and (iv) cooked ham.
26. According to the parties, from a supply-side point of view each of these types of processed pork products is typically made on different production lines involving different equipment and production methodologies and relying on different production recipes.
27. The parties further submitted that Smithfield France currently does not produce dry ham and also could not begin producing dry ham using its existing facilities. To start production, it would need to acquire both specialised equipment and the relevant know-how to do so.
28. As regards demand-side substitutability, the parties submitted that – despite the fact that all these products are often eaten at the same occasions – consumers view dry sausage, cooked sausage, dry ham and cooked ham as different products.
29. On the one hand, the Commission’s market investigation provided strong indications that the different sub-segments mentioned above, i.e. dry sausage, cooked sausage, dry ham and cooked ham, may constitute separate relevant product markets. The majority of customers involved in the investigation (more than 80%) marked their agreement with this product market definition. On the other hand, a limited number of customers also indicated that – on top of the product categories mentioned – additional types of processed pork meat products should be considered to constitute separate product markets, in particular pâté. However, due to the very limited activities of the notifying parties in that area⁶, the question whether a separate product market for pâté has to be delineated, can be left open for the purpose of this decision.
30. Also as regards the supply-side perspective, some factors may militate for a narrow product market definition (e.g. the increasingly specialised production line for each meat specialty). However, the Commission has already in previous cases noted that, from a supply-side perspective, all suppliers are in principle able to use all main processing techniques on meat from all species⁷.

⁶ The parties are only active in the supply of pâté in France and the Netherlands. The combined market share of the parties in France would not exceed [5-15]% and would reach in The Netherlands [0-10]%.

⁷ See e.g. COMP/M.3337 - Best Agrifund/Nordfleisch, paragraph 39.

31. In any event, since the proposed transaction will not lead to competition concerns, the precise delineation of the relevant product market can be left open for the purpose of this decision.

c) Branded products and private labels

32. The parties provided the view that branded processed meat products and private label processed meat products belong to the same relevant product market. They indicated that private labels directly compete with branded products and that retailers and particularly hard discounters have made private label products a centrepiece of their competitive strategies.

33. As the Commission's experience in previous cases, in particular in cases involving the production of consumer products, has shown, it is not likely that a further distinction between branded products and private label products has to be made⁸. This assessment has also been confirmed by the Commission's market investigation in the present case.

34. The vast majority of customers involved in the Commission's market investigation (more than 90%) currently offer private label products in all the different product markets affected by the proposed transaction. In addition, most of the customers also indicated that the private label products, while introduced, replaced branded products. Furthermore, and even more important, the majority of customers also indicated that they would increase the weight of private labels in their product portfolio in the event of a price increase for branded products of 10% and that the existence of private label products for processed meat products effectively restricts the ability of the suppliers of branded products to increase prices.

2. Supply of fresh meat to industrial processors

35. As indicated above, Smithfield is also active in the production and supply of fresh meat. The Commission in previous cases⁹ defined separate product markets for the sale of fresh¹⁰ pork and beef, respectively. Fresh meat includes both fresh and frozen meat which is not processed in any way.

36. The sale of fresh meat has in the previous cases also been further sub-segmented into (i) a retail market (supermarket, butchers, farm sales) and (ii) a catering market, each constituting separate product markets. In addition the Commission has identified a separate market for the sale of fresh meat to (iii) industrial processors. Industrial processors transform the meat into processed meat products, which is then sold to the retail market or the catering market as processed meat.

37. For the purpose of the present transaction, the notifying parties accept this market definition. However, due to the fact that even with the narrowest possible relevant

⁸ See lately COMP/M.4135 - Lactalis/Galbani; see also: COMP/M.3732 - Procter & Gamble/Gillette, paragraph 118; COMP/M.1892 Sara Lee/Coutaulds.

⁹ See especially COMP/M.1313 – Danish Crown/Vestjyske Slagterier, paragraph 22-38; see also COMP/M.3337 - Best Agrifund/Nordfleisch, paragraph 23 et seq.

¹⁰ "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.

product market the concentration will not result in a significant impediment of effective competition, the Commission has not to conclude on that issue and the precise product market definition can be left open for the purpose of this decision.

