Case No COMP/M.4667 - SYRAL / TATE & LYLE ASSETS

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REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 23/08/2007

In electronic form on the EUR-Lex website under document number 32007M4667
Dear Sir/Madam,

Subject: Case No COMP/M.4667 – Syral/Tate & Lyle assets
Notification of 18/06/2007 pursuant to Article 4 of Council Regulation No 139/2004

1. On 18 July 2007 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("EC Merger Regulation") by which the undertaking Syral SAS ("Syral", France), controlled by the Tereos group ("Tereos", France) acquires control of parts of the undertaking Tate&Lyle Food and Industrial Ingredients Europe group ("The Target").

I. THE PARTIES

2. The acquirer, Syral is active in the production and trade of sweeteners and by-products made from maize or wheat. Syral has currently one production plant located in France. The company is controlled by Tereos, a French sugar producer.

3. The Target consists of five production sites situated in Italy, UK, Spain, Belgium and France and the corresponding trading activities, which are currently part of TALFILE group, a division of the UK-based Tate&Lyle Food and Industrial Ingredients Europe group ("Tate&Lyle"). All production sites, but the Spanish one, produce sweeteners derived from wheat. The Spanish site produces sweeteners from maize.

II. THE TRANSACTION

4. The parties signed a share sale agreement on 17 July 2007. The deal will allow Syral, to enter a number of new markets and also expand its activities in the strongly growing sweetener sector.

5. The transaction relates to certain parts of Tate&Lyle, transferring sole control of Tate&Lyle Europe NV, Tate&Lyle UK Ltd and Tate&Lyle Spain SA. The deal will also transfer a 50% shareholding in the Bosnia-based Magnolia EU LLC to Syral, resulting in

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joint control with the Gardenia group, currently owning the other 50% of the shares. The operation subject to the present decision is a concentration within the meaning of Article 3 of the EC Merger Regulation.

6. The undertakings concerned have a combined aggregate world-wide turnover of more than 2.5 billion EUR2 (Syral/Tereos […] million EUR and the Target […] million EUR). The combined aggregate turnover of the undertakings concerned is more than 100 million EUR in seven Member States ([…]) and, in each of these seven Member States the aggregate turnover of each Syral/Tereos and Target is more than 25 million EUR. The aggregate Community-wide turnover of each of Syral/Tereos and the Target is more than 100 million EUR (Syral/Tereos […] million EUR and the Target […] million EUR), and none of them achieves more than two-thirds of its aggregate Community-wide turnover in one and the same Member State. Therefore, the notified operation has a Community dimension within the meaning of Article 1(3) of the EC Merger Regulation.

III. THE RELEVANT AFFECTED MARKETS

7. The two companies are active in the production and sale of sweeteners and certain by-products. Whereas sweeteners are mainly supplied to the food, beverage, chemical and pharmaceutical industries, by-products are predominantly used in the animal feed industry. During the production of sweeteners, maize, wheat or potato is processed into starch slurry which is then further processed into different types of liquid and dry sweetener products. Sweeteners differ according to both their physical characteristics, such as sweetness and viscosity, and according to their typical applications.

8. The transaction results in the following markets being affected: markets for (1) liquid sweeteners (2) maltodextrins (3) crystalline dextrose (4) vital wheat gluten (5) modified wheat proteins (6) dry polyols and (7) liquid polyols.3

9. **Liquid sweeteners** are used mainly in the food and beverage industry. Around [20-30]% of liquid sweeteners are supplied to the beverage industry, [15-25]% to the confectionery industry and [15-25]% to the fruit preparations industry. Liquid sweeteners differ according to their dextrose equivalent level and sugar composition but have a number of common product characteristics such as viscosity, mouth feel, colour and texture. The notifying party suggests that the market definition should comprise the different types of liquid sweeteners, namely glucose syrups, hydrolysates, isoglucose and blends, with the exception of liquid fructose which has different applications and much higher prices than other liquid sweeteners. In particular, the notifying party claims that due to their common characteristics (similar glucidic spectrums and sweetening powers) and liquid form, customers can switch from one to the other without new investment in the production process. On the supply-side, these products can be manufactured indistinguishably without any costly investment. The Commission in its previous decision examining glucose syrups and blends found that based on the supply-side substitutability these products belong to one market.4 Finally, the market investigation clearly confirmed the view that liquid fructose due to its different product characteristics should not be part of the market of liquid sweeteners.

