



EUROPEAN COMMISSION
DG Competition

***Case M.7868 - TÖNNIES
/ TICAN***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/02/2016

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EUROPEAN COMMISSION

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PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

Subject: Case M.7868 - TÖNNIES / TICAN
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 22 January 2016, the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 ('the Merger Regulation') by which the undertaking Tönnies International Holding GmbH, belonging to the Tönnies group ('Tönnies', Germany) intends to acquire sole control, within the meaning of Article 3(1)(b) of the Merger Regulation, of the whole of the undertaking Tican A/S ('Tican', Denmark) by way of purchase of shares ('the transaction').³

¹ OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

² OJ L 1, 3.1.1994, p.3 ('the EEA Agreement').

³ Publication in the Official Journal of the European Union No C34, 29.01.2016, p.17.

- (2) Tönnies and Tican are designated hereinafter as the 'Parties', while the company resulting from the transaction is referred to as 'the merged entity'.

1. THE PARTIES AND THE OPERATION

- (3) **Tönnies** is active in the field of slaughtering, cutting and deboning of pigs and cattle, meat processing, sale of fresh and processed meat, exploitation of slaughterhouse waste, and provision of related logistics services. The shareholders of Tönnies are Klemens (also spelled 'Clemens') Tönnies and his nephew Robert Tönnies holding 50% of the shares, respectively. Clemens Tönnies also exercises [...] control over zur Mühlen Group (Germany) which focuses on the sale of processed meat products.
- (4) **Tican** is a wholly-owned direct subsidiary of Andelsselskabet Tican a.m.b.a. ('Andelsselskabet', Denmark) which is a cooperative company owned by approximately 270 cooperative members supplying pigs and sows to Tican's slaughterhouses. Tican is the smaller of the two co-operative pig slaughterhouses active in Denmark. Tican is vertically integrated and active in several markets along the pig meat value chain, among others, in the slaughtering of pigs (in Denmark), in the meat processing (in Denmark, Poland and the UK) and in the sale of processed pig meat products.
- (5) Tican has also joint control together with Danish Crown (another Danish cooperative active along the pig meat value chain) over:
- a. SPF-Danmark A/S ('SPF'), a company active in trading and transport of piglets; and
 - b. Svineslagteriernes Varemærkeselskab ApS ('SV'), a company holding trademark registrations of the 'Danish' trademark in the EU, Benelux, Denmark, France, Italy, Great Britain and Japan.
- (6) On 21 December 2015 Tönnies International Holding GmbH and Andelsselskabet signed a Share Purchase Agreement according to which Tönnies International Holding GmbH will acquire all shares in Tican which will, therefore, become a wholly owned subsidiary of Tönnies.
- (7) As part of the transaction Tönnies will also indirectly through Tican acquire joint control over SPF and SV with Danish Crown.⁴
- (8) The Parties submit that the indirect acquisition of joint control over SPF and SV in which Tican as the target company holds an interest should not be treated as a separate concentration, but should rather be assessed within the context of Tönnies' acquisition of Tican.
- (9) As the indirect replacement of Tican as a controlling shareholder in the joint control of SPF and SV would take place via the acquisition by Tönnies of sole control over Tican, the Commission considers that any changes in the competitive situation after

⁴ However, the shareholders' agreement of SPF provides a change of control clause giving Danish Crown a right to purchase Tican's share in SPF in case of direct or indirect change of control over Tican. The Parties submit that until now Danish Crown has not yet exercised such right but that once the change of control over Tican will be effective it might do so.

the indirect replacement of Tican as one of the co-controlling parents in SPF and SV are to be assessed within the overall acquisition of control of Tican and, therefore, within the competitive assessment of the notified operation.⁵

- (10) In light of the above, the notified operation constitutes a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.

2. UNION DIMENSION

- (11) The Parties have a combined aggregate world-wide turnover of more than EUR 5 000 million⁶. Each of them has a Union-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.
- (12) The transaction therefore has a Union dimension under Article 1(2) of the Merger Regulation.

