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EUROPEAN COMMISSION
DG Competition

Case M.7610 - DANISH CROWN / WESTFLEISCH / WESTCROWN JV

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 02/12/2015

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties:

Dear Sirs,

Subject: Case M.7610 – Danish Crown / Westfleisch / WestCrown JV
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

(1) On 27 October 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Danish Crown A/S ('Danish Crown', Denmark) together with Westfleisch SCE mbH ('Westfleisch', Germany) acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of the newly created joint venture WestCrown JV ('WestCrown' or the 'JV', Germany) (the 'Transaction').[2]

(2) Danish Crown and Westfleisch are designated hereinafter as 'the Parties'.

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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 364, 04.11.2015, p. 7.

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1. THE PARTIES

(3) **Danish Crown** is an international food company based in Denmark with activities across the globe. Danish Crown is a cooperative owned by a total of 8 278 (2013/14) member farmers that supply raw materials (pigs, sows, and cattle) to the cooperative. It is notably active in slaughtering activities and in the sale of fresh pig meat for further processing.

(4) **Westfleisch** is an international meat company based in Germany. Westfleisch is a cooperative owned by a total of 4 218 (2014) member farmers. It is also active, among others, in slaughtering activities and in the sale of fresh sow and pig meat for further processing.

(5) **WestCrown** will be a newly-created joint venture established in Germany and active in the de-boning of sows and the subsequent marketing and sale of fresh sow meat for further processing. […].

2. THE OPERATION AND THE CONCENTRATION

(6) On 23 March 2015, Westfleisch and Danish Crown entered into a Joint Venture Agreement ('JVA') with the purpose of setting up WestCrown as a limited liability company under German law to which Westfleisch will contribute its sow de-boning business,[3] while both Westfleisch and Danish Crown will exclusively sell – and the JV will be obliged to purchase – all the German and Danish sows slaughtered by them or on their behalf to WestCrown for de-boning.[4]

(7) Westfleisch and Danish Crown will each hold 50% of the shares in WestCrown.[5]

2.1. Joint control

(8) WestCrown's supreme decision-making corporate body will be the Shareholders' Meeting (*Gesellschafterversammlung*).[6] Among others, the Shareholders' Meeting appoints and removes the Directors, which are the company's senior management officials, and reviews and approves the annual company plan.[7]

(9) The Shareholders' meeting passes all decisions unanimously.[8] If the Parties cannot reach an agreement, a deadlock situation occurs which may trigger a deadlock resolution mechanism.[9] Therefore, the Parties have the power to block decisions determining WestCrown's strategic commercial behaviour and thus are able to exercise decisive influence over WestCrown.

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3 Paragraph 1.2.1. JVA (annex 3 to the Form CO).

4 Paragraph 1.2.4 and paragraph 5.1.a) JVA (annex 3 to the Form CO).

5 Section 3.4 JVA (annex 3 to the Form CO).

6 Paragraph 4.2.1 JVA (annex 3 to the Form CO).

7 Paragraphs 4.2.1.g) and j) JVA (annex 3 to the Form CO).

8 Paragraph 4.2.3 JVA (annex 3 to the Form CO).

9 Paragraph 10.3 and Section 11 of JVA (annex 3 to the Form CO).

(10) Therefore, Danish Crown and Westfleich will have joint control over WestCrown.[10]

2.2. Full functionality

(11) WestCrown will be full-functioning in the sense of Article 3(4) of the Merger Regulation.

(12) The fact that a joint venture does not enjoy autonomy as regards the adoption of its strategic decisions does not mean that it may not be a full-function and economically autonomous entity. It is sufficient for the criterion of the full-functionality that the joint venture is autonomous from an operational viewpoint.[11]

(13) In this regard, first, the JVA is entered into by the Parties […].[12]

(14) Second, it will have sufficient resources to operate independently on the market. On top of receiving the assets, employees, contracts, customer base, marketing know-how, IT system, etc. of Westfleisch's de-boning business, WestCrown will have its own Directors dedicated to its day-to-day business.[13] Furthermore the JVA provides for the Parties' obligation to provide both start-up financing as well as additional financing necessary for WestCrown to meet its business objectives.[14]

(15) Third, WestCrown's activities are not limited to one specific function of the parents since it will engage not only in de-boning but also in other activities such as sourcing of sow carcasses and marketing of fresh sow meat for further processing. To this end, the JV is not limited to sourcing from and producing goods for its parents but rather has its own market presence insofar as it can source sow carcasses from third parties and can sell fresh sow meat for further processing to third parties.

(16) Fourth, according to the Parties, the JV is likely to source [20-30]% of its raw material from third parties and WestCrown's sales to the parents would likely account for no more than 10% of all WestCrown's sales of fresh sow meat for further processing.

(17) Last, by de-boning slaughtered sows WestCrown will add value to the sow meat thus bringing it to a new stage within the value chain.

(18) Consequently, WestCrown constitutes a joint venture performing on a lasting basis all the functions of an autonomous economic entity, with its own presence on the market.

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10 See also the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95 of 16.04.2008, p. 1 ('Jurisdictional Notice', paragraphs 62 and 65–73).

11 See the Jurisdictional Notice, paragraph 93.

12 Paragraph 15.1 JVA (annex 3 to the Form CO).

13 Section 4.3 JVA (annex 3 to the Form CO).

14 Section 6 JVA (annex 3 to the Form CO).

2.3. Conclusion

(19) The Transaction therefore constitutes a concentration within the meaning of Articles 3(4) and 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(20) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[15] (Danish Crown: EUR 7 779 million, Westfleisch: EUR […]). Each of them has a Union-wide turnover in excess of EUR 250 million (Danish Crown: EUR […], Westfleisch: EUR […]). Danish Crown does not achieve more than two-thirds of its aggregate Union-wide turnover within one Member State. The notified operation has therefore a Union dimension according to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Introduction

(21) WestCrown will be active in the de-boning of slaughtered sow carcasses and in the subsequent sale of (de-boned) fresh sow meat for further processing. The Parties are active in the slaughtering of sows, which is upstream of WestCrown's activities. They are also active in the sale of fresh pig meat for further processing, which is part of the same broad market as WestCrown's sale of fresh sow meat for further processing.[16]

(22) Sows are female pigs that are used for the production of piglets, which are to be grown into slaughter pigs. Ultimately, the sows will also be slaughtered and may be used for meat production.

(23) For the purposes of this decision, the terms 'pig meat' and 'sow meat' are kept separate and pig meat is not understood to include sow meat.

(24) In its decisional practice,[17] the Commission identified several relevant product markets along the pig value chain[18] and left open the existence of possible separate market for pigs and sows, although the Commission has concluded in some previous decisions that a further segmentation of the market between pigs and sows exists, depending on the facts of the cases.[19]

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

16 The Parties have a number of other activities, including the production and sale of processed meat products in which sow meat may be used. As the Transaction does not give rise to any affected markets with respect to those activities, they are not considered further in this decision.

17 For instance: M.1313 – *Danish Crown/Vestjyske Slagterier*, M.2662 – *Danish Crown/Steff Houlberg* and M.7565 – *Danish Crown/Tican*.

18 The main ones being: purchase of live pigs for slaughtering; sale of fresh pig meat for further processing; sale of fresh pig meat for direct human consumption; sale of processed meat products; animal by-products.

