



EUROPEAN COMMISSION
DG Competition

Case M.7565 – Danish Crown/ Tican

Only the English text is available and authentic.

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

Article 9(3)
Date: 17/7/2015



EUROPEAN
COMMISSION

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Brussels, 17.7.2015
C(2015) 5105 final

PUBLIC VERSION

COMMISSION DECISION

of 17.7.2015

relating to the partial referral of case M.7565 – Danish Crown / Tican to the Danish Competition and Consumer Authority, pursuant to Article 9 of Regulation (EC) No 139/2004

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COMMISSION DECISION

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relating to the partial referral of case M.7565 – Danish Crown / Tican to the Danish Competition and Consumer Authority, pursuant to Article 9 of Regulation (EC) No 139/2004

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (the ‘TFEU’)¹,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No. 139/2004 of 20.1.2004 on the control of concentrations between undertakings² (the ‘Merger Regulation’), and in particular Article 9(3) thereof,

Having regard to the notification made by Leverandørselskabet Danish Crown Amba and Andelsselskabet Tican on 3 June 2015, pursuant to Article 4 of the said Regulation,

Having regard to the request of the Kingdom of Denmark of 22 June 2015,

Whereas:

- (1) On 3 June 2015, the Commission received notification of a proposed concentration by which Leverandørselskabet Danish Crown Amba (‘Danish Crown’, Denmark) and Andelsselskabet Tican Amba (‘Tican’, Denmark) enter into a merger within the meaning of Article 3(1)(a) of the Merger Regulation (‘the Transaction’).³ Danish Crown and Tican are designated hereinafter as the ‘Parties’.
- (2) The Danish Competition and Consumer Authority received a copy of the notification on 4 June 2015.
- (3) By letter dated 22 June 2015, the Kingdom of Denmark via the Danish Competition and Consumer Authority requested the referral to its competition authority of the Transaction with a view to assessing it under national competition law, pursuant to Article 9(2)(a) of the Merger Regulation (‘the request’).

¹ OJ C115, 9.8.2008, p.47.

² OJ L 24, 29.1.2004, p.1. 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.

³ Publication in the Official Journal of the European Union No C 139, 11.06.2015, p. 10.

1. THE PARTIES

- (4) **Danish Crown** is the largest cooperative slaughterhouse based in Denmark and ultimate parent company of the Danish Crown Group, an international food undertaking with activities across the globe. Danish Crown is a cooperative owned by its members, who supply raw materials (pigs, sows and cattle) to the cooperative. Danish Crown has 8 878 cooperative members (2013/2014) of which 5 691 are cattle producing members and 3 990 pig and sow producing members.
- (5) **Tican** is the second largest (and only other) cooperative pig slaughterhouse in Denmark. Tican is vertically integrated through its subsidiaries in the slaughtering of pigs (Denmark) and in meat processing (Denmark, Poland and the UK). Tican has sales worldwide. Tican has 277 members who supply pigs and sows to the slaughterhouse.
- (6) Neither Danish Crown nor Tican have any non-Danish cooperative members.

2. THE OPERATION AND THE CONCENTRATION

- (7) According to the terms of the merger agreement of 24 February 2015, Tican will be dissolved without liquidation by way of a transfer of all of its activities, assets and liabilities to Danish Crown. The member farmers of Tican will collectively join Danish Crown, thus becoming cooperative members of the latter.
- (8) The operation therefore constitutes a concentration pursuant to Article 3(1)(a) of the Merger Regulation.
- (9) The Transaction will also lead to sole control by the merged entity of SPF-Danmark A/S and Svineslagteriernes Varemærkeselskab ApS, which are jointly controlled by Danish Crown and Tican at present. SPF-Danmark A/S is active in the trading and transport of live hogs, piglets etc.; Svineslagteriernes Varemærkeselskab ApS holds trade mark registrations of the 'Danish' brand in the EU, Benelux, Denmark, France, Italy, the Great Britain and Japan.

3. UNION DIMENSION

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Danish Crown: EUR 7 779 million, Tican: EUR 692 million).⁴ Each of them has a Union-wide turnover in excess of EUR 250 million (Danish Crown: EUR [...], Tican: EUR [...]), but neither of the undertakings concerned achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. THE ARTICLE 9 REQUEST FOR REFERRAL

- (11) By a letter dated 22 June 2015, the Danish Competition and Consumer Authority ('DCCA'), on behalf of the Kingdom of Denmark, requested the Transaction to be partially referred to the DCCA with a view to assessing the effects of the Transaction

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation.

in Denmark under Danish national competition law, pursuant to Article 9(2)(a) of the Merger Regulation.

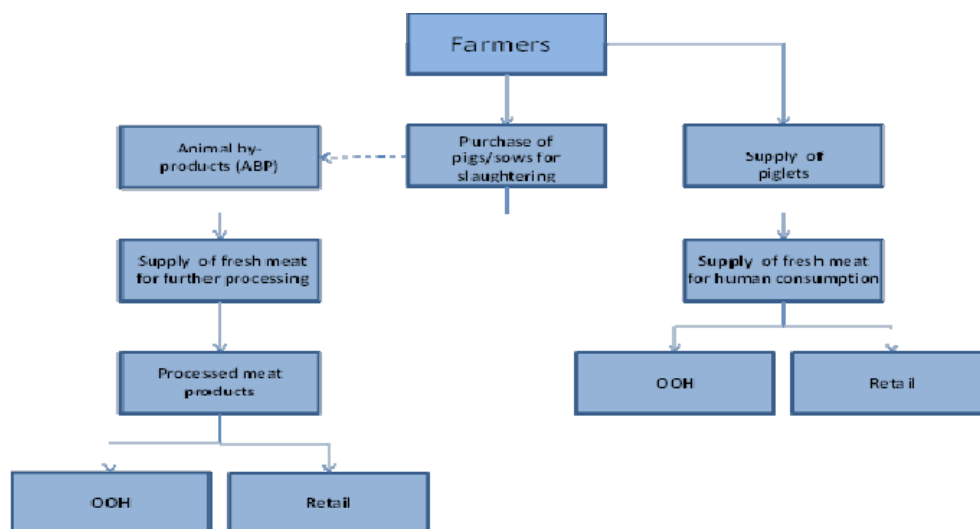
- (12) On a preliminary assessment, the DCCA has identified five markets in which the Transaction would threaten to significantly affect competition in Denmark:
- (1) The purchase of live pigs for slaughtering
 - (2) The sale of fresh pig meat for direct human consumption
 - (3) The sale of fresh pig meat for further processing
 - (4) The sale of processed meat products
 - (5) Animal by-products
- (13) The DCCA further submits that it would be the best placed authority to review the competition effects of the Transaction in Denmark for all such markets, given the likely locus of the competition effects of the transaction, the DCCA's proximity to such markets and its specialist knowledge and experience in handling previous cases related to the same markets.

5. RELEVANT MARKETS

5.1. Introduction

- (14) The Parties are both active and vertically integrated in the pig meat value chain where their activities overlap to a notable extent. In addition, the Parties and particularly Danish Crown, have some activities in meats other than pig meat. Those activities are only discussed in this decision to the extent they give rise to affected markets.
- (15) The pig meat value chain comprises several steps, as shown in Figure 1.

Figure 1 – Pig meat value chain



- (16) The Commission has analysed the Danish pig meat industry in previous decisions.⁵ The Commission has identified several relevant product markets along the pig meat value chain, including:

⁵ M.2662 – *Danish Crown/Steff Houlberg* and M.1313 – *Danish Crown/Vestjyske Slagterier*.

- (a) The purchase of live pigs for slaughtering;
 - (b) The sale of fresh pig meat for direct human consumption, which can be further split according to the distribution channel (retail vs. Out-of-Home ('OOH'));
 - (c) The sale of fresh pig meat for further processing;
 - (d) Sale of processed meat products, which can possibly be further split per type of products (i.e. bacon, raw sausage, cooked sausage, pate and pies, canned meat, convenience products) and the distribution channel (retail vs. OOH);
 - (e) Markets related to animal by-products ('ABPs').
- (17) The Transaction gives rise to affected markets in all of the value chain levels (a) – (e).

