

EN

***Case No COMP/M.6285 -
SARIA / DANISH
CROWN / DAKA JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/06/2012

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EUROPEAN COMMISSION

Brussels, 29.6.2012
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.6285 - SARIA / Danish Crown / Daka JV
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 24 May 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which SARIA Bio-Industries AG & Co. KG ("SARIA", Germany), controlled by the Rethmann group (Germany), indirectly via its subsidiary SARIA Bio-Industries Denmark ApS ("SARIA Denmark", Denmark), and Danish Crown A/S ("Danish Crown", Denmark) acquire joint control within the meaning of Article 3(1)(b) of the Merger Regulation of the undertaking Daka Denmark A/S ("Daka", Denmark), a newly incorporated company to which the co-operative DAKA a.m.b.a ("Old Daka", Denmark) will transfer its current business.² SARIA and Danish Crown are designated hereinafter as the "Notifying Parties" or "Parties".

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² Publication in the Official Journal of the European Union No C 158, 5.6.2012, p. 23.

I. THE PARTIES

2. SARIA is an international manufacturer of products for human consumption, animal nutrition, agriculture and industrial applications using animal by-products for the production of proteins and fats.
3. Danish Crown is a vertically integrated European meat group owning slaughterhouses for pigs and cattle as well as meat processing and trading activities.
4. Daka will be present in animal rendering (abattoir by-products) and manufacture of different products for human and animal consumption, the fertilizer industry, and biodiesel. Daka will continue the business of Old Daka, a Danish co-operative of which the share capital is held by a number of companies including Danish Crown, Tican Fresh Meat S/A (“Tican”) and Scan A/B (“Scan”).

II. THE OPERATION

5. Under the proposed transaction, Old Daka will transfer its business to a new shell company, Daka, and cease to exist. SARIA will hold 51% of Daka's share capital. The remaining 49% of Daka's shares will be held by Danish Crown (42.9%), Tican (2.8%), Scan (2.7%), and Slagteriet Brørup A/S (0.6%). As discussed below, however, only SARIA and Danish Crown will exercise joint control over Daka.
6. According to a draft Shareholders' Agreement signed by SARIA, Danish Crown and Tican, resolutions regarding certain reserved matters require a 2/3 majority of the votes in Daka's general shareholder meeting in order to be adopted. As a result, the adoption of these resolutions requires the consent of both SARIA and Danish Crown, but not of any other shareholder in Daka.
7. These reserved matters include decisions on Daka's investments above DKK [...] million (currently EUR [...] million). Such investments were commonplace for Old Daka in the past five years and are most likely to be so in the future. A number of capital-intensive projects for Daka are in the pipeline and it is SARIA's intention to use Daka as a general hub for further expansion in the Scandinavian and Baltic regions. SARIA will therefore necessarily require support from Danish Crown in order to implement these plans.
8. In addition, matters requiring Danish Crown's consent include any significant expansion or reduction of Daka's business and any change to the group's business strategy that alters the business model compared to Old Daka's and SARIA's present businesses.
9. These strategic veto rights go beyond ordinary minority shareholder protection and hence lead to joint control as defined in the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.³

³ OJ C 95, 16.4.2008, paragraphs 62 and 67-68. See also Case IV/M.010 – Conagra / Idea, paragraphs 10-15.

10. In view of the above, the proposed concentration results in the acquisition of joint control by SARIA and Danish Crown of Daka within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million [SARIA: EUR 9 099 million, Danish Crown: EUR 6 945 million, Daka: EUR 130 million]. The aggregate Community wide turnover of at least two of the undertakings concerned is more than EUR 250 million [SARIA: EUR [...] million; Danish Crown: EUR [...] million] but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

12. The proposed transaction concerns the markets for the sourcing, processing and sale of different animal by-products and the markets for the purchase of live pigs and cattle for slaughter.

A. Relevant product market definition

A.1. Collection and processing/supply of animal by-products

13. Animal by-products include all products other than meat rendered from the slaughter of animals or from fallen stock, including offal, hides and skins, blood, bones, hair and meat pieces.
14. The Parties claim in line with previous Commission decisions that the markets for animal by-products should be broadly categorised into: (i) animal by-products that can be further processed for human consumption⁴ and (ii) animal by-products only fit for other uses.⁵
15. Products not fit for human consumption can be further broadly segmented according to the risk level of the materials and corresponding EU legislation⁶ into (i) category 1 and 2 (high-risk) materials and (ii) category 3 (low-risk) materials.⁷

⁴ As none of these markets is affected, they will not be further discussed in this Decision.

⁵ COMP/M.3968 - Sovion / Südfleisch, paragraph 84.

⁶ Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation), OJ L 300, 14.11.2009, p. 1, paragraphs 8-10.

⁷ IV/M.1313 - Danish Crown / Vestjyske Slagterier, paragraph 48; COMP/M.3175 – Best Agrifund / Dumeco, paragraph 15; COMP/M.3337 – Best Agrifund / Nordfleisch, paragraphs 75 and 149; COMP/M.3605 - Sovion / HMG, paragraph 122; COMP/M.3968 – Sovion / Südfleisch, paragraph 85.