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

3 The Target has also activities in the markets for (1) animal feed (2) potable alcohol (3) bioethanol, (4) starches and (5) liquid fructose but in these markets there is either no overlap or the combined market share of the merging companies remains below 15%.

4 Case No COMP/M.2502 – Cargill/Cerestar para. 16.
10. The vast majority of respondents indicated that the products do not differ according to the raw material, namely wheat or maize, used to produce starch slurry. On the other hand, a number of customers do not see these different liquid sweeteners interchangeable. As to the supply-side substitutability, indeed, all main competitors cover the complete range of liquid sweeteners and these products are manufactured via similar methods following the hydrolysis of starch slurry.5

11. As the market investigation was not conclusive, the Commission analyzed the effects of the merger also with regard to potential narrower markets. The market investigation suggested in particular that given the specificity of its application, glucose syrups of high dextrose content (also called dextrose syrup or hydrolysates) might be regarded as a separate product market. Whereas glucose syrups of low dextrose content are mainly used in the food industry typically for confectionary and bakery products, glucose syrups of high dextrose content are mainly used for fermentation ([55-65]% of all glucose syrups of high dextrose content) and also by the beverage industry ([20-30]% of all glucose syrups of high dextrose content).

12. For the purpose of the current decision, the question as to whether different liquid sweeteners belong to one product market or whether narrower product markets such as glucose syrup of high dextrose content should be defined according to product characteristics and application can be left open, as even taking the hypothetical market for glucose syrups of high dextrose content, the assessment of the transaction would not be different.

13. As to the geographic scope of the market for liquid sweeteners, the notifying party suggests that it is EU-wide, given the significant cross-border trade flows, the homogeneity of prices and the increasing number of pan-European tenders. On the other hand, Syral also recognizes that transportation of certain liquid sweeteners is affected by specific technical constraints. For instance, glucose syrups and blends must be kept at constant high temperature (at around 60°C) during transport to avoid crystallization, which can be done for no more than 2 to 4 days. The transport costs of liquid sweeteners make the maximum transportation distance 2000 km.

14. Considering these aspects in its previous decision6, the Commission concluded that France, Germany and the Benelux countries formed one market, and that the UK constituted a separate market (referring jurisdiction with regard to the UK market to the OFT) and left open the question of the precise market definition with regard to the other Member States. In its decision with regard to the same transaction, the UK Competition Commission concluded that the geographic market was wider than the UK7.

15. The market investigation indicated that the market is wider than national. Whereas for half of the respondents the market should be regarded as EU-wide, a number of customers indicated that due to transportation constraints they do not purchase from farther than 1000-1500 km, whereas others only purchase within a smaller radius. The question of the geographic market definition can be left open as even if a narrower Western-European

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5 However, isoglucose 42 is subject to an EU production quota regime and requires limited additional equipment.

6 Case No COMP/M.2502 – Cargill/Cerestar para. 12.

7 Cargill Incorporated and Cerestar SA – May 2002


market is taken, limited to France, Germany and the Benelux countries, the transaction will not impede effective competition.

16. **Maltodextrins** including dry glucoses are spray-dried forms of glucose syrups, and mainly differ in their energy and sweetening power according to the degree of hydrolysis of the syrup used as raw material. They are typically low in fat and calories and are mostly used in baby food, in the flavour industry as texturing material, spray-drying aid, fat replacer, film former and freeze control agent.

