

***Case No COMP/M.6383 -
CARGILL/ KOROFRANCE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 16/11/2011

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EUROPEAN COMMISSION

Brussels, 16.11.2011
C(2011) 8543 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.6383 – CARGILL/ KOROFRANCE
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 11.10.2011, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Cargill Incorporated ("Cargill", United States) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of KoroFrance SAS ("KoroFrance", France) by way of purchase of shares². Cargill is hereinafter referred to as "the notifying party". Together with KoroFrance, they are jointly referred to as "the parties".

I. THE PARTIES

2. Cargill, the ultimate parent company of the Cargill Group, is a privately held company active in the international production and marketing of food, and agricultural and risk management products and services. Cargill's businesses include grain and commodity

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 301, 12.10.2011, p. 11.

merchandising, oilseed and grain processing and refining, flour milling, meat processing and financial services.

3. KoroFrance ("the Target") is the holding company of the Provimi Group which is active in the manufacture and supply of animal feed.

II. THE OPERATION

4. On 14 September 2011, Cargill and Nutrilux S.a.r.l. ("the seller") signed a Sale and Purchase Agreement by which Cargill through its wholly owned subsidiary Cargill International Luxembourg 3 S.à.r.l. will acquire control of the whole of KoroFrance. The seller owns the entire issued share capital of KoroFrance.

III. CONCENTRATION

5. The proposed transaction will result in Cargill acquiring sole control over KoroFrance. The notified transaction therefore constitutes a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.

IV. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ ([...]). Each of them has an EU-wide turnover in excess of EUR 250 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.

V. MARKET DEFINITIONS

7. Cargill (via its Cargill Animal Nutrition business) and KoroFrance (via its Provimi subsidiaries) overlap in the production and supply of animal compound feed and feed mixes. The production of animal feed involves the mixing and compounding of various ingredients which include the required proteins, vitamins and minerals in the animal feed. Compound feed is ready-to-eat feed requiring no additional ingredients while feed mixes are vitamin and mineral mixes usually requiring the addition of grains and proteins and other supplements/additives.

Horizontal overlaps

1. Compound feed

8. The notifying party submits that compound feed⁴ constitutes a separate relevant product market to feed mixes. It further submits that there is a single market for compound feed for all types of animals with the exception of fish feed and pet food.
9. The Commission in previous decisions has considered the existence of a single market for animal compound feed for all types of animals⁵ except for fish feed and pet food⁶.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

⁴ Including complete feed, concentrates, starter nutrition and milk replacers.

The market investigation revealed no reasons to deviate from the previous Commission position concerning this particular aspect⁷. However, the market investigation revealed a possible sub-segmentation of compound feed into concentrates⁸, starter nutrition⁹, milk replacers¹⁰ and complete feed¹¹.

10. As to the geographic scope of the market, the notifying party submits that the markets is at least national in scope. The Commission in previous decisions noted that the market was likely to be at least national in scope since suppliers compete on a national basis through supply points and demand is strongly influenced by national demand characteristics.¹² The market investigation has broadly confirmed the position held by the Commission in its previous decisions as regards market definition¹³.
11. For the purpose of this case, the precise definition of the relevant market can also be left open since the competitive assessment would not change under any plausible alternative market definition.

2. Feed mixes

12. The notifying party submits that feed mixes constitutes a separate relevant product market. It further submits that there is a single market for feed mixes for all types of animals.
13. Premixes and base mixes are mixtures that basically differ in their mineral content and inclusion rate in animal feed. The Commission in previous decisions while ultimately leaving open the precise market definition, found a certain degree of supply and demand side substitutability between premixes and base mixes¹⁴. The Commission further considered that there may be a separate market for pet food and fish feed mixes.

⁵ Cases COMP/M.2271 – Cargill/Agribands, COMP/M.2956 – CVC/PAI Europe/Provimi; COMP/M. 4617 – Nutreco/ BASF; M.5558 – Nutreco/Cargill.

⁶ The parties do not overlap in the supply of fish or pet products (either as compound feed or mixes) in the EEA.

⁷ Replies to question 4 of the Commission's questionnaire to competitors dated 13 October 2011. Replies to question 5 of the Commission's questionnaire to customers dated 13 October 2011.

