



EUROPEAN COMMISSION
DG Competition

***Case M.8068 - BUNGE /
WALTER RAU
NEUSSER ÖL UND
FETT***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/09/2016

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EUROPEAN COMMISSION

Brussels, 20.09.2016
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sir/Madam,

**Subject: Case M.8068 - Bunge/ Walter Rau Neusser Öl und Fett
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 16 August 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Bunge Deutschland GmbH ('Bunge Deutschland', Germany), a subsidiary of Bunge Limited ('Bunge', USA), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over the whole of the undertaking Walter Rau Neusser Öl und Fett AG ('WRAG', Germany) by way of purchase of shares³ ("the Transaction"). Bunge and WRAG are designated

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').

³ Publication in the Official Journal of the European Union No C 306, 23.8.2016, p. 9.

hereinafter as 'the Parties', while the undertaking resulting from the Transaction is referred to as "the merged entity".

1. THE PARTIES

- (2) Bunge is a food and agribusiness group active in the purchase, storage and processing of grains and oilseeds, the production and sale of sugar and bioenergy, edible oils and fats, the production of milled wheat, corn and rice products for consumers and the production, blend and distribution of fertiliser products for agriculture. Bunge's EEA facilities, including for the processing of oil seeds, are located in Germany, Austria, Hungary, Romania, Poland, Spain and Italy.
- (3) WRAG is a company incorporated under German law active in the processing and blending of vegetable oils and fats primarily for industrial food processors and production and marketing of edible oils. WRAG's sole facility is located in Neuss, Germany.

2. THE CONCENTRATION

- (4) On 19 April 2016, Bunge and CREMER OLEO GmbH & Co. KG signed a sale and purchase agreement according to which Bunge, via its subsidiary Bunge Deutschland, will acquire shares representing 62.84% of the registered share capital of WRAG. The remaining 37.16% will be held by a natural person and Walter Rau Wohlfahrtsstiftung. Through the Transaction, Bunge will acquire sole control over WRAG as (i) Bunge will be able to select the supervisory board, which in turn selects the management of WRAG and (ii) the remaining shareholders will have neither rights granting decisive influence over WRAG nor power to take or block actions which determine the strategic commercial behaviour of WRAG.
- (5) Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Bunge: EUR 39 166 million, WRAG: EUR 301 million). Each of them has an Union-wide turnover in excess of EUR 250 million (Bunge: EUR 6 468 million, WRAG: EUR 278 million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has an Union dimension.

4. RELEVANT MARKETS AND COMPETITIVE ASSESSMENT

- (7) Crude oil is produced by crushing and pressing oil bearing crops. It is then further processed to produce refined seed oil which can be sold in bulk (BRSO) or packed for sale to end-users (PRSO). Refined seed oil is also further refined to produce vegetable fats. Vegetable oils and fats are used by the food processing industry as a component in food products.

- (8) In previous decisions, the Commission distinguished within edible oils and fats the following segments: (i) crude seed oil; (ii) BRSO; (iii) PRSO, and (iv) bakery fats⁴. It also considered that olive oils are distinct from seed oils⁵.
- (9) The Parties' activities in the EEA overlap horizontally regarding the production and sale of (i) BRSO and (ii) PRSO for the foodservice channel. However, whereas both companies sell mono-oil refined seed oil products, WRAG's business mainly focuses on specialised blended seed oils which are tailor made to suit particular functional applications and customers ("functional oils").

