

***Case No COMP/M.5705 -
MARFRIG
ALIMENTOS/SEARA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/12/2009

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5705 - MARFRIG ALIMENTOS/ SEARA
Notification of 16 November 2009 pursuant to Article 4 of Council
Regulation No 139/2004¹**

1. On 16 November 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "EC Merger Regulation") by which the undertaking Marfrig Alimentos S.A. ("Marfrig", Brazil) acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation control of the whole of the undertaking Seara Alimentos Ltda² and associated companies ("Seara", Brazil) by way of purchase of assets. Marfrig and Seara are jointly referred to as "the parties".

I. THE PARTIES

2. Marfrig produces a diversified range of products in Brazil and internationally focusing on food products, in particular food derived from animal protein. It has industrial plants in South America (Brazil, Argentina, Uruguay and Chile) and Europe³.

¹ OJ L 24, 29.1.2004 p. 1.

² Seara Alimentos Ltda is the new name of Cargill Alimentos S.A. and associated companies after its conversion to a "limitada" as part of the required reorganization prior to closing.

³ In 2008, the Commission in its decision in COMP/M.5322 *Marfrig/OSI Group Companies*, cleared Marfrig's acquisition of certain companies from OSI, including companies in Europe which together formed the Moy Park Group ("Moy Park"), a mainly UK-based business whose activities include the rearing, production and supply of poultry products.

3. Seara (currently belonging to Cargill, Incorporated) is active in the rearing of live chickens and pigs for slaughter and production of primary and processed chicken and pork products in Brazil. It exports chicken products but not pork to Europe. Seara also supplies processed beef products, but these are not exported to Europe. It does not have any production facilities in Europe, only export sales offices.

II. THE OPERATION

4. Pursuant to the Share Purchase Agreement dated 14 September 2009 and a supplementary agreement dated 9 October 2009 entered into by the parties, Marfrig will acquire the assets, liabilities and operations of the Cargill Meats Brazil business unit which includes the shares of Cargill Alimentos S.A. (subsequently converted into Seara Alimentos Ltda) and associated companies⁴, altogether named "Seara".

III. CONCENTRATION

5. The proposed transaction consists in the acquisition by Marfrig of sole control over Seara and associated companies, therefore constituting a concentration in the sense of Article 3(1)(b) of the EC Merger Regulation

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2.5 billion⁵ (Marfrig: EUR 2,320 million; Seara: EUR [...]million). In each of at least three Member States (Germany: EUR [...] million, the Netherlands: [...] million and the UK: EUR [...] million), the combined aggregate turnover of all the undertakings concerned exceeds EUR [...] million. In each of the aforesaid three Member States the aggregated turnover of at least two of the undertakings concerned is more than EUR [...] million (Germany: Marfrig EUR [...] million, Seara: EUR [...] million; the Netherlands: Marfrig EUR [...] million, Seara: EUR [...] million; the UK: Marfrig EUR [...] million, Seara: EUR [...] million). The aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR [...] million (Marfrig: EUR [...] million; Seara: EUR [...] million). None of the undertakings concerned achieves more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension according to Article 1(3) of the EC Merger Regulation.

V. MARKET DEFINITION

RELEVANT PRODUCT MARKET

7. The transaction concerns the markets for supply of primary chicken meat and of processed chicken meat. In the EEA, the parties' activities overlap in the supply of primary and processed chicken products. The supply of primary chicken is upstream to the supply of processed chicken.

⁴ Fully owned by Cargill, Incorporated.

⁵ Turnover calculated in accordance with Article 5(1) of the EC Merger Regulation.

