



EUROPEAN COMMISSION
DG Competition

***Case M.7854 - AGRAVIS / WILMAR INTERNATIONAL /
H BÖGEL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/06/2016

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EUROPEAN COMMISSION

Brussels, 30.06.2016
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case M.7854 - AGRAVIS / WILMAR INTERNATIONAL / H BÖGEL
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

- (1) On 2 June 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Agrarrohstoff Beteiligungs GmbH ("Agrarrohstoff", Germany) belonging to AGRAVIS Raiffeisen AG ("AGRAVIS", Germany) and WIL Holdings GmbH ("WIL") belonging to Wilmar International Limited ("Wilmar", Singapore) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of H. Bögel GmbH & Co. KG ("Bögel", Germany) and of H.Bögel Beteiligungsgesellschaft mbH ("Bögel GmbH", Germany), by way of purchase of

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 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

shares (the "Transaction")³. Wilmar, AGRAVIS, Bögel GmbH and Bögel are collectively referred to as the "Parties".)

1. THE PARTIES

- (2) AGRAVIS is a limited liability company incorporated under German law and active in the cooperatively organised agricultural trade and the production and sale of compound animal feed with 18 production facilities in Germany. AGRAVIS is the parent company of Agrarrohstoff, a pure holding company.
- (3) Wilmar is a Singapore based international agribusiness group. Its activities include oil palm cultivation, edible oils refining, oilseeds crushing, consumer pack edible oils processing and merchandising, specialty fats, oleo chemicals, biodiesel manufacturing, as well as grains processing and merchandising. Wilmar is the parent company of the holding company WIL.
- (4) Bögel is a limited partnership incorporated under German law. Bögel is active in the international wholesale of animal feed ingredients, such as palm kernel expeller, dried sugar beet pulp pellets, soybean meal, and rapeseed meal.
- (5) Bögel GmbH as a pure holding company is the sole personally liable parent company ("Komplementärin") of Bögel.
- (6) The shares in Bögel and Bögel GmbH respectively are currently held by AGRAVIS⁴ and two natural persons.

2. THE OPERATION AND THE CONCENTRATION

- (7) On 31 August 2015 Agrarrohstoff, a 100% subsidiary of AGRAVIS, and WIL, a 100% subsidiary of Wilmar, entered into an agreement (Sales and Purchase Agreement) by which Agrarrohstoff and therefore indirectly AGRAVIS will acquire a 33.33%-interest in Bögel and in Bögel GmbH. Thus, WIL currently holding 66.66% of the shares in Bögel and Bögel GmbH will post-transaction own 33.33% of shares in those companies. The remaining shares will be held by two natural persons owning respectively 23.34% and 10% of shares in each of Bögel and Bögel GmbH.
- (8) Pursuant to German law, Bögel GmbH as the sole limited partner of Bögel represents and acts through its own management as the managing director of Bögel. The Articles of Association of Bögel and Bögel GmbH establish as a general rule a simple majority quorum for shareholders' decisions. Such decisions concern inter alia strategic decisions such as the appointment of the management board of Bögel GmbH. Therefore, as a general rule, no shareholder can block such decisions against the will of the other shareholders.
- (9) However, according to the Articles of Association of Bögel GmbH, AGRAVIS/Agrarrohstoff and Wilmar/WIL – in case there is a factual and objectively comprehensible reason – have both the right to veto resolutions

³ Publication in the Official Journal of the European Union No C 207, 10.6.2016, p. 16.

⁴ Should read as "WIL"

appointing members of the management board of Bögel GmbH. In the light of Bögel GmbH's position as managing director of Bögel, AGRAVIS and Wilmar can in this case indirectly also influence the casting of the management for Bögel. The burden of proof that there are no factual and objectively comprehensible reasons is with the other shareholders. Therefore, AGRAVIS and Wilmar respectively can essentially block the appointment of new managing directors and, thus, they have the ability to exercise decisive influence over Bögel's and Bögel GmbH's strategic business decisions.⁵

- (10) In the light of the above, AGRAVIS and Wilmar will jointly control Bögel and Bögel GmbH.
- (11) Consequently, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the EU Merger Regulation.

3. UNION DIMENSION

- (12) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁶ (Wilmar EUR 32 431 million; AGRAVIS EUR 7 364 million, Bögel EUR [...] million, Bögel GmbH EUR 0). Two of them have a Union-wide turnover in excess of EUR 250 million (Wilmar EUR [...] million; AGRAVIS EUR [...] million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.
- (13) The notified operation therefore has an Union dimension within the meaning of Article 1(2) of the Merger Regulation.