A.1.i. Differentiation between collection and processing/supply

16. In line with previous Commission decisions concerning category 3 materials⁸, the Parties distinguish between: (a) the upstream markets for (i) the sourcing of category 1 and 2 animal by-products and (ii) the sourcing of category 3 animal by-products;⁹ and (b) the downstream markets for processed animal by-products, which could be further differentiated according to different products. These output markets would include¹⁰ (i) a market for the sale of category 1 and 2 meal,¹¹ (ii) a market for the sale of category 1 and 2 fats,¹² (iii) a market for the sale of category 3 fat¹³ and (iv) a market for the sale of category 3 processed animal proteins or “PAP”¹⁴.
17. In previous decisions, the Commission has repeatedly considered a further segmentation of the downstream markets for processed animal by-products,¹⁵ but has only confirmed the existence of a separate market for fats, with a possible further distinction between category 3 and food grade fats.¹⁶
18. The Commission's market investigation broadly confirmed a distinction between the markets for the collection of animal by-products and the downstream market for the sale of processed animal by-products. Replies from respondents to the Commission's requests for information show that after collection from the slaughterhouses, all rendering companies process even the lower value category 1 and 2 products by splitting them into fats and meals. Unlike in the past, energy-intensive industries such as cement and electricity plants are today willing to pay for category 1 and 2 meals instead of demanding a charge for their disposal. The same is true, *mutatis mutandis*, for the higher valued category 3 animal by-products.

⁸ COMP/M.3337 – Best Agrifund / Nordfleisch, paragraphs 149, 154. Note, however, that in the recent decision in COMP/M.6438 – SARIA / Teeuwissen / Jagero II / Quintet / Bioiberica, paragraph 45, the Commission did not explicitly adopt that segmentation but rather differentiated between a number of product markets within category 3 by-products, notably ingredients for dry and for wet pet food.

⁹ Sourcing refers to the collection of raw materials at slaughterhouses and farms.

¹⁰ Regarding category 3 animal by-products the Parties also seek to establish a number of other downstream markets, especially regarding blood products. However, as these do not constitute affected markets, they will not be further assessed in this decision.

¹¹ Meal is a dry, powdery product from crushed and processed animal by-products. It is mostly used for animal and pet food production, fertilizer production, and as substitute fuel in energy intensive industries such as concrete plants.

¹² Fats are used for animal and pet food production, in the oil-chemical industry, as substitute fuels, and increasingly for the production of bio-diesel.

¹³ Category 3 fats are to a considerable extent used for the same purposes as category 1 and 2 fats but due to their lower risk level they are subject to different regulations.

¹⁴ Category 3 PAP are proteins processed from category 3 animal by-products. They are mainly used for animal and pet food production and in the fertilizer industry.

¹⁵ Cases COMP/M.3337 – Best Agrifund / Nordfleisch, paragraphs 98-107; 115-117 and 123 seq.; COMP/M.3175 – Best Agrifund / Dumeco, paragraphs 23, 24; COMP/M.3605 – Sovion / HMG, paragraphs 143 and 144; COMP/M.5935 – Vion / Weyl, paragraphs 75-76, 82-83.

¹⁶ Cases COMP/M.3337 – Best Agrifund / Nordfleisch, paragraph 144; COMP/M.5935 – Vion / Weyl, paragraph 79.

19. This clearly indicates that rendering companies add value to the collected products by further processing them. Hence, the collection of raw material and the sale of the processed product must be regarded as two different activities and therefore constitute separate markets.

A.1.ii. Collection of animal by-products

20. As regards the collection of animal by-products, the Parties submit in line with previous Commission decisions that these markets should be segmented, like the whole non-food grade animal by-product sector, between high-risk and low-risk products.¹⁷ As a result, different markets for the collection of category 1 and 2 animal by-products on the one hand and for the collection of category 3 animal by-products on the other hand should be identified. In the Parties' view, this differentiation reflects the difference between highly regulated category 1 and 2 materials and less regulated category 3 material.
21. The Parties reject, however, the differentiation between the sourcing of category 3 fats and the sourcing of other category 3 materials that was considered by the Commission in *Best Agrifund / Nordfleisch* and *Vion / Weyl*.¹⁸ They submit that such a differentiation would not reflect market reality since renderers generally buy all these materials together and only then further process them.
22. The market investigation in the present case has suggested that a basic difference does indeed exist between category 1 and 2 raw materials on the one hand and category 3 raw material on the other hand.
23. The Commission found that slaughterhouses receive a payment for the supply of the high-valued category 3 raw animal by-products. By contrast, the collection of low-value category 1 and 2 raw animal by-products is essentially a service for slaughterhouses. Therefore, rendering companies request a payment from slaughterhouses for the collection of these products. Slaughterhouses are at the same time obliged to ensure the correct disposal of these products under Article 4 of the Animal by-products Regulation and national health and hygiene obligations adopted in accordance with that Regulation.
24. The Commission also found some indications that a further differentiation could be drawn between category 1 and category 2 animal by-products as the former are of higher risk level than the latter.¹⁹ Furthermore, while category 1 animal by-products are almost exclusively derived from the slaughter of cattle, category 2 animal by-products are mainly derived from pigs.
25. By contrast, no respondent to the Commission's request for information in the present case proposed a differentiation between the collection of category 3 fats and other

¹⁷ Cases COMP/M.3175 – Best Agrifund / Dumeco, paragraph 15; COMP/M.3337 – Best Agrifund / Nordfleisch, paragraph 144.