⁸ Concentrate contains all of the vitamins, minerals and protein required in animal feed with the exception of grain.

⁹ Ready-to-eat specialty feed for young animals requiring no additional ingredients.

¹⁰ *Ibid.*

¹¹ Replies to question 6 of the Commission's questionnaire to competitors dated 13 October 2011.

¹² Cases COMP/M.2271 – Cargill/Agribands, COMP/M.2956 – CVC/PAI Europe/Provimi; COMP/M. 4617– Nutreco/ BASF; M.5558 – Nutreco/Cargill.

¹³ Replies to question 11 of the Commission's questionnaire to competitors dated 13 October 2011. Replies to question 11 of the Commission's questionnaire to customers dated 13 October 2011

¹⁴ Cases COMP/M.5558 – Nutreco/Cargill; COMP/M.4.617 – Nutreco/ BASF, COMP/M.3.177 – BASF/Glon-Sanders/JV and COMP/M.2956 – CVC/PAI Europe/Provimi.

14. The market investigation did not reveal any reasons to deviate from its previous position with regards to the definition of the product market¹⁵.
15. As to the geographic scope of the market, the notifying party submits it is broader than national and possibly EEA-wide. The Commission in its previous decisions considered that the market for feed mixes could be national in scope though ultimately left the question open¹⁶. The market investigation did not reveal any reasons to deviate from its previous position with regards to the geographic scope of the market¹⁷.
16. For the purpose of this case, the precise definition of the relevant market can be left open as it would not alter the competitive assessment under any plausible alternative market definition.

3. Technology and consulting services

17. Both Cargill and Provimi provide technology and consulting services. These services include the provision of intellectual property and software associated with animal nutrition and are generally ancillary to the supply of animal feed itself¹⁸. The parties consider these services as ancillary and part of the animal feed market insofar as these services are provided as a value-add to the sale of products. Thus, these activities would not be discussed further in this decision.

4. Supplements and additives

18. Cargill and Provimi also both have minimal participation in the segment of supplements and additives¹⁹. Both have a small amount of activity in respect of minerals. Provimi also supplies small amounts of probiotics, vitamins, amino acids and growth enhancers²⁰. However, given the small amount of activity of the parties in this segment²¹ these activities do not result in any affected markets and therefore would not be discussed further in this decision.

¹⁵ Replies to question 5 of the Commission's questionnaire to competitors dated 13 October 2011. Replies to question 7 of the Commission's questionnaire to customers dated 13 October 2011.

¹⁶ Cases COMP/M.5558 – Nutreco/Cargill; COMP/M.4.617 – Nutreco/ BASF, COMP/M.3.177 – BASF/Glon-Sanders/JV and COMP/M.2956 – Cvc/PAI Europe/Provimi.

¹⁷ Replies to question 12 of the Commission's questionnaire to competitors dated 13 October 2011. Replies to question 12 of the Commission's questionnaire to customers dated 13 October 2011.

¹⁸ [...].

¹⁹ Products used in animal nutrition for the purposes of improving the quality of feed and the quality of food from animal origin, or to improve the animals' performance and health, (e.g. providing enhanced digestibility of the feed materials).

²⁰ Cargill does not present in the production or supply of animal health antibiotics, probiotics, vitamins, amino acids and growth enhancers.

²¹ [...].

Vertical relationships (upstream to compound feed)

5. Supply of grains

19. The notifying party submits that the relevant market is the supply of grains to end customers and that it should not be further segmented by grain type (corn, barley, maize) since the different types of grain are substitutable from the demand side perspective of the animal feed compounder.
20. The Commission in its previous decisions²² has left open the precise definition of the product market.
21. As to the geographic scope of the market, the notifying party submits it is at least EEA-wide given that grains are traded internationally on both cash markets and organised futures markets and that in the EEA no customs barriers to trade apply.
22. For the purposes of this case, the precise definition of the relevant product market can be left open as it would not alter the competitive assessment under any plausible alternative market definition.