4. COMPETITIVE ASSESSMENT

4.1. Introduction

- (14) The Transaction concerns in substance (i) the production and sale of palm kernel expellers (PKE), (ii) the wholesale trade of PKE and (iii) the production of compound animal feed using PKE as input.⁷
- (15) PKE are obtained as a by-product of palm kernel oil production. They are a particular type of oil seed meal and, as other oilseed meals, are used as protein rich ingredients for compound animal feed. Oil seed meals are solid by-products of oil extraction and can be divided according to the plants of origin into PKE, dried sugar beet pulp pellets, soybean meal, rapeseed meal or sunflower meal.

⁵ See the Commission's Consolidated Jurisdictional Notice, OJ C 37, 30.01.2016, p. 3 (the 'Jurisdictional Notice'), point 69.

⁶ Turnover calculated in accordance with Article 5 of the Merger Regulation.

⁷ Wilmar also produces other non-grain based feed ingredients such as soybean meal. AGRAVIS and Bögel both purchase such other non-grain based feed ingredients, e.g. rape seed meal and soybean meal. However, as the Transaction will not lead to any affected market regarding other non-grain based feed ingredients than PKE the further analysis will focus on the Parties' activities regarding PKE.

- (16) Wilmar produces PKE in South East Asia and sells them exclusively fob ex⁸ Malaysia and Indonesia to international wholesalers which sell them on to other wholesalers or to compound feed producers without Wilmar knowing to which countries such PKE are exported.
- (17) Bögel is one of those wholesalers and purchases PKE from producers to sell them on to animal feed producers and other wholesalers mostly in Germany.
- (18) AGRAVIS also purchases PKE (i) mainly for its own production of compound animal feed and (ii) to a lesser extent for resale to cooperatives, farmers or other animal feed producers.

4.2. Market definition

4.2.1. Product market definition

4.2.1.1. Production and wholesale trade of PKE

- (19) Concerning oil seed meals, the Commission in its previous decisions has considered a distinct market for all non-grain animal feed ingredients (NGFI) including oil seed meals. A further sub-segmentation according to the various types of NGFI was also considered. However, the Commission left the definite market definition open.⁹ Furthermore, different markets could be defined for the sale of PKE from manufacturers to wholesalers and the sale of PKE from wholesalers to end consumers since those suppliers are active at different levels of trade and thus do not sell to the same customer groups.
- (20) The Parties submit that PKE as other oilseed meals belong to the product market of NGFI without further sub-segmentation according to the various types of NGFI, given that they are interchangeable for the purpose of animal feed production. Furthermore, the Parties distinguish between the upstream market for the production and sale of NGFI on the one hand and the downstream market for the wholesale trade of NGFI.
- (21) The results of the market investigation support a certain substitutability of PKE by other NGFI. In particular, it was confirmed that PKE wholesalers and compound animal feed producers can substitute PKE by other NGFI in case of price increases for PKE and that it is already common practice among compound animal feed producers to monitor price evolution of NGFI on a constant basis and to replace ingredients accordingly depending on the respective price development.

⁸ "Fob. ex." or "Free on Board" means that the seller fulfils its obligation to deliver when the goods have passed over the ship's rail at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that point.

⁹ E.g. cases COMP/M.6383 – Cargill / Korofrance para. 35; COMP/M.3725 – Cargill / Pagnan, para.7-9; COMP/M.2886 – Bunge / Cereol, para. 9; COMP/M.2693 – Archer Daniels Midland / Alfred C. Toepfer International, para. 14; COMP/M.2271 – Cargill / Agribrands, para. 9; COMP/M.1348 – Archer Daniels Midland / Alfred C. Toepfer International / International, para. 12-17.

4.2.1.2. Production and sale of compound animal feed

- (22) Compound feed consists to 98% of agricultural raw materials (grain or non-grain based) and to 2% of premixes, which are additives to cover the complete nutrition need of the animal.¹⁰
- (23) The Commission in previous decisions considered a segmentation of the market for compound animal feed per type of animal, but left the ultimate product market definition open.¹¹
- (24) The Parties suggest that compound feed for all animals should be considered as the relevant product market.