¹⁸ Cases COMP/M.3337 – Best Agrifund / Nordfleisch, paragraph 144-145; COMP/M. 5935 – Vion / Weyl, paragraph 79.

¹⁹ See also Articles 8-9 of the Animal by-products Regulation.

category 3 materials. All of them agreed with the notion that category 3 fats already represent a first stage of processing, which is downstream from the collection of raw category 3 animal by-products.

26. In view of the above, it appears that a differentiation can be made at least between the collection of category 1 and 2 animal by-products on the one hand and the collection of category 3 animal by-products on the other hand. In any event, the precise product market definition can ultimately be left open as no competitive concerns arise even under the narrowest market definition.

A.1.iii. Processing and supply of animal by-products

A.1.iii.a Processing and supply of category 1 and 2 animal by-products

27. The Parties submit that the markets for the processing and supply of animal by-products derived from category 1 and 2 raw material can be further segmented into markets for (i) category 1 and 2 meals and (ii) category 1 and 2 fats.²⁰
28. The Parties further submit that category 1 and 2 animal by-products are generally not processed into any other type of product, also due to legal restrictions. Moreover, they submit that no differentiation between category 1 and category 2 processed products should be made. The Parties argue that most renderers process category 1 and 2 materials together, thereby essentially downgrading the material as a whole to category 1 material. According to the Parties, this shows that the market essentially treats these products as the same.
29. The Parties also submit that, category 1 and 2 meals are mainly used as substitute fuels for incineration purposes, a purpose for which they can, according to the Parties, be seen as substitutable with other fuels, or, in the case of separated category 2 meals,²¹ for fertilizer production, where they are, again according to the Parties, substitutable with other fertilizer raw materials.
30. The market investigation in the present case confirmed that category 1 and 2 animal meals used as substitute fuels could be replaced by conventional fuels such as coal in most instances. Moreover, customers also confirmed that prices for animal meals are linked to that of other substitute fuels and fossil fuels with prices mainly depending on the calorific value and the CO₂ emissions of the products concerned. This would suggest that the relevant product market is broader than category 1 and 2 meals for combustion.
31. Contrary to the Parties' submission, the market investigation provided also some indication that a differentiation between category 1 and category 2 meals may be appropriate, as category 2 meal can be used for certain purposes, especially fertilizer production, for which category 1 meal cannot be used. This is corroborated by Articles

²⁰ Category 1 and 2 fats will, however, not be further discussed in this decision as they do not constitute an affected market.

²¹ Despite this, the Parties maintain that no need for a differentiation between category 1 and 2 meals arises since separated category 2 meals only constitutes a small niche within the meals market.

13 and 14 of the Animal by-products Regulation which allow the use of category 2 but not of category 1 animal by-products for the production of organic fertilizer.

32. However, apart from this potential segmentation between category 1 and 2 meal, a further sub-segmentation according to the use of the meals does not seem appropriate.²² Most market participants observed direct competition between customers using category 1 and 2 meals for different purposes as long as a certain type of meal could legally be used for that application.²³
33. In any event, the precise product market definition can ultimately be left open as no competitive concerns arise even under the narrowest market definition.

A.1.iii.b Processing and supply of category 3 animal by-products

34. With respect to category 3 products, the Parties submit that a number of different product markets could be identified, but that the only two relevant for the present case are those for fats and processed proteins (PAP). The Parties submit that these markets are clearly separated because of the different nutritional value of fats and proteins. They argue, however, that both these markets should not be limited to animal by-products but also include vegetable fats and vegetable proteins respectively since animal and vegetable products could be used for the same applications.
35. The results of the market investigation do not fully support the Parties' view that the supply of category 3 fats and PAP should not be seen as separate markets but rather as sub-segments of the broader markets for fats and proteins respectively, both also including vegetable substitutes.
36. Regarding category 3 PAP, a majority of customers confirmed that they could be substituted with other products for the production of fertilizer. However, only a minority shared this view for the production of animal feed and pet food. Here, a majority of respondents were of the opinion that animal proteins could be substituted with vegetable proteins only to a certain degree as carnivores and omnivores require a certain amount of meat in their nutrition.
37. As for category 3 fats, a majority of market participants considers that these products cannot be fully replaced by substitutes, e.g. vegetable fats in pet food and animal feed

²² Especially regarding the use for fur animal feed production it should be noted that according to Articles 12(f), 13(i) and 36(a)(ii) of the Animal by-products Regulation both category 1 and category 2 animal by-products can be used for this purpose under certain conditions.