5.2. Purchase of live pigs for slaughtering

5.2.1. Product market

- (18) The Commission has defined a distinct product market for the purchase of live pigs for slaughtering in its previous decisions.⁶ In addition, the Commission has concluded in some previous decisions that a further segmentation of the market between pigs and sows exists.⁷
- (19) The Parties do not contest the existence of a distinct market for the purchase of live pigs for slaughtering. They, however, note that sows only account for 1–2% of the Parties' total sourcing of live pigs and sows, and submit that the assessment of the case should be the same regardless of whether sows and pigs are considered to belong to the same relevant market or not.
- (20) The results of the market investigation support the market definitions adopted in previous cases.⁸
- (21) The Commission concludes that the purchase of live pigs for slaughtering is a relevant product market. It is not necessary for the purposes of the present decision to conclude whether pigs and sows belong to the same relevant product market as the Transaction warrants closer scrutiny irrespective of that distinction.

5.2.2. Geographic market

- (22) In past decisions, the Commission defined this market as national or at most national for Denmark.⁹ In cases concerning territories other than Denmark, the Commission

⁶ See, for instance M.1313 – *Danish Crown / Vestjyske Slagterier* paragraphs 20–21; and M.2662 – *Danish Crown / Steff Houlberg*, Art 9 referral decision, paragraph 21.

⁷ See, for instance M.3605 – *Sovion / HMG*, paragraphs 13–16, and M.3968 – *Sovion / Südfleisch*, paragraph 14.

⁸ See, for instance replies to questions 6 and 7 of Q1 – Questionnaire to farmers; and 5–7 of Q2 – Questionnaire to slaughterhouses.

⁹ M.2662 – *Danish Crown/Steff-Houlberg*, Article 9 referral decision, paragraph 31. See also M.1313 – *Danish Crown/Vestjyske Slagterier*, paragraph 61, where the market was defined as 'at most' Denmark.

has considered national markets or catchment areas around the sourcing slaughterhouses but has not made a definitive conclusion in all of the cases.¹⁰

- (23) The Parties submit the market in Denmark is national. They further note that the market conditions in Denmark are different from those in neighbouring countries such as Germany and the Netherlands, for instance due to the fact that Danish farmers are generally members of a cooperative.
- (24) The Commission notes that cross-border trade of slaughter pigs between Denmark and neighbouring countries is limited: imports of live pigs for slaughtering into Denmark are virtually non-existing while exports only amounted to 0.4 million out of the 18.6 million slaughter pigs produced in Denmark in 2014.¹¹ Moreover, live pigs delivered to the Parties' own slaughterhouses in Denmark seem to originate from Danish farms relatively close to the slaughterhouses: 50% of live pig supplies to the Parties' slaughterhouses originate from within 100 km of each of the slaughterhouses and, for all but one of the Parties' slaughterhouses, over 90% within 120 km of the respective facility, suggesting that transport distances of live pigs are generally limited.
- (25) The results of the market investigation support the finding of a national market in Denmark.¹²
- (26) The Commission therefore concludes that the geographical market for the purchase of live pigs for slaughtering is national or narrower than national in scope in Denmark. That geographic market presents, pursuant to Article 9(2)(a) of the Merger Regulation, all the characteristics of a distinct market.

5.3. Sale of fresh pig meat for direct human consumption

5.3.1. Product market

- (27) In previous decisions, the Commission has considered the sale of fresh pig meat for direct human consumption to constitute a distinct product market, separate from the sale of fresh pig meat for further processing to meat processors. The market for the sale of fresh pig meat for direct human consumption comprises fresh, frozen and minced pig meat that has not undergone further processing, it has had no other ingredients or spices added, nor has it been cooked, smoked or dried.¹³
- (28) In previous decisions, the Commission has further segmented the market for the sale of fresh pig meat for direct human consumption into retail and out-of-home ('OOH') segments.¹⁴

¹⁰ See, for instance M.3968 – *Sovion/Südfleisch*, paragraphs 33–34; M.3605 – *Sovion/HMG*, paragraph 44; and M.3337 – *Best Agrifund/Nordfleisch*, paragraphs 10–12.

¹¹ Source: the Parties, see for instance Form CO paragraph 449. The figures exclude the export of piglets.

¹² See, for instance replies to questions 8–13 of Q1 – Questionnaire to farmers; replies to questions 23–26 of Q2 – Questionnaire to slaughterhouses and agreed minutes of a conference call with Danske Slagtermestre on 28 April 2015, paragraph 8.

¹³ See, for instance M.1313 – *Danish Crown/Vestjyske Slagterier*, paragraphs 34–35; M.3337 – *Best Agrifund/Nordfleisch*, paragraph 24; and M.3605 – *Sovion/HMG*, paragraphs 71–72.

¹⁴ See, for instance M.1313 – *Danish Crown/Vestjyske Slagterier*, paragraphs 36–42; and M.2662 – *Danish Crown / Steff-Houlberg*, Art 9 referral decision, paragraphs 39–40.

- (29) The Parties do not contest the existence of separate sales channel segments.
- (30) The results of the market investigation support the existence of a distinct market for the sale of fresh pig meat for direct human consumption and the further segmentation according to the sales channel into sales to retail and OOH. The majority of respondents also agree that ‘fresh’ pig meat comprises fresh, frozen and minced pig meat that has not undergone further processing, it has had no other ingredients or spices added, nor has it been cooked, smoked or dried.¹⁵
- (31) The Commission therefore concludes that the sale of fresh pig meat for direct human consumption constitutes a distinct product market, which can likely be further sub-segmented according to the sales channels into retail and OOH.

5.3.2. *Geographic market*

- (32) In previous decisions concerning Denmark, the Commission has considered the retail segment to be national in scope while leaving it open whether the market in the OOH channel was national or wider.¹⁶ In a number of cases concerning primarily territories other than Denmark, the exact market definitions were ultimately left open.¹⁷
- (33) The Parties submit that both the retail and the OOH segments are wider than national, the retail segment comprising at least Northern Germany (including the federal states of Schleswig-Holstein, Niedersachsen and Mecklenburg-Vorpommern) and the OOH segment being EEA-wide. The Parties further argue that the retail segment has seen significant changes in recent years as the share of imports has consistently increased to approximately 22%. According to the Parties, price is a decisive factor for customers even in the retail channel, whereas the origin of meat is not. Moreover, even if Danish Crown still occasionally promotes its pig meat products with the brand ‘100% Dansk Danish Crown’, that is only done rarely.
- (34) The Commission notes that the evidence provided by the Parties is contradictory to their claims. For instance, the expert opinion submitted by the Parties indicates that a clear majority (71.3%) of consumers would not switch to non-Danish fresh pig meat even if faced with a 5% price increase for Danish fresh pig meat.¹⁸ The Parties’ own estimated demand curve for Danish fresh pig meat indicates that, with a 10% price increase less than 3% of customers would switch to non-Danish fresh pig meat¹⁹, which is indicative of a national market.²⁰ The Parties’ internal documents also

¹⁵ See, for instance replies to question 8–10 of Q2 – Questionnaire to slaughterhouses; replies to questions 5 and 6 of Q3 – Questionnaire to meat processors – Denmark; replies to questions 5–7 of Q5 – Questionnaire to retailers and meat packers – Denmark; and replies to questions 5–7 of Q7 – Questionnaire to the Horeca – Denmark.

¹⁶ M.1313 – *Danish Crown/Vestjyske Slagterier*, paragraphs 86 and 89; and M.2662 – *Danish Crown / Steff-Houlberg*, Article 9 referral decision, paragraphs 51 and 52.

¹⁷ M.3337 – *Best Agrifund / Nordfleisch*, paragraph 25; M.3522 – *Danish Crown / HK / Sokolow*, paragraph 15; M.3605 – *Sovion / HMG*, paragraph 62; and M.3968 – *Sovion / Südfleisch*, paragraph 66.

¹⁸ Annex 21 to the Form CO.

¹⁹ Annex 21 to the Form CO.

