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*Case No*  
***COMP/M.6626– DLG/***  
***Danish Agro/DanHatch***

Only the English text is available and authentic.

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

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Article 4(4) of Regulation No 139/2004  
Date: 17/06/2013



EUROPEAN COMMISSION

Brussels, 17/06/2013

C(2013) 3892

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**To the notifying party:**

**To the Danish Competition Authority**

**To the Swedish Competition Authority**

Dear Madam, Dear Sir,

**Subject: Case No COMP/M.6626– DLG/Danish Agro/DanHatch  
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004<sup>1</sup> for referral of the case to Denmark and to Sweden.**

**Date of filing: 8 May 2013**

**Legal deadline for response of Member States: 7 June 2013**

**Legal deadline for the Commission decision under Article 4(4): 17 June 2013**

**I. INTRODUCTION**

1. On 8 May 2013, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request that the case be referred to Denmark in

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<sup>1</sup> 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.

relation to the markets which are geographically limited to Denmark and for the remaining markets the parties request that the case be referred to Sweden.

2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 16 May 2013.
4. By email of 3 June 2013 the Danish Competition Authority as the competent authority of Denmark informed the Commission that Denmark agrees with the proposed referral.
5. By letter of 5 June 2013 the Swedish Competition Authority as the competent authority of Sweden informed the Commission that Sweden agrees with the proposed referral.

## **II. THE PARTIES**

6. DLG a.m.b.a. ("DLG") is a Danish cooperative undertaking and has approx. 28,000 members/farmers. DLG's main activities comprise purchasing of grain and supplying grain, feed, fertilizer, crop protection, premix, minerals etc. to farmers.
7. Danish Agro a.m.b.a. ("DA") is also a Danish cooperative undertaking with approximately 10,500 members/farmers. DA purchases grain and supplies farmers with, among other things, ready-made feed mixtures for pigs, poultry and cattle, fertilizer, seed, crop protection, mineral compounds, premix, feed fat, feeding stuffs, energy.
8. DanHatch A/S ("**DanHatch**" or "**JV**") is Denmark's only hatchery and has activities in the hatching and sale of day-old chicks with related activities in the rearing of parent stock and the production of hatching eggs (breeding). DanHatch has two hatcheries located in Denmark and one in Poland. In addition, through its subsidiary Binadan A/S, it produces broilers and natural fertilizer in Denmark and through its subsidiary DPL Invest A/S, it produces piglets and slaughter pigs also in Denmark and on one farm in Germany.

## **III. THE OPERATION AND CONCENTRATION**

9. Currently DanHatch has three shareholders: DLG has a shareholding of 47.50%, DA has a shareholding of 47.50% and Hedegaard A/S has a shareholding of 5%. None of these three shareholders currently solely or jointly controls DanHatch, since resolutions of DanHatch are adopted by simple majority. The transaction involves the acquisition of the entire shareholding of Hedegaard A/S in DanHatch jointly by DA (shareholding of 2.5%) and DLG (shareholding of 2.5%). Post-transaction, DLG and DA (referred to as the "Parents") will each have 50% of the share capital in DanHatch and will jointly control DanHatch, since the decisions will still be adopted by simple majority.

#### **IV. EU DIMENSION**

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million [DLG: EUR [...] million, DA: EUR [...] million]. Two of the undertakings concerned have an EU-wide turnover in excess of EUR 250 million DLG: EUR [...] million, DA: EUR [...] million]. DA achieves more than two-thirds of its aggregate EU-wide turnover within Denmark, but DLG does not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension within Article 1(2) of the Merger Regulation.

#### **V. ASSESSMENT**

##### **Affected markets**

##### **1 Downstream markets**

11. Neither of the Parents is active in the markets for the production of hatching eggs, of day old chicks, of broiler chicken or of pigs where the JV is active. Therefore no horizontally affected markets arise in respect of these activities. However as a result of the activities of the Parents in a number of markets in Denmark which are upstream to those in which DanHatch is active, a number of vertically affected markets arise from the proposed transaction. The upstream markets include: (i) the market for premix and mineral compounds, (ii) the market for oilseed meal, (iii) the market for fat for animal feed, (iv) the market for poultry feed, (v) the market for pig feed and (vi) the market for veterinary medicine. The downstream markets are as follows: (i) the market for hatching eggs, (ii) the market for day old chicks, (iii) the market for broiler chicken and (iv) the market for pigs.

