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***Case No COMP/M.6740 -
BAYWA / CEFETRA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

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EUROPEAN COMMISSION

Brussels, 19.12.2012
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.6740 – BayWa / Cefetra
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 14 November 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which BayWa AG ("BayWa", Germany) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of the whole of Cefetra B.V. ("Cefetra", The Netherlands) by way of purchase of shares (the "Proposed Transaction").² BayWa is hereinafter referred to as the "Notifying Party". BayWa and Cefetra are hereinafter referred to as "the Parties".

(1) THE PARTIES

2. BayWa is a trading and services group active in three business segments: (i) agricultural equipment and commodities such as grains, oilseeds, seeds, fertilizers, crop protection

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 358, 21.11.2012, p. 8.

and feedstuffs for livestock farming; (ii) building materials, do-it-yourself (DIY) and garden centres; and (iii) energy products such as heating oil, diesel and lubricants.³

3. Cefetra is an international trader and supplier of agricultural commodities for the animal feed, food, and fuel industries. More than [...]% of Cefetra's activities concern the supply of agricultural commodities for the animal feed industry. Cefetra is currently solely controlled by the Dutch cooperative ForFarmers.⁴

(2) THE TRANSACTION AND CONCENTRATION

4. The Proposed Transaction consists of the acquisition of all the issued and outstanding common shares of Cefetra through BayWa Dutch Agrico B.V., a newly established wholly owned BayWa subsidiary.
5. The Proposed Transaction therefore constitutes an acquisition of control within the meaning of Article 3(1)(b) of the Merger Regulation.

(3) UNION DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁵ [for BayWa: EUR 9 586 million; for Cefetra: EUR 4 606 million]. Each of them has an EU-wide turnover in excess of EUR 250 million [for BayWa: EUR [...]; for Cefetra: EUR [...]]. None of the Parties achieves more than two-thirds of its aggregate EU-wide turnover in one Member State.⁶ The Proposed Transaction therefore has an EU dimension under Article 1 (2) of the Merger Regulation.

(4) COMPETITIVE ASSESSMENT

7. Horizontal overlaps between the Parties' activities arise in the origination and marketing of grains, oilseeds and oilseed meals. These overlaps only give rise however to a horizontally affected market as regards the marketing of oilseed meals in the EEA.⁷

³ At the time of this Decision, Baywa is also in the process of acquiring control over Bohnhorst Agrarhandel GmbH ('Bohnhorst'). The acquisition of Bohnhorst is not interrelated with the present transaction and will be the object of a separate merger control proceeding.

⁴ See case COMP/M.5410 – ForFarmers/Cefetra, decision of 14 May 2009.

⁵ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

⁶ Baywa's turnover in Germany (EUR 6 238.9 million) is [...] of its aggregate EU-wide turnover.

⁷ If the geographic market for the marketing of grains were considered to be narrower than EEA-wide in scope, the Proposed Transaction would also give rise to an affected market in a possible Dutch market as well as a possible market including the Netherlands and Belgium. In these two possible markets, the Parties' combined market shares would respectively amount to [20-30]% and [10-20]%. In its previous decisions (see Case IV/M.1376 – *Cargill/Continental Grain*, decision of 3 February 1999, para. 13; Case COMP/M.6383 – *Cargill/Korofrance*, decision of 16 November 2011, para.60.), the Commission assessed the impact of those concentrations on the market for the marketing of grains at EEA-wide level only. In addition, trade flow data submitted by the Notifying Party shows that imports of grains in the Netherlands represent approximately 537% of local production, and that exports from the Netherlands account for approximately 43% of local production. Furthermore, Germany and France account for more than two thirds of total EEA imports into the Netherlands. In these two Member States, the combined market shares of the Parties are small ([5-10]% in Germany and [0-5]% in France). In addition, according to the Notifying Party, there are no significant transport cost differences for shipments within the Netherlands and from nearby Member States to the Netherlands (and vice-

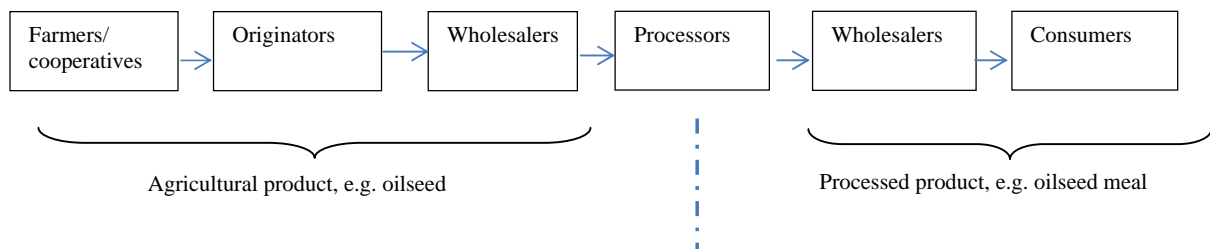
8. Horizontal overlaps and vertical relationships also exist in the supply of certain non-grain food ingredients⁸ and the supply of animal feed. None of these overlaps and relationships however gives rise to affected markets.