19 See, for instance, M.3605 – *Sovion / HMG*, paragraphs 13–16, and M.3968 – *Sovion / Südfleisch*, paragraph 14. According to the German *Bundeskartellamt* (Federal Cartel Office) in its decision B2-

(25) The market investigation highlighted the presence of a quality certification, namely the *Qualität und Sicherheit* ('QS') certification provided by Qualität und Sicherheit GmbH. The QS certification is a quality assurance scheme, which applies across all stages of food production (feed manufacturing, farm sides, transportation, slaughterhouses, de-boners, meat processors, retailers). QS certifies the participating companies, not the products themselves. Meat products may only bear the QS certification mark if all companies involved in the production and the marketing along the supply chain are QS-certified.[20]

(26) The market investigation also indicated that de-boners were certified under other standards, which are in most cases national standards either imposed by national law or requested by national food retailers. In particular, a majority of German de-boners referred to the International Featured Standards ('IFS') scheme.[21] The IFS are quality standards operated by IFS Management, GmbH, established in Berlin, Germany, which many food retailers in Germany demand from their suppliers. Contrary to the QS certification, IFS certification requires only compliance of the audited company with the IFS, not compliance of the complete supply chain. Since (i) the supply of IFS-certified fresh meat or processed products does not require the use of ISF-certified input,[22] and (ii) the Parties indicated that, to their best knowledge, all companies supplying German customers are IFS-certified,[23] it appears that the IFS certification has no impact on the competitive assessment of the Transaction. The IFS certification is thus not considered further in this decision.

4.2. Supply and sourcing of sow carcasses for de-boning

4.2.1. Product market definition

(27) The Commission has previously not explicitly considered the markets for the supply and sourcing of sow carcasses in its decisional practice. It has acknowledged, however, that slaughterhouses may sell carcasses to third parties.[24]

36/11 *Tönnies/Tummel*, *'Der Absatz von zerlegtem Schweinefleisch und der Absatz von zerlegtem Sauenfleisch gehören jeweils eigenständigen sachlichen Märkten an. Schweine- und Sauenfleisch unter-scheiden sich in ihren Eigenschaften, in den Absatzkanälen, im Preis und im Exportvolumen erheblich'* (paragraph 98) (*'The sale of de-boned pig meat and the sale of de-boned sow meat belong to separate product markets. Pig and sow meat differ significantly in their properties, their distribution channels, their price and the volume of their exports.').* The *Bundeskartellamt* thus viewed the distribution markets for sow meat and pig meat as distinct (see also paragraph 53 of its decision).

20 This means for instance that sausages made of sow meat qualify for QS certification if the entire production process and all interim products are QS-certified (breeding of sows, slaughtering, cutting, de-boning, production of the end products) (a competitor's submission of 13 November 2015, section 1.4).

21 See replies to Question 5.1 of Q1– Questionnaire to de-boners. This questionnaire was addressed to de-boners established in Germany only. The relevant IFS for the supply of meat for further processing is IFS Food.

22 As an example, Westfleisch, which is IFS-certified, also procures sow carcasses from suppliers without IFS certification.

23 See reply of 13 November 2015 to Question 2 of Request for information sent on 10 November 2015 (RFI 5).

24 M.3986 – *Sovion / Südfleisch*, paragraph 11.

In other precedents, the Commission has also distinguished between the slaughtering of sows and pigs without drawing explicit implications for the supply of carcasses.[25]

(28) The Commission has not previously investigated the role of the QS certification in the supply of sow carcasses for de-boning.

4.2.1.1. Parties' view

(29) The Parties submit that since the JV will not be active in the procurement of live sows for slaughtering or any slaughtering activity, but only in de-boning of sow carcasses, the relevant market is the sourcing of sow carcasses for de-boning.

4.2.1.2. Commission's assessment

(30) The majority of respondents to the market investigation highlighted how slaughtering and de-boning are different activities which require different skill-sets and different equipment.[26]

(31) Moreover, the majority of respondents to the market investigation also highlighted that de-boning a sow carcass might be considered as a separate relevant product market from de-boning a pig carcass due to the difference in size between a sow carcass and a pig carcass (the former being much larger and heavier) but also due to different organoleptic characteristics of the sow meat[27] and lastly also due to different end-use of sow meat, which is more suitable for processed meat products, while pig meat is often used also for direct human consumption.[28]

(32) Concerning the potential sub-market for QS-certified sow carcasses for de-boning, the majority of respondents highlighted limited substitutability between QS-certified and non QS-certified sow carcasses. Moreover, the respondents pointed out how the QS certification is an important factor in the choice of a carcass supplier.[29]

(33) Overall, the market investigation indicated that there is a separate relevant product market for the supply and sourcing of sow carcasses for de-boning, with a potential sub-market for QS-certified sow carcasses. That relevant product market is separated from the market for pig carcasses for de-boning,

(34) In conclusion, in the light of the outcome of the market investigation, the Commission considers that, for the purpose of this decision, there is a separate relevant product market for the supply (and sourcing) of sow carcasses for de-boning. Moreover, within this market, the Commission leaves open for the purposes of the present case, whether a separate relevant product market for QS-

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25 M.3968 – *Sovion / Südfleisch*, paragraphs13–14; M.3605 – *Sovion / HMG*, paragraphs 13–16; and M.3337 – *Best Agrifund / Nordfleisch*, paragraph 8.

26 See replies to Questions 7 and 7.1 of Q1– Questionnaire to de-boners.

27 Such differences are further described in paragraphs (43) and (46).

28 See replies to Questions 8 and 8.1 of Q1 – Questionnaire to de-boners.

29 See replies to Questions 9, 14, 14.1 and 14.2 of Q1 – Questionnaire to de-boners.

certified sow carcasses exists since the Transaction does not raise serious doubts even under the narrower definition of a market consisting in the supply (and sourcing) of QS-certified sow carcasses for de-boning.

4.2.2. Geographic market definition

(35) The Commission has not addressed the geographic market definition of the market for sow carcasses for de-boning in its precedents.

4.2.2.1. Parties' view

(36) The Parties submit that the market is EEA-wide. They refer to actual trade flows within the EEA. In particular, the Parties submit that Germany imports sow carcasses for de-boning from Denmark, the United Kingdom, Poland, Belgium, the Netherlands and Spain.

(37) The Parties submit also that sow carcasses from Denmark, the Netherlands and Belgium could likely meet the QS standard or an equivalent one.

4.2.2.2. Commission's assessment

(38) The market investigation returned mixed results with regards to the substitutability of sow carcasses of German origin for de-boning with sow carcasses imported from other countries,[30] the same mixed replies resulting when considering only QS-certified sow carcasses.[31] While some of the respondents pointed at the QS certification as a German-only specificity or pointed at a less substantiated preference for German sows, others indicated that prices are similar across different countries and that they would be ready to switch the origin of a considerable amount of their purchases if market condition would allow it (i.e. better prices and availability of sow carcasses of appropriate quality). [32]

(39) In conclusion, the Commission considers that there are indications that the geographic scope of the market may be national but, for the purpose of this decision, the precise dimension of the geographic market can be left open, as the Transaction does not give rise to serious doubts about its compatibility with the internal market under any plausible alternative geographic market definition (whether national or wider than national).