##### **1.1 The market for hatching eggs**

12. The process of production of hatching eggs begins with purchasing day-old chicks for parent stock. They are then reared and as soon as they are between eighteen and nineteen weeks old they are moved from the rearing facilities to hatching facilities. The production of hatching eggs starts as soon as the parent stock is around twenty-four weeks old.
13. The Commission has not previously considered the market for the production of hatching eggs. According to the Parties, in some cases before the Danish Competition Council, references to the activity of hatching eggs were made, however a separate market for hatching eggs was never defined. The Parties consider that there exists a market for the production of hatching eggs and that it is not necessary to segment this market further. The Parties also argue that the geographic scope of the market for the production of hatching eggs is national, due to the national regulations concerning salmonella reduction.
14. DanHatch is the only hatchery in Denmark and no companies have tried to enter the Danish market for hatching eggs in the past five years.

##### **1.2 The market for day old chicks**

15. The Parties claim that there is a specific market for day old chicks, which are sold to hatcheries for rearing and are subsequent input in hatching eggs production. However there are no Commission precedents with respect to these activities. According to the Parties, also the Danish competition authority has not clearly defined a separate market for the production of day old chicks.
16. The Parties argue that the geographic scope of this market should also be considered as national as a result of the above-mentioned national rules on salmonella reduction and transport restrictions.
17. Following earlier consolidation DanHatch now holds 100% market share in the market for the production of day old chicks in Denmark.

### **1.3 The market for broiler chicken**

18. After hatching the day old chicks are sold to broiler producers. The Commission has not previously considered the market for broiler chicken. However, according to the Parties, the Danish Competition Council has defined a separate market for broilers and considered it could be national although the market definition was ultimately left open.
19. The market share of DanHatch in the market for broiler chicken in Denmark is below [5-10] %.

### **1.4 The markets for piglets and slaughter pigs**

20. The Commission has previously defined an overall market for the purchase of live pigs for slaughtering, as opposed to the purchase of cattle for slaughtering.<sup>2</sup> The Parties submit that also the Danish Competition Council has found a separate market for pigs. As to the geographic scope, the Commission has previously left it open although it considered the arguments in favour of national markets<sup>3</sup>, markets defined in a radius of 150 km from the slaughterhouse<sup>4</sup> or larger than national, possibly EEA-wide<sup>5</sup>. The Danish Competition Council has concluded that this market is national in scope.
21. The Parties submit that an overall market for the production of pigs should be sub-segmented into the market for the production of piglets and of slaughter pigs, due to a specialisation of the farmers with respect to these two stages of pig production. In Denmark, the market share of DanHatch in the market for piglets is around [0-5]% and in the market for slaughter pigs around [0-5]%.

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<sup>2</sup> Case No COMP/IV/M.1313 – *Danish Crown/Vestjyske Slagterier*, Commission decision of 9 March 1999, par. 21; Case No. M.3968 - *Sovion / Südfleisch*, Commission Decision of 21 December 2005, par. 12, Case No. COMP/M.6285 - *Saria / Danish Crown / Daka JV*, Commission Decision of 29 June 2012 par. 39.

<sup>3</sup> Case No COMP/IV/M.1313 – *Danish Crown/Vestjyske Slagterier*, paras. 50-65.

<sup>4</sup> Case No. M.3968 - *Sovion / Südfleisch*, op. cit., par. 33.

<sup>5</sup> COMP/M.3337 – *Best Agrifund / Nordfleisch*, Commission decision of 19 March 2004, paragraphs 9-12.

22. Should the market for slaughter pigs or any of its potential sub segments be considered as wider than national, in any case, the effects resulting from the activities of DanHatch would be confined to Denmark.