A. Relevant markets

A.1. Origination/Marketing

9. In the Commission's case practice, the product markets for harvested grains, oilseeds, and intermediate oilseed products⁹ have traditionally been divided into the following categories:¹⁰
- i. "Origination" is defined as the market for purchasing crops such as harvested grains and oilseeds directly from farmers or cooperatives; and
 - ii. "Marketing" comprises the sale by wholesalers of grains, oilseeds, and intermediate oilseed products to third parties.¹¹
10. The graphic below illustrates the value chain for these products:¹²

Diagram 1 – Illustration of the grains and oilseeds value chain¹³



versa). For these reasons, it can be concluded that the geographic scope of the market for grains cannot reasonably be found to be limited to the Netherlands or to the Netherlands and Belgium. As such, no horizontally affected market would arise with respect to the marketing of grains.

- ⁸ A technically affected market would arise as regards the marketing of molasses in the Netherlands, where the Parties have a combined share of [10-20]%. In any event, the increment in market shares is marginal ([0-5]%) and the market would not be affected if neighbouring countries such as Belgium were also considered as part of the relevant geographic market.
- ⁹ Intermediate products include crude seed oil and oilseed meal (see, e.g. Commission decision of 3 February 1999, Case IV/M.1376 - *Cargill/Continental Grain*, para. 13).
- ¹⁰ Case IV/M.1376 - *Cargill/Continental Grain*, Commission decision of 3 February 1999; Commission decision of 9 November 1999, Case COMP/M.1348 – *ADM/Alfred C. Toepfer International/Intrade*; Commission decision of 8 February 2001, Case COMP/M.2330 – *Cargill/Banks*. Some of these decisions also discussed trading, which is a possible, though not necessary, step in the production chain. It is defined as paper trading of grains, oilseeds, and intermediate oilseed products between traders where no physical delivery of the underlying commodity asset takes place and a cash settlement is made. The Parties' activities in paper trading are marginal and [...].
- ¹¹ Grain and oilseed products may be sold between wholesaling intermediaries before being sold to processors.
- ¹² Direct sales may also be made between non-adjacent parts of the chain, e.g. direct sales by farmers/cooperatives to processors or direct sales by processors to end users.
- ¹³ Source: paragraph 69 of the Form CO.

A.2. Marketing of oilseed meals in the EEA

11. Oilseed meal is produced through the crushing of oilseeds resulting in crude oil and oilseed meal. Oilseed meal is used primarily as an animal feed ingredient because of its protein content.

A.2.a. Relevant market definition

A.2.a.i. Product market

12. The Commission has previously left open the question as to whether the marketing of intermediate products derived from oilseeds, in particular oilseed meals, must be considered separately from oilseeds.¹⁴ In addition, it was considered to be likely that different types of oilseed meals (e.g. soymeal and rapeseed meal) belonged to the same product markets. Indeed, the Commission found indications that there is significant demand-side and supply-side substitutability, interdependent pricing and comparable nutritional value.¹⁵ However, the Commission ultimately left this question open.
13. In line with previous decisions, the Notifying Party submits that the question as to whether oilseed meals should be considered separately from oilseeds can be left open. In any event, the Notifying Party considers that the market for oilseed meals does not need to be further segmented.
14. A large majority of the respondents to the Commission's request for information consider that from a customer's perspective different types of oilseed meals are functionally similar and largely substitutable. A considerable majority of respondents also stated that customers of oilseed meals could easily switch from one type of oilseed meal to another should the price of one of them increase. By contrast, a majority of respondents stated that the prices of different types of oilseed meals differ to a significant extent. However, all respondents noted that the prices between the different types of oilseed meals are correlated.
15. From the supply-side, the majority of the respondents stated that most oilseed meal suppliers sell all types of oilseed meals. Most of the respondents however stated that oilseed meal suppliers cannot switch supply between one type of oilseed meal and another in a short time and without incurring significant costs or risks.
16. In any event, the Commission concludes that for the purposes of this Decision the product market definition can be left open given that the Proposed Transaction would not give rise to serious doubts even under the narrowest market definition.

¹⁴ Case No. COMP/M.6383 – *Cargill / Korofrance*, decision of 16 November 2011.