4.2.2. *Geographic market definition*

4.2.2.1. Production and wholesale trade of PKE

- (25) The Commission has considered the geographic market for the sale of NGFI to be EEA-wide or wider, but left the geographic market definition open.¹²
- (26) The Parties submit that the market for the production of PKE and the production of NGFI including PKE in general should be considered worldwide in scope. They argue that the different types of NGFI are cultivated in different parts of the world and exported to countries around the world due to difference in harvesting seasons and thus in supply and demand patterns. The Parties submit further that the relevant geographic market for the wholesale trade should be wider than national, possibly regional or even EEA-wide. They submit that cross-border trade of NGFI is common.
- (27) The Parties' views were generally confirmed by the results of the market investigation. As regards the production and sale of PKE by manufacturers, PKE are produced mainly in Asia and are subsequently shipped to countries around the world. Wholesale traders thus buy PKE typically at the place of origin of the PKE or at the harbour of delivery (in Europe mainly Rotterdam, Amsterdam and Hamburg) and thus purchase at the worldwide or EEA-wide level. As regards the wholesale trade of PKE in the EEA, the sales activities of wholesalers appear to be more limited in geographic scope and there appears to be a certain degree of geographic differentiation between traders. For instance, Bögel mainly sells PKE and other NGFI in Germany (accounting for more than [70-80]% of its turnover), the Netherlands and Denmark (all three countries together accounting for [90-100]% of its turnover) and has only minor operations in other EEA member states. Therefore, competition in the wholesale trade of PKE and other NGFI may take place at a more regional level within the EEA.

¹⁰ E.g. case COMP/M.6468 – Forfarmers / Hendrix, para. 24.

¹¹ E.g. case COMP/M. 2771 – Cargill / Agribrands, para. 10 and M.6468 –Forfarmers / Hendrix, para. 23-31.

¹² E.g. cases COMP/M.6383 – Cargill / Korofrance, para. 37; COMP/M.3725 – Cargill / Pagnan, para.10; COMP/M.2886 – Bunge / Cereol, para. 10; COMP/M.2693 – Archer Daniels Midland / Alfred C. Toepfer International, para. 16; COMP/M.2271 – Cargill / Agribrands, para. 11; COMP/M.1348 – Archer Daniels Midland / Alfred C. Toepfer International / International, para. 18.

4.2.2.2. Production and sale of compound feed

- (28) The Commission has considered national and also regional geographic markets for the sale of compound feed but left the ultimate market definition open.¹³
- (29) The Parties submit that the relevant geographic market should be considered regional, due to the limited transportation radius of compound feed and suggest to segment Germany into three regions: Northern, Southern and Eastern Germany.¹⁴

4.2.3. Conclusion

- (30) As will be shown below, the transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition. For the purposes of this decision, the exact market definitions can therefore be left open.

4.3. Competitive assessment

- (31) The Transaction leads to a horizontally affected market concerning the overlap of Bögel's and AGRAVIS' activities as wholesalers of PKE in Germany. Furthermore, the Transaction results in vertically affected markets concerning the links it creates between (i) Wilmar's PKE production business upstream and Bögel's/AGRAVIS' PKE wholesale activities downstream and (ii) these wholesale activities upstream and AGRAVIS' compound animal feed production and sale in Germany downstream.
- (32) However, as will be outlined further in the following paragraphs the Transaction is not likely to significantly impede effective competition on the relevant markets.

4.3.1. Horizontal overlap on the wholesale market for NGFI (PKE)

- (33) Horizontally, the Parties' activities overlap in the wholesale trade for NGFI where Bögel and AGRAVIS are active.¹⁵ The overlap would not lead to an affected market considering an overall market for the wholesale of all kinds of NGFI or considering a distinct market for the wholesale of PKE in the EEA. The Parties estimate that on an EEA wide market for PKE, the Parties' combined market share (approx. [10-20] % in 2014; Bögel: [5-10]%, AGRAVIS: [0-5]%) is modest and inferior to the shares of their major competitors such as ADM ([40-50]-[40-50]%) and Cefetra ([20-30]-[20-30]%, all in 2014) and that there remain a number of

¹³ E.g. cases COMP/M.2271 – Cargill / Agribrands, para. 10; M.6468 – Forfarmers / Hendrix, para. 23-31.

¹⁴ The regions comprise the following states: (i) Northern Germany: Schleswig-Holstein, Hamburg, Bremen, Lower Saxony and North-Rhine Westphalia, (ii) Southern Germany: Hessen, Rhineland-Palatinate, Saarland, Baden-Württemberg and Bavaria and (iii) Eastern Germany: Brandenburg, Berlin, Mecklenburg-Vorpommern, Saxony, Saxony-Anhalt and Thüringen.