17. The notifying party submits that although dry maltodextrins and crystalline dextrose are both dry sweeteners, they differ in their application and therefore should form separate product markets. **Crystalline dextrose** can be produced via crystallization whereas maltodextrins are produced by a spray drying process. Crystalline dextrose has different applications and is used for example for coating in the confectionary industry, for decreasing the melting point of ice-cream and dairy desserts or for powdered drinks in the beverage industry. The market investigation clearly confirmed the proposed distinction. As the assessment of the Commission would not change under any market definition, the precise definition of these markets can be left open.

18. With regard to the geographic market, the notifying party suggests, relying on similar arguments as for liquid sweeteners, that both dry maltodextrins and crystalline dextrose form an EU-wide market. It indicates that around [85-95] % of both parties' sales are realized abroad for dry maltodextrins and [70-90]% for crystalline dextrose. Additionally, there are exports to countries located outside Europe. Furthermore, in contrast to certain liquid sweeteners, it appears that no special technical requirements constrain transport, and that transport costs remain reasonable. Finally, [55-65]% of the parties' sales are achieved via centralized European tenders. The market investigation suggests indeed that these markets should be regarded as European; however the precise market definition can be left open for the purposes of the present decision.

19. Besides sweeteners, both companies produce **vital wheat gluten**, a water insoluble protein fraction obtained as a by-product of starch production. Vital wheat gluten is then further processed and mainly used in the food industry, for instance in breakfast cereals and in the animal feed sector. The market investigation unanimously confirmed the Commission’s previous decision in which it considered vital wheat gluten as a distinct product market. The precise market definition can be left open given the absence of competition concerns on the market.

20. The notifying party submits that for vital wheat gluten the geographic market should be defined as at least EEA-wide. Transportation accounts for [5-10]% of the costs of vital wheat gluten, and is the product is traded throughout the EU. It is even exported to the USA: the notifying party estimates that around 60% of the USA vital gluten market is supplied by plants located in Europe. Also the Commission defined in its previous decision the market as being at least EEA-wide. The market investigation confirmed the previous finding of the Commission, however the question can be left open for the purpose of the present decision.

21. **Modified wheat proteins** are obtained from processing vital wheat gluten and are used mainly in the feed sector as alternatives to milk proteins for calves and also in pet-food and in aqua-culture. The notifying party proposes that the market should be regarded as EU-wide. However for the present case, the question can be left open.

22. Polyols are produced via hydrogenation process of glucose syrups and also sugar. **Liquid polyols** are low-calorie bulking agents and sweeteners used by the food industry (in

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Case No COMP/M.2502 – Cargill/Cerestar para. 17-18.
particular for candies, chewing gums, bakery, jellies and foam), in the cosmetics (for creams) in the oral care (in particular for tooth-paste) for chemicals and pharmaceuticals. These products can be crystallized or dried to produce dry polyols used in the confectionary and pharmaceutical sector. As dry and liquid polyols differ in their price, applications and fabrication processes, the notifying party considers that these markets should be regarded as distinct and proposes that the market for both liquid and dry polyols should be regarded as EU-wide. However the question of the precise market definition can be left open for the present decision.

IV. COMPETITION ASSESSMENT

Non-coordinated horizontal effects

23. The market positions of the parties and of their competitors on the horizontally affected EEA-wide markets are the following:

<table>
<thead>
<tr>
<th>Market</th>
<th>Syral</th>
<th>Target</th>
<th>Combined</th>
<th>Competitor 1</th>
<th>Competitor 2</th>
<th>Competitor 3</th>
<th>Market Size (in tons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dry polyols (EU)</td>
<td>[0-5]%</td>
<td>[0-5]%</td>
<td>[0-5]%</td>
<td>[45-55]% (Roquette)</td>
<td>[20-30]% (Cargill)</td>
<td>[20-30]% (Tate&amp;Lyle)</td>
<td>395T</td>
</tr>
<tr>
<td>Liquid polyols (EU)</td>
<td>[5-10]%</td>
<td>[0-5]%</td>
<td>[5-15]%</td>
<td>[40-50]% (Roquette)</td>
<td>[25-35]% (Cargill)</td>
<td>[5-15]% (Tate&amp;Lyle)</td>
<td>395T</td>
</tr>
<tr>
<td>Crystalline dextrose (EU)</td>
<td>[0-5]%</td>
<td>[10-20]%</td>
<td>[10-20]%</td>
<td>[35-45]% (Cargill)</td>
<td>[25-35]% (Roquette)</td>
<td>[0-5]% (Tate&amp;Lyle)</td>
<td>451T</td>
</tr>
<tr>
<td>Vital wheat gluten (EU)</td>
<td>[0-5]%</td>
<td>[15-25]%</td>
<td>[20-30]%</td>
<td>[25-35]% (Cargill)</td>
<td>[20-30]% (Roquette)</td>
<td>0% (Tate&amp;Lyle)</td>
<td>306T</td>
</tr>
<tr>
<td>Dry maltodextrins (EU)</td>
<td>[5-15]%</td>
<td>[5-15]%</td>
<td>[20-30]%</td>
<td>[30-40]% (Cargill)</td>
<td>[20-30]% (Roquette)</td>
<td>[0-5]% (Tate&amp;Lyle)</td>
<td>210T</td>
</tr>
<tr>
<td>Liquid sweeteners (EU)</td>
<td>[5-10]%</td>
<td>[15-25]%</td>
<td>[25-35]%</td>
<td>[30-40]% (Cargill)</td>
<td>[15-25]% (Roquette)</td>
<td>[5-10]% (Tate&amp;Lyle)</td>
<td>4,5M</td>
</tr>
<tr>
<td>Liquid sweeteners (Europe)</td>
<td>[5-15]%</td>
<td>[20-30]%</td>
<td>[30-40]%</td>
<td>[20-30]% (Cargill)</td>
<td>[20-30]% (Roquette)</td>
<td>[5-10]% (Chamtor)</td>
<td>1,8M</td>
</tr>
</tbody>
</table>

24. In the markets for dry and liquid polyols the combined market share of the parties remains below 15% suggesting that it will not have market power. Similarly, in the market for crystalline dextrose, the minimum increment of [0-5]% and the low combined market share of the parties markets do not give rise to serious doubts as to the compatibility with the common market. In the market for vital wheat gluten, the combined entity will come closer to its two main, but still larger competitors Cargill and Roquette. However, Syral's limited presence on the market pre-merger does not suggest that the transaction will bring major structural changes on this market.

25. In the market for dry maltodextrins the new entity will retain [20-30]% of the market with an increment of more than [5-10]% thereby approaching in terms of market share the same two strong competitors, Cargill and Roquette. However, besides these two important

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Market share estimates are based on the data of Association des Amidonniers et Féculiers “AAF” and on the result of the market investigation.
competitors customers will also have the possibility to source from additional smaller market players: Südzucker/Agrana, Chamtor, Avebe and Tate&Lyle which as explained above, will remain an active player on the market.

26. Indeed, most respondents during the market investigation did not consider that the transaction would have a major impact, and pointed out that current and potential future price increases will be driven by strongly increasing and volatile raw material prices. They also indicate that a possible reduction in the price of sugar, due to the new EU sugar regime, is expected to have an impact on these markets.

27. With regard to the market for **liquid sweeteners**, even under the narrowest geographic market definition, including France, Germany and the Benelux countries, the parties' combined market share would be [30-40]% in this market the combined entity will have the highest market share; however, it will be followed by Cargill ([20-30]%) and Roquette ([20-30]%) and further competitors such as Chamtor ([5-10]%), Südzucker/Agrana ([0-5]%) and Tate&Lyle ([0-5]%).