²⁰ This is because it would a priori be profitable for a hypothetical monopolist of Danish fresh pig meat to raise its price. When questioned about the meaning of this result, the Parties replied that, given the existence of imports, the relevant retail market for fresh pig meat was already wider than Denmark, and so, due to a ‘reverse cellophane fallacy’ effect, the hypothetical monopolist test could not be

include references to specific national market characteristics between different EEA countries. For instance, Tican notes for Denmark that [...] while for Germany they note that [...].²¹

- (35) The results of the market investigation include indications of national markets particularly for the retail channel where the majority of market participants replying told that Danish consumers prefer Danish-origin pig meat and commented for instance that *'Dansish [sic] customer prefer fresh pork of Danish origin'*, *'[t]he Danish consumers have a belief that the Danish system is less corrupt, more humane, and better quality than imported meat'*, *'Foodsafty [sic] is higest [sic] in Denmark + Consumers want to bye [sic] Danish produced pigs'*, and *'Danish consumers' preference for fresh pig meat of Danish origin is partially also driven by their concern about animal welfare and perceived better quality than imported fresh pig meat'*.²² The majority of retailers also considered that a significant price increase of 5–10% would not make the Danish consumers currently buying Danish fresh pig meat switch to a non-Danish product.²³ Retailers also generally need to pay a higher price for Danish than non-Danish fresh pig meat.²⁴ Finally, at least one major retail chain has lately increased its demands for Danish-origin pig meat over non-Danish pig meat because of end-customer preferences.²⁵
- (36) In light of the above and based on a preliminary analysis, the Commission's investigation has shown a sufficient number of indications suggesting the existence of a possible national Danish market for the sale of fresh pig meat for direct human consumption, including its sub-segments retail and OOH. If the market for the sale of fresh pig meat for direct human consumption were considered wider than national, the Transaction would not give rise to horizontally affected markets or threaten to significantly affect competition. In contrast, if the market were defined as Danish, the Transaction would give rise to such a threat. Given that any competition concerns would be confined to Denmark, the Commission has reached the conclusion that the geographic market definition can be left open in the present case leaving the DCCA to investigate the matter further.

relied upon as it could result in defining the market too narrowly (see the reply to question 69 of RFI2). Aside from the fact that the reply assumes the existence of a wide market to argue that a test to define the market cannot be performed (which would mean that this test can, effectively, never be performed), the reliance on a significant 'reverse cellophane fallacy' effect to invalidate the results of the hypothetical monopolist test is hard to justify since this type of situation usually only occurs in markets with regulated prices or where predatory prices are suspected, none of which applies to the present case.

²¹ Page 54 (slide 42) of Tican's internal document titled 'Process presentation, Project Hamburg', annex 10, sub-annex 5.4.12 to the Form CO.

²² See, for instance replies to questions 29–30 of Q5 – Questionnaire to retailers and meat packers – Denmark, and agreed minutes of a call with a retailer on 5 May 2015.

²³ Replies to question 33 of Q5 – Questionnaire to retailers and meat packers – Denmark, and agreed minutes of a call with a retailer on 5 May 2015.

²⁴ Replies to question 36 of Q5 – Questionnaire to retailers and meat packers.

²⁵ Agreed minutes of a call with a market participant on 7 May 2015.

5.4. Sale of fresh pig meat for further processing

5.4.1. Product market

- (37) In previous decisions, the Commission has considered the sale of fresh pig meat for further processing to constitute a distinct product market, separate from the sale of fresh pig meat for direct human consumption.²⁶ The Parties do not contest that market definition.
- (38) The results of the market investigation support the finding of a distinct market for the sale of fresh pig meat for further processing.²⁷
- (39) The Commission therefore concludes that the sale of fresh pig meat for further processing constitutes a relevant product market.

5.4.2. Geographic market

- (40) In the previous decision M.1313 – *Danish Crown / Vestjyske Slagterier*, the Commission found the relevant geographic market for the sale of fresh pig meat for further processing to be wider than national in scope when it came to Denmark.²⁸ However, in the following case M.2662 – *Danish Crown / Steff-Houlberg*, the market investigation showed indications of possible national markets but the Commission left the question ultimately open.²⁹ In a number of other cases concerning primarily territories other than Denmark, the question has been left open.³⁰
- (41) The Parties submit the market is at least EEA-wide or possibly even WTO-wide. The Parties support their view by referring to, for instance the nature of pig meat as a commodity product and significant international trade flows.
- (42) As to trade flows, the Parties submit that in 2014 the import share represented 78% of all pig meat consumption in Denmark, constituting 233 000 tonnes out of the total consumption of 300 000 tonnes of pig meat in Denmark.
- (43) Nonetheless, the Commission considers that the import figures alone, as provided by the Parties, are not reliable indicators of the role of imported pig meat in Denmark and do not constitute sufficient evidence of a geographic market wider than national.

²⁶ See, for instance M.1313 – *Danish Crown/Vestjyske Slagterier*, paragraphs 34–35; M.2662 – *Danish Crown / Steff-Houlberg*, Article 9 referral decision, paragraph 53, and Article 6(1)(b) decision, paragraph 15; M.3337 – *Best Agrifund/Nordfleisch*, paragraph 24; and M.3605 – *Sovion/HMG*, paragraphs 71–72. Further, possible sub-segments such as ‘pig heads’ (M.3605 – *Sovion/HMG*) or ‘half-carcasses’ (by the German Bundeskartellamt in B2 - 36/11 - Tönnies/Tummel) within the market of sale of fresh pig meat for further processing have been considered in previous cases but these distinctions are not relevant for assessment in the present case.

²⁷ See, for instance replies to questions 8 and 9 of Q2 – Questionnaire to slaughterhouses; and replies to question 5 and 6 of Q3 – Questionnaire to meat processors – Denmark.

²⁸ M.1313 – *Danish Crown/Vestjyske Slagterier*, paragraph 95.

²⁹ M.2662 – *Danish Crown / Steff-Houlberg*, paragraph 65 of the Article 9 decision and paragraph 22 of the Article 6(1)(b) decision.

³⁰ See, for instance M.3968 – *Sovien / Südfleisch*, paragraph 66; M.3522 – *Danish Crown / HK / Sokolov*, paragraph 15; M.3401 – *Danish Crown / Flagship Foods*, paragraph 10; M.3337 – *Best Agrifund / Nordfleisch*, paragraph 25. In the case *Sovion / HMG*, in which the target was primarily active in the Netherlands, the geographic market was considered as wider than national but the exact scope was left open. See M.3605 – *Sovion / HMG*, paragraph 74.

First, the report referred to by the Parties assumes that all imports are consumed in Denmark, setting aside possible re-exporting of such meat (or re-importing of Danish meat). The Parties themselves acknowledge that import figures may appear *'high compared to the total market, not least in respect of Denmark'* because of, among others, *'[s]ome of the meat will likely be re-exported out of the EU/EEA'*.³¹ This finding is further supported by the fact that the report provides over 100% 'import shares' for another type of meat.³² Moreover, even with the figures provided in the report, the total volume of pig meat available in Denmark before exports (imports + domestic production) in 2014 was approximately 1.9 million tonnes. Imports therefore represented only 12% of that volume.³³

- (44) Even if imports do not constitute a sufficient evidence of wider than national markets, it cannot be excluded that imports might constitute some level of competitive constraint on a potential Danish market.
- (45) The Commission further notes that the Parties' market shares differ significantly between, for instance Denmark ([40-50]% combined) and the neighbouring Germany ([10-20]% combined) when it comes to the sale of fresh pig meat for further processing. As explained in Recital 59, one of the Parties to the transaction also makes claims that it is only using pig meat of Danish-origin in its processed meat products in its marketing of such products. In the Commission's view, that points preliminarily towards national markets also for the supply of fresh pig meat for further processing.
- (46) Moreover, the market investigation has shown that, for most types of processed meat products, a significant share of respondents considered the origin of the meat to be important for Danish consumers when purchasing processed meat products. It was also found that the Danish origin is very important for certain products.³⁴
- (47) In light of the above and based on a preliminary analysis, the Commission's investigation has shown a sufficient number of indications suggesting the existence of a possible national Danish market for the sale of fresh pig meat for further processing.
- (48) Moreover, if the market for the sale of fresh pig meat for further processing were considered wider than national, the Transaction would not give rise to horizontally affected markets or threaten to significantly affect competition. In contrast, if the market were defined as Danish, the Transaction would give rise to such a threat. Given that any competition concerns would be confined to Denmark and that the DCCA is in the best position to deal with the case for the reasons referred to in Section 7 of the present decision, the Commission has reached the conclusion that the geographic market definition can be left open for the purposes of this decision, leaving the DCCA to investigate the matter further.

³¹ Form CO, paragraph 1116.

³² Report 'GIRA – Meat in Retail 2014', page 9, Annex 43 to the Form CO.

³³ See the report 'GIRA – Meat in Retail 2014', Annex 43 to the Form CO. According to the report, the imports were not 233 000 tonnes, as suggested by the Parties in their submission of 29 June 2015, but 210 000 tonnes. With that figure, the share would have been 11%.

³⁴ See, for instance replies to question 28 and 29 of Q2 – Questionnaire to slaughterhouses; and replies to question 21 of Q3 – Questionnaire to meat processors – Denmark.