6. Supply of crude seed oil

23. The notifying party claims that for crude seed oils, the oils used for animal feed are the same as for other applications although they may be further processed when they are destined for human consumption or for use in biodiesel. The notifying party further claims that the various crude seed oils may generally be substituted for each other, as well as by other ingredients, such as animal fats, acids and other ingredients as a source of energy (kcal/kg) for the animal diet.
24. The Commission, in previous decisions has left open the precise product market definition of crude seed oil.²³
25. The market investigation in the present case was inconclusive as to whether the crude seed oils are the same irrespectively of their intended use (e.g. for animal feed or other purposes) and whether the different types of crude seed oil can be considered interchangeable in use²⁴. The market investigation also revealed that most respondents consider that crude seed oil could be substituted by animal fats, acids and other ingredients as a source of energy for animal diets.²⁵

²² Case COMP/M.2693 – Archer Daniels Midland Company / Alfred C. Toepfer International GmbH.

²³ Cases IV/M.866 Cereol/ÖSAT-Öhlmühle; IV/M.1225 Cereol/Sofiproteol-Saipol; IV/M.1126 - Cargill/-Vandermoortele.

²⁴ Replies to question 9 of the Commission's questionnaire to competitors dated 13 October 2011. Replies to question 9 of the Commission's questionnaire to customers dated 13 October 2011.

²⁵ Replies to question 10 of the Commission's questionnaire to customers dated 13 October 2011. Replies to question 10 of the Commission's questionnaire to competitors dated 13 October 2011.

26. As to the geographic scope of the market, the Commission in previous decisions concluded that the market for crude seed oil is at least Community wide and probably even wider²⁶.
27. However, in the present case the precise definition of the relevant market can be left open as it would not alter the competitive assessment under any plausible alternative market definition.

7. Supply of refined seed oil

28. Crude seed oils may be further processed and refined. The notifying party submits that refined seed oil constitutes a separate market from crude seed oil. It further claims that similarly to crude seed oils, in the case of refined seed oils, the oils used for animal feed are the same as for other applications although they may be further processed when they are destined for human consumption or for use in biodiesel. The notifying party further claims that the various crude seed oils and refined seed oils may generally be substituted for each other, as well as by other ingredients, such as animal fats, acids and other ingredients as a source of energy (kcal/kg) for the animal diet.
29. The Commission in its previous decisions has left open whether refined seed oils should constitute a separate product market from crude seed oil.²⁷
30. The market investigation in the present case was inconclusive as to whether refined seed oils are the same irrespective of their area of application and as to whether the different types of refined seed oil can be considered interchangeable in use. The market investigation also revealed that most respondents consider that refined seed oil could be substituted by animal fats, acids and other ingredients as a source of energy for animal diets.²⁸
31. As to the geographic scope of the market for the supply of refined oilseed, the notifying party submits that it is EEA-wide.
32. The Commission in its previous decisions has left open the precise definition of the geographic market for refined seed oil²⁹.
33. The responses to the market investigation were mixed on this point.³⁰
34. However in the present case the precise definition of the relevant market can also be left open as this would not alter the competitive assessment under any plausible alternative market definition.

²⁶ Case IV/M.1126 Cargill/Vandermoortele.

²⁷ Cases COMP/M.3039 Soprol/Cereol - Lesieur, Case No COMP/M.3044 ADM/Pura and Case No COMP/M.3039 Soprol/Cereol – Lesieur.

²⁸ Replies to question 10 of the Commission's questionnaire to customers dated 13 October 2011. Replies to question 10 of the Commission's questionnaire to competitors dated 13 October 2011.

²⁹ Case COMP/M.3039 – Soprol/Cereol.

³⁰ Replies to question 14 of the Commission's questionnaire to customers dated 13 October 2011. Replies to question 13 of the Commission's questionnaire to competitors dated 13 October 2011.

8. Supply of oilseed meals

35. Oilseed meals are obtained through the crushing of oilseeds and are used in the animal feed industry for their high protein content. The notifying party submits that oilseed meals form part of a broader market for non-grain feed ingredients and, in any event, should not be further segmented between the various types of oilseed meal. The Commission in its previous decisions has left open the precise product market definition for oilseed meals³¹.
36. The notifying party submits that the geographic scope for the supply of oilseed meals is EEA-wide. The Commission in its previous decisions has considered that the geographic scope of the market for oilseed meals is at least EEA-wide.³²
37. For the purposes of this case the precise definition of the relevant market can be left open as this would not alter the competitive assessment under any plausible alternative market definition.