3. RELEVANT MARKETS

- (13) The Parties activities overlap in several markets but, in view of Tönnies' and Tican's different geographical focus, the transaction gives rise only to three affected markets: (i) sale of fresh pig and sow meat for further processing in Germany; (ii) sale of pig bacon to out-of-home ('OOH') customers in the UK and (iii) sale of category 3 pig blood in Denmark.⁷

3.1. Sale of fresh pig and sow meat for further processing

3.1.1. Product market definition

- (14) Fresh pig and sow meat comprises fresh, frozen and minced pig meat that has not undergone further processing, i.e. no other ingredients or spices have been added, nor has the meat been cooked, smoked or dried.
- (15) In previous decisions, the Commission concluded that the market for sale of fresh pig and sow meat could be segmented according to whether the meat is sold for direct human consumption or for further processing.⁸
- (16) As regards the segmentation between pig and sow meat, the Commission left open in previous decisions if fresh pig meat and sow meat for further processing are part of

⁵ See the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, p.1, 16.4.2008, in particular foot note 81.

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

⁷ Further overlaps exist as regards the purchase of pigs for slaughtering in Denmark and the sale of fresh and processed pig meat in several Member States. The indirect replacement of Tican in SPF and SV does not give rise to any additional affected market, as described in section 4.4.

⁸ See, for instance M.1313 – *Danish Crown/Vestjyske Slagterier*, paragraphs 34–35; M.2662 – *Danish Crown / Steff-Houlberg*, Article 9 decision, paragraph 53, and Article 6 decision, paragraph 15; M.3337 – *Best Agrifund/Nordfleisch*, paragraph 24; and M.3605 – *Sovion/HMG*, paragraphs 71–72; M.7565 – *Danish Crown/Tican*, Article 9 decision, paragraphs 37-39.

the same relevant product market.⁹ Similarly, the Commission did not conclude if quality certification, namely QS-certification in Germany, would give rise to a separate relevant product market.¹⁰

3.1.1.1. The views of the Parties

- (17) The Parties submit that a distinction between fresh pig meat and fresh sow meat for further processing is not warranted in this case and that the product market definition can be left open for the purpose of assessing the transaction.
- (18) Similarly, the Parties submit that the definition of a relevant sub-market for QS-certified fresh pig and sow meat can be left open for the assessment of the transaction.

3.1.1.2. The Commission's assessment

- (19) The respondents to the market investigation confirmed the previous definition of fresh pig and sow meat used by the Commission and referred to in paragraph (14).¹¹
- (20) Moreover, the respondents to the market investigation indicated that there might be a relevant product market for QS-certified meat (separated from non-certified meat)¹² and 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.¹³
- (21) 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.

3.1.2. Geographic market definition

- (22) With regard to the geographic scope, in previous decisions the Commission found indications that the market for sale of fresh pig and sow meat for further processing could be either national or wider than national. In any case the most recent decisions left the geographical market definition open.¹⁴

⁹ See, for instance M.7610 – *Danish Crown/Westfleisch/Westcrown JV*, paragraph 50; M.3968 – *Sovion / Südfleisch*, paragraphs 13–14; and M.3605 – *Sovion / HMG*, paragraphs 13–16; M.3337 – *Best Agrifund / Nordfleisch*, paragraphs 8 and 23–24.

¹⁰ See M.7610 – *Danish Crown/Westfleisch/Westcrown JV*, paragraph 50.

¹¹ See replies to Questions 7 and 7.1 of Q2 – Questionnaire to meat processors – DE.

¹² See replies to Questions 8 and 8.1 of Q2 – Questionnaire to meat processors – DE.

¹³ See replies to Questions 9, 9.1 and 9.2 of Q2 – Questionnaire to meat processors – DE; agreed non-confidential minutes of a conference call with a market participant on 27 January 2016 and agreed non-confidential minutes of a conference call with a market participant on 28 January 2016.

¹⁴ See, for instance M.7610 – *Danish Crown/Westfleisch/Westcrown JV*, paragraph 57; M.7565 – *Danish Crown / Tican*, Article 9 decision, paragraphs 47–48. See also M.7565 – *Danish Crown / Tican*, Article 6 decision, paragraphs 34–35; 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.

3.1.2.1. The views of the Parties

- (23) The Parties submit that the market for fresh pig and sow meat for further processing is EEA-wide in scope since fresh pig and sow meat for further processing is a commodity. Nonetheless, the Parties conclude that the transaction does not raise competition concerns regardless of the exact geographic market definition.