5.5. Sale of processed meat products

5.5.1. Product market

- (49) Processed meat products can be defined as meat containing additional ingredients such as salt or spices, being raw, dried smoked or cooked. The Commission concluded in *Danish Crown / Steff-Houlberg*, which concerned primarily markets in Denmark, that processed pig meat products constitute a relevant product market separate from those of processed beef and processed poultry products.³⁵ In some other decisions, the question was nonetheless left open.³⁶
- (50) The Commission has in previous cases also noted that processed meat products constitute a combination of seven dimensions: (i) type of meat used (pig meat, beef, poultry), (ii) ingredients (spices), (iii) water content, (iv) heat treatment (smoked or boiled), (v) portion, (vi) packaging and (vii) temperature.³⁷ Further, the Commission has considered a possible sub-division of the market into:
- (a) Raw cured products
 - (b) Processed meat for cold consumption ('cold cuts')
 - (c) Canned meat
 - (d) Cooked sausages
 - (e) Pâtés and pies
 - (f) Ready-prepared dishes and components for such meals / convenience products³⁸
- (51) Moreover, the Commission has considered a possible segmentation of the market according to sales channel into retail and OOH.³⁹
- (52) The Parties generally agree with the past Commission's practice. However, they contest a distinction by meat type particularly for cold cuts and convenience products. According to the Parties, cold cuts and convenience products may typically include meats of various types and the exact meat type is not decisive for the final consumer.

³⁵ See, for instance M.2662 – *Danish Crown / Steff-Houlberg*, Article 9 referral decision, paragraph 70, and Article 6(1)(b) decision, paragraph 27. See also M.3401 – *Danish Crown / Flagship Foods*, paragraphs 15–18; and M.3605 – *Sovion / HMG*, paragraph 88.

³⁶ See, for instance M.3337 – *Best Agrifund / Nordfleisch*, paragraphs 41 and 42; and M.3522 – *Danish Crown / HK / Sokolow*, paragraph 19.

³⁷ See, for instance M.2662 – *Danish Crown / Steff-Houlberg*, Article 9 referral decision, paragraph 68; M.2662 – *Danish Crown / Steff-Houlberg*, Article 6(1)(b) decision, paragraph 25; M.3337 – *Best Agrifund / Nordfleisch*, paragraph 39; M.3522 – *Danish Crown / HK / Sokolow*, paragraphs 16 and 19; M.3605 – *Sovion / HMG*, paragraphs 87 and 89.

³⁸ See, for instance M.3968 – *Sovion / Südfleisch*, paragraph 80; M.3605 – *Sovion / HMG*, paragraphs 88 and 89; M.3522 – *Danish Crown / HK / Sokolow*, paragraphs 17 and 19; M.3401 – *Danish Crown / Flagship Foods*, paragraphs 16 and 18; M.2662 – *Danish Crown / Steff-Houlberg*, Article 9 referral decision, paragraphs 71–74 and 76.

³⁹ See, for instance M.3522 – *Danish Crown / HK / Sokolow*, paragraphs 17 and 19; M.3401 – *Danish Crown / Flagship Foods*, paragraphs 17 and 18; and M.2662 – *Danish Crown / Steff-Houlberg*, Article 9 referral decision, paragraphs 75 and 76.

- (53) The market investigation has largely confirmed the Commission's earlier definition and sub-segmentation within processed meat products.⁴⁰ The majority of Danish respondents replying also indicated that the type of meat used in the product was important even if the importance seemed to vary between different types of processed meat products.⁴¹
- (54) Replies to the market investigation were split when it came to a distinction between the retail and OOH channel for processed meat products.⁴²
- (55) However, it is not necessary for the purposes of this decision to conclude on the exact market definition concerning processed pig meat products as the Transaction warrants closer scrutiny with respect to processed meat products under all plausible market definitions.

5.5.2. *Geographic market*

- (56) In a previous case concerning Denmark, the Commission initially considered the geographic market to be wider than national in *Danish Crown / Vestjyske Slagterier*. Later, the Commission however decided in *Danish Crown / Steff-Houlberg* that a national delimitation of the market was warranted due to suppliers' ability to price discriminate between Member States.⁴³ In a number of cases concerning primarily territories other than Denmark, the exact market definition has been left open.⁴⁴
- (57) The Parties submit that the product markets, regardless of the product types and the sales channels, are wider than national because: 1) consumers are no longer focused on origin of meat and most processed products, both private label and branded, are therefore essentially imported from processing facilities located in countries where production costs are low and where it is possible to produce processed products at more competitive prices; 2) brands are relatively less important than what they were in the past; and 3) transportation costs are low.
- (58) Replies to the market investigation contain indications of possible national markets due to, for instance, the preference for national brands and national differentiations in pricing, as well as the role played by the origin of the meat in consumer choices.⁴⁵ That finding does not preclude the possibility that imports might constitute some level of competitive constraint on the potential Danish market.

⁴⁰ See, for instance replies to questions 7–17 of Q3 – Questionnaire to meat processors – Denmark, and replies to questions 13–24 of Q5 – Questionnaire to retailers and meat packers – Denmark.

⁴¹ Replies to question 18 of Q3 – Questionnaire to meat processors – Denmark; and replies to question 25 of Q5 – Questionnaire to retailers and meat packers – Denmark.

⁴² Replies to question 19 of Q3 – Questionnaire to meat processors – Denmark; and replies to question 26 of Q5 – Questionnaire to retailers and meat packers – Denmark.

⁴³ M.1313 – *Danish Crown/Vestjyske Slagterier* paragraph 96, M.2662 – *Danish Crown/Steff-Houlberg* Article 9 referral decision, paragraph 84, and Article 6(1)(b) decision, paragraph 37.

⁴⁴ See, for instance M.3968 – *Sovion/Südfleisch*, paragraph 81; M.3605 – *Sovion/HMG*, paragraph 91; M.3522 – *Danish Crown/HK/Sokolow*, paragraph 21; M.3401 – *Danish Crown/Flagship Foods* paragraph 21; and M.3337 – *Best Agrifund / Nordfleisch*, paragraph 46.

⁴⁵ See, for instance replies to questions 24 and 25 of Q3 – Questionnaire to meat processors – Denmark; and replies to questions 38 and 39 of Q5 – Questionnaire to retailers and meat packers – Denmark. See also replies to questions 20, 21 and 23 of Q4 – Questionnaire to meat processors – UK; and replies to question 18 of Q6 – Questionnaire to retailers – UK.

- (59) The Commission further notes that one of the Parties, Tican uses claims referring to it only using Danish-origin pig meat in its processed products in the marketing of such products. Those claims include statements such as ‘*Danish pig meat, Danish quality, Tican only uses pig meat from its own slaughterhouse in Northwest Jylland*’ and ‘*Tican’s activities cover the whole value chain - - With responsibility for the whole value chain, Tican can guarantee food safety and quality all the way from the farm to the table. That allows Tican to guarantee 100% Danish pig meat for consumers*’.⁴⁶
- (60) In light of the above and based on a preliminary analysis, the Commission’s investigation has shown a sufficient number of indications suggesting the existence of possible national Danish markets for the sale of processed meat products.
- (61) Moreover, if the markets for the sale of processed meat products were considered wider than national, the Transaction would not give rise to horizontally affected markets or threaten to significantly affect competition. In contrast, if the market were defined as Danish, the Transaction would give rise to such a threat. Given that any competition concerns would be confined to Denmark and that the DCCA is in the best position to deal with the case for the reasons referred to in Section 7 of the present decision, the Commission has reached the conclusion that the geographic market definition could be left open for the purposes of this decision, leaving the DCCA to investigate the matter further.

5.6. The supply and collection of animal by-products

5.6.1. Product market

- (62) Animal by-products (ABPs) include all products other than edible meat originating from the slaughter of animals or from fallen stock, including products such as blood, intestines, bones, fats and skins. Such by-products can be supplied by slaughterhouses to rendering companies for further processing or for disposal of.
- (63) ABPs can generally be divided into products that can be further processed for human consumption and those only fit for other uses. In line with previous Commission decisions, the Parties submit that ABPs not fit for human consumption can further be divided into category 1 (highest risk), category 2 (high risk) and category 3 (low risk) materials depending on the risk that they pose to public and animal health.⁴⁷ In previous cases the Commission has defined a distinct market for the collection of ABPs and the sale of processed ABPs products.⁴⁸ The Parties do not contest that definition.

⁴⁶ Excerpts from one of Tican’s webpages, www.ticanfoods.dk, quoted on 3 July 2007. The original texts in Danish read: ‘*Dansk svinekød, dansk kvalitet, Tican bruger kun svinekød fra eget slagteri i Nordvestjylland*’ and ‘*Ticans aktiviteter omfatter hele værdikæden - - Med ansvar for hele værdikæden kan Tican garantere fødevarer sikkerhed og kvalitet hele vejen fra gård til bord. Herved kan Tican garantere 100 % dansk svinekød til forbrugerne.*’

⁴⁷ See, for instance M.6285 – *Saria / Danish Crown / Daka JV*, paragraph 15. See also M.2662 – *Danish Crown / Steff-Houlberg*, Article 9 decision, paragraphs 85–87; and M.1313 – *Danish Crown / Vestjyske Slagterier*, paragraphs 45–48.