¹⁵ This assessment would not change if one would consider an overall market for the production, sale and wholesale trade of PKE, which would include Wilmar's activities. This would lead to an increase of the combined market share of the Parties only at the worldwide level without resulting in further affected markets since Wilmar does not sell any PKE itself into the EEA, but sells exclusively fob ex. Malaysia and Indonesia without knowing the destination of the PKE which are sold on by wholesalers.

smaller suppliers of PKE such as Ameropa (below [10-20]%), Glencore (ca.[5-10]%), and Otterfeed (ca.[5-10]%).

- (34) However, taking a narrower view of the geographic market considering a distinct market for the wholesale of PKE in Germany, the Transaction leads to an affected market with a combined market share of the Parties in 2015 between [40-50]% and [40-50]% (Bögel: [40-50]%; AGRAVIS: below [5-10]%).
- (35) The Parties submit that the wholesale trade of PKE is not a core activity for AGRAVIS. While Bögel mainly sells PKE to producers of compound animal feed, AGRAVIS sells limited volumes of PKE to cooperatives and farmers. The Parties argue further that the international competitors listed in paragraph (33) could also deliver PKE to Germany without obstacles as they all usually debark in the port of Rotterdam. The Parties submit further that customers of PKE can easily switch suppliers as it is a homogeneous mass product with no variations in quality. Moreover, according to the Parties, animal compound feed producers tend to switch between different NGFI since there is seasonality in the availability of the raw ingredients and volatility of prices. Furthermore, the Parties submit that prices of PKE are transparent and communicated daily by the traders.
- (36) The results of the market investigation confirmed the Parties' main arguments. In particular, customers explained that if the Parties stopped supplying them or supplied them only at less favourable conditions they would switch to other suppliers within Germany such as ADM and Cefetera, and even to suppliers in the Netherlands, such as Ameropa and Glencore. On that basis, the Parties' customers who replied to the Commission's market investigation did not raise any concerns about the overlap of the Parties' activities in the sale of PKE.
- (37) In the light of the results of the market investigation and the information available to it, the Commission considers that Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the horizontal overlap of the Parties' activities on the wholesale market for NGFI (PKE).

4.3.2. *Vertical link: production of PKE and wholesale of PKE*

- (38) The vertical relationship between Wilmar producing PKE and Bögel's and AGRAVIS' activities as wholesale trader of PKE gives rise to an affected market when considering the downstream market for the wholesale trade of PKE to be national, due to the combined downstream market share of Bögel and AGRAVIS between [40-50]% and [40-50]% in Germany in 2015.¹⁶ Wilmar's market share on the upstream market for the production and sale of PKE remains below 15% under any plausible product and geographic market definition.
- (39) Given the moderate market shares of Wilmar on the upstream market, input foreclosure concerns are unlikely to arise.

¹⁶ It has to be noted that in Denmark Bögel's market share on the market for the wholesale of PKE was [70-80]% in 2014. However, as AGRAVIS is not active in the sale of PKE in Denmark the Transaction will not increase Bögel's market power. Thus, competition concerns are unlikely to arise in this regard.

- (40) As regards potential customer foreclosure concerns, the Parties argue that Bögel currently sources only approximately [30-40]% of its needs in PKE from Wilmar and that it would not be economical to raise the ratio to 100%. This, they explain, is due to the fact that traders prefer to fully load their boats with a capacity of 40-50 000 tons in one or two ports in order to reduce the number of stops for the boat thus minimising transport costs. However, no single PKE producer alone, including Wilmar, is capable to fully load a boat from one or two ports with PKE. This is only possible by purchasing from several producers at once in a given port. If Bögel purchased only from Wilmar, it would have to load a boat in at least four ports, significantly increasing its transport costs. The Parties argue furthermore that Bögel's demand for PKE is below 400.000 tons, which represents only a minor share of Wilmar's overall PKE production of [...] megatons.
- (41) In any event, the increment resulting from the Transaction on the downstream market for the wholesale trade of PKE will be minor and thus, it is unlikely to substantially increase the likelihood of Wilmar engaging in customer foreclosure. Even before the Transaction, Bögel had a [40-50]% market share on the market for the wholesale of PKE in Germany. Nevertheless, Bögel continued to purchase PKE from other PKE producers than from Wilmar who has been its controlling shareholder so far.
- (42) Also Participants in the market investigation did not expect any substantial impact on Bögel's procurement strategy resulting from the Transaction.
- (43) In the light of the above, it is unlikely that the Transaction will increase the Parties' ability and incentives to foreclose other PKE traders from their access to PKE or other PKE producers from their access to Bögel.