Supply of primary meat

8. In its previous decisions⁶, the Commission has referred to fresh meat as comprising both fresh and frozen meat which has not been processed in any way. However, due to regulatory changes about to enter into force concerning the labelling of previously frozen meat products sold in the EU⁷, the notifying party considers more appropriate to use the term primary meat to encompass both fresh and frozen meat, including meat supplied frozen for transport and then defrosted prior to sale to be consumed as a fresh or chilled product. In this context, a potential further segmentation of the supply of primary meat between fresh and frozen primary meat products seems appropriate.
9. The Commission, while leaving the market definition for the supply of primary meat open, considered additional possible segmentations according to customer type: (i) retailers⁸ (ii) caterers and (iii) industrial processors⁹.
10. Furthermore, by analogy with the product market definition of meat products in general¹⁰ and considering the existence of separate markets for pork products, beef products and poultry products¹¹, primary chicken meat can be considered as encompassing both fresh and frozen chicken meat, including chicken meat supplied frozen for transport and then defrosted prior to sale to be consumed as a fresh or chilled product. The Commission has also left open whether the market for poultry (including chicken and turkey) is to be subdivided in separate markets for chicken meat, turkey meat, or boneless chicken breast meat.¹²
11. The responses to the market investigation converged towards the limited substitutability between fresh and frozen primary chicken. Moreover, answers from retailers suggest that final consumers are sensitive regarding the country of origin when buying fresh chicken products, which is not always the case with caterers or industrial processors.
12. However, for the purpose of this decision the exact product market definition can be left open since no serious doubts are likely to arise even under the narrowest possible market definition.

⁶ See COMP/M.5322 Marfrig/OSI Group Companies; COMP/M.3337 Best Agrifund/ Nordfleisch.

⁷ See Council Regulation (EC) No 1047/2009 of 19 October 2009 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets as regards the marketing standards for poultrymeat, OJ L 290, p.1; Commission Regulation (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat, OJ L 157, p.46.

⁸ See COMP/M.5204 Vion/Grampian.

⁹ See COMP/M.3337 Best Agrifund/Nordfleisch, M COMP/M.3968 Sovion/ Südfleisch.

¹⁰ See IV/M.1313 Danish Crown/Vestjyske Slagterier.

¹¹ See COMP/M.5322 Marfrig/OSI Group Companies; No IV/M.1262 Cebeco/Plukon;

¹² See COMP/M.3476 Cargill/Seara.

Supply of processed meat

13. As to the supply of processed meat, in its previous decisions¹³, the Commission has considered that it comprises meat from mammals or birds combined with external ingredients such as salt or spices and which can be raw, dried, smoked or cooked. In later decisions, the Commission considered that there are distinct product markets for processed pork, processed beef and processed poultry.¹⁴ 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, finally leaving the segmentation open¹⁵.
14. The Commission in its previous decisions¹⁶ has further considered possible sub-segmentation of the supply of processed meat according to customer type: (i) retailers and (ii) caterers, a segmentation which is sustained by results in the market investigation.
15. However, for the purpose of this decision the exact product market definition can be left open since no serious doubts are likely to arise even under the narrowest possible market definition.

RELEVANT GEOGRAPHIC MARKET

Supply of primary meat

16. The Commission has, in its previous decisions, considered the market for supply of primary meat to retailers to be national or possibly EEA-wide in scope, while leaving it finally open¹⁷. The notifying party submits that the market is EEA-wide in scope due to the significant trade flows, in particular for certain market segments linked to caterers and industrial processors.
17. For the purpose of this case, the geographic market definition can be left open as, even under the narrower possible market definition, the concentration does not give rise to serious doubts.

Supply of processed meat

18. As to the supply of processed meat products, the parties submit that the market is EEA-wide. While leaving the geographic market definition open, the previous Commission decisions give a somewhat mixed picture, with arguments both in favour and against wider than national markets¹⁸.

¹³ See IV/M.1313 Danish Crown/Vestjyske Slagterier.

¹⁴ See COMP/M.2662 Danish Crown/Steff Houlberg; COMP/M.3401- Danish Crown/Flagship Foods; COMP/M. 3337 – Best Agrifund/Nordfleisch.

¹⁵ See COMP/M.5322 Marfrig/OSI Group Companies.

¹⁶ See COMP/M.3401 Danish Crown/Flagship Foods.

¹⁷ See COMP/M.5322 Marfrig/OSI Group Companies and COMP/M.4257 Smithfield/Oaktree/Sara Lee Foods Europe.

¹⁸ See COMP/M.5410 Forfarmers/Cefetra; COMP/M.3337 Best Agrifund/Nordfleisch.

19. For the purpose of this case, the geographic market definition can be left open as even under the narrower possible market definition, the concentration does not give rise to serious doubts.

