

***Case No COMP/M.4617 -
NUTRECO / BASF***

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/09/2007

***In electronic form on the EUR-Lex website under document
number 32007M4617***



Brussels, 25/09/2007

SG-Greffe(2007) D/205668

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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.4617 - NUTRECO / BASF
Notification of 21/08/2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 21 August 2007, the Commission received a notification of a proposed concentration pursuant to Article 4, and following a referral pursuant to Article 4(5), of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which Nutreco International B.V., controlled by Nutreco Holding N.V. ("Nutreco", the Netherlands), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of parts of the animal feed mixes and third party trading business (hereafter "Target") of BASF Aktiengesellschaft by way of purchase of shares and assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES

3. **Nutreco** is active in the production of animal feed, fish feed and meat processing. Nutreco, through its Trouw Nutrition International Business Group ("Trouw"), produces and supplies animal feed mixes, concentrates, feed specialties and nutritional services.

¹ OJ L 24, 29.1.2004, p. 1.

4. **BASF** is the world's largest chemical company with a product portfolio ranging from chemicals, plastics, agricultural products and fine chemicals to crude oil and natural gas. As part of the restructuring of its fine chemicals division, BASF intends by the proposed transaction and other asset disposals to withdraw from the manufacture of animal feed mixes. It will however remain active at the upstream level as a manufacturer of vitamins and other feed additives that are used in the production of such mixes.
5. Target comprises BASF's animal feed mixes and trading businesses in Italy, Poland, and the United Kingdom, as well as in Indonesia, the United States, Mexico, Guatemala and China.²

II. THE CONCENTRATION

6. In all countries, with the exception of the United Kingdom, the proposed transaction will be effected by means of a transfer of assets from BASF to Nutreco. In the case of the United Kingdom, Nutreco will purchase 100% of the shares of BASF's subsidiary, Frank Wright Limited.
7. As a result of the transaction, Nutreco will acquire sole control over Target within the meaning of Article 3(1)(b) of the Council Regulation.

III. COMMUNITY DIMENSION

8. The operation does not have a Community dimension within the meaning of Article 1 of the Merger Regulation as [...].
9. However, as the proposed transaction was capable of being reviewed in five Member States³ the notifying party submitted a request for referral under Article 4(5) of the Merger Regulation on 3 May 2007. None of the Member States competent to examine the concentration indicated its disagreement with the request for referral within the period laid down by the Merger Regulation.
10. The concentration is, therefore, deemed to have a Community dimension pursuant to Article 4(5) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

11. The parties' activities overlap at a horizontal level in relation to the production and sale of animal feed mixes⁴ and to a limited extent in the trading of additives purchased from third parties. This trading business is limited to the sale of additives that the parties have acquired that are in excess of their own production needs. By purchasing a greater

² The total BASF animal feed mix business comprises 19 production plants worldwide. Buyers are being sought for the production companies not included in Target. In Europe these comprise a facility in Spain and an interest in a joint venture with Glon-Sanders in France.

³ Germany, Greece, Malta, Poland and the United Kingdom

⁴ Animal feed mixes (hereafter "mixes") are mixtures of additives such as vitamins, minerals, trace elements (e.g. iron, zinc, copper), amino acids, organic acids, phosphates, enzymes, and growth promoters that are not intended for direct feeding to animals, but are instead added to animal compound feed in order to enhance the growth, performance or health of animals.

volume of additives than is necessary for their own production requirements, the parties are able to secure a better negotiation position vis-à-vis their suppliers. This trading business is incidental to the parties' main activities, i.e. the production and sale of animal feed mixes and is not considered further.⁵

12. As Nutreco is also active in the production of animal compound feed⁶, which is downstream of the production of animal feed mixes, the Commission's assessment of the proposed concentration will also deal with this vertical link. As noted above, BASF's production of additives is not part of the proposed transaction and therefore the upstream market of the production of additives will not be specifically addressed in the competitive assessment.

1. Relevant product markets

Horizontal issues

Animal feed mixes (mixes)

13. The notifying party submits that the relevant product market comprises all animal feed mixes i.e. '**premixes**'⁷, '**basemixes**'⁸, '**vitamin blends**'⁹ and '**downblends**'¹⁰. Premixes and basemixes are mixtures which basically differ in their mineral content and inclusion rate in animal feed. A vitamin blend is a combination of two or more vitamins blended on a carrier such as limestone. Downblends are dilutions of a single additive, such as vitamin A, or a particular enzyme. By far the most important types of mixes in terms of total consumption are premixes and basemixes and the competitive analysis in the present case will therefore concentrate on these two types of mixes.¹¹

⁵ The notifying party estimates that their share of the market for the sale of additives is less than [0-5%] at an EEA level. Other competitors include additive producers such as BASF and DSM which produce and supply a wide range of additives.

