

***Case No COMP/M.5322 -  
MARFRIG / OSI GROUP  
COMPANIES***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 13/10/2008

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.5322– Marfrig/ OSI Group Companies  
Notification of 8 September 2008 pursuant to Article 4 of Council Regulation  
No 139/2004**

**I. INTRODUCTION.**

- 1) On 8 September 2008 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004<sup>1</sup> by which the undertaking Marfrig Frigoríficos e Comércio de Alimentos S.A. ("Marfrig", Brazil) acquires control of some of the undertakings of the OSI Group, LLC ("OSI Group", USA) located in Brazil, Europe and Bermuda ("OSI Group Companies", Europe, Brazil) by way of purchase of shares.

**II. THE PARTIES AND THE PROPOSED TRANSACTION**

- 2) **Marfrig** is a South American based company active in the rearing of live cattle for slaughter and the production of fresh beef and processed beef products for domestic customers and for export. To a lesser extent, Marfrig also rears live chicken and pigs for slaughter and produces fresh and processed chicken, pork and lamb, which it supplies to domestic customers and for export. Marfrig's sales of processed chicken

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1

products in Europe are limited to a small amount of sales of canned chicken products in the UK.

- 3) The **OSI Group companies in Europe**, which together form the Moy Park Group include Moy Park Limited (based in the UK and France), Kitchen Range Foods Limited (based in the UK) and Albert van Zoonen B.V. (based in the Netherlands) (together, “the OSI Europe Companies”). The OSI Europe Companies are active in the rearing of live chickens and the supply of fresh and processed chicken to customers in United Kingdom and to a lesser extent, in other European countries. They are also active in the supply of value-added vegetable products and specialty bakery products and, to a limited extent, processed pork products in the UK and in France.
- 4) The **OSI Group companies in Brazil** to be acquired are Braslo Produtos de Carnes Ltda., Penasul Alimentos Ltda. and Agrofrango Indústria e Comércio de Alimentos Ltda. (“the OSI Brazil Companies”). The OSI Brazil Companies supply a range of meat products, including fresh and processed beef, pork and poultry. These companies sell mainly to customers in Brazil, and their exports to customers in Europe comprise a limited amount of sales of fresh and processed poultry.
- 5) The OSI Group company in Bermuda to be acquired is Brusand Limited ("Brusand") and its subsidiaries. **Brusand** and its subsidiaries are service companies and do not process any poultry products. Brusand is a licensee and sub-licensor of the "Pena Branca" trademark and acts as sales agent for certain sales by Penasul Alimentos Ltda to European customers. Its subsidiary, Penasul UK Limited, is a UK company that brokers sale of chicken meat to European customers and, together with its subsidiaries, holds import quotas.

### III. THE CONCENTRATION

- 6) The proposed concentration consists of two transactions: the acquisition by Marfrig of all shares of the OSI Group companies in Europe and the acquisition by Marfrig of all shares of OSI Group companies in Brazil.<sup>2</sup>
- 7) Both SPAs have been concluded between the same Parties and were signed on the same date. The intention of the Parties is that the two agreements shall close at the same time. According to the SPAs the acquisition of OSI Group companies in Europe is dependent on the acquisition of OSI Group companies in Brazil and vice versa. Therefore neither transaction can be completed without the other SPA also being completed. Consequently, the transaction constitutes a single concentration within the meaning of Article 3 of the Merger Regulation.<sup>3</sup>

### IV. COMMUNITY DIMENSION

- 8) The notified operation has a Community dimension within the meaning of Article 1(3) of the EC Merger Regulation. The combined aggregate worldwide turnover of all the

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<sup>2</sup> Brusand and its subsidiaries form part of Share and Purchase Agreement of OSI Group companies in Brazil. The turnover and market shares of Brusand have been included in the market shares of OSI Group Companies.