## 2 Upstream markets

### 2.1 The market for premix and mineral compounds

23. Animal feed mixes (also called feed additives) are mixtures of additives such as vitamins, minerals, trace elements, amino acids, organic acids, phosphates, enzymes and growth promoters. These mixes are added to animal compound feed in order to enhance the growth, performance or health of animals. Feed additives could be divided into premixes and base mixes, with the latter containing also minerals. In the previous decisions<sup>6</sup> of the Commission it was suggested that various animal feed mixes (including both premixes and mixes with mineral, i.e. base mixes) together could form one market, due to supply-side substitutability. However, the market definition in these cases was ultimately left open. As to the geographic scope of the market for animal feed mixes, the Commission considered it to be national, although ultimately the market definition was also left open<sup>7</sup>. According to the Parties the Danish Competition Council has defined a separate market for premix and mineral compounds and considered it as national.
24. The combined market share of DA and DLG in the market for premix and mineral compounds would be approximately [90-100]% in Denmark and [20-30]% in Sweden.

### 2.2 The market for oilseed meal

25. Oilseed meal constitutes raw material for animal feed and it is obtained as a by-product from crushing of oilseeds (mainly soya, rape and sunflower). In *Cargill/Agribrands*<sup>8</sup> the Commission found there to be a chain of substitution between the different types of oilseed meal and therefore they could be seen as belonging to one market<sup>9</sup>. According to the Parties the view that different types of raw materials for animal feed constitute one market is shared by the Danish Competition Council. While the Commission has found the market for oilseed meal to be at least EEA-wide<sup>10</sup>, the Danish Competition Council considered its scope to be national.

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<sup>6</sup> COMP/M.4617 – *Nutreco/BASF*, op. cit. par. 17, COMP/M.5558 – *Nutreco/Cargil*, op. cit., par. 12, Case No. COMP/M.6573, *Forfarmers / Agricola*, Commission Decision of 4 July 2012, paras. 27-28.

<sup>7</sup> COMP/M.5558 – *Nutreco/Cargill*, op. cit., par. 13, COMP/M.6573, *Forfarmers / Agricola*, op. cit. paras. 29-30.

<sup>8</sup> COMP/M.2271 – *Cargill/Agribrands*, op. cit. par. 9.

<sup>9</sup> Also in: Case No. COMP/M.6383, *Cargill / Korofrance*, Commission Decision of 16 November 2011, para. 35.

<sup>10</sup> COMP/M.2271 – *Cargill/Agribrands*, op. cit. par. 11.

26. The combined market share of DA and DLG in the market for raw materials for animal feed would be approximately [60-70]% in Denmark. In the EEA their combined market share would be lower than [10-20]%. It is also worth noting that DA sells oilseed meal only in Denmark.
27. In any event, even if the market for oilseed meal was considered as wider than national, any effects resulting from these overlapping activities of the Parents would be confined to Denmark.

### **2.3 The market for fat for animal feed**

28. The Commission has not previously considered the market for fat for animal feed. However, according to the Parties, the Danish Competition Council has previously found that fat is separate from other raw materials for animal feed because it is used for controlling the energy level in the animal feed, while the other raw materials are used for controlling the protein level. The geographic scope of the market was found to be national by the Danish Competition Authority.
29. The combined market share of DA and DLG in Denmark in the market for fat for animal feed would be approximately [80-90]%.

### **2.4 The markets for poultry feed and pig feed**

30. Animal feed is produced from various amounts of grain, raw materials (such as soya, rape and sunflower products), fat and mineral compounds. The amount of inputs used differs depending on the type of animal and on the stage of the animal's life for which the feed is intended.
31. In previous cases the Commission has considered a general market for animal feed<sup>11</sup>, including a potential segmentation into<sup>12</sup>: complete feed, premix (which has a highly nutritional value), pet feed and aqua feed (i.e. for fish farming). However, ultimately the market definitions in all these cases were left open. In another case<sup>13</sup> the Commission analysed the sub-segmentation of the market for animal compound feed into: (i) concentrates, (ii) starter nutrition, (iii) milk replacers and (iv) complete feed; but again left the market definition open. Finally in recent cases<sup>14</sup> another potential division of the market for animal feed was taken into account, namely for (i) feed for cattle, (ii) feed for pig and (iii) feed for poultry. Again, the market definition was ultimately left open.
32. According to the Parties, the Danish Competition Council has found in its previous decisions that the market for animal feed could be divided according to animal species into cattle, pig and poultry feed. A further sub-segmentation of the market for pig feed

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<sup>11</sup> Case No COMP/M.2271 – *Cargill/Agribands*, Commission decision of 19 February 2001, par. 8; Case No COMP/M. 4617 – *Nutreco/BASF*, Commission decision of 25 September 2007, par. 20; Case No COMP/M.5558 – *Nutreco/Cargill*, Commission decision of 11 December 2009, par. 7.