Vertical relationships (downstream to compound feed)

9. Fresh poultry

38. The notifying party submits that the supply of fresh poultry meat and of processed poultry meat constitute separate product markets. In previous decisions the Commission has considered that the supply of fresh chicken is upstream to the supply of processed chicken.³³
39. As regards the market for the supply of fresh poultry meat, the Commission envisaged in past decisions³⁴ to further distinguish separate markets for (i) chicken meat, (ii) turkey meat and (iii) boneless chicken breast meat, although ultimately leaving this question open. Within the markets for fresh meat, the Commission also considered the possibility to identify separate markets based on the customer type: (i) retail market (supermarkets, butchers, farm sales, etc)³⁵, (ii) sales to caterers and (iii) sales to industrial processors³⁶.
40. As regards the geographic scope, the Commission has in recent decisions left open the question whether the market for the supply of fresh poultry meat is national or wider than national.³⁷
41. For the purposes of this case the precise definition of the relevant market can be left open as this would not alter the competitive assessment under any plausible alternative market definition.

³¹ Case COMP/M.4042 – Toepfer/Invivo/Soulès.

³² Cases COMP/M.2693 – Archer Daniels Midland Company/Alfred C. Toepfer International; COMP/M. COMP/M.1376 Cargill/Continental Grain .

³³ Case COMP/M.5322 –Marfrig/OSI Group Companies.

³⁴ *Ibid.*

³⁵ Case COMP/M.5204 – Vion/Grampian.

³⁶ Cases COMP/M.3337– Best Agrifund/Nordfleisch, M COMP/M.3968 Sovion/ Südfleisch.

³⁷ Cases COMP/M.5322 – Mafrig/OSI Group Companies and COMP/M.4257 – Smithfield/Oaktree/Sara Lee Foods Europe.

10. Processed poultry

42. The Commission has previously concluded that there were separate markets for processed pork products, processed beef products and processed poultry products³⁸. It further considered that meat products could potentially be distinguished according to customer type: (i) retailers and (ii) caterers³⁹.
43. The notifying party submits that the market for the supply of processed poultry is EEA-wide. The Commission has previously considered the possibility of national markets but has ultimately left open the exact market definition⁴⁰.
44. For the purposes of this case the precise definition of the relevant market can be left open as this would not alter the competitive assessment under any plausible alternative market definition.

VI. COMPETITIVE ASSESSMENT

Horizontal overlaps

45. The parties' activities overlap in the EU and in particular Member States in respect of each of the following segments: (i) compound feed; (ii) complete feed; (iii) concentrates; (iv) starter nutrition (v) milk replacers; and (vi) feed mixes.⁴¹

1. Compound feed

46. At EEA-wide level, as shown in Table 1, the proposed transaction does not lead to any affected market for any of the above mentioned segments since the combined market shares remain below 5% under any possible market segmentation.

³⁸ Case COMP/M.2662 – Danish Crown/Steff-Houlberg.

³⁹ Case COMP/M.2662 – Danish Crown/Flagship Foods.

⁴⁰ Case COMP/M.5410 – Forfarmers/Cefetra; COMP/M.3337 – Best Agrifund/Nordfleisch.

⁴¹ As regards, the proposed methodology for the calculation of the market shares, the parties have relied on volume data since it is the most common data used in the animal nutrition business and since relying on value data would imply introducing further assumptions which might risk distorting the accuracy of the reported market shares. The underlying data source used for the calculation of the market shares is the European Feed Manufacturers Association (FEFAC). Furthermore, the notifying party has relied on total sales data (including both intra-group and sales to third parties). However, the notifying party, at the request of the case team, has also used a worst case scenario approach in which only sales to the merchant market are taken into account to identify potentially affected markets. All the reported figures in this note concerning Cargill relate to the year ending 31 May 2011 while those of Provimi relate to the calendar year 2010.