3.1.2.2. The Commission's assessment

- (24) The market investigation indicated, on the one hand, that in Germany preferences for fresh pig or sow meat from Germany still exist, at least where the processed meat products are sold in the retail distribution channel.¹⁵ On the other hand meat processors based in Germany do to a certain extent currently source from several Member States and/or consider switching their purchases to non-German suppliers in case of a sustained price increase in the range of 5% to 10%.¹⁶
- (25) In conclusion, in the light of the outcome of the market investigation, the Commission considers that there are ambiguous indications with regards to the geographic scope of the market. In any case for the purpose of this decision, the exact scope of the geographic 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 geographic market definition.

3.2. Sale of processed meat products – pig bacon

3.2.1. Product market definition

- (26) The Commission defined in previous decisions processed meat products as pig, beef or poultry meat containing external ingredients such as salt or spices, being raw, dried smoked or cooked.¹⁷ In some instances, the Commission concluded that pig meat processed products were a separate relevant product markets distinct from processed meat products using meat from other animals (i.e. poultry or beef),¹⁸ whereas in other cases the question was left open.¹⁹
- (27) Moreover, within the processed meat products, the Commission considered in the past the existence of separate markets for different product groups, but left ultimately open the product market definition.²⁰ With particular regard to bacon, the Commission has

¹⁵ See replies to Questions 11 and 11.2 of Q2 – Questionnaire to meat processors – DE. For sow meat the market investigation indicated the origin of the meat to be not of the same relevance as it is the case for pig meat, see Question 11.1 of Q 2.

¹⁶ See replies to Questions 6, 10, and 10.2 of Q2 – Questionnaire to meat processors – DE.

¹⁷ See, for instance M.1313 – *Danish Crown/Vestjyske Slagterier*, paragraph 43; M.2662 – *Danish Crown/Steff-Houlberg*, Article 6 decision, paragraph 23; M.3522 – *Danish Crown/HK/Sokolow* paragraph 16.

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

¹⁹ See, for instance M.3337 – *Best Agrifund / Nordfleisch*, paragraphs 41 and 42; and M.3522 – *Danish Crown / HK / Sokolow*, paragraph 19 and M.7565 – *Danish Crown/Tican*, Article 9 decision, paragraph 55.

²⁰ Namely: 1) raw cured products, which can possibly be further segmented between bacon and raw sausages; 2) processed meat for cold consumption ('cold cuts' or charcuterie); 3) canned meat; 4)

in recent cases investigated but ultimately left it open whether bacon is a potential product market.²¹ Moreover, the Commission considered a possible further segmentation of these markets both the broader market for sale of processed meat products as well as the potential narrower market for the sale of bacon into retail and OOH markets.²²

3.2.1.1. The views of the Parties

(28) For the purposes of this decision, the Parties do not contest the market definitions applied by the Commission in previous cases and referred to in paragraphs (26) and (27).

3.2.1.2. The Commission's assessment

(29) The results of the market investigation generally confirmed that the market for processed meat products could be further divided into different product groups as considered by the Commission in previous cases and that pig bacon might form a separate market within the category 'raw cured products'.²³

(30) 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.

3.2.2. *Geographic market definition*

(31) In the past the Commission left open whether the geographic scope of the market for the sale of processed meat products was national or wider.²⁴

(32) More particularly with respect to the potential market for the sale of pig bacon in the UK, the Commission found indications that such market might have a national dimension but nonetheless the exact delineation of that market was left open.²⁵

cooked sausages; 5) pâtés and pies; and 6) ready prepared dishes and components for such (convenience products). See, for instance, See, for instance M.3968 – *Sovion / Südfleisch*, paragraph 80; M.3605 – *Sovion / HMG*, paragraphs 88 and 89; M.3522 – *Danish Crown / HK / Sokolow*, paragraphs 17 and 19; M.3401 – *Danish Crown / Flagship Foods*, paragraphs 16 and 18; M.2662 – *Danish Crown / Steff-Houlberg*, Article 9 decision, paragraphs 71–74 and 76; M.7565 – *Danish Crown/Tican*, Article 9 decision, paragraph 50.

²¹ See, for instance, M.3401 – *Danish Crown/Flagship Foods* paragraph 16; M.7565 – *Danish Crown/Tican*, Article 6 decision, paragraph 28.

²² See, for instance M.3522 – *Danish Crown / HK / Sokolow*, paragraphs 17 and 19; M.3401 – *Danish Crown / Flagship Foods*, paragraphs 17 and 18; and M.2662 – *Danish Crown / Steff-Houlberg*, Article 9 decision, paragraphs 75 and 76; M.7565 – *Danish Crown/Tican*, Article 9 decision, paragraph 51.