4.1. Product market definition

4.1.1. BRSO

- (10) In previous decisions, the Commission left open whether various types of refined seed oils sold in bulk constitute different markets⁶. It was found that whereas there is a certain degree of substitutability between the different types of seed oil, it is not complete neither from the demand nor the supply side.
- (11) The Parties do not contest the Commission's findings in previous decisions but submit that the limited overlap between the Parties activities makes it unnecessary to consider these distinctions further⁷.
- (12) The Commission inquired market participants about the appropriate market definition for BRSO products in the context of case M.7963 – ADM /Wilmar /Olenex JV which concerned the same products and was notified to the Commission on 4 August 2016. It resulted from that market investigation that vegetable refined oils, such as for example, rapeseed, sunflower or soy bean oils, are to be distinguished from tropical refined oils, such as palm and coconut oil⁸ due to differences in composition, intended use and price.
- (13) The Commission also investigated in that case whether further segmentation should be considered between different types of vegetable oils and, separately, between different types of tropical oils. It resulted from the investigation that there is only a limited degree of substitutability between different types of refined oils. This concerns both vegetable oils and tropical oils⁹.
- (14) In the present case whether the market for the sale and production of BRSO should be segmented according to the different types of seeds and vegetable oils can be left open since the Transaction would not give rise to serious doubts as to its compatibility with the internal market under the narrowest possible product market definition where the overlaps between the Parties are most pronounced. Therefore,

⁴ M.3044 – ADM/PURA, par. 8

⁵ M.1802 – Unilever/Amora,Naille par.17

⁶ Cases M.3044 – ADM/Pura, par. 10 and M.3188 ADM/VDBO, par.12-16.

⁷ Form CO, par.77.

⁸ Case M.7963 – ADM/Wilmar/Olenex JV, par. 25-26.

⁹ Case M.7963 – ADM/Wilmar/Olenex JV, par. 27-33.

the effects of the Transaction have been assessed on the basis of the narrowest product market for each of the different types of BRSO

4.1.2. *PRSO*

- (15) As regards PRSO, previous markets investigations run by the Commission suggested that it may not be necessary to distinguish separate markets on the basis of different types of seeds. However, with respect to the different distribution channels, sales of food products (including oils) to the retail sector were considered separate from sales to the food service sector.
- (16) The Parties highlight the different characteristics of PRSO products sold to retailers or to the food service channel. As regards other possible sub-segmentations the Parties do not contest the Commission's findings in previous decisions but submit that the limited overlap between the Parties activities makes it unnecessary to consider these distinctions further¹⁰.
- (17) In the present case whether the market for the sale and production of PRSO should be segmented according to the different types of seeds or the different distribution channels can be left open since the Transaction would not give rise to serious doubts as to its compatibility with the internal market under the narrowest possible product market definition where the overlaps between the Parties are most pronounced. Therefore, the effects of the Transaction have been assessed on the basis of the sale of the different types of PRSO to the foodservice channel.

4.2. **Geographic market definition**

4.2.1. *BRSO*

- (18) In two previous cases, the Commission left open the exact geographic scope of the BRSO markets and analysed both EEA-wide and national markets¹¹. In other cases, the Commission found that these markets were EEA-wide in scope¹².
- (19) The Parties argue that the market should be considered wider than national or regional and put forward that customers source these products from producers across the EEA, and that suppliers can easily ship the products to different countries or regions in response to demand¹³.
- (20) The Commission's investigation in the above-mentioned parallel case M.7963 – ADM /Wilmar /Olenex JV appears to indicate that the geographic scope for the markets of BRSO is regional, covering nearby countries¹⁴.
- (21) For the purpose of the present case, BRSO markets will be analysed at both EEA and national level taking into account potential cross-border trade.

¹⁰ Form CO, par.78-82.

¹¹ M.3188 – ADM/VDBO, par.30. M.7625 – ADM/AOR, par.31.

¹² M.2980 – Cargil/AOP. M.3044 –ADM/PURA.

¹³ Form CO, par.92.

¹⁴ Case M.7963 – ADM/Wilmar/Olenex JV, par.40-43.

4.2.2. PRSO

- (22) The Commission in previous decisions left open the precise definition of the geographic scope of the PRSO markets. However, the market investigation in previous cases revealed elements indicating that supply of PRSO to the retail channel can be regarded as national in scope with possible cross-border effects. For instance, the competitive assessment carried out in *Cargil/Vandemoortele*¹⁵, related not only to Belgium, but also neighbouring areas where bottling plants within a reasonable distance (at least 300km) were located.
- (23) The Parties argue that the market for PRSO should also be considered wider than national or regional and put forward that customers source these products from producers across the EEA, and that suppliers can easily ship the products to different countries or regions in response to demand¹⁶.
- (24) In the present case, and for the purposes of this decision, whether the relevant geographical market for the production and sale of PRSO is national or wider in scope can be left open since the Transaction would not give rise to serious doubts as to its compatibility with the internal market under the narrowest possible geographical market where the overlaps between the Parties are most pronounced. Therefore, the effects of the Transaction have been assessed at national level taking into account potential cross-border trade.

4.3. Competitive assessment

- (25) The Transaction will lead to the following potentially affected markets:
- (i) the EEA-wide market for BRISO made from sunflower seed oil. An analysis on the basis of the different types of BRISOs and PRISOs shows that, with the exception of the market for BRISO produced from sunflower, the Transaction would not lead to any potentially affected markets when considering EEA-wide markets.
 - (ii) the markets for the supply of BRISO in Austria, Hungary and Poland and
 - (iii) the market for the supply of PRISO to the foodservice channel in Bulgaria.

4.4. EEA-wide market for BRISO produced from sunflower

- (26) As regards the market for BRISO produced from sunflower, competition issues appear unlikely to arise as the combined market share of the Parties is not high ([20-30]%) and would therefore not exceed [20-30]% post-transaction with an increment of below [10-20]% (Bunge [10-20]% and WRAG [5-10]%). Furthermore, several important competitors will remain present and exercise competitive pressure on the merged entity. These include most notably the international competitors Cargil, Olenex, Lesieur/Sofiproteol and Glencore.

¹⁵ Case COMP/M.1227 – Cargil/Vandemoortele. The market delineation used in the assessment covered therefore Belgium and several transborder regions of France, Germany, the Netherlands, Luxembourg as well as the United Kingdom.

¹⁶ Form CO, par.92 and 98.

4.5. National markets - BRSO

- (27) When considering the geographic scope of the relevant markets to be national or regional, the Transaction would lead to potentially affected markets for BRSO in: (i) Austria, (ii) Poland and (iii) Hungary.
- (28) The combined market share of the Parties are as follows: in Austria [70-80]% (Bunge: [70-80]%, WRAG: [5-10]%), in Poland: [30-40]% (Bunge: [30-40]%, WRAG: [0-5]%) and in Hungary up to [20-30]% (Bunge: up to [20-30]%, WRAG: up to [5-10]%).
- (29) Yet, competition concerns are unlikely to arise as a result of the Transaction for the following reasons:
- (30) First, the increment to Bunge's market share brought about by the Transaction with respect to those national markets is limited and remains in any case below [10-20]%.
- (31) Second, in view of the information provided by the Parties¹⁷ and the market assessment in previous cases, it appears likely that national market shares are only of limited significance to measure the market power of the Parties on the respective oils markets as customers seem to procure cross-border.
- (32) In this respect, the assumption that BRSO products travel at least to a certain extent across the borders is supported by the fact that WRAG owns only one production facility in Germany but sells outside Germany [50-60]% of its production. Yet, when considering a regional market the combined market shares of the Parties differ substantially from the national market shares. For instance, in a regional market comprising Austria and neighbouring countries the combined market share of the Parties would be approximately [50-60]% for the region comprising Austria, Slovenia, Slovakia and Hungary, [40-50]% for the region Austria and Hungary and even only [10-20]% for the region Austria and Germany.
- (33) This was confirmed in the course of the market investigation conducted by the Commission. The large majority of the customers that responded to the market investigation indicated that they would be able to source BRSO from producers located in countries other than the ones where their company's facilities are located¹⁸. Potential alternative suppliers were named by customers: "*there are medium-sized, mostly regional suppliers as well regional suppliers as well in France, Southern and Eastern Europe or even Black Sea (e.g. Coppini, Speroni, Lipidos, Florin, Lamotte, Toledo, Sabo Oleificio, Fabio etc.)*"¹⁹. Supplies from ADM locations in the Czech Republic, Germany and Poland as well as from Glencore in Germany were also indicated by customers²⁰. Generally, no concerns

¹⁷ The Parties have submitted in this regard that tenders for refined seed oil products usually take place at least on an EEA-wide basis.

¹⁸ See emails from customers consulted of 23 August 2016, 9.59am.; 23 August 2016 10.48am; 23 August 2016, 5.02pm; 24 August 2016 12.04pm; 23 August 2016 1.19pm; August 25, 2016 3:04 pm; 25 August 2016, 4.28pm.

¹⁹ See email from a customer consulted of 17 August 2016, 9.06am.

²⁰ See email from a customer consulted of 23 August 2016, 5.02pm.

were raised by the customers consulted as to the potential impact that the Transaction could have on the procurement of BRSO.

- (34) Concerns were neither expressed by customers located in Austria, where national market shares are highest. A customer sourcing BRSO for Austria and Hungary indicated that it could turn to suppliers located in Czech Republic, Hungary, Germany and a number of other countries and in relation to alternative suppliers it indicated that *"suppliers are all big ADM(Olenex), Glencore, Bunge, Cargill, but also many smaller suppliers like Tywissen, Brökelmann, Bimal, Ardealul, NT, Banat, Tampieri"*.²¹
- (35) This is corroborated by an analysis of the refining plants active in the production of BRSO within Austria or in the neighbouring countries within a maximum distance of 500km. A large number of plants are active within that territory, including, inter alia, in Austria itself (BAG Ölmühle, Olea Rauch), Czech Republic (ADM, Agrofert, Glencore, Slavia Capital), Germany (Cargill), Hungary (NT, Öko-Line), Italy (Cereal Docks, Deoleo, Tampieri, Unigrà), Poland (Bielmar, Komagra) and Romania (Ardealul).²²
- (36) Third, the Parties' products do not appear to be close competitors as WRAG is specialised in the production of functional oils while Bunge produces and sells almost exclusively standard mono-oil²³. Indeed production of functional BRSOs constituted [80-90]% of WRAG's overall production in 2015. Moreover, WRAG sales of BRSO in Austria [were 90-100%] functional oils²⁴.
- (37) Finally, the merged entity will continue facing competition from other large international agribusiness groups such as Cargill, Olenex, Lesieur/Sofiproteol and Glencore.
- (38) In the light of the above and in view of the information available to it and the outcome of the market investigation, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market with respect to the production and sale of BRSO.

4.6. National markets - PRSO

- (39) The Transaction leads to an affected market in the market for PRSO to the foodservice sector in Bulgaria. However, the combined market share of the Parties of [20-30]% (Bunge: [10-20]%, WRAG: [5-10]%) remains below [20-30]% with an increment below [10-20]%. Therefore, also in respect of the market for the

²¹ See email from a customer consulted of 15 September 2016, 11.14 am.

²² See annex 564662673-1 submitted by Bunge representatives by email of 14 September, 6.52pm.

²³ Functional blends are blends developed and produced especially for the customer's individual needs and demands. Functional monos are oils of a single type which are not blended but have a certain function, or a special modification such as a defined melting point or a certain demanded level of sustainable sourcing. Non-functional oils are pure commodity oils (for example, standard sunflower oil, standard rapeseed oil, standard palm oil). See email of Bunge representatives of 15 September 2016, 11.31am.

²⁴ See Annex "Functional and non functional oils 2015" submitted by Bunge representatives by email of 14 September 2016, 2.16pm.

production and sale of PRSO, competition concerns are unlikely to arise from the Transaction.

5. CONCLUSION

- (40) 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)

Neven MIMICA

Member of the Commission