Table 1: EEA-wide shares of the Parties based on total and merchant market sales by volume for compound feed segments

	Total market size (MT thousands) (*)	Cargill segment share (%)	Provimi segment share (%)	Combined segment share (%)	Estimate combined merchant market share (%)
Compound feed (including complete feed, concentrates, starter nutrition and milk replacers)	144,682	[0-5]	[0-5]	[0-5]	[0-5]
Complete feed	110,804	[0-5]	[0-5]	[0-5]	[0-5]
Concentrates	14,523	[0-5]	[0-5]	[0-5]	[0-5]
Starter nutrition	16,355	[0-5]	[0-5]	[0-5]	[0-5]
Milk replacers	1,486	[0-5]	[0-5]	[0-5]	[0-5]

(*) the difference existing between adding up the estimate for each category of compound feed and the estimate for the total market size is explained by the lack of consensus in the industry as regards which products should be reported under each category.

Source: Notifying party estimates

47. At national level, the proposed transaction only leads to potentially affected markets in Poland⁴². As shown in Table 2, the proposed transaction would lead to affected markets in complete and compound feed, milk replacers and concentrates in Poland.

48. In the course of the market investigation, the Commission received information to the effect that in Poland as a result of Provimi's acquisition of the company Rolimpex⁴³ in 2003, the market shares of Provimi may be higher than those presented by the notifying party in the Form CO.

49. Following a Commission request, the notifying party confirmed that in fact, as a result of the acquisition of control over Rolimpex, Provimi's market shares peaked in 2002/2003 period.⁴⁴ However, the market situation of animal feed in Poland both as a whole and specifically as regards Provimi has evolved considerably over the past decade and, in particular, since the acquisition of Rolimpex. Indeed, the overall animal feed market in

⁴² In all other Member States, the combined market share of the parties in the market for compound feed or in any of the possible product market segmentations remains below 15%.

⁴³ Rolimpex a state-owned company was one of the leading manufacturers of animal feed in Poland at the time.

⁴⁴ According to the notifying party estimate, Provimi's market share by volume in total feed in Poland was about [20-30]% in 2003.

Poland has gone through a period of sustained growth during the last ten years⁴⁵, as the economy developed⁴⁶ and especially since its accession to the European Union in 2004. During the same period 2003-2010, Provimi's own sales volumes have suffered a decline by almost [...] %⁴⁷. This significant loss in sales was the result of the restructuring of operations, cost-optimisation and process changes the company⁴⁸ introduced as well as to the entry of new competitors and the increased levels of integration achieved by companies such as Indypol and Animex. The growth of the Polish animal feed market in conjunction with Provimi's declining position explain the significant reduction in Provimi's market share between 2003 and 2010.

Table 2: Market shares of the Parties based on total and merchant market sales by volume for compound feed segments in Poland

	Total market size (MT thousands)	Cargill segment share (%)	Provimi segment share (%)	Combined segment share (%)	Estimate combined merchant market share (%)
Compound feed (including complete feed, concentrates, starter nutrition and milk replacers)	7,490	[0-5]	[10-20]	[10-20]	[10-20]
Complete feed	4,820	[0-5]	[10-20]	[20-30]	[20-30]
Concentrates	1,032	[0-5]	[5-10]	[10-20]	[10-20]
Starter Nutrition	918	[0-5]	[5-10]	[10-20]	[10-20]
Milk replacers	30	[10-20]	[0-5]	[10-20]	[10-20]

⁴⁵ The total Polish animal feed market as well as in the different segments has increased in size by approximately 80% in the period from 2000 to 2010 (from 4.2 million tones of total feed in 2000 to approximately 7.7 million tones in 2010).

⁴⁶ As a country's GDP/capita increases, demand for animal feed increases. In particular, farms tend to develop from feeding their livestock on self-supplied feed, and will increasingly look to purchase from animal nutrition companies in order to improve the quality of nutrition provided to livestock, and improve the yield of their animals.

⁴⁷ Provimi sales of total feed declined from [...] million tones in 2003 to [...] million tones in 2010.

⁴⁸ The measures introduced include the closure of 60% of Provimi's animal feed plants over the period, reduction in geographic coverage, [...].