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30 See replies to Questions 15 and 15.1 of Q1 – Questionnaire to de-boners. See also the submissions from a French market participant of 16 November 2015 and of 23 November 2015 according to which the de-boning market is now cross-border and includes in particular Germany, Denmark, Benelux, and France. The French market participant considers that the same applies to the markets for slaughtering, cutting and processing (e.g. French producers would have delivered more than 88 000 living sows to Germany for slaughtering in 2014).

31 See replies to Questions 16 and 16.1 of Q1 – Questionnaire to de-boners.

32 See replies to Questions 15 and 16 (including sub-questions) of Q1 – Questionnaire to de-boners.

4.3. Supply of fresh sow and pig meat for further processing

4.3.1. Product market definition

(40) After the sow carcasses have been de-boned at de-boning facilities, the resulting fresh sow meat is sold to industrial processors primarily for sausage production rather than for direct human consumption. Fresh sow meat includes fresh, frozen as well as minced sow meat, which has not undergone further processing, i.e. no other ingredients or spices are added, nor has the meat been cooked, smoked or dried.

(41) In its decisional practice, the Commission has not explicitly assessed the possible differentiation between fresh sow meat and fresh pig meat sold for further processing. In a number of cases, the Commission has nonetheless assessed the sale of fresh pig and sow meat together (calling them 'pork' or 'pig meat') even if a differentiation between pigs and sows was made at the level of sourcing live animals for slaughtering.[33]

(42) The Commission has not previously investigated the role of the QS certification in the sale of fresh meat for further processing.

4.3.1.1. Parties' view

(43) The Parties submit that in the supply of fresh meat for further processing, pig meat should be distinguished from sow meat since sow meat is darker, more mature and firm in structure compared to pig meat. Sow meat is generally well-suited for the production of certain sausages, such as salamis, but not for direct human consumption.

(44) The Parties also submit that, in particular, German meat processing companies are not able to switch from fresh sow to fresh pig meat for certain processed meat products.

(45) Regarding the issue and significance of QS certification, the Parties consider that the QS scheme, as other schemes existing on the European market,[34] is not in itself sufficient to lead to the definition of a separate relevant product market for fresh meat for further processing meeting a specific scheme.

4.3.1.2. Commission's assessment

(46) The majority of respondents to the market investigation confirmed the existence of a separate relevant product market for the supply of fresh sow meat for further

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33 See, for instance, M.3968 – *Sovion / Südfleisch*, paragraphs 13–14; and M.3605 – *Sovion / HMG*, paragraphs 13–16. See also M.3337 – *Best Agrifund / Nordfleisch*, paragraphs 8 and 23–24, where it was nonetheless left open whether the slaughtering of pigs and sows belong to the same relevant market. The German Competition Authority has in the recent *Tönnies/Tummel* case (Beschluss B 2 – 36/11 – *Tönnies / Heinz Tummel GmbH & Co. KG and others*, paragraph 98) distinguished between the supply of fresh sow meat and fresh pig meat. On appeal, the Düsseldorf Higher Regional Court did not overrule that distinction (Decision of 1 July 2015, VI-Kart 8/11, paragraph 205).

34 See, for instance, the Danish quality assurance system QSG (Quality and Safety Guarantee System), the Belgian Certus scheme or the Dutch standard IKB.

processing.[35] To this regard, the majority of respondents to the market investigation confirmed the different characteristics of fresh sow meat as compared to fresh pig meat and indicated also how fresh sow meat is used almost exclusively for further processing as opposed to direct human consumption.[36]

(47) Meat processors indicated also that fresh pig and sow meat can be substitutable only for certain processed meat products.[37]

(48) Concerning the possible relevant product market for QS-certified fresh sow meat for further processing, the respondents to the market investigation gave indication that such separate market might exist and often having the QS certification is a requirement from retailers but it is not clear to which extent such requirement applies to processed meat products rather than to fresh meat for direct human consumption.[38]

(49) In fresh meat for direct human consumption the importance of brands is quite limited and therefore a quality certification might play an important role in driving the consumers' purchasing decision, whereas in processed products the presence of brands with their inherent values might already *per se* convey an idea of quality. In this regard, while virtually all fresh pig meat for direct human consumption sold in Germany is marketed as QS-certified, only less than 50% of the processed meat products that contain QS-certified pig and sow meat are marketed as QS-certified.[39]

(50) Overall, the market investigation indicated that there might be a relevant product market for fresh sow meat for further processing, separated from the market for fresh pig meat for further processing, with potential sub-markets for QS-certified fresh sow and pig meat for further processing respectively. However, the Commission considers that, for the purpose of this decision, the exact scope of the product market can be left open since the Transaction does not give rise to serious doubts about its compatibility with the internal market under any plausible product market definition.

4.3.2. Geographic market definition

(51) The Commission has not explicitly assessed the geographic market for the supply of fresh sow meat for further processing in its decisional practice.

(52) Nonetheless, in some previous decisions the Commission assessed the market for the supply of fresh pig meat for further processing and left the geographic scope

35 See replies to Questions 12 and 12.1 of Q1 – Questionnaire to de-boners; replies to Question 8 of Q2 – Questionnaire to meat processors. This questionnaire was addressed to meat processors established in Germany only.

36 See replies to Questions 8.1, 11 and 11.1 of Q1 – Questionnaire to de-boners; replies to Question 8.1 of Q2 – Questionnaire to meat processors.

37 See replies to Questions 9 and 9.1 of Q2 – Questionnaire to meat processors.

38 See replies to Questions 9.2 of Q1 – Questionnaire to de-boners; replies to Questions 12 and 12.1 of Q2 – Questionnaire to meat processors.

39 See agreed minutes of a call with a market participant on 18 September 2015.

open,[40] whereas in others the Commission found the market to be wider than national,[41] depending on the facts of the cases.

4.3.2.1. Parties' view

(53) The Parties submit that the geographic market for the supply of fresh sow and pig meat for further processing is at least EEA-wide regardless of the possible differentiation between sow and pig meat for further processing.

(54) Their position is primarily based on the fact that it is possible for the industrial processors to multi-source meat from different suppliers located in different countries. Furthermore, industrial processors are generally focused on the quality of the meat rather than on its origin.

4.3.2.2. Commission's assessment

(55) The majority of meat processors which replied to the market investigation highlighted how fresh sow meat of German origin for further processing (whether QS-certified or not) cannot be substituted with equivalent meat of non-German origin (whether QS-certified or not), but those meat processors which see a possible substitutability with non-German meat are ready to switch a material amount of their purchases of fresh sow meat for further processing if market condition would allow it (i.e. better prices and availability of fresh sow meat for further processing of appropriate quality).[42]

(56) The majority of meat processors which replied to the market investigation indicated the absence of legal, commercial and veterinary barriers to import fresh sow meat for further processing from other EU Member States into Germany but highlighted how the origin of the meat plays an important role among retailers but also restaurants and Horeca in general.[43] They nevertheless confirmed the Parties' views that multi-sourcing from slaughterhouses and de-boners established in different EU

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40 See, for instance M.7565 – *Danish Crown / Tican*, Article 9 decision, paragraphs 47–48. See also M.7565 – *Danish Crown / Tican*, Article 6 decision, paragraphs 34–35. In its recent decision B2-36/11 *Tönnies / Tummel*, the German *Bundeskartellamt* found the market for the supply of fresh sow meat to be national for Germany (paragraphs 142–148). On appeal, the Düsseldorf Higher Regional Court left open how to define the geographic market for fresh sow meat (Decision of 1 July 2015, VI-Kart 8/11, paragraph 205). See also M.3968 – *Sovion / Südfleisch*, paragraphs 65–66; M.3522 – *Danish Crown / HK / Sokolow*, paragraph 15; M.3401 – *Danish Crown / Flagship Foods*, paragraph 10; M.3337 – *Best Agrifund / Nordfleisch*, paragraph 25; and M.2662 – *Danish Crown / Steff-Houlberg*, Article 9 decision, paragraph 65, and M.2662 – *Danish Crown / Steff-Houlberg*, Article 6 decision, paragraph 22.