B. Relevant geographical market

a) Processed pork meat products

38. The parties submit that the geographic market for processed meat is probably still national in scope. This is mainly due to the fact that the markets are still to a large extent characterised by national consumer preferences and recipes for national “specialties” (e.g. “Kasseler” in Germany, “Chorizo” in Spain etc.).
39. In a previous case¹¹, the Commission found that the geographic market was wider than national, but decided later¹² that due to the suppliers’ ability to price discriminate between different Member States, the definition of national geographic market was justified. However it was not ruled out, that the markets for individual product groups of processed meat under specific circumstances may be wider in scope.
40. However, for the purpose of this decision the precise geographic market definition can be left open, since the proposed transaction will not lead to competition concerns under any possible geographic market definition.

b) Supply of fresh meat to industrial processors

41. In previous decisions, the Commission considered the “retail market” for fresh meat, i.e. the market for the sale of fresh meat to super- and hypermarkets to be national in scope. On the contrary, the markets for sales of fresh meat to caterers and industrial processors were considered to be possibly wider than national (i.e. regional or even EEA-wide). This conclusion was mainly based on the significant imports and exports taking place inside the EEA¹³.
42. However, for the purpose of this decision the precise geographic market definition can be left open, since the proposed transaction will not lead to competition concerns under any possible geographic market definition.

C. Impact of the transaction

1. Processed meat products

a) Processed pork meat products

43. On the EEA-level, the parties’ combined share of sales for all processed pork meat products would be [0-10]% and the share of sales would not exceed [10-20]% for any of the different potential sub-markets identified (i.e. dry sausage, cooked sausage, dry ham, cooked ham, each respectively for whole or sliced products).

¹¹ See COMP/M.1313 - Danish Crown/Vestjyske Slagterier

¹² See COMP/M.2662 - Danish Crown/Steff Houlberg.

¹³ COMP/M.2662 – Danish Crown/Vestjyske Slagterier, COMP/M.3337, Best Agrifund/Nordfleisch.

44. The parties have overlapping activities in the following countries within the EEA: Austria, Belgium, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, The Netherlands, Portugal, Sweden and the United Kingdom. However, for most of these countries (i.e. Austria, Czech Republic, Denmark, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Sweden and the United Kingdom), the combined market share for any of the potential sub-markets identified above as well as for the market for all processed pork meat products will be [0-10]% or even significantly lower. Accordingly, the assessment of the impact of the transaction in the following will be restricted to the following countries where the parties have the most significant overlapping activities: France, Belgium, The Netherlands and Portugal.
45. Furthermore, Smithfield is currently not active in the production of dry ham in Europe and – based on purchases of dry ham from third parties – is only active to a very limited extent in the sale of dry ham as part of pre-packed “assortments” of sliced processed pork products. Accordingly, the horizontal overlaps in the market for dry ham have to be considered to be minimal¹⁴, and the assessment of the impact of the transaction will therefore be restricted to the following potential sub-markets for processed pork meat products: (i) dry sausage, (ii) cooked sausage, and (iii) cooked ham.

France

46. The most significant horizontal overlap of the parties’ activities in the market for processed pork meat products occurs in France. However, for the overall market for processed pork meat products the parties’ combined share would be still well below 20%. The following table summarizes the relevant market share data according to the different product segments discussed in more detail above.

Company	All processed pork	All ham (dry, cooked)	All sausage (dry, cooked)	Cooked ham	Dry Sausage	Cooked sausage
Smithfield	[0-10]%	[10-20]%	[5-15]%	[15-25]%	[0-10]%	[5-15]%
SLFE	[0-10]%	[5-15]%	[10-20]%	[0-10]%	[20-30]%	[0-10]%
Combined	[10-20]%	[20-30]%	[15-25]%	[20-30]%	[25-35]%	[10-20]%

47. Following the transaction, with a market share of more than [25-35]% the joint venture would be the leading supplier of pork-based **dry sausage** in France. The rest of the market would be rather fragmented with the second and third largest competitors (Polette, Campofrio) reaching market shares of roughly 10%. In addition, there are several other companies holding market shares of respectively 5-10% (e.g. France Salaison, Souchon, Chevallier) or 2 – 5% (e.g. Loste Grand Saloir, Raffin, CCA).
48. However, a significant impediment of effective competition in the French market for pork-based dry sausage can be excluded for the following reasons: Firstly, it has to be noted that due to the rather weak market position of Smithfield pre-merger, the market

¹⁴ According to the parties’ own estimates, the market share of Smithfield in dry ham in the country with the most important overlapping activities of the parties (France) would amount to [0-10]%.

share lead of the merged entity over its main competitors is mainly due to the strong position of SLFE. Secondly, whereas SLFE is mainly active in the supply of branded products (e.g. the brands Aoste, Justin Bridou, Cochonou, Marcassou and Nobre), Smithfield is only a relative minor supplier of branded products, focussing instead mainly on private label production. Thirdly, post-merger at least nine medium-sized processed meat suppliers will remain active in the market as suppliers of well established brands.