(*) the difference existing between adding up the estimate for each category of compound feed and the estimate for the total market size is explained by the lack of consensus in the industry as regards which products should be reported under each category.

Source: Notifying party estimates

50. The notifying party claims the animal compound feed segments in Poland are extremely fragmented. The parties' combined share under any plausible market segmentation is below 25% and there are a number of other competitors including De Heus ([10-20]% market share) Wipasz ([5-10]%), Cedrob ([0-5]%), Piast ([0-5]%), Sano ([0-5]%), Agrocentrum ([0-5]%), Dossche ([0-5]%) and Golplasz ([0-5]%) as well as a long tail of other market players accounting for a large proportion of each segment. Furthermore, the notifying party claims that it is not aware that any of the top 8 compound feed producers has any relevant downstream activities in Poland and that therefore all are active in the potential "merchant" segment of the market and will heavily constrain the merged entity.
51. The market investigation confirmed that the market shares provided by the notifying party are a good basis for the Commission's assessment⁴⁹. Furthermore, the majority of respondents have indicated that the Parties are not each other's closest competitors⁵⁰.
52. In the market investigation, a competitor expressed concerns about the effect of the transaction in Poland⁵¹. However, the unease appears to be related to the pro-competitive effects of the transaction as it is considered that it might result in an initial reduction in prices. Another competitor, expressed concerns about a possible increase in prices resulting from the transaction⁵². However, the concern expressed appears not to be merger specific since the expected increase in prices would result from an overall increase in the market demand of animal feed.
53. The vast majority of the competitors replies to the market investigation indicated that the transaction will not have an effect on competition for compound feed⁵³. It is noted, among others, that Provimi's role in compound feed is marginal and that while Cargill is a producer of both raw materials and compound feed, Provimi produces concentrates and premixes. Consequently, both parties hardly overlap in the markets in which they are present. Moreover, respondents also signalled that significant supplier availability will still remain in the market. Similarly, the vast majority of customers signalled that the transaction would not have any impact on competition and that it would not result in a price increase in animal feed.⁵⁴ It was signalled among others that as a result of the transaction, the competition level in animal feed would remain unaltered and that sufficient competition will remain the market.

⁴⁹ Replies to question 14 of the Commission's questionnaire to competitors dated 13 October 2011.

⁵⁰ Replies to question 15 of the Commission's questionnaire to competitors dated 13 October 2011. Replies to question 15 of the Commission's questionnaire to customers dated 13 October 2011.

⁵¹ Replies to questions 17 and 18 of the Commission's questionnaire to competitors dated 13 October 2011.

⁵² *Ibid.*

⁵³ Replies to question 17 and 18 of the Commission's questionnaire to competitors dated 13 October 2011. .

⁵⁴ Replies to question 16 and 17 of the Commission's questionnaire to customers dated 13 October 2011.

54. In light of all the aforementioned factors, the transaction does not raise competition concerns in relation to the supply of compound feed in the common market or in a substantial part of it.

2. Feed mixes

55. At an EEA-wide level, as shown in Table 3 the proposed transaction does not lead to an affected market in feed mixes. The parties overlap in feed mixes is significantly below 15% even when further distinguishing between base mixes and premixes or when considering only the shares on the basis of merchant market sales.

Table 3: EEA-wide market shares of the Parties based on total and merchant market sales by volume for feed mixes

	Total market size (MT thousands)	Cargill segment share (%)	Provimi segment share (%)	Combined segment share (%)	Estimate combined merchant market share (%)
Feed mixes	4,453	[0-5]	[0-5]	[0-5]	[0-5]

Source: Notifying party estimates

56. At a national level, as shown in Table 4, the transaction would only lead to affected markets in two Member States namely, Poland and Hungary. In the case of Hungary, the transaction would lead to an affected market only if base mixes are considered a separate product market. However, it would not lead to competition concerns since the combined market share of the parties in base mixes is below 25%⁵⁵. In the case of Poland, the transaction would lead to an affected market on the basis of an overall market for feed mixes or under a further segmentation in base mixes and premixes.