²³ See replies to Questions 6 and 8 of Q4 – Questionnaire to meat processors – UK.

²⁴ See, for instance M.3968 – *Sovion/Südfleisch*, paragraph 81; M.3605 – *Sovion/HMG*, paragraph 91; M.3522 – *Danish Crown/HK/Sokolow*, paragraph 21; M.3401 – *Danish Crown/Flagship Foods* paragraph 21; M.3337 – *Best Agrifund / Nordfleisch*, paragraph 46.

²⁵ See M.7565 – *Danish Crown/Tican*, Article 6 decision, paragraph 39-40.

3.2.2.1. The views of the Parties

- (33) The Parties submit that the geographic market for the sale of processed meat products is wider than national as customers would no longer focus on the origin of such products, in the light of existing imports, decreased importance of brands and low transportation costs.

3.2.2.2. The Commission's assessment

- (34) The majority of respondents to the market investigation indicated that for UK customers and competitors the market for the sale of processed meat products is EEA-wide or wider.²⁶
- (35) However, the Commission considers that, for the purpose of this decision, the exact scope of the geographic 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 geographic market definition.

3.3. Animal by-products – Sale of Category 3 pig blood

3.3.1. Product market definition

- (36) Animal by-products ('ABP') can broadly be distinguished into food-grade by-products, which can be further processed to become suitable for human consumption and non-food-grade by-products. Non-food grade ABP can be further divided into three different categories depending on the degree of risk that they pose to public and animal health: category 1, category 2 and category 3 materials (category 1 having the highest risk and category 3 the lowest).²⁷
- (37) Category 3 materials can be incinerated, disposed to biogas production or composting or further processed elsewhere. Most of category 3 materials are sold by slaughterhouses to collectors of such materials.
- (38) In previous decisions, the Commission considered that a distinction could likely be made at least between collection of category 1 and 2 materials on the one hand, and collection of category 3 materials on the other hand, but left the exact market definition ultimately open.²⁸
- (39) The Commission has previously defined a separate market for the purchase and collection by rendering companies of category 3 animal by-products which includes all category 3 materials regardless of animal species (e.g. pig, poultry and cattle).²⁹

²⁶ See replies to Questions 9 and 9.1 of Q4 – Questionnaire to meat processors – UK and Questions 8 and 8.1 of Q 3 – Questionnaire to retailers/OOH – UK.

²⁷ For the definition of further categories within non-food-grade ABP, see Articles 9 to 10 of Regulation (EC) No. 1069/2009 of October 21st 2009, laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (Animal by-products Regulation).

²⁸ See, for instance, M.6285 – *Saria / Danish Crown / Daka JV*, paragraph 26 and M.7565 – *Danish Crown/Tican*, Article 9 decision, paragraph 68.

²⁹ See, for instance, M.6285 – *Saria / Danish Crown / Daka JV*, paragraph 19.

3.3.1.1. The views of the Parties

- (40) The Parties do not contest the application to this case of the precedents and the product market definition referred to in paragraphs (36) to (39).

3.3.1.2. The Commission's assessment

- (41) The results of the market investigation are in line with the Commission findings and considerations on the relevant product market definition including category 3 material forming a separate product market.³⁰
- (42) 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.

3.3.2. *Geographic market definition*

- (43) In recent decisions the Commission has found indications of the geographic scope of ABP markets being national but has in many instances left the exact market definition open.³¹

3.3.2.1. The views of the Parties

- (44) The Parties do not contest, for the purposes of this decision, the market definition applied by the Commission in previous cases and referred to in paragraph (43).

3.3.2.2. The Commission's assessment

- (45) The results of the market investigation were not conclusive whether the geographic market for category 3 pig blood would have to be defined as being national or wider.³²
- (46) In any case, the Commission considers that, for the purpose of this decision, the exact scope of the geographic 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 geographic market definition.

4. **COMPETITIVE ASSESSMENT**

4.1. **Sale of fresh pig and sow meat for further processing**

- (47) Within the market for fresh pig and sow meat for further processing, the transaction gives rise to a horizontally affected market when considering the scope as national. In this case the only affected country is Germany.³³

³⁰ See replies to Questions 5 and 6 of Q1 – Questionnaire to slaughterhouses – DK; agreed non-confidential minutes of a conference call with a market participant on 29 January 2016.