⁴⁸ M.6285 – *Saria / Danish Crown / Daka JV*, paragraph 19.

- (64) The Commission has further considered numerous possible further segmentations of the markets, for instance according to different organs of the animals.⁴⁹ In the recent *Saria / Danish Crown / Daka JV*, the Commission considered that a distinction could likely be made at least between collection of category 1 and 2 materials on the one hand, and collection of category 3 materials on the other hand but left the exact market definition ultimately open.⁵⁰
- (65) The Parties note that their activities overlap with respect to (i) the supply of food-grade bowel packages, (ii) supply of category 2 materials and (iii) supply of category 3 materials (including category 3 blood as well as other category 3 materials).⁵¹ Moreover the Parties note that Danish Crown is also active in the collection of ABPs, while Tican is not active in such markets.
- (66) It should further be noted that the Parties' activities in animal by-products are vertically linked to their sourcing of live pigs for slaughtering.
- (67) The results of the market investigation support the differentiation between food grade and non-food grade ABPs and that non-food grade ABPs can be further segmented into the previously identified three categories. The market investigation also provides indications that bowel packages could constitute a distinct market separate from other food-grade ABPs. Finally, the market investigation further supports the view that ABPs, including blood, should be differentiated by animal type and that food-grade blood and category 3 blood constitute distinct markets.⁵²
- (68) However, it is not necessary for the purposes of this decision to conclude on the exact market definition concerning the supply and collection of ABPs as the Transaction warrants closer scrutiny with respect to animal by-products regardless of the exact product market definition.

5.6.2. Geographic market

- (69) In past decisions concerning Denmark, the Commission concluded in *Danish Crown / Vestjyske Slagterier* that the market for the collection of high-risk ABPs is at most Denmark but left the exact market definition for other by-products open.⁵³ In *Danish Crown / Steff-Houlberg*, the Commission considered that relevant market for the collection of high-risk ABPs was confined to Denmark.⁵⁴ In more recent decisions, including *Saria / Danish Crown / Daka JV*, the Commission has found indications of the geographic scope of ABP markets being as national but has in many instances left the exact market definition open.⁵⁵

⁴⁹ See, for instance M.6285 – *Saria / Danish Crown / Daka JV*; M.5935 – *Vion / Weyl*; M.3605 – *Sovion / HMG*, M.3337 – *Best Agrifund / Nordfleisch*; and M.3175 – *Best Agrifund / Dumeco*.

⁵⁰ M.6285 – *Saria / Danish Crown / Daka JV*, paragraph 26.

⁵¹ The Parties supply such ABPs from their slaughterhouses to rendering companies.

⁵² Replies to questions 14–22 of Q2 – Questionnaire to slaughterhouses and questions 5–11 of Q8 – Questionnaire Animal by-products.

⁵³ M.1313 – *Danish Crown / Vestjyske Slagterier*, paragraphs 98 and 99.

⁵⁴ M.2662 – *Danish Crown / Steff-Houlberg*, paragraph 88.

⁵⁵ See, for instance M.6285 – *Saria / Danish Crown / Daka JV*, paragraph 46. See also M.5935 – *Vion / Weyl*, paragraphs 69, 73, 77 and 80; M.3605 – *Sovion/HMG*, paragraphs 124, 138, 139 et al.; M.3337

- (70) The Parties submit that the relevant geographic markets are wider than national.
- (71) While the market investigation did not provide definitive evidence about the exact geographic markets definition, contacts with market participants nonetheless highlighted that food grade ABPs and Category 3 blood need to be very fresh and chilled in order to be processed, and transport costs have a very high impact on the total cost of the products. As a result, the sourcing by rendering companies might be limited in distance and they need a presence at the slaughterhouses of specific machinery to pre-treat the ABPs before the transport.⁵⁶
- (72) In light of the above and based on a preliminary analysis, the Commission's investigation has shown a sufficient number of indications suggesting the existence of possible national Danish markets for the supply and collection of ABPs. Moreover, if such markets were considered to be wider than national, the Transaction would not give rise to horizontally affected markets or threaten to significantly affect competition. In contrast, if the markets were defined as Danish, the Transaction would give rise to such a threat. Given that any competition concerns would be confined to Denmark and that the DCCA is in the best position to deal with the case for the reasons referred to in Section 7 of the present decision, the Commission has reached the conclusion that the geographic market definition can be left open for the purposes of this decision, leaving the DCCA to investigate the matter further.

6. COMPETITIVE ASSESSMENT

6.1.1. Introduction

- (73) Both of the Parties are cooperative companies owned by their owner-farmers who are also suppliers of live animals to the companies. In principle, the cooperative accepts all animals sent to it by its owner-farmers and attempts to process them into as high-margin products as possible throughout the pig meat value chain in an effort to generate as much income as possible for the owner-farmers for their animals. As part of this model, both Parties pay their owner-farmers for the animals supplied to the cooperative in two instalments: a rolling payment around the actual supply of the animal and a so-called residual payment at a later stage.⁵⁷ According to the Parties, the residual payment paid to pig farmer owners is based on the profit margin achieved by the cooperative in the processing and selling of various pig meat products.
- (74) The cooperative members of Tican are under the obligation to supply all of their pigs for slaughtering to a cooperative slaughterhouse. Generally, Danish Crown members are also under the obligation to deliver all their pigs for slaughtering to a Danish Crown slaughterhouse. This general obligation is mitigated by the remedies imposed by the DCCA in the *Danish Crown / Steff-Houlberg* case⁵⁸, which introduced the

– *Best Agrifund/Nordfleisch*, paragraphs 76–77 et al.; and M.3175 – *Best Agrifund/Dumeco*, paragraphs 25–32.

⁵⁶ See non-confidential minutes of conference call with BHJ on 21 May 2015, paragraph 15.

⁵⁷ Danish Crown uses the term 'supplementary payment' while Tican calls the payment a 'bonus'.

⁵⁸ The case was partially referred to Denmark pursuant to the Commission's Art 9 referral decision in M.2662 – *Danish Crown / Steff-Houlberg*.

possibility for Danish Crown members to deliver up to 20% of their pigs for slaughtering to third party slaughterhouses (so-called 'split deliveries'). Farmers need to apply to Danish Crown for such exemption and are subject to a notice period before they can start their split deliveries.

6.1.2. *Purchase of live pigs for slaughtering*

- (75) The Parties' activities in this market only overlap in Denmark.
- (76) The Parties estimate that they will have a combined market share of [80-90]% (Danish Crown: [70-80]%, Tican [10-20]% including the purchase of 'free pigs' that are bought from non-cooperative members)⁵⁹ of the Danish market for purchasing of live pigs for slaughtering. The Transaction will increase the already strong position of Danish Crown and, at the same time, eliminate the largest competitor in Denmark, the only remaining cooperative other than Danish Crown. The closest competitors would be Brorup DanePork with market shares of [5-10]% and [0-5]%, respectively.
- (77) The Parties submit that, due to the cooperative structure of Danish Crown (which is to be preserved after the Transaction), the merged entity will not be able to exert buying power vis-à-vis the cooperative members and the presence of split deliveries offers a viable alternative to Danish Crown members who want to supply third parties. The Parties submit also that because of the split deliveries, farmers are benchmarking Danish Crown prices with prices offered by private slaughterhouses and that therefore split deliveries offer a competitive constraint. Moreover, the Parties put forward the possibility for a farmer to export piglets before they become pigs for slaughtering as a viable alternative to supplying live pigs for slaughtering to Danish Crown.
- (78) The Parties further submit that the growing market shares of private slaughterhouses, which passed from [0-5]% in 2002 to approximately [10-20]% in 2014, is an evidence of the fact that competitor slaughterhouses can have access to live pigs for slaughtering and there is no ability of the merged entity to foreclose competing slaughterhouses.
- (79) Brorup stated that they would be in a position to accept deliveries of live pigs for slaughtering from current Tican members⁶⁰ but another market participant believes that at present Brorup is not in a position to increase its capacity.⁶¹
- (80) DanePork is currently operating at full capacity and it has applied for a capacity expansion permit, which is expected to be granted in early 2016.⁶² It is not clear to what extent DanePork could represent a strong alternative to suppliers of live pigs for slaughtering due to its small size and to its pricing mechanism for live pigs for slaughtering, which is heavily linked to the Danish Crown published prices as explained in Recital 81.