Table 4: Market shares of the Parties based on total and merchant market sales by volume for feed mixes

	Total market size (MT thousands)	Cargill segment share (%)	Provimi segment share (%)	Combined segment share (%)	Estimate combined merchant market share (%)
Feed mixes in Poland	210	[10-20]	[0-5]	[10-20]	[20-30]
Premixes in Poland	72.8	[20-30]	[0-5]	[20-30]	[20-30]
Base mixes in Poland	137.2	[10-20]	[0-5]	[10-20]	[20-30]
Base mixes in Hungary	79.6	[0-5]	[5-10]	[10-20]	[10-20]

Source: Notifying party estimates

⁵⁵ See recital 32 of the Merger Regulation.

57. In Poland, according to the notifying party estimates, the parties face a number of other strong competitors such as Nutreco/Trouw ([10-20]% market share), DSM ([5-10]%), Sano ([0-5]%), Dolfos ([0-5]%), Polsanders ([0-5]%), De Heus ([0-5]%), Ekoplon ([0-5]%) and Vitfoss ([0-5]%). Although Sano and De Heus are active downstream they also supply feed mixes to third parties. Furthermore, currently Provimi does not supply feed mixes in Poland and has not done so since the end of 2010. This is borne out by the market investigation which does not indicate that Cargill and Provimi are closest competitors⁵⁶.
58. Furthermore, the businesses of Cargill and Provimi appear to be largely complementary in Poland. As shown in Tables 2 and 4, Cargill's animal feed business is primarily focused in feed mixes with a significantly lower presence in compound feed, while Provimi is strong in compound feed and very weak in feed mixes.
59. In light of all the aforementioned factors, the transaction does not raise competition concerns in relation to the supply of feed mixes in the common market or in a substantial part of it.

Vertical relationships (upstream to animal feed)

3. Supply of grains

60. The supply of grains as an input for animal feed does not constitute a vertically affected market since the market share of Cargill even if differentiating by grain type (i.e. wheat, barley and corn) does not exceed [0-5]% at EEA level. Therefore this vertical relationship does not lead to a vertically affected market.

4. Supply of oilseed meals

61. Cargill's market shares for the supply of oilseed meals at the EEA-wide level are below 25% even when segmented by seed type. Therefore this vertical relationship does not lead to a vertically affected market.

5. Supply of crude seed oil

62. At an EEA-wide level, as shown in Table 5, the proposed transaction leads to vertically affected markets in respect of the merchant supply of total crude oils and soya bean oil to the feed industry in the EU.

Table 5: Cargill's market share based on supply of crude seed oil into the animal feed industry

	Total crude seed oil (%)	Rapeseed oil (%)	Soyabean oil (%)
EEA	[20-30]	[5-10]	[30-40]

Source: Notifying party estimates

⁵⁶ Replies to question 15 of the Commission's questionnaire to competitors dated 13 October 2011.

63. The merged entity would lack the ability to engage in an input foreclosure strategy given its limited market share at an EEA-wide level and the competitive constraint imposed by the remaining upstream competitors. In fact, the vast majority of customers and competitors expressed no concerns as regards the vertical relationship arising between Cargill's supply of seed oils and the parties' presence in animal feed.⁵⁷
64. Therefore, it is considered that the transaction does not lead to foreclosure concerns in relation to the supply of crude seed oils to the animal feed industry.

6. Supply of refined seed oil

65. At an EEA-wide level, the proposed transaction, as shown in Table 6, leads to vertically affected markets in respect of the merchant supply of refined rapeseed oil, soya bean oil, palmoil and coconut oil to the animal feed industry with market shares between [30-40]%.
66. At national level as shown in Table 6, the proposed transaction leads to a series of vertically affected markets in respect to the supply of refined seed oil to the animal feed industry. In particular as regards, refined soya bean and coconut oil in Belgium; refined palm oil in Denmark; refined rapeseed oil, soya bean oil, palmoil and coconut oil in France; refined palm oil and coconut oil in Germany; refined rapeseed oil, soya bean oil, palm oil and coconut oil in the Netherlands and refined palm oil in the United Kingdom.⁵⁸

Table 6: Cargill market share based on merchant supply of refined seed oil into the animal feed industry