³¹ See, for instance M.7565 – *Danish Crown/Tican*, Article 9 decision, paragraph 72; M.6285 – *Saria / Danish Crown / Daka JV*, paragraph 46. See also M.5935 – *Vion /Weyl*, paragraphs 69, 73, 77 and 80; M.3605 – *Sovion/HMG*, paragraphs 124, 138, 139 et al.; M.3337 – *Best Agrifund/Nordfleisch*, paragraphs 76–77 et al.; M.3175 – *Best Agrifund/Dumeco*, paragraphs 25–32.

³² See replies to Question 11 6 of Q1 – Questionnaire to slaughterhouses – DK and agreed non-confidential minutes of a conference call with a market participant on 29 January 2016.

2014	Tönnies	Tican	Combined
Supply of fresh pig and sow meat for further processing in Germany	[10-20]%	[0-5]%	[20-30]%

Table 1 - Parties' market shares - Fresh pig and sow meat for further processing (Germany)

4.1.1.1. The views of the Parties

- (48) The Parties submit that Tican is not active in the sale of sow meat for further processing in Germany, and that its activities in the sale of fresh pig meat for further processing are rather limited in that country.
- (49) Moreover, the Parties point out that, from a supply-side perspective, the market is fragmented due to the presence of several competitors including major market players such as Vion, Westfleisch and Danish Crown as well as a large number of mid-size and small companies such as Vogler, Müller Gruppe and Böseler Goldschmaus. The Parties further submit that a strong rivalry between Tönnies and Westfleisch exists.
- (50) On the demand side, the Parties submit that meat processors do not have difficulties in switching to alternative suppliers in other Member States.
- (51) With regards to the QS- certified fresh meat for further processing, the Parties bring forward the argument presented by the Commission in its recent case M.7610 – *Danish Crown/Westfleisch/Westcrown JV* that in Germany there is a sufficient number of suppliers to exert competitive pressure on prices of for fresh sow an pig meat whether QS-certified or not.

4.1.1.2. The Commission's assessment

- (52) In Germany, the combined market share will remain modest with a minor increment of only [0-5] %. A number of viable market players exerting competitive pressure on the Parties will remain in the market for the sale of fresh pig and sow meat for further processing (QS and non-QS).
- (53) The results of the market investigation show that market participants do not consider Tican as a main supplier of fresh pig meat for further processing in Germany.³⁴ Further contacts with market participants highlighted how, in Germany, both, major players and smaller slaughterhouses, are competing together in the same market.³⁵ One market participant estimated that the Parties' main competitors will have a market

³³ When considering the potential market for QS-certified meat, the transaction would give raise to similarly horizontally affected markets in both the market for fresh pig and sow meat for further processing ([20-30]% combined market share) and the market for fresh pig only meat for further processing ([20-30]% combined market share).

³⁴ See replies to Questions 12 and 13 of Q2 – Questionnaire to meat processors – DE. Likewise, two market participants highlighted the limited extent of Tican's activities in Germany in this market, see agreed non-confidential minutes of a conference call with a market participant on 27 January 2016 and agreed non-confidential minutes of a conference call with a market participant on 28 January 2016.

³⁵ See agreed non-confidential minutes of a conference call with a market participant on 27 January 2016 and agreed non-confidential minutes of a conference call with a market participant on 28 January 2016.

share equivalent to the merged entity (approximately [20-30]%), while the third player would have a market share of approximately [10-20]%.³⁶

- (54) With regards to the effects of the transaction, some market participants considered that there will not be sufficient competition to prevent the merged entity from raising prices for fresh pig and sow meat for further processing in Germany post-transaction. Two market participants submitted that the transaction would increase barriers to entry/expansion in the market.³⁷ However, the majority of participants in the market investigation confirmed, at the same time, the presence of several competitors in the market for fresh pig and sow meat for further processing (whether QS-certified or not) both in Germany and in the EEA.³⁸ Furthermore, the market investigation indicated that German meat processors source already today fresh pig and sow meat from different sources within Germany as well as from other countries and/or that they would continue to do so in case of a sustained price increase.³⁹ One market participant stated that he would be in a position to increase its production if the market condition would allow it.⁴⁰
- (55) In light of the considerations in paragraphs (52) to (54) and the outcome of the market investigation, and considering in particular that (i) the increment to the market share brought about by the Transaction is very limited, (ii) the modest combined market share and (iii) the sufficient number of suppliers in Germany and in neighbouring countries remaining to exert competitive pressure on prices of fresh sow and pig meat for further processing, whether QS-certified or not, the Commission concludes 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.