41 M.3605 – *Sovion / HMG*, paragraph 74; and M.1313 – *Danish Crown / Vestjyske Slagterier*, paragraph 95.

42 See replies to Questions 13 and 14 (including sub-questions) of Q2 – Questionnaire to meat processors.

43 See replies to Questions 15, 15.1, 16 and 16.1 of Q2 – Questionnaire to meat processors. See also the submission from a French market participant of 16 November 2015 according to which the market of fresh pig and sow meat is wider than national.

Member States, including in non-neighbouring countries (for instance Spain), is customary.[44]

(57) In conclusion, the Commission considers that there are indications that the geographic scope of the market is national but, for the purpose of this decision, the precise geographic dimension of the market can be left open, as the Transaction does not give rise to serious doubts about its compatibility with the internal market under any alternative (whether national or EU-wide) geographic market definition.

5. COMPETITIVE ASSESSMENT

(58) In its competitive assessment, the Commission will analyse the horizontal and vertical relationships between the Parties and WestCrown.

(59) First, horizontally affected markets would occur only if one considers the sale of fresh sow meat for further processing – in which WestCrown will be active – and of fresh pig meat for further processing – in which the Parties are active – to belong to the same relevant product market, and if either of the following additional condition is met:

i. the geographic scope of the market for fresh sow and pig meat (whether QS-certified or not) for further processing is defined as national (Germany); or

ii. the product market is defined as the supply of QS-certified fresh sow and pig meat for further processing and the geographic scope of that market is defined as EU-wide.

(60) On the contrary, there would not be any horizontally affected market if the product markets for fresh sow and fresh pig meat for further processing are considered as separate or if the product market for fresh sow and pig meat for further processing (including QS-certified and non-QS-certified meat) is defined as EU-wide.[45]

(61) Second, vertical links between the Parties' upstream supply of sow carcasses and WestCrown's downstream de-boning activities lead to vertically affected markets if considering the potential upstream market for QS-certified sow carcasses in Germany. The market would not be affected under any plausible alternative (wider than national) geographic definition or under any alternative product market definition, for instance including QS-certified and non-QS-certified meat.

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44 The techniques of fresh meat packing make it possible to sell fresh meat across Europe. Besides, according to the submissions from a French market participant of 16 November 2015 and 23 November 2015, since transport costs are below the competitive advantages enjoyed by German producers, they do not hinder trading of fresh meat at EU level. This market participant also points at alleged practices of VAT-related tax dumping in Germany, which would constitute State aid; it also refers to alleged social dumping measures (e.g. massive hiring of low-paid staff seconded from other Member States), Upon scrutiny, the above issues, which are qualified as undue competitive advantages by the market participant, would not be merger-specific. Any decision regarding a possible State aid would have no direct effects on the assessment of the Transaction under the Merger Regulation.

45 At EU level, Danish Crown and Westfleisch account for [10-20]% of the total volumes of fresh sow and pig meat for further processing including captive sales (Danish Crown [10-20]%, Westfleisch [5-10]%) and [10-20]% excluding captive sales (Danish Crown [5-10]%, Westfleisch [5-10]%).

5.1. Horizontal relationships – Supply of fresh sow and pig meat for further processing in Germany

(62) A concentration may impede effective competition by removing important competitive constraints or by creating or strengthening a dominant position (non-coordinated effects) but also by allowing the Parties to coordinate with other firms on the market with the aim to increase prices (coordinated effects). The Commission will assess whether significant non-coordinated or coordinated effects are likely to result from the Transaction.

5.1.1. Horizontal non-coordinated effects

(63) WestCrown will only be active in the supply of fresh sow meat for further processing, an activity in which only Westfleisch is meaningfully active at present in Germany but in which neither Danish Crown[46] nor Westfleisch would, after the Transaction, be active. The Transaction would therefore not give rise to horizontal overlaps if fresh sow and pig meat for further processing are considered separately.

(64) Conversely, if the supply of fresh sow and pig meat for further processing are considered in the same relevant product market and its geographic scope is defined as national (Germany), a horizontally affected market emerges as Danish Crown and Westfleisch will both remain active on that market post-Transaction[47] and together hold a combined market share of [20-30]% including and excluding captive sales (Danish Crown [5-10]%, Westfleisch [10-20]%).

(65) The market would remain affected if a potential segment of QS-certified fresh sow and pig meat for further processing in Germany is considered. In this case, the Parties reach a combined market share of [20-30]% including and excluding captive sales (Danish Crown [5-10]% including captive sales and [5-10]% excluding captive sales, Westfleisch [10-20]% including captive sales and [10-20]% excluding captive sales).[48]

(66) Finally, the market for the supply of fresh sow and pig meat for further processing would also be horizontally affected at EU level if QS-certified fresh sow and pig meat is considered as one and the same relevant product market, since the combined market share of the Parties is [20-30]% including internal sales (Danish Crown [10-20]%, Westfleisch [10-20]%) and [20-30]% excluding internal sales (Danish Crown [10-20]%, Westfleisch [10-20]%).[49]

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46 […].

47 Post-transaction, WestCrown will become active on that market by taking over Westfleisch's activities of supply of fresh sow meat for further processing. Since Danish Crown does not supply fresh sow meat for further processing, it will not transfer to WestCrown any activity on the market for supply of fresh sow and pig meat for further processing. For the assessment of the impact of the Danish Crown's exclusive supply of sow carcasses to WestCrown, see Section 5.2.

48 For the activities of WestCrown on that market: see footnote 47.

49 For the activities of WestCrown on that market: see footnote 47.

5.1.1.1. Parties' view

(67) The Parties submit that the combined shares of the Parties on the fresh sow and pig meat markets for further processing, which are below 30% regardless of the definition of the product market (i.e. including for the potential segment of QS-certified fresh meat or not) or the geographic scope (Germany or the EU), are not sufficient to exercise market power.

(68) In addition, the supply market remains fragmented and split between major international players such as Tönnies and Vion and a large number of small and medium sized companies (e.g. Vogler Fleisch, Müller Fleisch and Böseler Goldschmaus in Germany, Belgian Pork Group in the EU), which will continue to bring significant competition in the market.

(69) Finally, the Parties argue that German meat processors, notably sausage producers, do not face any barriers to switch their purchases to alternative suppliers established in Germany, Denmark but also other EU countries, since the quality of the fresh meat prevails over its origin. The Parties put forward that actually already pre-Transaction German meat processor multi-source across the EU.

(70) The Parties consider that customers could also easily switch to other suppliers for QS-certified fresh meat only, to the extent that (i) approximately 95% of German farmers are QS-certified and can therefore be assumed to supply, following slaughtering and de-boning through QS-certified processes, QS-certified fresh meat; (ii) the QS system is open to producers from other EU countries; and (iii) QS recognises other national standards as equivalent (in particular in Denmark,[50] the Netherlands[51] and Belgium,[52] while preparations are on-going in Spain).