	Refined rapeseed oil (%)	Refined soya bean oil (%)	Refined palmoil (%)	Refined coconut oil (%)
EEA-wide	[30-40]	[30-40]	[30-40]	[30-40]
Belgium	[0-5]	[50-60]	[20-30]	[30-40]
Denmark	[0-5]	[0-5]	[30-40]	[0-5]
France	[40-50]	[30-40]	[30-40]	[20-30]
Germany	[20-30]	[0-5]	[30-40]	[20-30]
Italy	[0-5]	[0-5]	[0-5]	[20-30]
Netherlands	[40-50]	[40-50]	[30-40]	[40-50]
UK	[0-5]	[0-5]	[30-40]	[20-30]

Source: Notifying party estimates

⁵⁷ Replies to question 20 of the Commission's questionnaire to competitors dated 13 October 2011.Replies to question 20 of the Commission's questionnaire to customers dated 13 October 2011.

⁵⁸ [...].

67. The market investigation broadly confirmed the market share estimates provided by the notifying party and shown in Tables 5 and 6. These therefore provide a good basis for the Commission's assessment⁵⁹.
68. The notifying party submits that the transaction would not lead to foreclosure concerns despite the high market shares of Cargill in the supply of refined seed oils into the animal feed industry.
69. The notifying party also submits that the ingredients chosen by customers are selected on the basis of availability, price contribution, and energy source, along with other perceived benefits. There is a minimum nutrient specification required in diets for dietary energy. Moreover, it is claimed that the animal feed industry represents a tiny proportion of demand for oils, by comparison to total production and the supply for human consumption and for bio-diesel applications.
70. In addition, but for some very few exceptions, the vast majority of customers and competitors expressed no concerns as regards the vertical relationship arising between Cargill's supply of seed oils and the parties presence in animal feed.⁶⁰ In this respect, competitors noted amongst others, that vegetable oils are a commodity, that prices of vegetable oils are world market prices and that the cost impact of vegetable oils in animal feed is small while observing that the merged entity will overall remain a small customer of vegetable oils.
71. In view of the above, it is considered that the transaction does not lead to foreclosure concerns in relation to the supply of refined seed oils to the animal feed industry.

7. Feed mixes

72. The two horizontally affected markets for the supply of compound feed and feed mixes are also vertically related. However, these vertical relationships do not lead to vertically affected markets since the parties' individual or combined market shares in either of the vertically related markets remains below 25%.

Vertical relationships (downstream to animal feed)

8. Fresh poultry

73. Cargill is active on the market downstream of the animal feed market for the supply of fresh poultry only in one Member State, namely, the UK.
74. At an EEA-wide level, Cargill's market share for the supply of fresh poultry is negligible (less than [0-5]%). Further, on any possible market segmentation, Cargill's EU market shares do not exceed [0-5]%.

⁵⁹ Replies to question 14 of the Commission's questionnaire to competitors dated 13 October 2011.

⁶⁰ Replies to question 20 of the Commission's questionnaire to competitors dated 13 October 2011. Replies to question 20 of the Commission's questionnaire to customers dated 13 October 2011.

75. In the UK, Cargill's market share for the supply of fresh poultry is below 10%. Furthermore, on any possible market segmentation (i.e. by customer and/or product type), Cargill's market shares do not exceed [10-20]% of the UK market.
76. Therefore, the transaction does not lead to vertically affected markets under any plausible product market definition regarding the supply of fresh poultry either in the EEA or in the UK.

9. Processed poultry

77. Cargill is active on the market downstream of the animal feed market in the supply of processed poultry only in the UK.
78. At an EEA-wide level, Cargill's market share for the supply of processed poultry in the EU is negligible (less than [0-5]%). In addition, on any possible market segmentation for processed poultry (e.g. by customer and product type), Cargill's market shares do not exceed [5-10]%.
79. In the UK, Cargill's market share for the supply of processed poultry is below [10-20]%. In addition, Cargill's UK market shares are below [10-20]% on any possible market segmentation (i.e. by customer or product type).
80. Therefore the transaction does not lead to vertically affected markets under any plausible product market definition regarding the supply of processed poultry either at EEA or national level.

VII. CONCLUSION

81. 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)
Joaquín ALMUNIA
Vice-President