¹⁵ Case COMP/M.2271 2271 – *Cargill/Agribands*, Commission decision of 19 February 2001, point 9; see also Case COMP/M.4042 – *Toepfer/Invivo/Soulès*; Case COMP/M.2886 – *Bunge/Cereol*, Commission decision of 20 September 2002; Case COMP/M.2693 – *ADM/ACTI*, Commission decision of 11 February 2002; Case IV/M.1126 – *Cargill/-Vandermoortele*, Commission decision of 20 July 1998; Case IV/M. 1125 – *Cereol/Sofiproteol-Saipol*, Commission decision of 10 March 1998; Case IV/M.866 – *Cereol/ÖSAT-Öhlmühle*, Commission decision of 2 April 1997.

A.2.a.ii. Geographic market

17. In previous decisions, the Commission has found the market for the marketing of oilseed meals to be at least EEA-wide in scope, and possibly even larger.¹⁶ This was based on the fact that (i) the US, China, Korea and Japan are also important markets for oilseed meal constituent and disruption of supply in these regions has an effect on EU prices for oilseed meals; and (ii) oilseed products are traded on the international commodity markets of Chicago and Rotterdam and there are no barriers to trade. The Commission only identified transport costs as a relevant factor limiting the international trade of oilseed meals.
18. In line with previous decisions, the Notifying Party submits that the geographic market for the marketing of oilseeds and oilseed meals is at least EEA-wide.
19. A majority of respondents to the Commission's request for information stated that although there are price differences both between EEA Member States and between the EEA and different geographic areas, these price differences are quite similar inside the EEA and between the EEA and the rest of the world. Furthermore, most respondents indicated that there were no quality differences of oilseed meals within the EEA or between the EEA and the rest of the world. A majority of respondents also stated that a local presence in a given EEA Member State is not required in order to sell in that Member State. Moreover, a clear majority of respondents stated that while there are significant transport costs involved in the sale or purchase of oilseed meals, there are no other significant barriers to the EEA-wide trade of oilseed meals.
20. On the basis of the above, the Commission considers in line with its previous decisions that the scope of the geographic market for oilseed meals is at least EEA-wide. However, for the purposes of this Decision it can be left open whether the geographic scope of the market is EEA-wide or broader, given that the Proposed Transaction would not give rise to serious doubts even under the narrowest market definition.

A.2.b Competitive assessment

21. The overlaps between the Parties' activities give rise to a horizontally affected market in the marketing of oilseed meals at EEA-level and its potential sub-segments of soymeal and rapeseed meal.¹⁷ The table below contains the Parties' market shares in all these potentially affected markets:

Table 1 – Parties' market shares in various markets for the marketing of oilseed meals in the EEA

| Oilseed meal | BayWa | Cefetra | Combined |
|---------------------------|--------------|----------------|-----------------|
| All types of oilseed meal | [0-5]% | [10-20]% | [10-20]% |
| Soymeal | [0-5]% | [10-20]% | [10-20]% |
| Rapeseed meal | [0-5]% | [10-20]% | [10-20]% |

¹⁶ Case COMP/M.2271 – *Cargill/Agribands*, Commission decision of 19 February 2001, point 11; Case COMP/M.2693 – *ADM/ACTI*, Commission decision of 11 February 2002, para.16; Case COMP/M.2886 – *Bunge/Cereol*, Commission decision of 20 September 2002, point 11; Case COMP/M.3385 – *Cargill/BCA*, decision of 1 April 2004, point 12; similarly, the Commission only assessed the market at the EEA level in its recent decision COMP/M.6383 – *Cargill/Korofrance*, Commission decision of 16 November 2011, para.61.

¹⁷ Soymeal and rapeseed meal are the only oilseed meal products where the Parties' activities overlap.

22. As illustrated in the table above, the increments brought about by the Proposed Transaction are limited at less than [0-5]% and the Parties' combined market shares remain below 20% and therefore not of a level that would be indicative of concern.¹⁸
23. In addition, the merged entity will continue to face competition from a number of strong competitors including Cargill, with a [10-20]% market share in the overall market for oilseed meals. Other notable competitors include ADM, Bunge and LDC (all with a [10-20]% market share). These competitors are multinational corporations active globally in the international trade of agricultural commodities.
24. Lastly, none of the respondents to the Commission's market investigation has raised concerns as regards possible anticompetitive effects resulting from the Proposed Transaction. In this respect, a large majority of respondents stated that there are sufficient alternative oilseed meals suppliers to BayWa and Cefetra in the EEA.
25. In view of the relatively limited increment to the Parties' market shares arising from the Proposed Transaction and the presence of alternative suppliers on the market that will be continue to exercise a competitive constraint on the merged entity, the Commission concludes that the Proposed Transaction does not give rise to serious doubts with respect to the marketing of oilseed meals in the EEA or its possible segments.

(5) CONCLUSION

26. 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

¹⁸ See paragraph 18 of the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C31, 5.2.2004, p. 5.