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*Case No IV/M.557 -
Alfred C. Toepfer /
Champagne Céréales*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 06/04/1995

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EUROPEAN COMMISSION

Brussels, 06.04.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.557 - Alfred C. Toepfer/Champagne Céréales
Notification of 07.03.1995 pursuant to Article 4 of Council Regulation No 4064/89

1. On 7th March 1995 the Commission received a notification of an operation whereby Alfred C. Toepfer International GmbH ("ACTI") will acquire joint control of a malting barley company, Cerecom Cereal Commerce GmbH ("Cerecom"), which has hitherto been solely controlled by Champagne Céréales ("CC").
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE OPERATION

3. The proposed operation consists in the establishment of a joint venture for the trading of malting barley, which is used in the manufacture of beer. ACTI will acquire joint control of a malting barley company, Cerecom, which has hitherto been solely controlled by CC via a holding company "Champagne Céréales GmbH".

II. THE PARTIES

4. ACTI is a German company active in the international trading of agricultural commodities. CC is a French cooperative owned by more than 11,000 farmers and acts as a first buyer of its members' products. CC is also active in the processing of agricultural commodities (flour mills, maltsters, etc.) and in the international grain trade. Cerecom is a Germany company active in the international trading of malting barley. Hitherto Cerecom

has been wholly owned by CC; after the operation CC will continue to hold a 25% stake in Cerecom, and ACTI will hold the remaining 75%.

5. CC has a 36% stake in a French company "Malteurop", which is the largest producer of malt in the EU; given the wide dispersion of small shareholdings in Malteurop, other than that held by CC, it may be assumed that CC controls Malteurop.

III. CONCENTRATIVE JOINT VENTURE

(a) Joint control

6. Despite their disparate shareholdings, ACTI and CC will exercise joint control of Cerecom, via a stipulation in the latter's statute, which requires the unanimous consent of the shareholders to Cerecom's annual budget (including planning of turnover, investments, financing and personnel), and to appointment of management.

(b) Concentration

7. Malting barley is produced by farmers who sell to "first buyers", who in turn sell either to maltsters, whose function is to convert the barley into malt for brewers, or to international traders, which latter undergo price and currency risks with a view to making a profit by selling on to maltsters. First buyers are normally cooperatives, and in the EU about 75% of malting barley is sold by first buyers directly to maltsters, the remaining 25% being sold initially to international traders who sell on to maltsters. The malt produced by maltsters is used primarily for beer production and, to a limited extent, for the production of alcoholic spirits. The product market affected by the proposed operation is the trading of malting barley, particularly at the international level, which is the sector in which the Cerecom joint venture is active.
8. ACTI will continue its operations in the trading of malting barley. However, CC will withdraw from the business of international trading of malting barley. Its withdrawal from trading activities is confirmed by a non-competition clause in the shareholders JV agreement, whereby CC "undertakes for the lifetime of the joint venture to refrain from doing business in the international malting barley trade". This non-competition clause includes the withdrawal by CC from any involvement in the sale of malting barley whether at international or national level.
9. As far as malting barley is concerned, CC is a first buyer; its international trading activities of malting barley have been carried out by its subsidiary Cerecom, and hence their activities will now be transferred to the new Cerecom joint venture. The latter will operate independently on the free market, where it will buy and sell the major part of its malting barley throughput. CC will continue to operate as a first buyer only, as far as malting barley is concerned. In recent years about 75% of its bought-in malting barley has been delivered to the malt-producing company Malteurop (see above), and the remaining 25% has been delivered either to independent companies or, to some extent, to Cerecom. After the proposed operation, it is intended that CC's bought-in malting barley will be used to supply Malteurop, which is effectively controlled by CC. Only in the event that CC should buy amounts surplus to Malteurop's requirements, will CC deliver malting barley to the new Cerecom JV.
10. Therefore, CC will effectively operate, through its own "first-buying" activities, and the activities of Malteurop, as a self-sufficient vertically-integrated producer of malt for sale to

breweries. Thus CC will not operate as an independent trader on the "free" market for malting barley. As far as vertical links between the Cerecom JV and the parents are concerned, it can be excluded that the JV will be a principal supplier or customer of its parents, since CC will be largely self-sufficient and ACTI will continue to be active on the same market as the JV.

11. In view of the above, the Cerecom JV is of a concentrative nature.

IV. COMMUNITY DIMENSION

12. The combined aggregate worldwide turnover of the undertakings concerned is more than ECU 5,000 million; the aggregate Community-wide turnover of each of ACTI and CC is more than ECU 250 million; and no undertaking concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. Therefore the concentration has a community dimension.

V. COMPATIBILITY

13. The product market concerned by the proposed concentration is malting barley. Malting barley is a variety of barley which meets standard quality criteria concerning purity, calibration, moisture and protein content and germination energy, which makes it the key raw material for the production of malt, which in turn is mainly used for the production of beer. Barley production which does not meet the standard quality criteria mentioned above is mainly used for feed purposes (feed barley).
14. The relevant geographic market is the EU. The EU market regulation for grain (MRG) which is part of the Common Agricultural Policy (CAP) applies to barley. The basic characteristic of the MRG is a system of prices, import levies and export restitutions. Malting barley is sold at a premium above feed barley prices. This premium depends in particular on the quality of the crop and the variety being used. For instance, during the past years malting barley prices were between 18 and 45 ECU/ton higher than feed barley prices. In past years EU malting barley production slightly exceeded consumption and the surplus has been exported outside the EU. Imports of malting barley in the EU are considerably restricted by the import levy system. Therefore only a very small percentage of EU consumption has been imported in the past and only extremely unfavourable growing conditions would justify significant higher imports in the future.
15. For the last three years the average yearly production of barley amounted in the EU 12 to 22 million tons. Malting barley accounted on average for about 34% (7.5million tons). Total average yearly consumption of malting barley in the EU during this period amounted to about 7.3 million tons. Net exports (exports less imports) accounted for a yearly average of 200,000 tons. For the same period the average yearly amount of malting barley traded within the EU amounted to 9.5 million tons. This amount is considerably higher than production and consumption figures and takes into account the quantities sold from first buyers to other intermediaries, in particular international traders which are therefore accounted for twice when these intermediaries re-sell these amounts to the final consumer (maltsters).
16. Cerecom is already the largest trader of malting barley in the Community with a 4.1% market share. ACTI's market share is about 1%. Therefore, after the concentration the total market share of ACTI and Cerecom will amount to about 5% as far as free market sales are concerned.

17. If market shares at country level are taken into account, combined market shares of ACTI and Cerecom higher than 10% are reached in only three countries: the Netherlands (12.8%), Greece (33.8%) and Portugal (41.5%). However, in Greece and Portugal there is no addition of market shares since only Cerecom is active in these markets. The high market share of Cerecom in these two countries can be explained by the fact that in both Greece and Portugal total consumption largely exceeds local production, and imports are made by only two large maltsters which prefer suppliers who are able to deliver large quantities.

VI. CONCLUSION

18. In view of the above, the proposed concentration does not raise serious doubts as to its compatibility with the Common Market.

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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 the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,