<sup>12</sup> Case No COMP/M.2956 *CVC/PAI Europe/Provimi*, Commission decision of 28 October 2002, par. 12.

<sup>13</sup> Case No COMP/M.6383 *Cargill/Korofance*, Commission decision of 16 November 2011, par. 9.

<sup>14</sup> Case No COMP/M.6468 *Forfarmers/Hendrix*, Commission decision of 16 March 2012, par. 26

into feed for slaughter pigs, piglets and sows was considered by the Danish competition authority, but ultimately the market definition was left open.

33. Market investigations in previous decisions<sup>15</sup> of the Commission indicated that the geographic scope of the markets for various types of animal feed tends to be national, but the exact definition was ultimately left open. It has been stated by the Parties that according to the precedents of the Danish competition authority, these markets are national or even smaller – confined to regions within Denmark.
34. In the market for poultry feed the combined market share of the Parents in Denmark would be approximately [60-70]%. In the market for pig feed the combined market share of the Parents in Denmark would be between [60-70]% and [70-80]%.
35. In any event, any effects resulting from the vertical link between the Parents and the JV would be limited to Denmark.

## **2.5 The market for veterinary medicine**

36. Veterinary medicine is used for the production of both chicks and pigs. The Commission has previously<sup>16</sup> considered the market for a veterinary medicine as one of the categories of the animal health sector and analysed whether veterinary medicine could be subdivided further according to the type of product and/or their use. However, ultimately the market definition was left open. According to the Parties the Danish Competition Council concluded that veterinary medicine for production animals was a distinct market and left open, whether it should be sub-segmented further on the basis of intended use and properties of the medicine. In the same decision it was indirectly implied that this market is national in scope. The Commission has also stated that the market for the animal health sector is national in scope.<sup>17</sup> The Parties submit that national regulation in Denmark provides for a number of requirements for the distributors of veterinary medicine, including permissions from health authorities. Therefore the Parties argue that the scope of this market is indeed national.
37. DA is currently active in the market for veterinary medicine and holds a market share of [30-40]% in Denmark. DLG established a new joint venture which supplies veterinary medicine to farmers. However, since this joint venture has only been operational since 1 January 2013, DLG is not yet able to provide its market share.

## **3 Other overlapping activities of the Parents**

38. Horizontally affected markets arise in Denmark and in Sweden as a result of certain overlapping activities of the Parents, which are neither upstream nor downstream to the activities of the JV.

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<sup>15</sup> COMP/M.2271 – *Cargill/Agribands*, op. cit., par. 10; COMP/M.2956 *CVC/PAI Europe/Provimi.*, op. cit., par. 16; COMP/M. 4617 – *Nutreco/BASF*, op. cit., par. 26; COMP/M.5558 – *Nutreco/Cargill*, op. cit., par. 8.

<sup>16</sup> Case No. IV/M885 -*Merck/Rhône-Poulenc/Merial*, Commission Decision of 2 July 1997, par. 30.

<sup>17</sup> IV/M885 -*Merck/Rhône-Poulenc/Merial*, op. cit., par. 49.



### **3.1 The market for compound feed for cattle**

39. The Commission in its previous cases<sup>18</sup> has recognised a potential separate market for animal compound feed, as opposed to pet feed and aqua feed. In another decision<sup>19</sup> the Commission considered segmentation of the market for animal compound feed into three segments: feed for cattle, pig and poultry. In all those cases the market definition was ultimately left open. As already noted, the Commission has previously considered the markets for various types of animal feed to be national in scope. According to the Parties the Danish Competition Council has defined a separate product market for compound feed for cattle, which was deemed national in scope.
40. The combined market share of DA and DLG in the market for compound feed for cattle would be approximately [60-70]% in Denmark.