⁶ Animal compound feed is the final feed product given to farm and other animals, consisting of an energy or protein source like grain or soya, together with a proportion of animal feed mix.

⁷ A premix is a mixture of vitamins, a carrier (in some cases a macro mineral as carrier material) and micro minerals (zinc, iron, copper, magnesium, cobalt and selenium) which is included in complete animal feed at an inclusion rate of 0.2-5%

⁸ A basemix is a mixture of vitamins, a carrier, micro minerals and macro minerals (e.g. salt, sodium bi-carbonate, limestone, phosphates); the inclusion rate is of 0.25-1%.

⁹ Vitamin blends are highly concentrated vitamin mixtures. They contain only vitamins (plus a carrier such as limestone) and have a very low inclusion rate of 0.05 – 0.2%.

¹⁰ Downblends are dilutions of single additives, in particular vitamins A and E, enzymes and carotenoids, with a carrier other than additives. Downblends comprise only one ingredient that is mixed with a carrier and the inclusion rate is less than 0.05%.

¹¹ Premixes account for approximately [55-65%] and basemixes for approximately [30-40%] of Nutreco's sales of animal feed mixes. Downblends and vitamin blends represent approximately [0-5%] of Nutreco's total sales of animal feed mixes. The Target's sales of animal feed mixes in the wider sense (regarding the European plants) comprise about [65-75%] of premixes and [25-35%] of basemixes; less than [0-5%] of its total sales are achieved with vitamin blends and downblends.

14. The notifying party explains that all the above mentioned types of mixes are essentially mixtures of additives that are not intended for direct feeding to animals but rather for inclusion in animal compound feed in order to enhance the growth, performance or health of animals. They further submit that there is no standard terminology in the industry and that competitors may segment their product portfolio in different ways. They note that it may be impossible to draw a clear distinction between premixes and basemixes in that the ingredients as well as the inclusion rates of mixes in animal compound feed i.e. the percentage of mixes in a given volume of animal compound feed vary from producer to producer.
15. In a previous case,¹² basemixes and premixes were found to constitute separate product markets because of a lack of demand-side substitutability due to differing mineral content, i.e. basemixes were said to contain minerals whereas the premixes do not. In the present case, the notifying party explains that both basemixes and premixes may contain minerals. According to the notifying party, basemixes generally contain macro minerals whereas premixes generally do not. Moreover, basemixes are more diluted than premixes and are therefore generally cheaper than premixes but must be added in greater quantity in the production of animal compound feed, i.e. they have a higher inclusion rate.
16. Nevertheless, the notifying party argues that there is a high degree of supply-side substitutability between premixes and basemixes. It submits that in any animal feed mix manufacturing plant, with two or three production lines, orders for different mixes are received continuously throughout the year, and are delivered on a tight 'rolling order/delivery' basis, which indicates both the variety of mixes recipes required, and the ability of a manufacturer to supply this variety within a tight time frame using only two or three 'mixing lines'. Provided machinery is suitably and quickly flushed several times a day as part of the daily production schedule, many different animal feed mixes 'recipes', both premix and basemix, are produced for different customers and different species of animals on the same mixing machinery. Animal feed mixes producers supply both 'standard' recipe mixes and 'tailor-made' recipe mixes, the latter being individually specified by the customer.
17. The Commission's market investigation generally confirmed the notifying party's submission as regards supply-side substitutability and furthermore revealed that all of the main suppliers of mixes can and do produce most of the many different mixes recipes. From a demand-side perspective, the market investigation showed that for many customers, the choice between a premix and a basemix mainly depends on the nature of their mixing facilities. Some customers indicated that the complexity of high capacity modern feed mills, where animal compound feed is produced, would not allow for the use of basemixes. Basemixes would however be used in more simple on farm mixing operations.
18. Further, the market investigation showed indications that separate markets may exist in respect of mixes for pet food and mixes for fish feed. A majority of competitors and customers indicated that the production of mixes for pet food and fish feed require specialist knowledge and in some instances dedicated production equipment. Moreover, it was suggested that these types of mixes were niche categories with different customers, demand requirements and supply channels.