⁵⁹ Excluding 'free pigs' the combined market share would be [80-90]% (Danish Crown [70-80]% and Tican [5-10]%).

⁶⁰ See reply to Question 47.2.1 of Q2 - Questionnaire to slaughterhouses.

⁶¹ See minutes of conference call with Hilton Foods on 7 May 2015.

⁶² See minutes of conference call with DanePork on 11 May 2015.

- (81) On a weekly basis, Danish Crown and Tican publish their prices for the purchase of live pigs for slaughtering (net of the residual payment disbursed at the end of the year).⁶³ DanePork, in order to attract suppliers, needs to offer a slightly higher price than Danish Crown and Tican.⁶⁴ However, given its small size and the market structure, the Commission considers that it could not be excluded that DanePork's pricing could generally follow the Parties' pricing (with a limited mark-up) and therefore the constraint exercised by DanePork towards the Parties could be limited.
- (82) Although there might be some spare capacity in other smaller private Danish slaughterhouses, they do not seem to be in a position to compete with the Parties for large retail or OOH contracts given their limited size and inability to offer a nationwide supply.⁶⁵
- (83) For what concerns split deliveries, data from the Parties show that they are not largely used. In the year 2013/14, on a total of 2 716 members providing live pigs for slaughtering,⁶⁶ only [...] cooperative members used such option for a total of [...] pigs and [...] sows delivered outside Danish Crown. The figures for split deliveries have been declining from [...] members for [...] pigs and [...] sows in the year 2012/13. Moreover, several market participants highlighted the limited impact of split deliveries on the overall competitive landscape.⁶⁷
- (84) Danish Crown members (and members of the merged entity) will be prevented from selling their pigs for slaughtering to third parties, except for the limited phenomenon of the split deliveries, and for certain farmers the merged entity might be the only viable purchaser for their pigs, in view of higher transport costs to reach farther located private slaughterhouses.
- (85) In theory, Danish slaughterhouses could import foreign live pigs for slaughtering in order to compete with the Parties but they could not label such meat to be of Danish origin. Therefore, in view of the high importance of the origin of the pig for the successive steps of the pig meat value chain, this type of import seems unlikely to constrain the merged entity to a sufficient extent. Such unlikelihood is confirmed by very low figures on import of live pigs for slaughtering as presented by the DCCA in its referral request⁶⁸ and by the Parties.⁶⁹
- (86) As for the possibility for a farmer to switch from producing pigs for slaughtering to piglets for export, this does not seem a short term possibility for any given farmer

⁶³ <http://www.danishcrown.dk/Ejer/Noteringer/Aktuel-svinenotering.aspx> and <http://www.tican.dk/andelshavere/afregning/afregningspriser-uge-26-2015>

⁶⁴ See minutes of conference call with DanePork on 11 May 2015.

⁶⁵ See section 6.1.3 and 6.1.4. of this decision.

⁶⁶ 1 129 integrated members and 1 587 members specialised in finisher pigs (source: Form CO paragraph 285).

⁶⁷ See for instance .minutes of conference call with Danske Slagtermestre on 28 April 2015, and minutes of conference call with DanePork on 11 May 2015.

⁶⁸ Referral request, Figure 1.

⁶⁹ Form CO figure in paragraph 449.

since such shift in production might require some investments and a slightly different set of skills.⁷⁰

Conclusion

- (87) Post Transaction, the merged entity will be purchasing [80-90]% of pigs slaughtered in Denmark.⁷¹ Farmers might have no choice as to where to sell their live pigs for slaughtering but to supply the merged entity and the presence of split deliveries does not seem to alleviate such concern.
- (88) Moreover, the option for a farmer specialised in producing pigs for slaughtering to switch its production to piglets for export is not a likely scenario at least in the short to medium term.
- (89) Furthermore, competing slaughterhouses will be in a weak position vis-à-vis the merged entity given their reliance on the pricing set by Danish Crown and their limited size which does not fully allow them to compete for broad (i.e. nation-wide) contracts.
- (90) Based on its preliminary analysis, the Commission considers that the Transaction would threaten to significantly affect competition in the market for the purchase of live pigs for slaughtering in Denmark by reinforcing a very large player and by giving to the merged entity high influence on the market.
- (91) As explained in Section 7, the DCCA is the most appropriate authority to deal with this Transaction because it takes place in Denmark, has most of its effects in Denmark and the DCCA has the necessary tools and expertise to assess it.

6.1.3. *Sale of fresh pig meat for direct human consumption*

- (92) The Parties estimate that they will have a combined market share of [40-50]% (Danish Crown: [30-40]%, Tican [5-10]%) of the possible Danish market for the sale of fresh pig meat for direct human consumption. The Transaction will increase the already strong position of Danish Crown and, at the same time, eliminate one of the largest competitors in Denmark. The closest competitors would be Brorup and DanePork with market shares of [5-10]% and [0-5]% respectively. In the potential sub-segments, the Parties estimate they would have a combined market share of [50-60]% (Danish Crown: [40-50]%, Tican [5-10]%) in retail and [20-30]% (Danish Crown: [10-20]%, Tican [0-5]%) in OOH.
- (93) Hilton Food Company is also present on this market with a market share of [10-20]% but it does not have any slaughtering facility and is hence dependent on third party slaughterhouses to supply primal cuts. Therefore, the competitive constraint exercised by Hilton is of a lesser extent than the constraint exercised by competing slaughterhouses.
- (94) The Parties submit that Danish Crown and Tican are not close competitors in this market, that import of fresh pig meat for direct human consumption poses a strong

⁷⁰ Form CO paragraphs 281 and 284.

⁷¹ Form CO paragraph 393 '*Danish Crown will not as part of the merger agreement take over the supplies of free pigs*'.

competitive constraint⁷² and that vertically integrated retailers will enjoy strong buying power vis-à-vis the merged entity. Lastly, the Parties submit also that the merged entity will not be an unavoidable trading partner.

- (95) Contacts with market participants highlighted how the origin of the meat is an important factor in the choice of consumers when purchasing fresh pig meat even if there are some imports.⁷³ From the market investigation, it appears that Danish retailers are aware of such consumer preferences, they compete among themselves to match consumers' preferences and therefore would be purchasing mainly meat which could be labelled of Danish origin.⁷⁴
- (96) Post Transaction, the merged entity would be the only slaughterhouse in Denmark able to supply major customers, including national supermarket chains and meat packers across the country with sufficient and stable volume of fresh pig meat for direct human consumption. As explained in Section 6.1.2, it is also unlikely that competitors would be in a position to quickly increase their production capacities to the extent that they would become viable nation-wide competitors of the merged entity in the short term.
- (97) In the retail segment, the market has seen an evolution from in-store butchers to pre-packed fresh meat and Modified Atmosphere Packed ('MAP') meat in the last years, but the main competitive dynamics appear to have remained comparable across the products. Nevertheless, COOP and Hilton set-up a MAP packing facility to supply to Coop stores with MAP packed fresh meat in 2011; that facility produces MAP packed pig, beef, veal and lamb meat. The cooperation between COOP and Hilton was partially set up in order to reduce dependency on Danish Crown, which has been the only supplier of MAP packed fresh pig meat of Danish origin.⁷⁵ Currently 50% of Hilton's purchases of fresh pig meat are of Danish origin but it does not have its own slaughtering capacity and is therefore dependent on supplies by Danish slaughterhouses.
- (98) In the OOH segment, the market investigation gave indications that Danish Crown and Tican are close competitors and that for certain cuts the merged entity would have a considerable part of the market.⁷⁶ Moreover, contact with market participants highlighted a trend among OOH customers to prefer dealing with larger suppliers to the detriment of small or local players.⁷⁷
- (99) Moreover, given the very large market share that it will have in the upstream market for slaughtering of live pigs, it cannot be excluded that the merged entity could have the ability and incentive to foreclose competitors in the downstream market for the

⁷² The Parties submitted also an expert report, which shows an increase in import of fresh pig meat for direct human consumption in Denmark and tries to argue that imports could act as a competitive constraint on the price of Danish-origin fresh pig meat for direct human consumption.

⁷³ See minutes of conference call with COOP on 5 May 2015, paragraphs 11–13.

⁷⁴ See replies to questions 30 and 30.1 of Q5 - Questionnaire to retailers and meat packers - Denmark and minutes of conference call with COOP on 5 May 2015, paragraph 5.

⁷⁵ See minutes of conference call with COOP on 5 May 2015, paragraph 7.

⁷⁶ See reply to Question 30, 31 and 33.1 of Q7 - Questionnaire to the horeca Denmark.