(71) The Parties therefore conclude that there is no reason to expect that the Transaction would significantly impede effective competition on the market for the supply of fresh (sow) meat for further processing.

5.1.1.2. Commission's assessment

(72) The combined market shares of the Parties in Germany remain limited, as they do not exceed 30% for the supply of fresh pig and sow meat for further processing and for the specific segment of QS-certified pig and sow meat.

(73) Furthermore, in Germany, the Parties face strong competition from other suppliers of fresh sow and pig meat for further processing, notably integrated companies, such as Tönnies (market share in Germany of [20-30]% including and excluding internal sales) or Vion (market share in Germany of [10-20]% including and excluding internal sales).

(74) The same competitors are to be found on the segment of the supply of QS-certified fresh sow and pig meat for further processing, both at German level (Tönnies [20-

50 The Danish quality assurance system QSG (Quality and Safety Guarantee System) is recognised by the QS scheme.

51 The Dutch IKB (Integrated Chain Control) system is recognised by the QS scheme.

52 The Belgian Certus system is recognised by the QS scheme.

30]% including and excluding internal sales, Vion [10-20]% including and excluding internal sales) and at EU level (Tönnies [10-20]% including and excluding internal sales, Vion [10-20]% including and excluding internal sales).

(75) In addition, respondents to the market investigation have not raised material concerns regarding the pig meat value chain, as opposed to the sow meat value chain. In particular, German meat processors, which use both fresh sow and pig meat as inputs, have not identified any market or segment that would be impacted by the Transaction other than fresh sow meat for further processing.[53]

(76) Respondents to the market investigation have also confirmed that German meat processors usually multi-source fresh meat from a pool of slaughterhouses or de-boners which are not limited to the Parties and which are established in different EU countries, notably Germany, Denmark, the Netherlands, Belgium or Spain.[54]

(77) Moreover, there is no significant barrier to the import of fresh sow or pig meat for further processing to Germany from other EU countries.[55] Respondents to the market investigation supported the view expressed by the Parties that import of QS-certified fresh pig and sow meat to Germany was also possible, since the QS scheme is open to suppliers established outside Germany, certain national standards are acknowledged as equivalent to the QS standard and non-German slaughterhouses and de-boners have obtained or will obtain certification under the QS scheme.[56] Respondents to the market investigation also confirmed that the penetration rate of the QS standard outside Germany was growing and thus de-boners outside Germany would be able to increase their exports of QS-certified fresh and pig meat to Germany or enter the market. Such expansions would mean that the Transaction would be unlikely to pose any significant anti-competitive risk.

(78) Some respondents to the market investigation[57] nevertheless expressed reservations and indicated that the capacity of QS-certified suppliers of fresh sow and pig meat established in Denmark, Belgium or France is currently constrained by the limited production capacity of QS-certified farmers, hence by the limited availability of QS-certified sows, and to a lesser extent QS-certified pigs, for slaughtering.

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53 See replies to Question 34 of Q2 – Questionnaire to meat processors.

54 See replies to Questions 17 and 18 of Q2 – Questionnaire to meat processors.

55 See replies to Questions 15 and 15.1 of Q2 – Questionnaire to meat processors.

56 See replies to Question 8 of Q5 - Questionnaire to EEA slaughterhouses, to Question 8 of Q4 – Questionnaire to EEA de-boners and the agreed minutes of a conference call with a market participant on 18 September 2015.

57 See replies to Question 10 (and sub-questions) of Q4 - Questionnaire to EEA de-boners and agreed minutes of a conference call with a Belgian sow and pig de-boner on 12 November 2015. For Denmark, compliance with the QSG standard (equivalent to the QS standard) is required by law, hence all farmers are QS-certified. The limited capacity of production of QS-certified sows is linked to farmers' financial difficulties which reduce their ability to expand. For Belgium, the limited capacity of production of QS-certified sows is rather linked to the low number of QS-certified farms producing sows. The same is valid for France where, according to the submission from a French market participant of 23 November 2015, basically no QS-certified farm is present. The situation in France would result e.g. from the lack of equivalence between the French quality certifications for farming and the QS certification.

(79) In view of the above and of all the evidence available to the Commission, and in the light of the outcome of the market investigation and considering in particular that (i) the combined market share of the Parties is not *prima facie* indicative of material competition concerns, and (ii) there will remain a sufficient number of suppliers to exert competitive pressure on prices of fresh sow and pig meat for further processing whether QS-certified or not in Germany and of QS-certified fresh sow and pig meat for further processing in the EU, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the supply of fresh sow and pig meat for further processing, whether QS-certified or not, in Germany or with respect to the supply of QS-certified fresh sow and pig meat for further processing in the EU.

5.1.2. Horizontal coordinated effects

(80) Considering that (i) WestCrown will only supply fresh sow meat in Germany, and (ii) supply of fresh sow meat accounts for [10-20]% in volume of the overall market for the supply of fresh sow and pig meat in Germany, the risk that WestCrown's activities may have anti-competitive effects appears limited to the potential segment of fresh sow meat for further processing.

(81) On that segment, the Parties submit that WestCrown will hold [20-30]% of the market in Germany (in volume, including and excluding captive sales) following the transfer of Westfleisch's de-boning activities and the additional volumes of fresh sow meat for further processing resulting from Danish Crown's sow carcasses currently sold to other German customers than Westfleisch.[58] WestCrown's market

58 According to a competitor's submission received on 30 November 2015, the market share of WestCrown in the market of "sow slaughters in Germany without Tönnies and Vion" would reach [50-60]% in 2014. This market share corresponds to the addition of the estimated market shares of Danish Crown ([20-30]%) and of Westfleisch ([30-40]%) in 2014. The submission defines the market of "sow slaughters without Tönnies and Vion" as comprising slaughtering and de-boning of sows and excluding the sow carcasses which would be produced by Tönnies and Vion since those are integrated companies (the sow carcasses Tönnies and Vion produce are deemed used for their own needs, hence unavailable for third parties).

The Commission considers that the hypothetical market share of WestCrown in 2014 is overestimated, due to (i) a significant overestimation of the market shares of Danish Crown and Westfleisch on the possible market of sow slaughtering, probably resulting from an overestimated ratio between the number of pigs and sows slaughtered by Danish Crown and Westfleisch (see reply of 1 December 2015 to the Request for information sent on 30 November 2015 (RFI 10)); (ii) the discrepancy in the treatment of the sow carcasses produced by Westfleisch compared to the treatment of sow carcasses produced by Tönnies or Vion. Westfleisch is also integrated and does not supply sow carcasses to third parties (all sow carcasses produced by Westfleisch are de-boned by Westfleisch); (iii) an unclear definition of the market on which the Parties and WestCrown are active, which is extrapolated via data, assumptions and calculations from the pig slaughtering activity.

Those elements lead also to a biased analysis of the closeness of the competition between Westfleisch and Danish Crown. In fact, pre-Transaction, Westfleisch and Danish Crown do not compete for sow-related products as they are not present on the same markets (Danish Crown is only present on the upstream market of supply of sow carcasses to third parties while only Westfleisch is present on the downstream market of supply of fresh sow meat for further processing). The need to separate those two markets is even acknowledged by the competitor's submission (for example, the submission mentions that '*Although the markets of slaughtering and de-boning have to be treated separately, it has to be stated that Westfleisch and Danish Crown are close competitors in the market of sow slaughters, which is exemplified by the relatively high market shares in the market of sow slaughters*').

share would reach [20-30]% (in volume, including and excluding captive sales) if only QS-certified fresh sow meat for further processing is considered.