### **3.2 The market for crop protection**

41. In its previous decisions<sup>20</sup> the Commission has analysed possible segmentations of the overall market for crop protection, on the basis of the application of the product. According to the Parties, the Danish Competition Council has also analysed possible sub-segmentations of this market but has ultimately left the market definition open. Both the Commission and the Danish Competition Council have found the market(s) for crop protection to be national.
42. The combined market share of DA and DLG in the market for crop protection would be approximately [60-70]% in Denmark.

### **3.3 The market for seeds**

43. The Commission has previously<sup>21</sup> analysed separate market segments for seeds determined by cereal type. According to the Parties, the Danish Competition Council has also considered similar sub-segmentations but has ultimately left the definition of the market for seeds open. As to the geographic scope, previous market investigations indicated that the market is national, although the Commission has ultimately left the geographic market definition open.<sup>22</sup> The Parties submit that the geographic scope of the market for seeds should be considered as national.

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<sup>18</sup> COMP/M.2956 *CVC/PAI Europe/Provimi.*, op. cit. par. 9; COMP/M. 4617 – *Nutreco/BASF*, op. cit., par. 20, COMP/M.5558 – *Nutreco/Cargill*, op. cit., par. 7.

<sup>19</sup> COMP/M.6468 – *Forfarmers/Hendrix*, op. cit., par. 26.

<sup>20</sup> Case No COMP/M.1806 *AstraZeneca/Novartis*, Commission decision of 26 July 2000, par. 13; Case No COMP/M.2547 – *Bayer/Avantis Crop Science*, Commission decision of 17 April 2002, Case No COMP/M.4972 – *Pemrira/Arysta.*, Commission decision of 25 February 2008, par. 22.

<sup>21</sup> Case No IV/M.556 – *Zeneca/Vanderhave*, Commission decision of 9 April 1996, par. 10; Case No COMP/M.3465 – *Syngenta CP/Advanta*, Commission decision of 17 August 2004, par. 13

<sup>22</sup> COMP/M.3465 – *Syngenta CP/Advanta*, op. cit. paras. 29-30.

44. The combined market share of DA and DLG in the market for seeds would be approximately [70-80]% in Denmark and [10-20]% in Sweden.

### **3.4 The market for purchase of grain**

45. The Commission has previously<sup>23</sup> referred to the market for purchase of grain and considered that its scope is national, or even smaller – i.e. regional within the UK. Ultimately the market definition was left open. According to the Parties the Danish Competition Council has previously considered whether the overall market for the purchase of grain should be divided according to each type of cereal, but ultimately left the market definition open. As to the geographic scope, the Parties submit that the Danish Competition Council has analysed whether it should not be smaller than national, i.e. west of the Great Belt and east of the Great Belt.
46. The combined market share of DA and DLG in Denmark in the market for the purchase of grain would be approximately [70-80]%.

### **3.5 The market for the sale of fertiliser**

47. DLG and DA are active in the market for purchasing of fertiliser, which they then sell to their downstream customers.<sup>24</sup>
48. The Commission has previously<sup>25</sup> considered various possible subdivisions of the market for fertiliser, including segmentation according to the fertiliser's content i.e. containing (i) nitrogen, (ii) phosphorus or (iii) potassium. In addition the Commission considered<sup>26</sup> separate markets for: (i) production and sale of fertiliser, (ii) wholesale sale of fertiliser<sup>27</sup> and (iii) retail sale of fertiliser. According to the Parties the Danish Competition Council has also considered the abovementioned segmentations, as well as a subdivision into the market for solid and liquid fertiliser. In *Norsk Hydro/Enichem Agricoltura*<sup>28</sup> the Commission noted that due to special demands for storage, transportation and use of fertilisers in particular Member States, including Denmark, the geographic scope of the market for fertiliser could be considered national in these countries. Similarly in *Yara/DLG/Agro Denmark*<sup>29</sup> the markets for wholesale and retail

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<sup>23</sup> Case No. COMP/M.3534 - *Cargill-BCA/ABF-Allied Grain/JV*, Commission Decision of 8 December 2004, paras. 10-11. This case was referred to the United Kingdom in its entirety; Case No. COMP/M.3385 - *B2323 Cargill/BCA*, Commission Decision of 1 April 2004, paras. 8,11.