²³ As regards to the possibility to include in the market also certain fertilizers, it appears that in general animal meal can be replaced by other products, mainly chemical components. Regarding organic fertilizers, the choice of replacements is more limited but publicly available data showed that alternatives such as manure based and plant based fertilizing techniques exist (http://en.wikipedia.org/wiki/Organic_fertilizer). Hence, there is some indication that if a separate market for category 2 meals was considered, it would have to include other fertilizer raw materials containing the same nutrients. This question is made more complex by the fact that in some countries such as Denmark category 2 meal exclusively derived from animal by-products collected in slaughterhouses can according to the Parties be used for animal feed production, e.g. for minks, so that again the question arises in how far other products could be regarded as substitutes. In any event, it is not necessary to conclude on this matter as no competition concerns would arise even under the narrowest definition.

for the same reasons as category 3 fat. By contrast, for oleo-chemical production switching to vegetable fats was largely considered as an alternative and for bio-diesel views were mixed with most market participants stating that animal fats could in principle be replaced by other fats but that switching was not easy.

38. In any event, the precise product market definition can ultimately be left open as no competitive concerns arise even under the narrowest market definition.

A.2. Purchasing of live animals for slaughter and slaughter activities

39. In line with previous Commission decisions, the Parties define markets for (i) the purchase of live pigs for slaughter and (ii) for the purchase of live cattle for slaughter.²⁴ These markets can be considered as upstream to the markets for category 1, 2 and 3 animal by-products. In addition to this distinction, the Commission has also considered a possible further segmentation between the purchase of sows and slaughter pigs as well as between adult cattle and calves,²⁵ though the Parties do not consider this further segmentation to be appropriate as it would not reflect market reality.²⁶
40. In the present case, the product market definition with respect to the purchase of pigs and cattle for slaughter can ultimately be left open because it would not affect the competitive assessment.

B. Geographic market definition

B.1. Collection and processing/supply of animal by-products

B.1.i. Collection of animal by-products

41. The Parties support the Commission's previous finding that the markets for the collection of category 1, 2 and 3 animal by-products can be viewed as national in scope due to export restrictions and transport costs. In any event, in previous decisions the Commission has always left the market definition open.²⁷

²⁴ COMP/M. 1313 – Danish Crown / Vestjyske Slagterier, paragraphs 20-21; COMP/M.3337 – Best Agrifund / Nordfleisch, paragraphs 8, 17; COMP/M.3535 – Van Drie / Schils, paragraphs 14 seq.; COMP/M.3605 – SOVION/HMG, paragraphs 9-16.

²⁵ COMP/M.2662 – Danish Crown / Steff-Houlberg, paragraph 15; COMP/M.1313 – Danish Crown / Vestjyske Slagterier, paragraphs 22-42; COMP/M.5204 – Vion / Grampian, paragraphs 9-10; COMP/M.3401 – Danish Crown / Flagship Foods, paragraphs 8-9; COMP/M.3337 – Best Agrifund / Nordfleisch, paragraphs 23-24; COMP/M.3605 – SOVION/HMG, paragraphs 55-57, 67, 71-72; COMP/M.3968 – Sovion / Südfleisch, paragraphs 61-62; COMP/M.5935 – Vion / Weyl, paragraphs 36-37, paragraphs 57-58; COMP/M.5933 – Marfrig / Keystone, paragraphs 20-26; COMP/M.5705 – Marfrig Alimentos / Seara, paragraphs 8- 12.

²⁶ According to the Parties, this is mainly due to the fact that both from the perspective of the slaughterhouses and from the perspective of the downstream market customers, live sows and live pigs and meat from both are substitutes. It is also possible to use the same slaughter line for pigs and sows. This also applies with respect to calves and cattle. In addition, as to live pigs, both sow and slaughter pig meat are used as fresh pork and are suitable for the production of pork sausages.

²⁷ COMP/M.3337 – Best Agrifund / Nordfleisch, paragraph 69, COMP/M.3175 – Best Agrifund / Dumeco, paragraphs 25, 152-153 COMP/M.3337 – Best Agrifund / Nordfleisch , paragraphs 76-77,

42. As regards category 1 and 2 animal by-products, market participants generally only source these raw materials in the Member State where they are located. This is mainly caused by the restrictions imposed on cross-border trade of these materials under Article 48 of the Animal by-products Regulation.
43. However, the Commission found in its market investigation certain indications that markets for the collection of animal by-products could be broader than national. Firstly, the majority of respondents to the Commission's requests for information stated that although applying for and obtaining a permission to export category 1 and 2 animal by-products can be very cumbersome, especially for small companies, it is certainly not impossible. Likewise, the Parties confirmed that a subsidiary of Daka and also some Swedish companies export category 1 and 2 animal by-products from Sweden to Denmark and Germany, while Vion, a competitor of Old Daka, collects these products in Denmark while processing them in Germany.
44. With regard to category 3 products, a number of market participants confirmed that cross-border sales are relatively frequent. Likewise, some rendering companies consider players active in different Member States as actual or potential competitors.
45. For the purposes of the competitive assessment in this case, it appears that category 3 animal by-products cross-border trade is generally limited to a region encompassing the agricultural centres of Northern Germany, the Netherlands, Poland and Denmark, and possibly also Sweden, not least due to time restrictions for the processing of raw materials and the impact of transport costs on the product price. At the very least, almost all market participants regularly referred to Denmark, the Netherlands and Germany as the three countries between which category 3 products are quite regularly traded.²⁸
46. In any event, the question as to the scope of the geographic market for the collection of animal by-products can ultimately be left open since serious doubts would not arise under any alternative.