(82) WestCrown will thus become the second largest supplier of fresh sow meat (including QS-certified sow meat) for further processing in Germany, behind Tönnies. The two firms will hold [50-60]% of the market for the supply of fresh sow meat for further processing in Germany (in volume, including and excluding captive sales) and [60-70]% (in volume, including and excluding captive sales) if only QS-certified fresh sow meat for further processing is considered.

(83) In this context, the Commission has assessed whether the Transaction would increase the likelihood that the two largest players, i.e. Tönnies and WestCrown, would be able to coordinate their behaviour on the market for the supply of fresh sow meat for further processing in Germany, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU.

(84) For that purpose, the Commission has examined whether it would be possible for WestCrown and Tönnies to reach terms of coordination and whether such coordination would be sustainable.

5.1.2.1. Parties' view

(85) Regarding the possibility to reach terms of coordination, the Parties' stress that the formation of WestCrown will not result in a decrease in the number of companies active in the market but in a strengthened position of WestCrown, which will make it more difficult to obtain a common understanding on the terms of coordination.

(86) First, the Parties submit that the degree of asymmetry between the de-boning companies active in Germany will increase post-Transaction. The market structure pre-Transaction is as follows:

Table 1: Supply of fresh sow meat and QS-certified fresh sow meat for further processing in Germany, in volume, including internal sales (2014)

	Tönnies	West-fleisch	Kurant	Uhlen / Goertz	Westphal	Korff	Others
All sow meat	[30-40]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[10-20]%
QS-certified sow meat	[30-40]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[10-20]%

Source: the Parties, Annexes 12b and 12d to the Form CO

(87) Post-Transaction, the volumes of fresh (QS-certified) sow meat stemming from sow carcasses supplied by Danish Crown […] will be shifted to WestCrown, which will replace Westfleisch on the market. The number of players will remain the same, but the difference between the market shares of the two leaders and those of their challengers will increase.

(88) Second, the Parties submit that the asymmetries in the market also result from differences between the various de-boning companies in terms of cost structure (size and capacity) and business profile (specialised sow de-boners vs. integrated

companies across slaughtering and de-boning or between pigs, sows or other species).

(89) Third, the Parties note that the market is characterised by high demand elasticity (due to the high substitutability of sow meat, including QS-certified sow meat, with other products such as pig meat and to some degree beef meat) and by price volatility, which make it less conducive to coordination.

(90) Fourth, the Parties point to the fact that there is historically a strong rivalry between the different players and in particular between Westfleisch and Tönnies, and no history of previous coordination or collusion on the market.

(91) Regarding the sustainability of coordination, the Parties submit that the market is not transparent. It would thus be practically impossible for the de-boning companies to monitor whether the terms of a theoretical coordination were being adhered to.

(92) In addition, the fragmented customer base, made of many small and medium sized meat processors, would make any theoretical retaliation difficult to implement. The de-boning companies would therefore not have any form of deterrent mechanism to prevent competitors from deviating from the terms of coordination.

(93) The Parties argue further that the terms of any coordination between de-boning companies in Germany could be easily defeated by outsiders to coordination, i.e. competitors as well as customers. Any theoretical coordinated price increase would very likely be countered by the numerous effective competitors active in the supply of standard sow meat (seen as a substitute for QS-certified sow meat) or established outside of Germany. The Parties notably indicate that a theoretical higher price level for QS-certified sow meat would likely accelerate the implementation of QS-standard in Spain and the entry of new suppliers.

(94) Finally, the Parties also underline the constrain exercised by food processors which purchase fresh sow meat and are themselves under pressure by the buying power of the food retailers.

(95) The Parties conclude that the Transaction will not lead to coordinated effects on the market for the supply of fresh sow meat for further processing in Germany, even if only the potential segment for QS-certified sow meat is taken into account.

5.1.2.2. Commission's assessment

(96) The Commission notes that the market structure post-Transaction may present some features that may be considered as facilitating and incentivising coordination. In particular, the Transaction will accelerate market concentration, with the two largest players, Tönnies and Westfleisch, holding more than half of the market and their direct competitors, notably Kurant, being weakened by the redirection to WestCrown of all (QS-certified) sow carcasses supplied by Danish Crown (see also below).

(97) In addition, the prices of fresh sow meat[59] are publicly available on the companies' websites and, although the other commercial conditions under which the fresh sow meat is sold by de-boners to meat processors are confidential, they are sufficiently standardised for market participants to be in a position to compare offers and adjust prices accordingly. The degree of price transparency would nevertheless not materially change as a consequence of the Transaction.

(98) However, the Commission considers that the market positions of WestCrown and Tönnies will be asymmetrical post-Transaction. Tönnies will clearly remain the market leader for the supply of fresh sow meat (+[10-20]% compared to WestCrown) and on the potential segment of QS-certified fresh sow meat (+[5-10]% compared to WestCrown). In addition, the level of integration and the range of products offered by the two companies are diverging: WestCrown will be specialised in sow de-boning in Germany,[60] while Tönnies is a global actor in the food industry, active in all markets of the pig, sow and beef meat value chains.

(99) Furthermore, the German *Bundeskartellamt* has not adopted any decisions concerning collusive behaviour in the area of slaughtering and de-boning of sows or pigs in the last five years and so far no evidence for coordinated behaviour or a price cartel besides the similar prices (probably due to market transparency, see above) has been found on those markets in Germany.

(100) The Commission therefore considers that the Transaction would not increase the likelihood that WestCrown and Tönnies would reach terms of coordination for the supply of fresh sow meat, including QS-certified sow meat, in particular in view of the asymmetry of the firms active on the market and the lack of evidence of past coordination.

(101) Furthermore, even if WestCrown and Tönnies were to arrive at a common perception as to how the coordination should work, the Commission is of the view that the coordination would likely be unstable, due to the lack of credible deterrent mechanisms, the ability and incentive of smaller competitors (notably Uhlen/Goertz or de-boners established outside Germany) to disrupt coordination and the multi-sourcing and switching behaviours of the de-boners' customers (meat processors).

(102) In light of the above, and of all the evidence available to the Commission and in view of the outcome of the market investigation, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of coordinated anti-competitive effects in the market for the supply of fresh sow meat for further processing in Germany, including in the potential segment for QS-certified fresh sow meat.

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59 The market investigation confirmed that the price for QS-certified sow meat is the same as the price for non QS-certified sow meat.

60 See Section 1.2 JVA (annex 3 to the Form CO).

5.2. Vertical relationships

5.2.1. Introduction

(103) The Transaction only gives rise to vertically affected markets if QS-certified (or equivalent) sow carcasses are considered separately from other types of sow carcasses. Under that assumption, the vertical link between the Parties' upstream supply of such carcasses in the potential national market in Germany[61] and their downstream de-boning activities in Germany give rise to a vertically affected market.

(104) At present, Westfleisch is not selling sow carcasses to third parties but supplies them to its own downstream de-boning business, which is to be contributed to WestCrown. Danish Crown, on the other hand, supplies a total [300 000-700 000] sow carcasses annually to customers in Germany. At present, approximately [0-100 000] of those carcasses go already to Westfleisch's de-boning business and the rest go to other German de-boners. The supply of sow carcasses in Germany is described in Table 2 below.