¹² Case No COMP/M.3177, BASF/Glon-Sanders/JV, decision of 29.07. 2003

19. However, in the present case the precise market definition of animal feed mixes may be left open, as the transaction would not result in competition concerns irrespective of market definition.¹³

Vertical issues

Animal compound feed (the downstream market)

20. In line with previous Commission decisions¹⁴, the notifying party submits that there is a single market for animal compound feed due to significant demand-side and supply-side substitutability between the different types of animal compound feed. In *CVC/PAI Europe/Provimi*, the Commission found indications that pet food and fish feed could constitute distinct product markets but in both instances the precise market definition was ultimately left open.
21. The market investigation in the present case also indicated that pet food and fish feed may constitute distinct markets in light of specific supply-side and demand-side considerations. However, as the proposed transaction does not give rise to competition concerns in the market for animal compound feed, the precise product market definition may again be left open.¹⁵

2. Relevant geographic markets

Horizontal issues

Animal feed mixes

22. The notifying party submits that the relevant geographic market is at least EEA-wide. On the demand side, it submits that large customers have a uniform purchasing policy across the EEA, that the pricing mechanism which is based on raw material costs is largely similar throughout Europe, that transportation costs are low and that customers increasingly use tender procedures on a European-wide basis for their purchases. As regards supply-side substitutability, the notifying party argues that: the product is relatively homogeneous, the manufacturing process for all animal feed mixes is the same everywhere and there are no tariffs, import quotas or national regulations.
23. The notifying party notes that its position is in line with the Commission's findings in *CVC/PAI Europe/Provimi*¹⁶ where the Commission found, whilst leaving the precise

¹³ The notifying party estimates that even if separate markets were considered for mixes for pet food and mixes for fish feed, the proposed transaction would not give rise to competition concerns as their combined market shares would be less than [10-20%] at an EEA level in both instances

¹⁴ Cases COMP/M.2271 - Cargill/Agribands and COMP/M.2956 - CVC/PAI Europe/Provimi, para. 9 et seq.

¹⁵ The notifying party estimates that even if separate markets were considered for pet food and fish feed, the proposed transaction would not give rise to competition concerns for a number of reasons. Firstly, the Target is not active in the production of pet food and fish feed. Secondly, Nutreco is a minor player in the pet food industry with an EEA-wide market share of less than [0-5%]. As far as fish food is concerned, Nutreco's sales of premixes for fish feed on the merchant market in 2006 represented [0-5%]. With the Target's negligible sales of mixes for fish feed (less than [0-5%] in the EEA) Nutreco's position will not be strengthened as a result of the transaction.

¹⁶ Case COMP/M.2956 - CVC/PAI Europe/Provimi, para. 17.

market definition open, that the relevant geographic market was likely to be at least EEA-wide in scope in view of the existence of cross-border trade. It further recognises that in *BASF/Glon-Sanders/JV*, the Commission left the geographic market definition open whilst referring to the possibility of national markets due to customers' expectations regarding individual advice and technical service.¹⁷

24. In the present case the results of the Commission's investigation concerning the geographic extent of the market for mixes were not entirely conclusive. Some customers, such as large pet food manufacturers, indicated that the market is EEA-wide as a European purchasing strategy seems to be more cost effective. However, a significant majority of both customers and competitors asserted that the market is national in scope, citing in particular the importance of transport costs as a proportion of total mixes costs. This proportion varies according to the value of the particular kind and quantity of an individual mixes cargo, but would amount to at least 5%, and could reach as much as 30% for international shipments of lower-value mixes recipes. The majority of competitors stated that in most EU countries a high percentage of demand is from domestic customers. United Kingdom customers in particular, possibly for reasons of national history and geography, are considered to be especially likely to source mixes from within the United Kingdom and rarely consider suppliers located in other countries.
25. In any event, the precise definition of the geographic market for animal feed mixes may be left open in the present case, since the transaction would not result in competition concerns irrespective of market definition.

Vertical issues

Animal compound feed

26. The notifying party submits that the relevant geographic market for animal compound feed is EEA-wide. In *Cargill/Agribands*¹⁸, although the definition of the relevant geographic market was left open, the market investigation found evidence that the market was likely to be national in scope as suppliers competed on a national basis through supply points and supply was strongly influenced by national demand characteristics. In the present case, the majority of respondents to the market investigation indicated that the market is no wider than national in scope as transport costs militate against compound feed being transported over long distances. In any event, the precise definition of the geographic market for animal compound feed may be left open in the present case, since no competition problems arise in this sector.

¹⁷ Case COMP/M.3177 - BASF/Glon-Sanders/JV, para. 10.

¹⁸ Case COMP/M.2271 - Cargill/Agribands, para. 10.