28. As some customers active in the fermentation industry indicated in the course of the market investigation that the merged entity might be in position to raise prices, the Commission carefully analyzed their concerns. As glucose syrup of high dextrose content is one of the most used liquid sweeteners by the fermentation industry, the Commission examined the hypothetical market for this product. However, it should be noted that as indicated in the previous decision of the Commission\(^\text{10}\) and as explained by respondents during the market investigation, depending on the application, the fermentation industry can also typically use sugar, blends and also isoglucose as an input product. In this regard, the Commission notes that the fermentation industry was recently authorized to import 200.000 tons of sugar to Europe beyond the normal importation quota.

29. Glucose syrups of high dextrose content are typically produced by all liquid sweetener producers and count for about ([20-30]%) of the entire liquid sweetener market. When looking at the possible market for glucose syrups of high dextrose content in Western-Europe, it appears that there will be three major players with rather similar positions on the market: Cargill ([20-30]%), Roquette ([20-30]%) and the new merged entity ([20-30]%) ([5-15]% for Syral and [5-15]% for the Target))\(^\text{11}\) surrounded by smaller players such as Südzucker/Agrana and Chamtor.

30. Glucose syrups of high dextrose content are rather considered by the industry as standard commodity products, in contrast to glucose of lower dextrose content, which might be more sophisticated, individually tailored products typically delivered to the food industry. The market investigation also clearly showed that customers in the sweetener sector in general and in particular with regard to glucose of lower dextrose content have a systematic multi-sourcing policy, thereby underlining the fact that these products may rather be thought of as commodities. In particular, it is easy to increase volumes from any given supplier. As supply contracts are concluded for a maximum of one year but typically for shorter periods, they do not prevent customers from re-allocating a portion of demand to another supplier or from switching between suppliers altogether.

31. When asked about Syral’s role on the market for liquid sweeteners, many customers explained that although it is a competitive company in the sweetener sector, Syral remains a small actor and can only cover a limited portion of their needs. For instance, respondents from the fermentation industry, which is characterised by a limited number of major players, stated in the course of the market investigation that they do not purchase at all

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\(^{10}\) Case No COMP/M.2502 – Cargill/Cerestar para. 14.

\(^{11}\) Market shares are based on AAF estimations.
from Syral or they typically use the company as an additional complementary supplier. By way of example, one of these customers even left the company considering it as too small to satisfy its needs. One of the customers referred to Syral as a “challenger” on the market. Indeed, since its entry on the market in 2001, Syral has strengthened its position in the sweetener industry. However, most likely due to capacity constraints, over the last three years its market share remained stable, both on the market for liquid sweeteners and on the narrower market for glucose syrups of high dextrose content.

32. Even if liquid sweeteners might have to fulfil specific requirements depending on their application, their production processes remain comparable. In fact most type of liquid sweeteners can be produced with the same production lines. This is particularly true with regard to glucose syrup of high dextrose content, which is rather a commodity liquid sweetener in comparison to the more specific glucose syrups of lower dextrose content used by the food industry. As one of the competitors rather focused to the food segment explained, it could easily adapt/expand its current sweetener production. Indeed, supply-side substitutability was one of the main reasons that the Commission considered all liquid sweeteners as one market in its previous decision.12

33. Furthermore, some of the markets across the sweetener industry have experienced strong growth over the last three years ([10-20]% for dry maltodextrins, [5-10]% for crystalline dextrose, [10-20]% for dry polyols, [5-15]% for liquid polyols, [20-30]% for vital wheat gluten and [80-90]% for vital wheat proteins) making them attractive for investments. Regulatory rules, IP rights, brands, distribution network or existing over-capacity do not hinder entry, but the cost of a new plant and the economies of scale should be taken into account. On the other hand, necessary investment in existing plants to enter new markets or expand existing capacity is not significant. Indeed, production plants in the sector are typically multi-product plants producing a range of sweeteners, alcohol and by-products. With regard to liquid sweeteners, it appears that existing market players and also major customers have been investing to increase capacity from the 90’s. Currently, one of the major customers on the market has publicly announced to inaugurate a new glucose syrup production plant for its fermentation activity in the near future.