4.2. Sale of processed meat products – pig bacon

- (56) Both Parties are active on the market for the sale of processed meat products. The transaction would give rise to an affected market in the UK only considering a separate market for the sale of pig bacon to OOH customers if the geographic market was to be considered national in scope.

2014	Tönnies	Tican	Combined
Raw cured products (bacon/OOH) – Pig Meat	[20-30]%	[0-5]%	[20-30]%

Table 2 - Parties' market shares – Supply of raw cured products (bacon/OOH) – Pig Meat (UK)

4.2.1.1. The views of the Parties'

- (57) The Parties submit that the transaction does not give rise to competition concerns given that the Parties' combined market share and market share increments remain

³⁶ See agreed non-confidential minutes of a conference call with a market participant on 28 January 2016.

³⁷ See replies to Question 14 of Q2 – Questionnaire to meat processors – DE.

³⁸ See replies to Questions 12 and 13 of Q2 – Questionnaire to meat processors – DE.

³⁹ See replies to Questions 6, 10, 10.1 and 10.2 of Q2 – Questionnaire to meat processors – DE.

⁴⁰ See agreed non-confidential minutes of a conference call with a market participant on 28 January 2016

low. Moreover, they submit that a number of competitors would remain in the market to supply customers.

- (58) The Parties further submit that they are not close competitors since they are active in different segments of the pig bacon market in the UK [manufacturing process]. Moreover, whereas Tönnies supplies almost exclusively OOH wholesalers, Tican is mainly active in the sale of pig bacon to retailers.⁴¹

4.2.1.2. The Commission's assessment

- (59) Post-transaction, the combined market share of the Parties on the market for the supply of pig bacon to the OOH segment will be approximately [20-30]%, with a minor increment of only [0-5] %. It is, therefore, unlikely that the transaction would significantly change the market structure in the UK. Moreover, a number of competitors will remain active in the UK, including A 1 Bacon ([10-20] %), Quality Food Products (Aberdeen) ([10-20] %) and Midland Bacon ([5-10] %).
- (60) Some respondents to the market investigation expressed their concerns as regards the ability of the Parties to raise prices post-transaction.⁴² However, as the market investigation showed, market participants do already source pig bacon from different sources. Accordingly, all of the respondents expressing their concerns indicated that they would switch to alternative suppliers in case of a sustained price increase.⁴³ Furthermore, respondents to the market investigation even indicated that there is spare capacity and that pig bacon production volumes by rivals could, thus, be increased.⁴⁴
- (61) In the light of the considerations in paragraphs (59) and (60) and the outcome of the market investigation, the Commission concludes that the transaction does not give rise to serious doubts about its compatibility with the internal market with respect to the sale of processed meat products (and of pig bacon specifically) in the UK.

⁴¹ [...].

⁴² See replies to Question 10 and 11 of Q3 – Questionnaire to retailers/OOH – UK and replies to Question 13 of Q4 – Questionnaire to meat processors – UK.

⁴³ Other market participants expressed their concerns that competing meat processors might have less access to pig meat for further processing ('input foreclosure', see replies to Question 14.1 and 15.1 of Q4 – Questionnaire to meat processors – UK). Similarly, other market participants are concerned that post-transaction Direct Table (Tican) and Beckett's will stop sourcing from third party producers of fresh pig meat for further processing ('customer foreclosure', see agreed non-confidential minutes of a conference call with a market participant on 28 January 2016). Yet, in the light of the modest combined market share upstream and downstream ([5-10] % and [20-30] % respectively) and, thus, in the absence of a vertically affected market resulting from the vertical link between the market for the supply of fresh pig meat for further processing and the sale of pig bacon to OOH in the UK neither an input foreclosure nor a customer foreclosure scenario are likely.

⁴⁴ See replies to Question 11 of Q4 – Questionnaire to meat processors – UK.

4.3. Animal by-products – Category 3 pig blood

- (62) As regards animal by-products the transaction will give rise to an affected market only in Denmark as regards Category 3 pig blood.