3. Assessment

Introductory remark - Market share data

27. The notifying party submits that it is not able to provide fully reliable figures for the premix sector either in volume or value terms as no such statistics on tonnage and value are collected, the inclusion rate of premix in complete feed may vary significantly and the different inclusion rates used by competitors are not known. The notifying party has estimated market share data in volume terms on the basis of the Complete Feed Equivalent ('CFE') which seeks to define the premixers' market position in terms of how much compound feed is produced using their mixes. It submits that CFE is the industry standard measure and was accepted as such by the Commission in *CVC/PAI Europe/Provimi*.
28. The market investigation has confirmed that the CFE is used as a standard instrument "to estimate market share" in the animal feed sector and statistics are compiled on this basis. Moreover, on the basis of the information received from competitors, the Commission did not find reasons to suspect that the market data submitted by the notifying party were not accurately reflecting the market position of the competitors. Therefore, the Commission has assessed the competition issues based on the CFE data provided by the notifying party.

Horizontal issues

Animal feed mixes

29. At an EEA-wide level, the concentration would not result in competition concerns as the market power of the parties in any of the above identified potential relevant product markets are below [10-20%] i.e. on a common premix/basemixes market the combined market shares would be [10-20%], on a basemix only market [10-20%] and on a premix only market [10-20%].
30. Also, the market is rather fragmented with the top five suppliers (including the merged entity) accounting for less than 40% of the total market and strong competitors such as DSM (vertically upstream integrated), Provimi (vertically downstream integrated), Schaumann, Salvana or DLG are present with [0-5%] to [5-15%] market shares.
31. The Commission's investigation has revealed that the majority of the customers choose their suppliers mainly based on price and apply dual or multiple sourcing strategies. There are no long term contracts in the industry but rather short term agreements which do not bind the customer to place any particular volume of business with the supplier. Another characteristic of the industry according to the notifying party is excess capacity, which creates a significant incentive amongst producers to undercut competitors' prices in order to capture market share and increase the utilisation of their plants.
32. On narrower market definition basis, the highest combined national market shares would be in the Netherlands at [35-45%] (Nutreco [30-40%] + Target [0-5%])¹⁹, Poland

¹⁹ Market share considered on a market including basemixes and premixes; the notifying party submitted also data for a basemixes only market where the combined market shares would be [10-20%] (Nutreco [10-20%] + Target [0-5%]) and for a premixes only market where the combined market shares would be [35-45%] (Nutreco [35-45%] + Target [0-5%]).

at [25-35%] (Nutreco [5-15%] + Target [15-25%])²⁰ and the United Kingdom at [45-55%] (Nutreco [10-20%] + Target [30-40%])²¹.

33. In the Netherlands, Nutreco's existing position as market leader will be consolidated, but the addition of Target's share of [0-5%] is marginal; moreover, other companies such as PREMIERVO ([15-25%]), VITAMEX ([10-20%]), TWILLMIJ ([5-15%]) or Provimi ([5-15%]) and DSM ([0-5%]) are also present.
34. In Poland, the new entity would become the market leader with approximately [25-35%] but competitors such as LNB International Feed B.V. (approx. [20-30%]), DSM (approx. [10-20%]) and Sano (approx. [0-10%]) would continue to apply significant competitive pressure. The Commission's investigation has also revealed that the Target's main competitor is DSM (which is also vertically integrated in the production of feed additives) rather than Nutreco which is integrated downstream in the market of animal compound feed.

The UK market

35. The highest combined market share of the merging parties at [45-55%] would be in the United Kingdom ([10-20%] Nutreco and [30-40%] the Target). Other competitors will have significantly lower market shares, such as Premier Nutrition (approx. [10-20%]), DSM ([10-20%]), Devenish, and Provimi (approx. [0-5%] each).
36. However, market shares do not fully explain the market strength of suppliers in the UK market. The notifying party stresses that Nutreco is likely to lose a part of its sales in the UK as many mixes customers apply dual or multi-sourcing strategies and switching costs are negligible. Such customers include, for instance, [...]. The notifying party submits that some of these customers are likely to divert part of their orders from the combined entity to a third party competitor, in order to be assured of a continued multiplicity of sources.
37. However, the market investigation is in this respect inconclusive. The majority of respondents in the market investigation stated that they have no immediate plans to alter their buying patterns as a result of the proposed transaction. Some customers, however, indicated that their decision would depend on the commercial behaviour of the merged entity.
38. The notifying party also underlines the buyer power of customers and the fact that the market is mainly conducted on the basis of tenders (80 – 85% of supplies). Supply contracts are not exclusive and generally do not provide for minimum purchase volumes. Customers are therefore free to shift volumes between suppliers even during the term of existing supply contracts. More than [...] of Nutreco's business in the UK is

²⁰ Market share considered on a market including basemixes and premixes; the notifying party submitted data for a basemixes only market where the combined market shares would be [20-30%] (Nutreco [5-15%] + Target [10-20%]) and for a premixes only market where the combined market shares would be [30-40%] (Nutreco [5-15%] + Target [20-30%]).