Table 2: Supply of sow carcasses in Germany (2014)

	All sows, including captive	All sows, excluding captive	QS sows, including captive	QS sows, excluding captive
Danish Crown	[300 000-700 000]	[300 000-700 000]	[300 000-700 000]	[300 000-700 000]
Westfleisch	[100 000-300 000]	[0-100 000]	[100 000-300 000]	[0-100 000]
Combined	[300 000-700 000]	[300 000-700 000]	[300 000-700 000]	[300 000-700 000]
Total market	[2 000 000-3 000 000]	[1 000 000-2 000 000]	[1 000 000-2 000 000]	[1 000 000- 2 000 000]

Source: the Parties, Form CO

(105) As can be deducted from Table 2 the Parties' individual and combined market shares in the upstream supply of sow carcasses reach 30%, and therefore gives rise to a vertically affected market, only if considering non-captive supplies of QS-certified sow carcasses. It should further be noted that the figures in Table 2 include imports into the potential German market. The Parties estimate that only [700 000-1 000 000] sows were actually slaughtered in Germany while [1 000 000-2 000 000] were imported in 2014 (including captive imports). It should further be noted that, as on the one hand Danish Crown's sow carcasses originate not from Germany but from Denmark and, on the other hand, Westfleisch does not supply sow carcasses to third parties even at present, the Transaction would not give rise to a vertically affected market if imports into Germany were not taken into account.

61 It should be noted that Westfleisch does not supply sow carcasses to third parties while Danish Crown supplies […] to Germany. Should the geographic market be wider than Germany, the Parties' market shares in the supply of sow carcasses for de-boning would thus only be diluted through the supply of sow carcasses to de-boners in neighbouring countries by third parties, if any.

(106) As to the potential downstream markets, the Parties' estimates of market shares are given in Table 3 and Table 4 below.

Table 3: Supply of QS-certified fresh sow meat for further processing in Germany, excluding captive sales (2014)

	Sow meat QS, CWE (tonnes)	Sow meat QS, market share (%)
Danish Crown	[…]	[0-5]%
Westfleisch	[…]	[10-20]%
Combined	**[…]**	**[10-20]%**
Tönnies	[…]	[30-40]%
Uhlen/Goertz	[…]	[10-20]%
Kurant	[…]	[10-20]%
Westphal	[…]	[5-10]%
Korff	[…]	[0-5]%
Others	[…]	[10-20]%
Total	[…]	**100%**

Source: the Parties, Annex 12e to the Form CO

Table 4 - Supply of QS-certified fresh sow and pig meat for further processing in Germany, excluding captive sales (2014)

	Pig and sow meat QS, CWE (tonnes)	Pig and sow meat QS, market share (%)
Danish Crown	[…]	[5-10]%
Westfleisch	[…]	[10-20]%
Combined	**[…]**	**[20-30]%**
Tönnies	[…]	[20-30]%
Vion	[…]	[10-20]%
Vogler Fleisch	[…]	[0-5]%
Müller Fleisch	[…]	[0-5]%
Böseler Goldschmaus	[…]	[0-5]%
Others	[…]	[20-30]%
Total	[…]	**100%**

Source: the Parties, Form CO and the Parties' submission of 20 November 2015

(107) As to the potential downstream markets for the supply of fresh sow (or fresh sow and pig) meat for further processing, the combined market shares remain below 30% under any plausible market definition. The Transaction thus only gives rise to vertically affected markets in case the supply of QS-certified (and equivalent) sow carcasses is considered separately from the supply of other sow carcasses.

5.2.2. The legal framework

(108) The Commission will examine whether the Transaction is likely to result in foreclosure.

(109) Foreclosure concerns a situation where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of a merger and those companies' ability and/or incentive to compete is reduced. Such foreclosure can take two forms: input and customer foreclosure.[62]

(110) Input foreclosure is a situation where, post-merger, the new entity would be likely to restrict access to products or services that it would otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar process and conditions as absent the merger.[63]

(111) Customer foreclosure is a situation where the merged entity may foreclose access to sufficient customer base to its actual or potential rivals in the upstream market and reduce their ability or incentive to compete. In turn, that may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.[64]

(112) For an input or customer foreclosure scenario to raise competition issues, three factors need to be taken into account: 1) the ability of the merged entity to engage in foreclosure, 2) the incentives of the merged entity to do so and 3) whether a foreclosure strategy would have a significant detrimental effect on competition on the downstream market.[65]

5.2.3. Input foreclosure

5.2.3.1. Parties' view

(113) The Parties submit that the Transaction would not give rise to any foreclosure related to the vertical link between the upstream supply of QS-certified sow carcasses and the downstream de-boning and supply of fresh sow and pig meat for further processing. In particular, the Parties submit that they lack the ability to engage into input foreclosure.

(114) The Parties particularly note that competing de-boners are not limited to sourcing sow carcasses from Germany only but can also source from suppliers abroad, as is currently also the case for Westfleisch as well. That would apply to non QS-certified as well as to QS-certified sow carcasses since the quality schemes in Denmark, the Netherlands and Belgium have been acknowledged by the QS scheme as equivalent with it. The Parties further submit that transport costs play a minimal role in the purchase of sow carcasses, which lowers trade barriers and increases the pool of alternative suppliers, including those capable of supplying QS-certified carcasses to German de-boners.

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62 See, for instance, Guidelines on the assessment of non-horizontal mergers under the Council regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 7 ('Non-Horizontal Guidelines'), paragraphs 29 and 30.

63 See, for instance, Non-Horizontal Guidelines, paragraph 31.

64 See, for instance, Non-Horizontal Guidelines, paragraph 58.

65 See, for instance, Non-Horizontal Guidelines, paragraphs 32 and 59.

(115) The Parties further submit that it will not be profitable for WestCrown to pursue a foreclosure strategy. If WestCrown were to offer higher prices for QS-certified sow carcasses bought from independent farmers in the upstream market in order to foreclose access to input to competing de-boners, the JV would not be able to recover these additional costs through higher prices in the downstream market for the supply of QS-certified fresh sow meat for further processing. This is because WestCrown will face competition on the downstream market by the other integrated de-boning companies with slaughtering activities including Tönnies, Uhlen/Goertz and Westphal all offering QS-certified fresh sow meat and having at least part of their QS-certified carcasses supplied internally, hence not impacted by the higher prices offered on the market by the JV.

5.2.3.2. Commission's assessment

(116) The Transaction would not give rise to vertically affected markets if imports of QS-certified (or equivalent) sow carcasses into Germany were not considered. Therefore the Commission will examine the effects of the transaction taking into account such imports.

(117) It should be noted that the Parties' market share in the upstream market remains modest at [30-40]%. That market share is generated by Danish Crown's sales of approximately [300 000-700 000] QS-certified sow carcasses to de-boners in Germany, including [0-100 000] that already go to Westfleisch's de-boning activities. Danish Crown thus at present supplies approximately [100 000-300 000] QS-certified sow carcasses to German de-boners other than Westfleisch.

(118) The Parties have submitted that they indeed intend to redirect all of Danish Crown's sow carcasses to WestCrown after the Transaction. [WESTCROWN'S SOURCING STRATEGY].