<sup>24</sup> DanHatch produces environmentally-friendly and organic fertilisers but its market share is minimal, of less than 1% in Denmark.

<sup>25</sup> Case No COMP/M.2524 – *Hydro/SQM/Rotem/JV*, Commission decision of 5 December 2001, paras. 11-17.

<sup>26</sup> Case No COMP/M.3737 – *Yara/DLG/Agro Danmark*, Commission decision of 1 September 2005, par. 10.

<sup>27</sup> Case No. IV/M.1362 - *BayWa AG/RWA*, Commission Decision of 3 June 1999, par. 14.

<sup>28</sup> Case No COMP/M.769 - *Norsk Hydro/Enichem Agricoltura*, Commission decision of 29 July 1996, par. 22.

<sup>29</sup> COMP/M.3737 – *Yara/DLG/Agro Danmark*, op. cit., par. 11.

sale of fertiliser were considered to be national. The Parties maintain that also the Danish Competition Council has considered the geographic scope of the market for fertiliser to be national, due to national regulations in force in Denmark.

49. The combined market share of DA and DLG in the market for the sale of fertiliser would be approximately [70-80]% in Denmark.

### **C. Assessment**

#### *Legal requirements under article 4(4) of the Merger Regulation*

50. The Commission considers that the proposed transaction may significantly affect competition in markets confined to Denmark and Sweden,<sup>30</sup> where a number of affected markets arise. In some of these markets the combined market shares of the parties are relatively high and thus the impact of the transaction on competition in Denmark and Sweden deserves close scrutiny. The Commission also considers that the markets in which competition is affected present all the characteristics of distinct markets. It follows that the legal requirements of Article 4(4) of the Merger Regulation are met.

#### *Additional factors*

51. The Danish Competition and Consumer Authority and the Swedish Competition Authority are the most appropriate for dealing with the case. First, any competitive effects resulting from the transaction would be constrained to Denmark and Sweden. Second, these authorities have previous experience in assessing mergers in the agricultural sector and are acquainted with the markets. Third, both competition authorities have expressed their willingness to accept the referral in the present case.
52. Although this case may potentially affect competition in two Member States, at the same time it does not require coordinated investigation and/or coordinated remedial action, which implies that a referral to two Member States is appropriate. In addition, the referral is triggered by a voluntary request of the parties in the pre-notification stage and therefore it cannot be considered that it deprives the parties of the benefit of a one-stop shop.
53. The Commission has also in a number of previous cases in the agricultural sector referred the matters to the national competition authorities in for example Denmark<sup>31</sup>, the United Kingdom<sup>32</sup> and France<sup>33</sup>.

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<sup>30</sup> The JV also has one hatchery in Poland and some sales of day-old chicks to the Czech Republic, Germany, the Netherlands and Poland. However these activities do not result in any horizontally or vertically affected markets in these countries.

<sup>31</sup> COMP/M.3737 – *Yara/DLG/Agro Danmark*, op. cit.

<sup>32</sup> COMP/M.3534 - *Cargill-BCA/ABF-Allied Grain/JV*, op. cit.

<sup>33</sup> COMP/M.6845 – *Sofiproteol / Groupe Euralis / JV*.

## VI. REFERRAL

54. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations<sup>34</sup> (point 17) indicates that, in seeking a referral under Article 4(4), *“the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny”, and that “such indications may be no more than preliminary in nature...”*. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the potential impact of the concentration on competition is limited to distinct markets in Denmark and Sweden, and that the requested referral would be consistent with point 20 of the notice.

## VII. CONCLUSION

55. For the above reasons, and given that both Denmark and Sweden have expressed their agreement, the Commission has decided to refer the transaction to be examined by the Danish Competition and Consumer Authority in relation to the affected markets which are geographically limited to Denmark and to the Swedish Competition Authority with respect to the remaining two affected markets which are geographically limited to Sweden. This decision is adopted in application of Article 4(4) of the Merger Regulation.

*For the Commission  
signed  
Alexander ITALIANER  
Director General*

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<sup>34</sup> OJ C 56, 05.03.2005, p.2.