²¹ Market share considered on a market including basemixes and premixes; the notifying party submitted data for a basemixes only market where the combined market shares would be [40-50%] (Nutreco [5-15%] + Target [30-40%]) and for a premixes only market where the combined market shares would be [45-55%] (Nutreco [10-20%] + Target [30-40%]).

based on tenders, with an average success rate of approximately [...]. For instance, in [...] Nutreco issued [...] quotations [...] of which [35-45%] were successful. In [...] Nutreco submitted [...] of which [25-35%] resulted in supply contracts. In 2007, BASF so far has had an average success rate of [70-80%].

39. The notifying party also underlines that raw materials account for about 85% of the total cost of mixes and as such are an important consideration in the tender procedures described above. In view of this importance, the notifying party submits that customers demand input price transparency and closely scrutinise their suppliers' prices and margins by insisting on the disclosure of the costs of the ingredients.
40. The market investigation confirmed that tender procedures are widely used by customers in the UK. It also confirmed the importance of raw materials in the final price of mixes and that the majority of customers in the United Kingdom have access to their suppliers' cost data. This is likely to limit the merged entity's ability to raise prices.
41. In addition, the merged entity will continue to compete with several mixes suppliers which are all able to meet customers' requirements in terms of price, volume and quality. They all have significant overcapacity which creates a significant incentive to undercut the other suppliers' prices in order to increase the utilisation of their plants²². In the market investigation, other important competitors active in the United Kingdom such as DSM and Premier Nutrition confirmed they have also spare capacity.
42. In light of the above considerations, the Commission considers that the proposed transaction does not raise serious doubts in the market for mixes in the EEA as a whole or any of its Member States.

Downblends and vitamin blends

43. In the EEA, the shares of Target and Nutreco in the area of downblends are below [0-5%]. Further, in each Member State of the EEA, the combined share of the parties for downblends and vitamin blends is below [10-20%]. In the EEA-wide segment for vitamin blends, the shares of the Target and Nutreco are below [0-5%] and [0-5%] respectively, and in each Member State of the EU and the EFTA, the combined share of the parties for vitamin blends are below [10-20%]. Competitors are essentially the same companies that manufacture premixes and basemixes.

Vertical issues

Animal compound feed

44. Nutreco, but not Target, is active in the production of animal compound feed, with annual production of approximately [0-10] million tonnes, which amounts to a share of [0-5%] of the total EEA production of 200 million tonnes. On a national basis, in the Netherlands, Belgium and in Spain/Portugal, countries in which its main animal compound feed activities are located, Nutreco has animal compound feed shares of [10-20%], [5-15%] and [5-15%] respectively.

²² This significant overcapacity is illustrated by the fact that Trouw UK's plant is operating at less than [20-40%] utilisation.

45. The parties' combined EEA market share on the upstream market of overall mixes is about [10-20%], with national combined shares of [35-45%] in the Netherlands (Nutreco [30-40%] + Target [0-5%]), [20-30%] in Belgium (Nutreco only, Target has no presence), [10-20%] in Spain (Nutreco [5-15%] + Target [0-5%]) and [0-5%] in Portugal (Nutreco [0-5%] + Target [0-5%]). Thus post-merger the highest vertical combination of market shares on a national basis would be in the Netherlands, with [35-45%] mixes upstream of [10-20%] animal compound feed. Despite the relatively high market shares in the upstream market, foreclosure effects can be excluded in view of the modest animal compound feed share.
46. Post-merger Nutreco would not find it economically rational to foreclose competitors on the animal compound feed market given that it would be unable to absorb all mixes production within its own in-house animal compound feed production, and conversely, even if all in-house animal compound feed production were to use in-house mixes, there would still be adequate demand for mixes competitors' production. In any event the proposed transaction changes little with respect to the Netherlands, in which Target is only marginally present (mixes [0-5%]) and Nutreco already has [30-40%] of mixes and [10-20%] of animal compound feed. The same arguments apply a fortiori to the Belgium, Spanish and Portuguese markets.
47. Therefore, the proposed transaction will not raise competition concerns in the markets for animal compound feed.

V CONCLUSION

48. 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
Neelie KROES
Member of the Commission