⁷⁷ See minutes of conference call with Danske Slagtermestre on 28 April 2015, paragraph 10.

sale of fresh pig meat for direct human consumption. The competitive assessment of the market for the sale of fresh pig meat for direct human consumption is therefore closely linked to the assessment of the upstream markets of purchase of live pigs for slaughtering, which will be assessed by the DCCA.

Conclusion

- (100) Based on its preliminary analysis, the Commission considers that the Transaction would threaten to significantly affect competition in the Danish market for the sale of fresh pig meat for direct human consumption, including both of its sub-segments.⁷⁸
- (101) As explained in Section 7, the DCCA is the most appropriate authority to deal with this Transaction because it takes place in Denmark, has most of its effects in Denmark and the DCCA has the necessary tools and expertise to assess it.

6.1.4. *Sale of fresh pig meat for further processing*

- (102) The Parties estimate that they will have a combined market share of [40-50]% (Danish Crown: [30-40]%, Tican [0-5]%) of the possible Danish market for the sale of fresh pig meat for further processing. The Parties' main competitors in Denmark are Brorup with [10-20]%, Vion with [10-20]% and Westfleisch with [5-10]% of the market; smaller meat processors represent the rest of the market. Almost [...] % of the meat sold by Danish Crown is sold internally to its subsidiaries in charge of processing the meat and producing different types of processed meat products.
- (103) On a national basis, the Transaction would give rise to affected markets also in Sweden, Poland and the United Kingdom. However, as explained in the relevant Article 6(1)(b) decision, the Transaction does not raise any serious doubts with regards to its effects on competition in those potential markets. Moreover, should the markets be defined as wider than national, the Transaction would not give rise to affected markets.
- (104) The Parties argue that the Transaction would not raise competition concerns in the market for the sale of fresh pig meat for further processing in view of the limited increment brought about by the Transaction and of the high percentage of internal sales. Moreover, the Parties articulate their analysis mostly in light of an EEA-wide market, in which Tönnies and Vion would be strong competitors of the merged entity.
- (105) As mentioned in Recital 46, contacts with market participants highlighted how the origin of meat still plays a role – although to a lesser extent than when purchasing fresh pig meat for direct human consumption – in the choices of consumers when purchasing processed meat products. Such contacts also highlighted how meat processors would prefer to buy from a slaughterhouse in its vicinity in order to receive fresher products as opposed to meat that travelled longer distances before reaching the processing facility.⁷⁹

⁷⁸ In the event that the market were to be defined wider than Denmark, the competitive assessment of the market for the sale of fresh pig meat for direct human consumption would however be closely linked to the assessment of the upstream market of purchase of live pigs for slaughtering which will be assessed by the DCCA.

⁷⁹ See minutes of conference call with Hilton on 7 May 2015, paragraph 8.

- (106) The majority of respondents to the market investigation stated that Danish Crown and Tican are close competitors in the sale of fresh pig meat for further processing.⁸⁰ Post-transaction, the merged entity will be the largest supplier of fresh meat for further processing in Denmark and the only one capable of offering short lead-time deliveries to a number of meat processors across the whole of Denmark.
- (107) Although some of the respondents to the market investigation did not see any barriers to entry, the majority of respondents highlighted how entry in this market seems unlikely in view of, among others, the difficulties in securing access to Danish pig meat at competitive prices, the large scale of existing players, the investments needed and the general entry costs.⁸¹
- (108) Furthermore, given (i) the very large market share that the merged entity will have in the upstream market for slaughtering of live pigs; (ii) the importance of having short lead-times for the deliveries, and (iii) the presence of the Parties in the downstream market for the sale of processed meat products, it cannot be excluded that the merged entity could have the ability and incentive to foreclose competitors in Denmark in the market for the sale of fresh pig meat for further processing. Therefore, the assessment of the market for sale of fresh pig meat for further processing is closely linked to the assessment of the upstream markets of purchase of live pigs for slaughtering, which will be assessed by the DCCA.

Conclusion

- (109) Based on its preliminary analysis, the Commission considers that the Transaction would threaten to significantly affect competition in the Danish market for sale of fresh pig meat for further processing.⁸²
- (110) As explained in Section 7, the DCCA is the most appropriate authority to deal with this Transaction because it takes place in Denmark, has most of its effects in Denmark and the DCCA has the necessary tools and expertise to assess it.

6.1.5. *Sale of processed meat products*

- (111) The Parties estimate that they will have a combined market share of [30-40]% (Danish Crown: [30-40]%, Tican [5-10]%) of a possible Danish market for the sale of processed pig meat products. The Parties main competitors in Denmark are Agra and Atria with market shares of [10-20]% and [5-10]% respectively; smaller meat processors represent the rest of the market.
- (112) The Parties' activities overlap in several segments of processed meat products in Denmark, namely:
- (1) Cooked sausages all meat types ([50-60]%, Danish Crown [40-50]%, Tican [10-20]%)

⁸⁰ See reply to questions 29 and 30 of Q3 - Questionnaire to meat processors Denmark.

⁸¹ See reply to question 34 of Q3 - Questionnaire to meat processors Denmark.

⁸² In the event that the market were considered wider than Denmark, the competitive assessment of the market for the sale of fresh pig meat for further processing would however be closely linked to the assessment of the upstream markets of purchase of live pigs for slaughtering which will be assessed by the DCCA.

- (2) Raw cured products all meat types ([40-50]%, Danish Crown [40-50]%, Tican [0-5]%⁸³)
- (3) Processed meat for cold consumption ('cold cuts') all meat types ([30-40]%, Danish Crown [20-30]%, Tican [5-10]%)
- (4) Ready-prepared dishes and components for such meals / convenience products ([30-40]%, Danish Crown [30-40]%, Tican [5-10]%)
- (113) On a national basis, the Transaction would give rise to affected markets also in Sweden and the United Kingdom. However, as explained in the relevant Article 6(1)(b) decision, the Transaction does not raise any serious doubts with regards to its effects on competition in those potential markets. Moreover, should the markets be defined as wider than national, the Transaction would not give rise to affected markets.
- (114) The Parties claim that Danish Crown and Tican are not close competitors in Denmark, that the merged entity will continue to face fierce competition from both Danish and non-Danish meat processors and that post Transaction the buying power of Danish retailers will prevent the merged entity from raising prices.
- (115) In the possible retail sub-segment, contacts with market participants highlighted the importance of brands in the sale of processed meat products as opposed to private labels that represent a lower portion of sales as compared to the sales of fresh pig meat for direct human consumption.⁸⁴
- (116) Moreover, the market investigation highlighted the importance of Modified Atmosphere Packaging ('MAP') also in processed products with the majority of respondents emphasising that MAP is an important aspect of the processed meat products.⁸⁵ At present, Danish Crown and Hilton are able to produce MAP processed meat products, but it is unclear to what extent other competitors have such capabilities. Moreover, as Hilton has an exclusive contract with COOP⁸⁶, the constraint that it could exercise on the Parties in the sale of processed meat products is therefore limited.
- (117) All the retailers responding to the market investigation replied that the Transaction would have a negative impact on their company.⁸⁷ The replies were mixed among meat processors.⁸⁸
- (118) Concerning the possible OOH sub-segment, the replies to the market investigation showed that Danish Crown is a close competitor to Tican in a number of potential segments, in particular in cold cuts and cooked sausages.⁸⁹

⁸³ Tican sold [...] tons of raw cured bacon in 2014 as compared to Danish Crown, which sold [...] tons in the same period.

⁸⁴ See minutes of conference call with COOP on 5 May 2015, paragraph 21.

⁸⁵ See replies to question 60 of Q5 - Questionnaire to retailers and meat packers - Denmark.

⁸⁶ See minutes of conference call with Hilton on 7 May 2015, paragraph 3.

⁸⁷ See replies to question 73 of Q5 - Questionnaire to retailers and meat packers - Denmark.

⁸⁸ See replies to question 55 of Q3 - Questionnaire to meat processors Denmark.

⁸⁹ See replies to question 42 of Q7 - Questionnaire to the horeca Denmark.