2014	Tönnies	Tican	Combined
By-products cat. 3 (blood)	[10-20]%	[10-20]%	[20-30]%

Table 3 - Parties' market shares – Supply of by-products cat. 3 – blood (Denmark)

4.3.1.1. The views of the Parties

- (63) The Parties submit that their combined market share post-transaction will remain modest and far below the market leader Danish Crown, which accounts for a share of approximately [70-80] %. As regards the possibility of coordinated effects, the Parties submit that a strong rivalry exists between Tönnies and Danish Crown which would be strengthened through the transaction. Furthermore, the remaining competitors would exert a constraint in case that Tönnies and Danish Crown would coordinate their behaviour.

4.3.1.2. The Commission's assessment

- (64) The Parties' post-transaction combined market share will be modest at approximately [20-30] % and, thus, well below the market share of its next biggest competitor Danish Crown. Post-transaction, the Parties' ability to exert competitive constraint on the dominant market leader Danish Crown having a market share of [70-80] % will be even increased. Danish Crown and Tönnies being market leader and strong rivals would compete not only in Denmark but throughout the EEA. The fierce rivalry and its positioning against Danish Crown are also confirmed by internal documents of Tönnies submitted by the Parties.⁴⁵
- (65) Furthermore, the Commission considers possible vertical effects of the transaction as limited. As both Parties sell only Category 3 blood from their own slaughtering activities in Denmark a customer foreclosure scenario is not relevant in this case. A possible input foreclosure, however, seems possible only in the light of Tican's [...] shareholding in Daka Denmark A/S ('Daka'). Daka is jointly-controlled by Danish Crown and Saria Bio-Industries Denmark ApS. Taking account of the fact that Tican, according to the Parties' submissions, [...] and in light of Danish Crown's participation in Daka, it cannot be considered to be likely that Tönnies would shift post-transaction its Category 3 blood sales to Daka, as this would increase indirectly Danish Crown's turnover through its shareholding in Daka. Moreover, Tican and Tönnies sell already now all their Category 3 blood to the same supplier ([customer]). In this regard, the transaction would not substantially change the current market structure. This is confirmed by the results of the market investigation in so far as [customer] did not

⁴⁵ See, for instance document [internal document regarding business strategy]. In this document the objective of the transaction is summarised as follows: [...]. Furthermore, the Transaction does not give rise to concerns in the light of Tican's [...] shareholding in Daka Denmark A/S ('Daka') as (i) there are no vertically affected market; (ii) it is unlikely that Tönnies would shift post-transaction its Category 3 blood sales to Daka and, thus, increase indirectly the turnover of Danish Crown's being a shareholder of Daka where Tican and Tönnies (iii) both sell at the moment all their Category 3 blood to the same third party supplier ([customer]). This is confirmed by the results of the market investigation in so far as [customer] did not raise any concerns about the Transaction and its impact on [customer] or the market for the sale of Category 3 blood.

raise any concerns about the transaction and its impact on [customer] or the market for the sale of Category 3 blood.⁴⁶

- (66) In the light of the considerations in paragraphs (64) and (65) and the outcome of the market investigation, the Commission concludes that the transaction does not raise to serious doubts about its compatibility with the internal market with respect to the sale of category 3 pig blood in Denmark.

4.4. Other overlaps

- (67) Apart from the above mentioned markets, the overlap of the Parties' activities with the activities of entities which are currently (jointly) controlled by Tönnies or Tican will not give rise to any other affected market.
- (68) With particular regard to SPF and SV over which Tönnies will indirectly acquire joint control through the transaction, no competition concerns will be raised by the transaction under any plausible market definition. Even if post-transaction Tönnies will at least temporarily⁴⁷ indirectly be jointly controlling SPF leading to an overlap with Tönnies' activity in the trading of piglets through its subsidiary Tönnies Livestock GmbH (Germany), the combined market share of the Parties remains in any case below 20 %.
- (69) For what concerns the joint control of SV, currently its only function is to maintain the registration of existing trademarks of existing markets. However, the indirect replacement of Tican by Tönnies in SV does not raise competitive concerns as the transaction would not lead to substantial changes but merely to an indirect replacement of Tican by Tönnies as a shareholder besides Danish Crown.

5. CONCLUSION

- (70) 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

⁴⁶ See agreed non-confidential minutes of a conference call with a market participant on 29 January 2016.

⁴⁷ Should Danish Crown successfully exercise its purchasing right it might acquire sole control over SPF in the near future.