34. One of the customers indicated that the merger will create a player which is strong in both the sweetener and the sugar sector, which might lead to a competitive advantage. However, even before the merger Syral belonged to one of the biggest sugar producers in Europe which did not provide it competitive advantage in none of these markets. At present Tereos holds [5-15]%13 of the sugar market surrounded by a number of established sugar producers. Additionally […].

35. Finally, certain companies indicate that the effect of the merger will depend on whether the merged entity will convert its production capacity for sweeteners to bio-ethanol production. However, it should be noted that such a potential commercial strategy change is not linked to the transaction and could also occur in the absence of the merger. Furthermore, the notifying party states that […]. Such a switch would make little commercial sense, given that even with the fiscal advantages of ethanol production, it remains more profitable to turn high-grade starches into sweeteners.14

36. In view of the above, the transaction does not raise serious doubts as to its compatibility with the common market as a result of non-coordinated effects.

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12 Case No COMP/M.2502 – Cargill/Cerestar para. 16.

13 Estimation of Tereos, not taking into account imports, representing about 20% of the market.

14 Answer of the notifying party of 14 August 2007 to the Article 11 letter of the Commission.
Coordinated effects

37. As the above table with the market shares shows, the different markets in the sweetener industry are characterised by a limited number of major players: Roquette, Cargill, Tate&Lyle and Syral post-merger. Given the structure of these markets, the question arises whether the merger would facilitate co-ordination between major players.

38. First of all, it should be noted that as explained above, on most markets, the merger does not greatly affect market structure either because of the small scale of Syral (crystalline dextrose in the EU) or because the merged entity will have a similar market position to that previously held by Tate & Lyal, with the "rump" Tate & Lyal having a market position similar to that of Syral pre-merger (liquid sweeteners in the EU, or dry maltodextrins in the EU). Secondly, it appears also that conditions allowing for coordinative effects15 (high degree of transparency, existence of retaliation mechanisms and no possible reaction of current and future competitors as well as customers) are missing from the markets. Although raw material prices strongly influence market prices, volume discounts, specificities of client requests with regard precise product composition and the lack of publicly available price lists do not render markets transparent. Indeed none of the respondents referred to current or potential coordinated effects.

39. Thus, the Commission is of the view that the proposed transaction does not raise serious doubts as to its compatibility with the common market as a result of coordinated effects.

Vertical effects

40. Additionally to the horizontal overlaps, the transaction results in the following markets being vertically affected.

41. In the market for modified wheat protein only the Target is active with a [50-60]% market share. As mentioned above, modified wheat protein is produced from vital wheat gluten where both parties are active with [20-30]% combined market share. This vertical effect is unlikely to enhance the ability of the new entity to foreclose access to a sufficient customer base as the Target was already vertically integrated before the transaction and the merger will only lead to a limited market share increase of [0-5]% in the upstream market for vital wheat gluten with significant competitors such as Cargill ([25-35]%) and Roquette ([20-30]%). The combined entity will face the same established integrated players on the downstream market for modified wheat protein such as Cargill ([25-35]%) and Roquette ([10-20]%).

42. Finally, as was the case pre-merger, the merged entity will remain active on the markets for liquid and dry polyols, which might be produced from glucose syrup.16 However, currently the glucose sales of the companies cover only around [5-15]% of the needs of the liquid polyols market and [0-5]% of the dry polyol market. The increment on these two downstream markets is respectively only [0-5]% and [0-5]%, suggesting that the merged entity will not have any incentive to change its current commercial behaviour. Even if the company reduced its glucose syrup sales to these markets, there remain further established players who could supply polyol producers.

43. Thus, the Commission is of the view that the proposed transaction does not raise serious doubts as to its compatibility with the common market as a result of coordinated vertical effects.

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15 See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, para. 41.

16 However, glucose syrup is not the only possible input material to produce polyols.
IV. CONCLUSION

44. 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 functioning of EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
(signed)
Viviane REDING
Member of the Commission