4.3.3. *Vertical link: wholesale of PKE and production of compound feed*

- (44) AGRAVIS produces and sells compound animal feed in Germany while Bögel and AGRAVIS provide input for compound animal feed producers throughout Germany. This vertical link leads to affected markets when considering a separate market for the wholesale of PKE in Germany upstream (combined market share of Bögel and AGRAVIS of [40-50]% to [40-50]%) and a separate market for the production of compound animal feed for pigs in the region Eastern Germany downstream (AGRAVIS' market shares reached up to [30-40] % in 2015).

4.3.3.1. Input foreclosure

- (45) Similar to the arguments outlined in paragraph (35), the Parties argue in regard of potential input foreclosure concerns that the competitors of AGRAVIS have sufficient alternative supply sources, including in other countries. Furthermore, the Parties claim in accordance with the argumentation set out in (20) that compound animal feed producers can substitute PKE with other NGFI. Finally, they submit that AGRAVIS and Bögel are not close competitors as their main activities differ; whereas Bögel's profitability as a wholesale trader of NGFI depends on high trade volumes, the sale of PKE constitutes only a marginal activity for AGRAVIS.
- (46) The Commission concludes on the basis of the information provided by the Parties and on the basis of the information collected during the market investigation that it is unlikely that Wilmar would exercise its influence on Bögel in a way that Bögel

would, post-transaction, engage in input foreclosure. As already set out in paragraph (36), the results of the market investigation confirmed that compound animal feed producers can purchase PKE from other suppliers than AGRAVIS and Bögel in Germany and in the Netherlands. Furthermore, as already set out in paragraph (21), PKE are to a certain extent substitutable by other NGFI.

- (47) Moreover, there are no indications that Wilmar could sufficiently recoup any loss of sales suffered by Bögel on the upstream market through increased sales on the downstream market. Wilmar – in contrast to AGRAVIS – is not active on the downstream market for the production and sale of compound animal feed. Therefore, it would not have any ability to regain turnover lost as a consequence of input foreclosure at the upstream level by increasing prices at the downstream level.
- (48) In the light of the above, the Transaction does not raise competition concerns regarding a potential input foreclosure to the detriment of other compound animal feed producers (see 36)

4.3.3.2. Customer foreclosure

- (49) Considering AGRAVIS' market share on a potential market for the production and sale of compound animal feed for pigs in Eastern Germany (up to [30-40] %, in 2015), the Transaction might lead to an increased probability that, post-transaction, AGRAVIS would stop purchasing PKE from other PKE wholesalers than Bögel, potentially foreclosing other PKE wholesalers.
- (50) However, it has to be noted that even in the event that a distinct market for compound pig feed in Eastern Germany exists, this would be just one potential sales market for PKE wholesalers who can supply all producers of compound feed for all animals in Germany and other countries. On this overall market for compound animal feed in Germany AGRAVIS' share is not substantial with only [10-20]% (2014). AGRAVIS' share on a purchasing market for NGFI including PKE remains even below [10-20] % in Germany and in the EEA (2014).
- (51) In general, participants in the market investigation did not raise substantial concerns regarding potential foreclosure of rivals from access to customers on the downstream market for compound animal feed production after the Transaction. However, one participant in the market investigation expressed some concern that post-transaction AGRAVIS might source its PKE needs entirely from Bögel. Yet, market participants indicated that wholesale traders supply customers not only in Germany but also in other countries within the EEA and even worldwide. Furthermore, AGRAVIS currently already sources almost [10-20] % (in 2014) of its PKE from Bögel.
- (52) The Commission therefore concludes, that in the light of the limited market shares of AGRAVIS on the overall market for compound animal feed and the corresponding purchasing market for PKE in Germany and its even smaller relevance when considering EEA-wide or worldwide markets for PKE, even in the hypothetical case of a customer foreclosure strategy of the Parties, there would still remain sufficient economic alternatives for wholesale traders of PKE to sell PKE. The Commission in this respect also takes into account that competitors of AGRAVIS on the downstream market for the production and sale of compound

animal feed might have an increased interest post-transaction to source PKE from independent wholesalers instead of from Bögel which will have a vertical relationship with their competitor AGRAVIS.

- (53) In the light of the above and the results of the market investigation, the Transaction is unlikely to increase the likelihood of customer foreclosure to the detriment of other PKE wholesalers.

4.3.4. Conclusion on horizontal and vertical effects

- (54) To conclude, for the reasons outlined above, the Transaction does not raise any competition concerns related to horizontal and non-horizontal effects.

5. CONCLUSION

- (55) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

*Margrethe VESTAGER
Member of the Commission*