B.1.ii. Processing and supply of animal by-products

47. The Parties argue that all the markets for the processing and supply of animal by-products are in all cases at least EU-wide in scope. According to the Parties, there are no barriers to trade and cross-border trade within the EU is significant.
48. The Commission has found in previous cases that the markets for supply of processed category 1 and 2 animal by-products could be potentially national in scope.²⁹ As

152-153; COMP/M.3605 – Sovion / HMG, paragraph 124; COMP/M.5935 – Vion / Weyl, paragraph 80; COMP/M.6438 – SARIA / Teeuwissen / Jagero II / Quintet / Bioiberica, paragraph 45.

²⁸ This could potentially be due to Denmark's geographic proximity and the close relations between the agricultural and food industry in these Member States. For other, larger Member States such as Spain and France the Commission found indications in the replies of market participants that these markets may be national in scope. In any event, no conclusion can be reached in this respect as these markets were not examined in detail.

²⁹ COMP.M.3337 – Best Agrifund / Nordfleisch, paragraph 69, COMP/M.3175 – Best Agrifund / Dumeco, paragraphs 25, 152-153 COMP/M.3337 – Best Agrifund / Nordfleisch, paragraphs 76-77, 152-153; COMP/M.3605 – Sovion / HMG, paragraph 124; COMP/M.5935 – Vion / Weyl, paragraph

regards processed category 3 products, the Commission left open the market definition.³⁰ Only for blood products such as dried haemoglobin and plasma has the market been defined as EU-wide.³¹

49. With regard to category 1 and 2 meals, most respondents to the Commission investigation stated that they only sell or buy these products in their own Member State. These respondents point to the impact of transport costs on the final price of these meals. Whilst national borders are possibly not an absolute barrier, the maximum transport distance from a processing plant is a very important factor. This market is therefore likely to be national or regional at most in scope.
50. Regarding the supply of processed category 3 products in Denmark, at least half of the market participants for PAP and two thirds of market participants for fats in Denmark confirmed that they source these products outside Denmark. Unlike for meals, the impact of transport costs on the final price is more limited and was estimated by market participants to amount to 5-10% of the final purchase price for PAP and 5-10% or less for fats, with only a slight increase through cross-border trade.
51. The market investigation also showed that imports largely came from Germany. To a lesser extent, imports also came from the Netherlands and to a minor degree from Poland. This would suggest that the market appears to be regional, and in particular limited to certain Northern European Member States. At the very least, this market would appear to include Germany as well.³²
52. This said, the question as to the scope of the geographic market for the supply of processed animal by-products can ultimately be left open as serious doubts would not arise even under the narrowest plausible market definition. However, it appears at the same time reasonable to exclude the existence of an EEA-wide market for category 1 and 2 products and a Danish market for category 3 products.

B.2 Purchase of live animals for slaughter

53. The Commission has considered the geographic scope of the markets for the purchase of live animals for slaughter from national/regional³³ to EU-wide³⁴. The Commission however has ultimately left the market definition open.

80. Specifically for blood also: COMP/M.3337 – Best Agrifund / Nordfleisch, paragraphs 95-96; COMP/M.3605 – SOVION/HMG, paragraphs 138-139; COMP/M.5935 – Vion / Weyl, paragraph 7.

30 COMP/M.3337 – Best Agrifund / Nordfleisch, paragraphs 154-155.

31 COMP/M.3337 – Best Agrifund / Nordfleisch, paragraph 108. The same was considered for the purchase of hides and skins but ultimately left open in COMP/M.3605 – Sovion / HMG , paragraph 148.and in COMP/M.3337 – Best Agrifund / Nordfleisch , paragraph 134.

32 This could potentially be due to Denmark's geographic proximity and the close relations between the agricultural and food industry in these Member States. For other, larger Member States such as Spain and France, the Commission found indications in the replies of market participants that these markets may be national in scope. In any event, no conclusion can be reached in this respect as these markets were not examined in detail.

33 COMP/M. 1313 – Danish Crown / Vestjyske Slagterier, paragraphs 50-65, 66-74; COMP/M.2662 – Danish Crown / Steff-Houlberg, paragraphs 22-31; COMP/M.5935 – Vion / Weyl, paragraphs 12-19.

54. The Parties submit that the upstream markets for the purchase of live pigs and cattle for slaughter are likely to be at least regional (i.e. larger than national) if not EEA-wide in scope.
55. Publicly available market data corroborates the Parties' submission in so far as it proves that a considerable number of pigs are exported from Denmark for slaughter.³⁵ Price data collected by the European Commission also shows that while pig prices are not exactly even across the European Union, movements e.g. between Germany and Denmark are largely parallel.³⁶ Hence, again the markets at least in the case of Denmark should possibly include neighbouring member states such as Germany and the Netherlands.³⁷
56. In any event, the question as to the scope of the geographic market for the purchase of live pigs and cattle for slaughter can ultimately be left open as serious doubts would not arise even under the narrowest definition.