- (119) Moreover, Tican is currently manufacturing certain processed meat products for third-party OOH market players as a sub-contractor; the main competitor for those third parties' are Danish Crown's processed meat products.
- (120) At a preliminary assessment, the merged entity would be active across a wide array of processed meat products and it cannot at present be excluded that the wide portfolio of products and brands held by the merged entity could increase its bargaining power vis-à-vis customers and other competitors in a possible Danish market.
- (121) The merged entity's strong market position is also corroborated by the fact it would be active at all levels of the value chain, from sourcing of live pigs for slaughtering, through the sale of fresh pig meat to further processing and, finally, the production and sale of processed meat products.
- (122) In light of the Parties' market position in the upstream markets and in the downstream market(s) for processed meat products, it cannot be excluded that it could have both the ability and incentive to foreclose its downstream competitors. Therefore, the assessment of the market for the sale of processed meat products is closely linked to the assessment of the upstream markets of sale of fresh pig meat for further processing and the sourcing of live pigs for slaughtering which will be assessed by the DCCA.

Conclusion

- (123) Based on its preliminary analysis, the Commission considers that the Transaction would threaten to significantly affect competition in the markets for the sale of processed pig meat products and cold cuts in all meat types in a Danish market both in the retail as well as in the OOH segments.⁹⁰
- (124) As explained in Section 7, the DCCA is the most appropriate authority to deal with this Transaction because it takes place in Denmark, has most of its effects in Denmark and the DCCA has the necessary tools and expertise to assess it.

6.1.6. *The supply and collection of animal by-products*

- (125) The Parties' activities give rise to two horizontally affected markets with regard to the supply of ABPs in a possible Danish market: (i) the supply of bowel packages, [...] with a combined market share of [90-100]% and (ii) the supply of category 3 pig blood with combined market share of [80-90]%. The Parties' market shares' levels are a direct consequence of their (upstream) pig slaughtering activities.
- (126) The Parties' competitors for the supply of category 3 pig blood have a much smaller presence on the market. The main competitors are Brorup and DanePork with market shares of [10-20]% and [0-5]% respectively, again in line with their slaughtering activities.

⁹⁰

In the event that the market were considered wider than Denmark, the competitive assessment of the market for processed meat products would however be closely linked to the assessment of the markets for the sale of fresh pig meat for further processing and that of purchase of live pigs for slaughtering which will be assessed by the DCCA.

- (127) In addition to the above identified horizontal overlaps, the Parties' activities give rise to vertically affected markets in relation to Danish Crown's presence in the collection of ABPs through:⁹¹
- (1) DAT-Schaub A/S (already solely controlled by Danish Crown with 90% of the shares while Tican owns the remaining 10%);
 - (2) Daka Denmark A/S (jointly controlled by Danish Crown and the Saria Group).
- (128) The Parties argue that the Transaction would not raise competition concerns in the ABP markets due to the fact that the Transaction would bring no change to the pre-merger situation, since Danish Crown is controlling DAT-Schaub A/S already prior to the Transaction and thus the Transaction will bring no change in this respect. The Parties also claim that the Transaction would not bring about any structural change in relation to Daka.
- (129) Nonetheless, at present, rendering companies competing with Danish Crown in the collection of ABPs are sourcing part of their ABP materials from Tican. Following the Transaction, there could be restricted access to the collection of pig ABP materials in Denmark. High transportation costs (relatively to the value of ABP materials) make sourcing of these materials from abroad not a viable alternative.⁹²
- (130) Moreover, the limited size of the remaining independent slaughterhouses might constitute an additional barrier to entry to other rendering companies, insofar not enough ABPs may be available for these players other than the merged entity to justify a market entry post Transaction.
- (131) Therefore, it cannot be excluded that the Transaction may result in the ability and incentive for the merged entity to foreclose other rendering companies currently sourcing ABPs from Tican (and possibly further processing them), in favour of the Danish Crown controlled entities (for instance DAT-Schaub and Daka).
- (132) Moreover, the assessment of the market for ABPs is closely linked to the assessment of the upstream market for the purchase of live pigs for slaughtering which will be assessed by the DCCA.

Conclusion

- (133) Based on its preliminary analysis, the Commission considers that the Transaction would threaten to significantly affect competition in a possible Danish markets for ABPs where it cannot be excluded that the merged entity might have the ability and incentive to foreclose competitors and customers.⁹³
- (134) As explained in Section 7, the DCCA is the most appropriate authority to deal with this Transaction because it takes place in Denmark, has most of its effects in Denmark and the DCCA has the necessary tools and expertise to assess it.

⁹¹ In addition, Danish Crown has a wholly-owned subsidiary – DC Ingredients A/S – which is in charge of coordinating the production of ABPs within the Danish Crown group. However DC Ingredients A/S does not source any ABPs from third parties

⁹² See non-confidential minutes of conference call with BHJ on 21 May 2015, paragraphs 18–22 and replies to question 13.1 of Q8 - Questionnaire Animal by-products.

⁹³ In the event that the market were considered wider than Denmark, the competitive assessment of the markets for animal by-products would however be closely linked to the assessment of the upstream markets of sourcing of live pigs for slaughtering which will be assessed by the DCCA.

7. ASSESSMENT UNDER ARTICLE 9(3)

- (135) According to Article 9(3) of the Merger Regulation, the Commission may refer the whole or part of the case to the competent authorities of the Member State concerned with a view to the application of that State's national competition law if, following a request for referral by that Member State pursuant to Article 9(2) of the Merger Regulation, the Commission considers that the Transaction threatens to significantly affect competition in a market within that Member State, which presents all the characteristics of a distinct market.
- (136) In deciding whether to refer a case fulfilling the legal criteria for referral, the Commission considers which authority is more appropriate for dealing with the concentration, having regard to the specific characteristics of the case as well as the tools and expertise available to the authority. Particular regard is given to the likely locus of any impact on competition resulting from the concentration.⁹⁴ Other factors taken into account include legal certainty and the benefits of the 'one-stop-shop' principle. Fragmentation of cases is to be avoided where possible, and it is normally appropriate that, in case of Article 9 referrals, the whole case or at least all connected parts thereof are dealt with by a single authority.⁹⁵
- (137) In the present case, the Commission considers that there is a distinct market for the sourcing of live pigs for slaughtering in Denmark and that the Transaction would threaten to significantly affect competition on that market.
- (138) Considering the markets downstream of the market for sourcing of live pigs for slaughtering, namely the sale of fresh pig meat for direct human consumption, the sale of fresh pig meat for further processing, the sale of processed meat products,⁹⁶ and the sourcing of ABPs, including any of their sub-segments, the Commission's market investigation has preliminarily found sufficient indications of possible distinct national Danish markets. The Transaction would threaten to affect significantly competition also on those possible distinct national markets.⁹⁷
- (139) The Commission also finds that the likely locus of the competitive effects of the Transaction case clearly resides in Denmark.
- (140) The competent Danish authorities have all the necessary tools to investigate the competitive effects of the Transaction and a number of factors speak in favour of them being the most appropriate authority to assess the concentration. The Danish authorities appear to be best placed to assess the particular characteristics of the pig meat value chain in Denmark since they have experience in assessing concentrations relating to the markets concerned by the Transaction. In particular, the Danish authorities have assessed the previous major concentration of cooperative companies

⁹⁴ See Commission Notice on Case Referral in respect of concentrations, OJ C56, 5.3.2005, p.2 ('Referral Notice'), paragraphs 9 and 37.

⁹⁵ Referral Notice, paragraphs 11–14.

⁹⁶ Downstream of the sale of fresh pig meat for further processing.

⁹⁷ All the downstream markets are also closely connected to the upstream market for the sourcing of live pigs, the upstream market concerning the main or sole input into the downstream markets. Consequently, the competitive assessment of those markets is closely connected to each other considering the vertical relationship between the markets, the Parties' strong position on the upstream market and the related threat of affecting competition through foreclosure considerations.

in the pig meat sector in Denmark, namely the Steff-Houlberg case, which was referred to the Danish authorities for all the markets relating to Denmark by the Commission pursuant to the Art 9 referral decision in M.2662 – *Danish Crown / Steff-Houlberg*. In that case, the Danish authorities also imposed remedies, some of which are still applicable to Danish Crown today.

8. CONCLUSION

- (141) In light of the above, and of all evidence available, the Commission considers that the legal criteria for a referral under Article 9 of the Merger Regulation are met and that the competent authorities of Denmark are the most appropriate and best placed to carry out a thorough investigation of the Transaction insofar as it concerns markets related to Denmark. It is therefore appropriate for the Commission to exercise its discretion under Article 9(3) Merger Regulation and partially refer the Transaction to Denmark as regards the markets identified in the referral request.
- (142) On the same date as this decision, the Commission has also adopted a decision on the basis of Article 6(1)(b) of the Merger Regulation with regard to the markets outside Denmark.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration is referred in part – with regards to the markets related to Denmark – to the competent authorities of the Kingdom of Denmark, pursuant to Article 9(3) of Council Regulation (EC) No 139/2004.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 17.7.2015

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission