

*Case No IV/M.788 -  
AgrEvo / Marubeni*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

---

Article 6(1)(b) NON-OPPOSITION  
Date: 03/09/1996

*Also available in the CELEX database  
Document No 396M0788*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.09.1996

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**to the notifying parties**

**Subject:**        **Case No IV\M.788 - AgrEvo/Marubeni**  
**Notification of 01.08.1996 pursuant to Article 4 of Council Regulation No**  
**4064\89**

1. On 01.08.1996 Hoechst Schering AgrEvo GmbH (AgrEvo) and Marubeni Corporation (Marubeni) notified the establishment of a joint venture (JV) which will be active in the distribution of products for the agricultural and horticultural sectors in Europe.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

**I THE PARTIES**

3. AgrEvo is a German company jointly controlled by Hoechst AG and Schering AG. Its establishment was approved by the Commission (Hoechst/Schering, IV/M. 392). AgrEvo operates world-wide in the crop protection (herbicides, fungicides, insecticides, etc) and environmental health businesses. In particular, AgrEvo is a manufacturer and distributor of agrochemical and horticultural products worldwide.
4. Marubeni is a Japanese trading company, overseeing a range of global operations that extend from the development of natural resources to the retail marketing of finished products.

## II THE OPERATION

5. AgrEvo will establish a limited liability company in the Netherlands (the JV) and subsequently will sell 60 percent of the share capital of JV to Marubeni.

## III THE CONCENTRATION

### Joint Control

6. The JV will be jointly controlled by AgrEvo and Marubeni, with Marubeni owning [...] <sup>(1)</sup> of the share capital of the JV and AgrEvo owning [...] <sup>(2)</sup>. Article II(4)(c) of the Master Agreement governing the JV provides that certain matters shall require shareholders' approval by a majority of 76% of the share capital. This means that such decisions can only be taken with the approval of both AgrEvo and Marubeni. These matters include the approval of:
  - the budget for each financial year and the annual business plan for the JV as well as entering into any contract or obligation inconsistent with the budget;
  - capital investments in excess of Dfl. [...] <sup>(3)</sup>;
  - appointment and removal as well as the remuneration of any director or employee of the JV; and
  - change in the JV's business philosophy.
7. These matters are strategic decisions affecting the business policy of the JV, and as such, they confer to AgrEvo and Marubeni joint control over the JV.

### Full function joint venture

8. The JV will distribute products for the agricultural and horticultural sectors in Europe. These products include plant protection products, special fertilizers and seeds. AgrEvo will transfer to the JV its existing activities in the field of distribution of these products, which consist of three companies: one company in the United Kingdom (Profarma Ltd.), and two companies in the Netherlands (Heyboer B.V. and Jan Mertens Beheer B.V.). [...] <sup>(4)</sup>
9. The JV will be active in a trade market, specifically, the distribution of products for the agricultural and horticultural sectors. There are a large number of independent distributors in this market. They are not vertically integrated into production of agrochemical products, but are dedicated to the business of distribution. Such distribution is a specialised business, requiring sizeable investments in customised warehouses (to meet regulatory approvals) and qualified staff (to provide timely advice to customers). Many

---

(1) Deleted business secret - more than 50%

(2) Deleted business secret - less than 50%

(3) Deleted business secret

(4) Deleted business secret

of the major agrochemical producers utilise independent distributors to distribute the majority of their products, rather than exclusively distributing for themselves because of these demanding requirements.

10. The three existing distribution companies of AgrEvo in the distribution of products for the agricultural and horticultural sectors currently obtain the majority of their agrochemical products from third party producers, rather than from AgrEvo. Furthermore, the supply agreements which accompany the establishment of the JV account for a limited proportion of the JV's annual requirements coming from AgrEvo and allow the JV to continue its current commercial relationships with third party producers. It is therefore likely that the JV will continue to obtain a substantial proportion of its supplies from other sources. It can thus be excluded that the JV will act as a sales agency for its parent companies.<sup>(5)</sup>
11. In addition, the JV will have sufficient financial and other resources in order to operate its activity on a lasting basis. It will initially consist of the current three distribution companies of AgrEvo and further it will have to provide alone for its own activity.

#### **Absence of coordination of competitive behaviour**

12. AgrEvo will transfer its existing European activities in the distribution of products for the agricultural and horticultural sectors to the JV and will consequently withdraw from the market. Marubeni is not yet active in this sector in Europe and will be active only through the joint venture. Coordination of the competitive behaviour of the parent companies can therefore be excluded.

### **IV COMMUNITY DIMENSION**

13. The combined aggregate worldwide turnover of AgrEvo and Marubeni in 1995 exceeded ECU 5,000 million (with turnover respectively, of 1.6 and 1.12 ECU billion). The 1995 aggregate Community-wide turnover of each of the parties exceeded 250 million ECU (AgrEvo's turnover was [...] <sup>(6)</sup> million ECU and Marubeni's turnover was [...] <sup>(7)</sup> billion ECU) and AgrEvo and Marubeni do not achieve more than two-thirds of their Community-wide turnover within one and the same Member State. Therefore, the operation has a Community dimension.

### **V COMPATIBILITY WITH THE COMMON MARKET**

#### **A. Relevant product market**

14. The parties state that the relevant product market is the distribution of agricultural and horticultural products, which is separate from the market of the production of these products. As noted above in the discussion on the full function aspects of this operation, it appears that the activity of distributing products for the agricultural and horticultural sectors belongs to a market which is separate from the production of these products. It

---

<sup>(5)</sup> See point 15 of the Notice on the distinction between concentrative and cooperative joint ventures.

<sup>(6)</sup> Deleted business secret - more than 250 million ECU

<sup>(7)</sup> Deleted business secret - more than 250 million ECU

can be left open whether the products to be distributed by the JV constitute a single product market or different product markets, because, as has been noted, there is no overlap in the activities of the parties in the EEA.

## **B. Relevant geographic market**

15. The parties state that, since certain market conditions affecting demand and distribution channels for products for the agricultural and horticultural sectors are similar across Europe, the relevant geographic market could be considered to be European. However, the parties also note that distribution conditions in each Member State are affected by specific factors which differ in the various states, such as local climate and agronomic conditions, special permits, registrations and other regulatory approvals regarding the storage, transport and sale of these products. For the purposes of the present case, it is nevertheless not necessary to provide a precise geographic market definition, since even on the narrowest geographic market definition the operation will not create or strengthen a dominant position.

## **C. Assessment**

16. The JV will operate in the market for the distribution of products for the agricultural and horticultural sectors in the EEA and several other European countries. The existing activities of AgrEvo amount, according to the parties, to 13% of the supplies of these products on a EU-wide level, ranging from 5.3% in Austria to 26.6% in the Netherlands. Marubeni is not active in any of these fields in Europe. Consequently, there will be no overlap in these distribution activities. Furthermore, as noted earlier, there are many independent distributors present in this market. It can therefore be excluded that this operation will lead to the creation or the strengthening of a dominant position.
17. In view of the above, it can be concluded that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

## **VI ANCILLARY RESTRAINTS**

18. As a part of the JV agreement, the parties have entered into a supply agreement between AgrEvo and the JV. The quantities to be supplied by AgrEvo and to be purchased by the JV will be, until [...]<sup>(8)</sup>, for the United Kingdom and the Netherlands, the same quantities provided by AgrEvo to its own three distribution companies in the previous year. For all other territories, for which distribution companies will have to be created, the quantities to be supplied will correspond to [...]<sup>(9)</sup> of the annual requirements of the JV in the respective territory. These provisions of the agreement can be considered as ancillary to the operation (see section C of the Notice regarding restrictions ancillary to concentrations).

---

<sup>(8)</sup> Deleted business secret

<sup>(9)</sup> Deleted business secret - less than 30%

19. The supply agreement further provides that for each subsequent year for the period ending [...] <sup>(10)</sup>, the quantities to be supplied will be at least the quantities of products that AgrEvo supplied to the JV in the respective previous year, and that the JV would be obliged to purchase such quantities unless they are able to supply themselves from other sources "at more favourable conditions" than those offered by AgrEvo. These provisions can be considered ancillary only insofar as the quantities to be supplied by AgrEvo, and purchased by the JV, do not exceed the quantities previously established for the calendar year [...] <sup>(11)</sup>.

## **VII CONCLUSION**

20. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

---

<sup>(10)</sup> Deleted business secret

<sup>(11)</sup> Deleted business secret