C. Competitive Assessment

C.1 Horizontally affected markets

C.1.i. Supply of category 2 meals in Germany

57. As regards the processing and sale of category 1 and 2 meals,³⁸ the transaction would only give rise to an affected market if category 2 meals were considered to form a separate relevant product market. Under this scenario, the transaction would only give rise to an affected market in Germany.³⁹
58. On a potential German market for category 2 meals, Daka's and Saria's combined 2011 market shares by volume would amount to [30-40]% (with an increment of [0-5]%). Danish Crown is not active in this market. Remaining competitors are Ztn Neckar-

³⁴ COMP/M.3337 – Best Agrifund / Nordfleisch , paragraphs 9-12, 18-21.

³⁵ See the statistics by Danish trade organization Danish Agriculture and Food Council (<http://www.agricultureandfood.co.uk/Statistics/~media/agricultureandfood-co-uk/Statistics/2010/Pig%20Meat%20Statistics%202010.ashx>)

³⁶ Cf. statistic under <http://ec.europa.eu/agriculture/markets/pig/porcs.pdf>.

³⁷ This could potentially be due to Denmark's geographic proximity and the close relations between the agricultural and food industry in these Member States. For other, larger Member States the result could be different.

³⁸ By contrast, sourcing of these products is not an affected market since there are no overlaps between the Parties in these markets. Sourcing markets have been considered as national in scope by the Commission in its previous case practice, a notion with which the Parties agree and which is further corroborated by the legal provisions governing the collection of category 1 and 2 raw materials and their limited transportability. The Parties are not sourcing these materials in the same Member States.

³⁹ Should the market for category 2 meals be considered as EEA-wide in scope, the combined market share of Daka and SARIA would amount to [60-70]%. However, there is hardly any significant geographic overlap between the Parties' activities in Member States other than Germany. As stressed in paragraph 49 above, customers mostly source on a national basis and transport costs are relatively high. Thus, it is highly unlikely that the proposed transaction will result in any impact on competition with regard to this market at EEA level.

Franken ([20-30] market share), Tierkörperbeseitigungsanstalt Ribenich ([5-10]%) and others ([30-40]%).

59. Customers replying to the Commission's requests for information did not express concerns as regards the effects of the transaction with regard to the market for the supply of category 2 meals. Only two competitors stated that in general the higher share of the merged entity in the German meal markets could allow it to influence prices. However, it can be concluded that the competitive pressure from existing players, as well as the low increment deriving from the transaction, make it highly unlikely that the combined entity will be able to unilaterally influence prices in this market.
60. As a result of the above, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the German market for the supply of category 2 meals.

C.1.ii. Supply of category 3 fats in Denmark and Germany

61. A further potentially affected market arises with regard to the supply of category 3 fats in a potential market comprising Denmark and Germany. In this market, the Parties' combined market share would only amount to [10-20]%.⁴⁰ Thus, the market position of the merged entity would not be sufficiently strong to cause competition concerns.
62. As a result of the above, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on a potential market for the supply of category 3 fats comprising Denmark and Germany.

C.1.iii Supply of category 3 processed animal proteins (PAP) in Denmark and Germany

63. The proposed transaction would also give rise to a potential horizontal overlap (although not to an affected market) with regard to the supply of category 3 PAP in Denmark and Germany. In this market, the Parties' and Daka's combined market share would only amount to [5-10]%.⁴¹ Thus, the market position of the merged entity would not be sufficiently strong to cause competition concerns.

⁴⁰ Should Denmark be considered as a separate market, the Parties' and Daka's combined market share by volume would amount to [90-100]%. The proposed transaction would in any event be unlikely to raise serious doubts because of the relatively limited increments brought by Danish Crown ([5-10]%) and Saria ([0-5]%), the high levels of imports into Denmark and the lack of concerns raised in the course of the market investigation. Moreover, even under this market definition, the fact that German renderers could increase their exports to Denmark and that Danish renderers could increase their exports to Germany if a sufficient price difference between both Member States developed, exposes the Parties' to potential competition from producers located on a hypothetical market comprising Denmark and Germany. If the scope of the market were to include Denmark, Germany and the Netherlands, the combined market share of the Parties and Daka would be [10-20]%.

⁴¹ Should Denmark be considered as a separate geographic market, the Parties' and Daka's combined market share by volume would amount to [40-50]%. The transaction would be in any event unlikely to raise serious doubts because of the small increments brought by Danish Crown ([5-10]%) and SARIA ([0-5]%), the high levels of imports into Denmark, as identified in the market investigation and the presence of strong competitors such as Vion, with a market share of [30-40]%. Moreover, even under this market definition, the fact that German renderers could increase their exports to Denmark and, that Danish renderers could increase their exports to Germany if a sufficient price difference between both

64. As a result of the above, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on a potential market for the supply of category 3 PAP comprising Denmark and Germany.

C.1.iv. Further technically affected markets

65. The proposed transaction leads to a number of additional horizontally affected markets. Under potential national markets for the sale of category 1 and 2 fats, the proposed transaction leads to a horizontally affected market only in Denmark where the Parties and Daka would have a combined market share of [10-20]%. It also leads to horizontally affected markets in relation to the supply of category 3 PAP in France, the Netherlands, Poland and Spain.
66. However, since in all cases the Parties' and Daka's combined market share will remain below 25%, and in the absence of concerns from customers in the market investigation, it can be concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to any of these markets.