49. Accordingly, the Commission's market investigation provided no indication that Smithfield and SLFE currently have to be considered to be the closest competitors for pork-based dry sausage in France. Quite on the contrary, all the French customers involved in the Commission's market investigation indicated that they can easily switch to alternative suppliers in the event of a price increase of the merged entity.
50. As regards **cooked sausages** and **cooked ham**, the parties' combined market share would be (for cooked sausage significantly) below [15-25]%. In addition, strong competitors will be active in both product segments holding a similar or even higher market share¹⁵.
51. For all the foregoing reasons, the Commission concludes that competition concerns are unlikely to arise on the markets processed pork meat products in France.

Belgium

52. In Belgium, the parties' combined market share for processed pork meat products would be below [5-15]%. Due to the very limited activities of Smithfield in Belgium, the market share increment would be less than [0-10]%. With a combined market share of [20-30]% the parties would hold their strongest position in dry sausage. However, also in this segment the market share increment would be modest ([0-10]%). The Commission furthermore takes note of the fact that none of the Belgian customers involved in the Commission's market investigation has indicated that the transaction would have a significant impact on the competitive landscape for processed pork meat products in Belgium.
53. For all the foregoing reasons, the Commission considers that competition concerns are unlikely to arise on the markets processed pork meat products in Belgium.

The Netherlands

54. In the Netherlands, the parties' combined market share for processed pork meat products would be [15-25]%. However, due to the very limited activities of Smithfield in Belgium, the market share increment would also be less than [0-10]%. With a combined market share of [30-40]% the parties would hold their strongest position in cooked ham. However, due to the minor activities of Smithfield in The Netherlands also in this segment the market share increment would be insignificant ([0-10]%). The Commission furthermore takes note of the fact that none of the Dutch customers involved in the Commission's market investigation has indicated that the transaction

¹⁵ For cooked sausage, the market leader in France would still be Herta with a share of roughly [15-25]% and Cooperl will hold a share quite similar to the parties ([10-20]%). In the market for cooked ham three other competitors (Madrangé, Ranou/Onno, Kerméné) will hold market shares between [5-15]% to [10-20]%.

would have a significant impact on the competitive landscape for processed pork meat products in The Netherlands.

55. For all the foregoing reasons, the Commission considers that competition concerns are unlikely to arise on the markets processed pork meat products in The Netherlands.

Portugal

56. In Portugal, the parties' combined market share for processed pork meat products would be [15-25]%. However, due to the very limited activities of Smithfield in Portugal, the market share increment would be [0-10]%. With a combined market share of [25-35]% the parties would hold their strongest position in cooked ham. However, due to the minor activities of Smithfield in Portugal also in this segment the market share increment would be insignificant ([0-10]%).
57. For all the foregoing reasons, the Commission considers that competition concerns are unlikely to arise on the markets processed pork meat products in Portugal.

Conclusion

58. For all the foregoing reasons, the Commission concludes that competition concerns are unlikely to arise on the markets for processed pork meat products.

b) Processed poultry meat products

59. As regards processed poultry products, the parties' combined market share would not exceed [20-30]% in any of the countries of the EEA where the parties have overlapping activities. The highest market share would be reached in Belgium ([15-25]%). However, due to the very limited activities of Smithfield in the markets for processed poultry products in Belgium, the increment would be insignificant ([0-10]%).
60. Therefore, the Commission concludes that a significant impediment of effective competition in the market for processed poultry products can be excluded.

2. Fresh meat

61. As indicated above, Smithfield is also active in the production and supply of fresh meat in Europe. Smithfield, through its Poland-based subsidiary Animex, sells fresh pork meat for industrial processing in France and The Netherlands. However, Smithfield's share in this market is insignificant ([0-10]%).
62. Despite the fact that SLFE holds significant market positions in the downstream market for processed pork meat products in France and the Netherlands, it can be excluded that the proposed transaction will lead to any anti-competitive vertical effect. In this regard, the Commission in particular takes note of the fact that – according to the results of the market investigation in previous cases¹⁶ – the geographical scope of the market for sales of fresh meat to industrial processors has to be considered to be wider than national (i.e. regional or even EEA-wide). Therefore, it is unlikely that the

¹⁶ COMP/M.2662 – Danish Crown/Vestjyske Slagterier, COMP/M.3337, Best Agrifund/Nordfleisch.

transaction will have any negative impact on the access of the parties' competitors to fresh meat for industrial processing.

VI. CONCLUSION

63. 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 Articles 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
signed
Joaquín ALMUNIA
Member of the Commission