<sup>3</sup> See Commission's Consolidated jurisdictional notice – 1.5 Interrelated transactions <http://ec.europa.eu/comm/competition/mergers/legislation/en.pdf>

undertakings concerned is more than EUR 2.500 million (Marfrig: EUR 1.255 million; OSI Group Companies: EUR [...] million). The combined aggregate turnover of all of the undertakings concerned exceeds €100 million in each of at least three Member States (Germany, the Netherlands and the UK) and the aggregate turnover of at least two of the undertakings concerned is more than €25 million in the above-mentioned Member States. The aggregate Community turnover of each of the undertakings concerned is more than EUR 100 million (Marfrig: EUR [...] million; the Targets: EUR [...] million).<sup>4</sup> Only the Targets (OSI Group Companies) achieve more than two-thirds of their Community-wide turnover within one and the same Member State, i.e. UK.

## V. RELEVANT MARKETS

### 1. RELEVANT PRODUCT MARKETS

- 9) The transaction concerns the markets for supply of *fresh meat*, in particular *fresh poultry meat* and of *processed meat*, in particular *processed poultry products*. In the EEA, the Parties' activities indeed overlap in the supply of fresh poultry (and, specifically, chicken) and, to a far lesser extent, in the supply of processed poultry (specifically chicken) products.

#### Supply of fresh meat

- 10) The Commission has previously considered fresh meat to include both fresh and frozen meat which is not processed in any way.<sup>5</sup> In a previous decision the Commission determined that poultry can be distinguished from other varieties of meat (especially pork and beef) since producers often specialise in processing one specific kind of meat, with the result that different producers are active in relation to the several varieties of meat.<sup>6</sup> The question whether the market for poultry (including chicken and turkey) can be subdivided in separate markets for chicken meat, turkey meat, or boneless chicken breast meat was however left open.<sup>7</sup>
- 11) In previous decisions the Commission sub-segmented the markets for sale of fresh meat to (i) retail markets (ii) catering markets; and (iii) industrial processors.<sup>8</sup>
- 12) While Marfrig accepted a general segmentation of meat products on fresh and processed meat as well as between different types of meat, it also argued that a number of elements were common to the production and supply of protein of all species. Marfrig claimed that these considerations were even stronger with respect to

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<sup>4</sup> Marfrig's has calculated its Community-wide turnover on the basis of the location of the port to which the goods were shipped as customers' (distributors) receive their delivery at the port as Marfrig does not know to which country the goods are finally delivered to. However, the proposed transaction would also have a Community dimension based on the location of the customers and thus irrespectively the proposed transaction meets the thresholds of Article 1(3) ECMR.

<sup>5</sup> Case COMP/M.3337 – Best Agrifund/Nordfleisch, decision of 19.03.2004.

<sup>6</sup> Case No IV/M.1262 – Cebeco/Plukon, decision of 24.09.1998.

<sup>7</sup> Case COMP/M. 3476 – Cargill/Seara, decision of 27.09.2004.

<sup>8</sup> Case No COMP/M.3337 – Best Agrifund/Nordfleisch, decision of 19.03.2004; Case COMP/M.3968 – Sovion / Südfleisch, decision of 21.12.2005.

different species of poultry and that it would be inappropriate to subdivide poultry by species type. Marfrig also did not agree that the market for a particular type of fresh meat should be sub-divided according to customer in all cases since, as particular fresh meat, poultry is a commodity product which has identical properties irrespective of the form in which it is supplied to customer.

- 13) For the purpose of the present case, the exact product market definition can however be left open since no competition concerns are likely to arise even under the narrowest possible market definition.