C.2. Vertically affected markets

67. The proposed transaction gives rise to a vertically affected market as a result of Danish Crown's presence in the Danish and Swedish markets for the purchase of live pigs and cattle for slaughtering (upstream) and the market for the collection of animal by-products in Denmark (downstream). The proposed transaction also gives rise to a vertically affected market in relation to the Parties' and Daka's presence in the market for the sourcing of category 3 animal by-products in Denmark and in the markets for the supply of category 3 PAP and fats in Denmark and Germany (downstream).

C.2.1. Vertical relationship between the market for live pigs and cattle and the market for collection of category 1 and 2 animal by-products

68. A number of market participants expressed concerns that Danish Crown could use the acquisition of joint control over Daka to foreclose competing slaughterhouses from access to collection services.⁴² These concerns mainly relate to category 1 and 2 animal by-products as the cost for their disposal is a significant expense for slaughterhouses that have a legal obligation to ensure the correct disposal of these by-products.⁴³

Member States developed, exposes the Parties to potential competition from producers located on a hypothetical market comprising Denmark and Germany. If the scope of the market were to include Denmark, Germany and the Netherlands, the combined market share of the Parties and Daka would be [10-20]%.

⁴² By contrast, the collection of category 1 and 2 animal by-products does not constitute a horizontally affected market even if national geographical markets were considered as there is no overlap between the Parties' activities in any of these national markets.

⁴³ By contrast, category 3 by-products are largely considered as a valuable resource and sought by a number of companies. Hence, market participants were generally of the opinion that it would be possible to find alternatives to Daka so that foreclosure here could be excluded.

69. The Commission already carried out an assessment on similar effects generated by the merger between Danish Crown and Vestjyske Slagterier, at the time a large shareholder in Old Daka., in its Decision in the case *Danish Crown / Vestjyske Slagterier*.⁴⁴ At that time, the Commission accepted as a remedy the divestment by Danish Crown of sufficient shares in Old Daka so as to prevent Danish Crown from acquiring sole control over Old Daka.
70. As a result of the proposed transaction, Danish Crown will acquire joint control over Daka together with SARIA. Without prejudice to any further decision on the compatibility of the notified operation with the remedies accepted in *Danish Crown / Vestjyske Slagterier*, the Commission assesses below the impact that the acquisition of joint control by Danish Crown over Daka will have on the markets concerned.

Ability to foreclose

71. Danish Crown's share in the Danish market for the purchase of live pigs is [70-80]%. As regards the market for the purchase of live cattle, Danish Crown's market share is [60-70]% in Denmark and [20-30]% in Sweden. As neither SARIA nor Daka are active in the slaughtering of live animals, the proposed transaction would not result in any increment in market share. Daka's share in the market for the collection of category 1 and 2 animal by-products is [90-100]% in Denmark and [90-100]% in Sweden.
72. Although the shares of the merged entity in both the upstream and the downstream markets are significant, the ability to foreclose would require that Danish Crown has sufficient power over Daka as to influence its conduct towards foreclosure of other slaughterhouses.
73. Danish Crown will acquire joint control over Daka. However, Danish Crown will not be in a position to decide autonomously on the day-to-day management of Daka. Danish Crown's joint control over Daka is primarily based on the fact that Danish Crown will be able to veto decisions on investments and other reserved matters. The daily management of Daka is delegated to the board of directors. Three of the six directors are nominated by SARIA, only two by Danish Crown and in a tie of votes the chairman, who is proposed by SARIA, has a casting vote.⁴⁵
74. In absence of an agreement with SARIA, Danish Crown will not be in a position to impose unilaterally a policy to refrain from collecting category 1 or 2 animal by-products from certain slaughterhouses or to offer less attractive terms of trade to these slaughterhouses.
75. SARIA is not active in the upstream markets for the slaughtering of live animals. On the contrary, SARIA's core market is that for the collection of animal by-products (outside Denmark) and the supply of processed animal by-products.
76. It would not be in SARIA's interest to refuse the collection of category 1 and 2 materials from or to offer less attractive terms of trade to Danish Crown's competitors.

44 Case IV/M.1313 – Danish Crown / Vestjyske Slagterier.

45 Cipher 7 of the draft Shareholders' Agreement.

Rather, SARIA would have an incentive to ensure that Daka offers access to as many suppliers as possible given that Daka is dependent on the raw materials supplied also by the competitors to Danish Crown on the upstream market for slaughtering of live animals. This is because Daka has a significant overcapacity and a foreclosure would most likely lead to a drop in the profits of the company.

77. In view of the above, it can be concluded that Danish Crown is unlikely to have the unilateral ability to foreclose competing slaughterhouses from access to collection services for category 1 and 2 animal by-products.