(119) During the market investigation, the majority of German de-boners expressed doubts in relation to the ability of non-German suppliers to supply additional QS-certified sow carcasses to them.[66] As to slaughterhouses, only one significant operator explained that it would be able to significantly increase its exports of QS-certified sow carcasses to Germany from the current levels.[67]

(120) It cannot thus be excluded that the market for the supply of QS-certified sow carcasses in Germany would decrease by the [100 000-300 000] carcasses that Danish Crown at present supplies to third parties without significant immediate additional supplies being available from other suppliers.

(121) Therefore, it cannot at present be excluded that some of the German de-boners competing with WestCrown would have more limited access to QS-certified sow carcasses after the Transaction particularly if they cannot resort to their own internal captive supply as it is the case for integrated de-boning companies. Since their production facilities' efficiency may depend on adequate utilisation rates, it

66 See replies to Question 21 of Q1 – Questionnaire to de-boners.

67 See replies to Question 10 of Q5 – Questionnaire to EEA slaughterhouses and the agreed minutes of a conference call with a slaughterhouse on 1 October 2015.

cannot be excluded that such developments could be detrimental to them and, in the worst case, result in the market exit of some de-boners.

(122) Some competing de-boners are concerned about their access to QS-certified sow carcasses after the Transaction. In particular, non-integrated German de-boners raised the risk of having their access to QS-certified sow carcasses hampered following the Transaction.[68]

(123) To the same regard, a non-integrated de-boner stated that it will have to shrink its size and potentially might exit the market and would not be any longer in a position to exercise a competitive constraint on the integrated market players. The reason for this is the difficulty to procure sufficient quantities of QS-certified sow carcasses for de-boning at competitive prices. That specific de-boner further submitted that other Danish slaughterhouses were not in a position to increase their supply of sow carcasses to make up for any lost supplies from Danish Crown.[69]

(124) German meat processors replying to the market investigation were concerned about the position of the smaller, non-integrated suppliers in the market after the Transaction. The majority of German meat processors taking a position also saw that price increases on the downstream market for the supply of QS-certified fresh sow meat for further processing could take place. On the other hand, the majority of meat processors purchasing sow meat that replied stated that they were not concerned about their access to sow meat and doubted whether the merged entity would have the incentive to increase its prices for fresh sow meat for further processing, including QS-certified fresh sow meat for further processing.[70]

(125) Nonetheless, it should be borne in mind that if there remain sufficient credible downstream competitors whose costs are not likely to be raised, for example because they are themselves vertically integrated, competition from those firms may constitute a sufficient constraint on the JV and therefore prevent output prices from rising or trade conditions otherwise worsening from pre-merger levels.[71]

(126) For the reasons stated below, the Commission considers that adequate competition will remain in de-boning of sows and in the sub-sequent sale of fresh sow and pig meat for further processing and any potential input foreclosure strategy by the Parties would only have limited effects on the downstream supply of fresh sow and pig meat for further processing.

(127) The most significant player on that market is already the sizeable integrated undertaking Tönnies, which will remain in that position even after the Transaction. As seen in Table 3, Tönnies had a market share of [30-40]% in the supply of QS-certified fresh sow meat for further processing in Germany in 2014, by far bigger than any other market participant. Even if the Parties' estimate that WestCrown's market share on that market could rise after the Transaction to [20-30]% due to the

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68 See replies to Questions 28–31 of Q1 – Questionnaire to de-boners.

69 Submissions of a competitor received on 13 November 2015 and on 30 November 2015.

70 See replies to Questions 26–31 of Q2 – Questionnaire to meat processors.

71 See, for instance, Non-Horizontal Guidelines, paragraph 50.

redirecting of Danish Crown's sow carcasses, Tönnies' position as a clear market leader would remain.

(128) In addition to Tönnies, there are a number of other sizeable players in the potential market for QS-certified fresh sow meat for further processing. For instance, Uhlen/Goertz had a market share of [10-20]% in 2014. Uhlen/Goertz is also vertically integrated with its own captive sow carcass supply that is likely to be at least partially shielded from any potential input foreclosure strategy.

(129) Besides, when assessing the likelihood and extent of input foreclosure, it should be borne in mind that competing de-boners are currently sourcing from a variety of slaughterhouses and can also compete for the third-party QS-certified sow carcasses to be supplied to WestCrown. Moreover, the potential exit from the market by a competitor would leave the sow carcasses (not delivered by Danish Crown) until then de-boned by that market participant for the remaining de-boners.[72] The Commission therefore considers it unlikely that a significant number of de-boners would exit the market due to input foreclosure.

(130) Furthermore, not all sow meat meeting the QS standard is actually marketed as such. According to the Parties, only approximately [100 000-300 000] CWE tonnes of the total [100 000-300 000] CWE tonnes of QS-certified fresh sow meat for further processing (excluding captive sales) are actually marketed as such. Westfleisch also markets a relatively small volume of its QS-certified fresh sow meat for further processing as QS-certified (only [0-100 000] tonnes CWE excluding captive sales in 2014), and the Parties estimate that its market share was down to [5-10]% in 2014 concerning fresh sow meat that is actually marketed as QS-certified.

(131) QS-certified fresh sow meat for further processing only constitutes a small part of the potential downstream market for combined QS-certified fresh sow and pig meat for further processing. To this extent it should also be noted that for some processed pig and sow meat products, meat processors can also source fresh pig meat as a substitute of fresh sow meat.[73] Any effects on that potential downstream market would thus be even smaller than on the potential separate fresh sow meat market.

(132) In light of the above, and of all the evidence available to the Commission and in view of the outcome of the market investigation, the Commission considers it unlikely that the Transaction would put WestCrown in a position to significantly increase prices or impose detrimental conditions on the downstream markets for QS-certified fresh sow meat for further processing or combined QS-certified fresh sow and pig meat for further processing.

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72 See, for instance, '*When determining the extent to which input foreclosure may occur, it must be taken into account that the decision of the merged entity to rely on its upstream division's supply of inputs may also free up capacity on the part of the remaining input suppliers from which the downstream division used to purchase before.*' (Non-Horizontal Guidelines, paragraph 37).

73 See replies to Questions 9 and 10 of Q2 – Questionnaire to meat processors.

5.2.4. Customer foreclosure

(133) The Parties submit that the Transaction does not give rise to any customer foreclosure because, for instance, the merged entity would lack any capacity to engage in such behaviour.

(134) The Commission notes that Westfleisch's de-boning business is not at present a significant purchaser of sow carcasses from third parties. In fact, it is only sourcing less than 20% of any sow carcasses on the merchant market (whether considering only QS-certified sow carcasses or together with non-QS-certified ones), of which over 40% already come from Danish Crown.

(135) Moreover, slaughterhouses competing with Danish Crown will still have the possibility to supply de-boners competing with WestCrown at competitive conditions, especially considering that those de-boners will have to source sow carcasses to replace those previously supplied to them by from Danish Crown.

(136) In light of the above and the evidence available to the Commission and in view of the outcome of the market investigation, it appears unlikely that the Parties would have the ability to engage into customer foreclosure strategy after the Transaction.

5.2.5. Conclusion on non-horizontal effects

(137) The Commission concludes that the Transaction does not raise serious doubts about its compatibility with the internal market due to non-horizontal effects.

6. CONCLUSION

(138) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission
(Signed)
Margrethe VESTAGER
Member of the Commission