VI. COMPETITIVE ASSESSMENT

QUOTAS ON IMPORTS FROM OUTSIDE THE EEA

20. The EU is a significant importer of chicken. Quotas apply on imports of chicken to the EU from certain countries, such as processed chicken from Thailand (currently subject to a 160 kilo tons quota), primary chicken from Brazil (currently subject to a 170 kilo tons quota) and processed chicken from Brazil (currently subject to a 79 kilo tons quota). The quota system is primarily ruled by Regulation 616/2007¹⁹ governing imports from Brazil and Thailand, the remainder being imported from other third countries²⁰.
21. According to the parties, the quota system does have some effect on trade in the sense it may limit, to some extent, the amount of chicken products imported to the EU, to the benefit of European producers. However, in the view of the parties, chicken meat is a commodity which is produced and sourced globally. Substitutability of chicken meat from the demand side does not depend on production location or on whether it is imported within a quota system. In this respect, although much of the demand of boneless chicken breast meat is satisfied by European producers, given the high existing demand, the EU is a net importer of boneless chicken breast meat in particular coming salted from Brazil.

HORIZONTAL EFFECTS

22. Notwithstanding its own view on the appropriate definition of the relevant market for poultry meat, the notifying party has provided information on the basis of the narrowest market segmentation. On an EEA-wide basis, the transaction leads to limited horizontal overlaps. The combined market share of the parties would not exceed 10% under any possible market segmentation. The combined share of supply for primary chicken will be only [0-5]% and for processed chicken [0-5]%. Even on the potential narrower market definitions considered, the highest combined market share would still only be [5-10]% in the segment of boneless chicken breast meat for further processing.
23. On a national basis, the transaction leads to horizontally affected markets in the UK and in the Netherlands. Specifically, the transaction leads to affected markets in relation to: i) supply of boneless chicken breast meat for further processing in the Netherlands where the parties' combined market share would be [10-20]% (with an increment of less than [0-5]% due to Marfrig); ii) supply of primary chicken for retail in the UK where the

¹⁹ Commission Regulation (EC) No 616/2007 of 4 June 2007 opening and providing for the administration of Community tariff quotas in the sector of Poultry meat originating in Brazil, Thailand and other third countries. OJ L 142, p.3.

²⁰ Country-specific Community Regulations are also applicable governing imports from particular third countries, such as, for example, Chile.

parties' combined market share would be [10-20]% (with no increment due to Seara); iii) supply of boneless chicken breast meat for retail in the UK where the parties' combined market share would be [10-20]% (with no increment due to Seara); iv) supply of processed chicken in the UK where the parties' combined market share would be [10-20]% (with an increment of less than [0-5]% due to Seara) and v) supply of processed chicken for retail where the parties' combined market share would be [10-20]% (with an increment of less than [0-5]% due to Seara).

24. The parties submit that the possible horizontal overlaps in the Netherlands and in the UK would not lead to any material effects on competition in the chicken meat markets for a number of reasons. Firstly, in all potentially affected markets the parties' combined share of supply would remain under 25%. Secondly, the transaction will lead either to no increment or to a low increment (less than [0-5]%) under any of the alternative product market definitions considered. Thirdly, the merged entity would continue to face significant competition from other major global companies²¹ and from a number of local competitors²².
25. The market investigation has broadly confirmed the market shares of the parties and its main competitors. It has provided indications that there will still remain significant competition post-transaction both in the UK and the Netherlands and confirmed the rather limited combined shares of the parties in the primary and processed chicken meat markets or in any potential specific submarket within them. There are also indications that new legislation entering into force will favour the entry of competitors from third countries, such as Ukraine. Furthermore, the replies received support considering separate product markets between fresh and frozen primary chicken meat due to the limited substitutability between them.
26. On the basis of this information, the Commission finds that the notified concentration does not raise serious doubts as to its compatibility with the internal market.

VII. CONCLUSION

27. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the internal 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

²¹ BRF Brasil Foods (former Perdigão) and Frangosul (part of the Groupe Doux) in Brazil, Saha Farms Group and CP in Thailand.

²² Vion Food Group ([20-30]% market share), Two Sisters group ([20-30]%), Faccenda ([10-20]%), Cargill Meats Europe ([5-10]%), O'Kane Poultry ([0-5]%) in the United Kingdom and Plukon Royale Group ([30-40]%), Storteboom ([20-30]%), Heijs Group ([5-10]%), Esbro ([5-10]%) and Van den Bor ([5-10]%) in the Netherlands. All market shares referred herein to are based on supply of primary chicken meat in volume in 2008.