### **Supply of processed meat**

- 14) The Commission has previously 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".<sup>9</sup>
- 15) One can distinguish various types of processed meat products according to the *raw material* used (pork, beef, poultry), the *ingredients* (spices), the *water content*, *heat treatment* (smoked or boiled), *portion*, *packaging* or *temperature* (chilled or canned) as all processed meat products constitute a combination of these seven parameters.
- 16) In later decisions the Commission concluded that there were separate markets for *processed pork products*, *processed beef products* and *processed poultry products*.<sup>10</sup> It has also discussed potential segmentation into several sub-markets for typical meat products, such as raw cured products, canned meat, ready prepared dishes, cooked sausages and pâté and pies.<sup>11</sup> The Commission has left open in its recent decisions whether such a detailed sub-segmentation is adequate.<sup>12</sup>
- 17) For the purpose of the present case, the question whether such a sub-segmentation should be followed can however be left open since no competition concerns are likely to arise even under the narrowest possible market definition. Indeed, the only processed chicken products sold by Marfrig in the EEA are canned chicken ready meals whereas the OSI Group Companies do not sell any ready meals.
- 18) In a previous decision<sup>13</sup> the Commission stated that the markets for processed meat products could potentially be distinguished according to customer type: retailers and caterers. However, the Commission ultimately left open the question of product market definition in that decision.

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<sup>9</sup> Case No IV/M.1313 - Danish Crown/Vestjyske Slagterier, decision of 09.3.1999.

<sup>10</sup> Case No IV/M.2662 - Danish Crown/Steff Houlberg, decision of 14.02.2002.; case No COMP/M.3401- Danish Crown/Flagship Foods, decision of 17.06.2004.; case No COMP/M. 3337 - Best Agrifund/Nordfleisch, decision of 19.03.2004..

<sup>11</sup> Case No COMP/M.3401- Danish Crown/Flagship Foods, decision of 17.06.2004.

<sup>12</sup> Case No COMP/M.3337 - Best Agrifund/Nordfleisch, decision of 19.03.2004; case No COMP/M.3605 - Sovion/HMG, decision of 21.12.2004.; Case No COMP/M.4257 – Smithfield Oaktree / Sara Lee Foods Europe, decision of 28.07.2006.

<sup>13</sup> Case No COMP/M.3401- Danish Crown/Flagship Foods, decision of 17.06.2004.

- 19) For the purpose of the present case, the exact product market definition can however be left open since no competition concerns are likely to arise even under the narrowest possible market definition.

## **2. Relevant geographic markets**

### **Supply of fresh meat**

- 20) 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. By contrast, 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 EEA.<sup>14</sup> However, in a recent case, the issue whether the market for the supply of fresh meat was national or EEA-wide has been left open by the Commission.<sup>15</sup>
- 21) Also 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.

### **Supply of processed meat**

- 22) In a previous case,<sup>16</sup> the Commission found that the geographic market for processed meat was wider than national, but has decided in a later case,<sup>17</sup> that due to the suppliers' ability to price discriminate between different Member States, the definition of national geographic markets 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.<sup>18</sup>
- 23) 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.

## **VI. COMPETITIVE ASSESSMENT**

### **Horizontal overlaps**

- 24) Without prejudice to Marfrig's views on the appropriate definition of the relevant market, Marfrig has provided information on the basis of the narrowest market segments. The transaction gives rise to overlaps on the markets of the supply of fresh

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<sup>14</sup> Case No COMP/M.2662 – Danish Crown/Vestjyske Slagterier, decision of 09.03.1999, Case No COMP/M.3337, Best Agrifund/Nordfleisch, decision of 19.03.2004.

<sup>15</sup> Case No COMP/M.4257 - Smithfield Oaktree / Sara Lee Foods Europe, decision of 28.07.2006.

<sup>16</sup> Case No COMP/M.1313 - Danish Crown/Vestjyske Slagterier, decision of 09.3.1999.

<sup>17</sup> Case No COMP/M.2662 - Danish Crown/Steff Houlberg, decision of 14.02.2002.

<sup>18</sup> Case No COMP/M.4257 - Smithfield Oaktree / Sara Lee Foods Europe, decision of 28.07.2006.

meat and the supply of processed meat (and specifically, in the segment of the supply of fresh and processed chicken as both Parties are only active in chicken in the poultry sector in Europe) in the EEA (and especially in the UK, Germany and in the Netherlands).

- 25) The transaction leads to the following horizontally affected segments: i) the supply of fresh chicken for retailers in the UK and its potential sub-segment of the supply of boneless chicken breast for retailers in the UK and ii) the supply of processed chicken in the UK and especially in its potential sub-segment of the supply of processed chicken for retailers in UK.
- 26) The transaction also gives rise to a possible vertically affected market in the supply of fresh chicken for further processing in the UK.