Incentive to foreclose

78. Danish Crown currently supplies [90-100]% of its category 1 and 2 raw material output to Old Daka.⁴⁶ These volumes, however, represent only [20-30]% of the total volume of category 1 and 2 raw materials collected by Old Daka. Old Daka therefore sources approx. [70-80]% of its requirements from third parties, including competitors to Danish Crown on the upstream market for the slaughtering of live pigs and cattle.
79. Post-transaction, Daka will continue to rely on third parties to source its requirements of category 1 and 2 raw animal by-products. Any foreclosure strategy would necessarily imply a decrease in the amount of category 1 and 2 raw animal by-products sourced by Daka. This would in turn generate a financial loss for the company. Danish Crown would therefore have to recoup these immediate losses in the upstream market for the purchase of live pigs and cattle.
80. As pointed out above, however, the Commission has found strong indications that the markets for live pigs and cattle encompass a region larger than Denmark. Hence, suppliers of pigs and cattle could turn to buyers outside Denmark and would not be forced to sell to Danish Crown if they were for some reason no longer able to find alternative slaughterhouses in Denmark.
81. In view of the above, it can be concluded that Danish Crown is unlikely to have the incentive to foreclose competing slaughterhouses from access to collection services for category 1 and 2 raw animal by-products.

C.2.2. Vertical relationship between the market for the sourcing of category 3 animal by-products and the markets for the supply of category 3 fats and PAP

82. In addition to the vertical relationship described above, there is also a vertical relationship between the sourcing of category 3 animal by-products and the processing and supply of category 3 fats and PAP. In this regard, one competitor expressed the concern that the transaction could lead to foreclosure in Denmark as Danish Crown, Daka and SARIA could control the whole production process from the live animal to products derived from the processing of category 3 by-products like pet food and animal feed, which are in the opinion of this competitor products derived from category 3 fats and PAP.⁴⁷

⁴⁶ Paragraph 89 of the Form CO.

⁴⁷ By contrast, the Parties have informed the Commission that neither of them, especially not SARIA, is active in the production of pet food or animal feed (Reply to the Commission's request for information

83. Upstream, Danish Crown supplies [60-70]% of the category 3 raw material available in Denmark. Downstream, the Parties' and Daka's combined market share for the supply of processed category 3 fats on the Danish and German markets amounts to [10-20]% and to [5-10]% for PAP.

Ability to foreclose

84. Danish Crown already supplies a substantial part of its category 3 materials to Old Daka. Danish Crown estimates that approximately [80-90]% of Old Daka's total demand in category 3 raw material is currently supplied by Danish Crown.
85. Under the draft Shareholders' Agreement, Daka has a right of first refusal, which provides for an obligation for Daka's shareholders to supply category 3 material to Daka. The right of first refusal only applies if Daka is able to offer competitive prices.
86. As the right of first refusal only applies to Daka's members, and most of Old Daka's current members will not be part of Daka post-transaction, there will be a significant part of the market that will be free from any constraint and that will be potentially available to supply category 3 products to Daka's competitors⁴⁸. Moreover, even if Danish Crown satisfied all of Daka's current demand in category 3 animal by-products, some [20-30]% of Danish Crown's output of category 3 materials would be free to be supplied to other market participants.
87. Furthermore, the market investigation indicated that at least to a certain extent category 3 materials can be traded cross-border. As a result, a potential competitor to Daka in the collection of category 3 animal by-products would have much broader sources of supply than category 3 material from Danish slaughterhouses alone. These sources could potentially extend at least to the Netherlands and the northern part of Germany. Finally, for category 3 fats, the Parties' combined shares on a market encompassing Denmark and Germany is [10-20]%. For category 3 PAP, the Parties' shares for this same region would be [5-10]%.⁴⁹ These relatively low market shares downstream further speak against the ability to vertically foreclose the markets.
88. In view of the above, it can be concluded that Danish Crown is unlikely to have the ability to foreclose Daka's competitors in the downstream market for category 3 fats and PAP from the sourcing of category 3 raw animal by-products.

Incentive to foreclose

89. At present, Danish Crown has a larger shareholding in Old Daka than it will have after the proposed transaction in Daka. The transaction will therefore diminish any incentive for Danish Crown to foreclose access to Daka's competitors to the sourcing

to the Notifying Parties of 14.06.2012, paragraph 20). Hence, any concerns relating to these further downstream markets can be dismissed for this reason alone.

⁴⁸ Old Daka's members are essentially undertakings which require collection of their animal by-products. In this respect, all the members of Old Daka apart from one producer of fur animal feed conduct their primary business activities in slaughtering and/or meat production.

⁴⁹ For category 3 fats, the Parties' combined shares on a market covering Denmark, Germany and the Netherlands is [10-20]%. For category 3 PAP, the Parties' shares for this same region would be [10-20]%

of category 3 raw animal by-products, as Danish Crown will capture a lower share of Daka's profits post-merger than pre-merger.

90. As Danish Crown has not yet engaged in any foreclosure strategy, it is therefore unlikely that it will do so in the future. As a result, it can be concluded that Danish Crown is unlikely to have the incentive to foreclose Daka's competitors from access to the sourcing of category 3 raw animal by-products.

V. CONCLUSION

91. For the above reasons, the European 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 the Merger Regulation.

For the Commission

Signed
Neelie KROES
Vice-President