### **Supply of fresh meat**

- 27) The Parties estimate their combined market share to represent less than [5-10]% on an overall market for all types of meat both at EEA-wide level and at individual Member States level.
- 28) The Parties' combined market share in any alternative product market definition concerning fresh chicken will not exceed 15% on an EEA wide basis either. The only affected market in relation to fresh meat would be in some segments of fresh chicken supply in the UK.
- 29) In particular, on a potential sub-segmentation for the supply of fresh chicken to retailers, the Parties combined market share would be around [10-20]% (with an increment of less than [0-5] % due to Marfrig). An affected market would also arise on a further subdivision of the segment of the supply of fresh chicken to retailers into a sub-segment of the supply of boneless chicken breast to retailers. On such a hypothetical market the Parties' combined market share is around [10-20]% with an increment of less than [0-5]% due to Marfrig.
- 30) There are a number of active competitors supplying fresh chicken to retailers in UK, such as 2 Sisters ([20-30]%), Grampian ([10-20]%), Cargill Meats Europe ([10-20]%) and Faccenda ([10-20]%). On the basis of the above, it is concluded that on a market for fresh meat (irrespective of further segmentation) the proposed transaction would not raise serious doubts as to its compatibility with the common market either on a national or EEA-wide market.

### **Supply of processed meat**

- 31) The Parties estimate their combined market share to be less than [5-10]% of an overall processed meat market if all types of meat are taken into account (i.e. beef, poultry, pork, etc.), both at EEA-wide level and in individual Member States. The Parties' combined market share for any product market definition concerning processed chicken will not exceed 15% at an EEA-wide market. The Parties' will reach combined market shares above 15% only in the UK.
- 32) In particular, the Parties' combined market share in the supply of processed chicken products in the UK would be around [20-30]% (with an increment of [0-5]% due to Marfrig). On a potential sub-segment of the supply of processed chicken products for

retailers the Parties combined market share would be around [30-40]% (with an increment of [0-5]% due to Marfrig).

- 33) The increments due to the transaction on the potential segment of the supply of processed chicken products in the UK are marginal ([0-5]% for each segment). In addition, there are a number of competitors with significant market shares active on the market of the supply of processed chicken products for retailers in the UK (Cargill [20-30]%, 2 Sisters [10-20]%, CP (Thai) [5-10]%, Birds Eye [5-10]% and Sadia [5-10]%).
- 34) Therefore the proposed transaction will not lead to serious doubts as to its compatibility with the common market in a market for processed meat or in any potential sub-segments thereof either on a national or EEA-wide market.

### **Vertical relationships**

- 35) The supply of fresh chicken is upstream to the supply of processed chicken. There is therefore a potential vertical link between the Parties' activities.
- 36) The transaction would only lead to a vertically affected market if the downstream market of processed chicken would be defined narrowly, i.e. as the supply of processed chicken products to retailers. Here the Parties would have in the UK a market share of around [30-40]%.
- 37) The overall market position of the Parties, even on the narrowest market definition, is not indicative of a dominant position and the increment due to the transaction on both the upstream and downstream market is very low ([0-5]%). Furthermore, the upstream product (fresh chicken) is used in all processed chicken products, not only those that are sold to retailers. Therefore, from the perspective of suppliers upstream the market downstream may be wider. On any wider market definition, the Parties' market share would be below 25%.
- 38) Based on the above, competitors in the supply of fresh chicken would still have access to a sufficient customer base and it is unlikely that the Parties would have the ability and the incentive to engage in a customer foreclosure strategy. The transaction would not therefore lead to competition concerns as a result of potential vertical links.
- 39) On the basis of the above it is concluded that the proposed transaction does not give rise to serious doubts as to its compatibility with the common market as regards any vertical relationships.

## **VI. CONCLUSION**

- 40) 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 the Merger Regulation.

For the Commission  
*(Signed)*  
Joaquín ALMUNIA  
Member of the Commission