

*Case No IV/M.866 -  
CEREOL / ÖSAT -  
ÖLMÜHLE*

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 002/04/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.04.1997

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject: Case No IV/M. 866 - CEREOL / ÖSAT - Ölmühle**  
**Notification of 27.02.1997 pursuant to Article 4 of Council Regulation (EEC) No 4064/89.**

1. On 27.02.1997, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Cereol Holding BV ("Cereol") and Ösat Beteiligungsgesellschaft m.b.H. ("Ösat") will acquire joint control of Ölmühle GmbH ("Ölmühle").
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 and the operation**

3. Cereol is an affiliate of the agro-industrial group Eridania Béghin-Say ("EBS") which is in turn controlled by the Montedison Group. It processes oilseed and produces and markets seed oil, meal and bio-diesel.
4. Ösat is a holding company jointly controlled by Austrian shareholders. These are cooperatives and representative organisations of farmers and traders of agricultural products (NÖLLWK, RWA, Mauthner, VÖENÖ, ÖEB, SSAT) as well as a manufacturer of sugar and starch products ("Agrana"). Ösat was set up with the purpose of facilitating the administration of its wholly owned subsidiary Ölmühle, and securing

the strong common interests of its shareholders. Therefore, Ösat acts as a vehicle for the present concentration.

5. Ölmühle was established in particular with the purpose of assuring an outlet for the production of oilseeds of a large number of Austrian farmers. It operates an oilseed crushing plant in the vicinity of Vienna. It currently produces and sells crude oil from sunflower and rape seed, meal and bio-diesel.
6. The concentration involves the acquisition by Cereol of a 50% interest in the target company, by way of an increase in Ölmühle's share capital, with the new shares to be solely subscribed for by Cereol. In a further stage, both parties plan to contribute equally to an increase in the crushing capacity of the joint venture and the installation of a refinery plant.

## **II. Concentrative joint venture**

### **Joint control**

7. Ölmühle's corporate governance bodies will be composed of an equal number of members representing each party (Cereol and Ösat) and the decisions on annual budgets will normally be taken on a parity basis between both parents. A business manager, nominated by Cereol, will be primarily responsible for the day-to-day management and a general manager, nominated by Ösat, will be in charge in particular of oilseed supply.
8. Cereol appears to have a leading role within the joint venture, notably with respect to the selling policy of the joint venture. Ösat will remain mainly responsible for the procurement of the raw material to be processed by the joint venture. Furthermore, both parties are given specific powers in the event of disagreement in relation to the approval of the budget, which would allow one or the other to impose its view, depending on the point of the disagreement. However, such powers can only be exercised after several stages of arbitration and attempts at reconciliation .
9. As a result, both parties are able to influence strategic decisions on the business policy of the joint venture. Therefore, Cereol and the shareholders of the shell company Ösat will have joint control over Ölmühle.

### **Autonomous full function entity operating on a lasting basis**

10. As stated in the Frame Agreement, as well as in its amended articles of association (which have an indefinite term), the joint venture will continue the current activities of Ölmühle and expand them through a refining facility to be set up.
11. Although Ölmühle purchases a large part of its seeds from Ösat's shareholders, the parties state that the company deals with all its suppliers on an arm's length basis. Moreover, at the level of the joint venture's activities themselves, the added value of Ölmühle amounts to a comparable level to that of other undertakings active in the same commodity business. As regards the sales, [...] % of Ölmühle's 1996 turnover

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<sup>1</sup> See Commission Notice on the notion of a concentration, paragraph 37

<sup>2</sup> Deleted - Business secret : between 20 - 40 %

was realized with related parties, and more than [...] % of the seed oil went to third parties. All sales by Ölmühle are and will be made on an arm's length basis and it is expected that the oil sales to current customers will continue. The additional oil production is expected to go to non related bottlers and might be partly exported to third parties, especially to Central and Eastern European countries.

12. As the joint venture is geared to play an active role on the market regardless of these purchases and sales, the presence of the parent companies on upstream and downstream markets does therefore not call into question the full function nature of the joint venture. It can therefore be concluded that the joint venture will operate on a lasting basis and will perform all the functions of an autonomous economic entity .

### **Absence of coordination**

13. Amongst the parent companies, including all Ösat's shareholders, only Cereol is active in the markets of the joint venture. Furthermore, although both Cereol and the shareholders of Ösat are active on markets which are upstream, downstream or neighbouring to those of the joint venture, they are not together active on the same markets, and therefore no risk of coordination arises. Insofar as the joint venture will have access to the support services of Cereol's international network, these will give rise to commercial relationships on an arm's length basis.
14. Coordination can thus be excluded and it can be concluded that the present operation does constitute a concentration within the meaning of Article 3 of the Merger Regulation.

### **III. Community dimension**

15. The undertakings concerned have a combined aggregate world-wide turnover of more than ECU 5,000 million (EBS 7,816m, Agrana 508m, RWA [...] Mauthner [...]<sup>4</sup>, Ölmühle 54m). Three of these undertakings have a Community-wide turnover in excess of ECU 250 million (EBS 5,917m, Agrana 387m, RWA [...]<sup>4</sup>) and only EBS does not achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension according to Article 1(2) of the Merger Regulation.

### **IV. Compatibility with the common market**

#### **A. Relevant product markets**

##### Meal market

16. Sunflower and rape meal are essentially used as protein sources for animal feed. The parties state that all types of meal, including soya, corn feed and palmkernel meal, which are intended for the same use and whose prices are linked to each other, are interchangeable. However, it is not necessary to delineate further the relevant product market because, in all alternative market definitions considered, effective competition would not be significantly impeded.

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<sup>3</sup> Deleted - Business secret : between 80 - 100 %

<sup>4</sup> Deleted - Business secret

### Crude seed oil

17. Seed oil is mainly used for direct use in human food consumption and in the food industry (indirect consumption e.g. confectionery, canning industry, margarine). It is also used to a lesser extent in the chemical industry. The main oilseeds crushed in Europe are soya, rape and sunflower. Most oilseed processors refine the crude oil as well, and some of them have bottling activities.
18. According to the parties, taste, nutritional value and usage of the different seed oils are very close and the cross price elasticity of demand is high. For these reasons, the parties state that the various kinds of seed oil are substitutable for most uses. In previous cases (case IV/M.431-MEDEOL/ELOSUA, case IV/M.720-CEREOL/ACEPROSA), the Commission has found that production methods, marketing and sale prices of crude seed oils are comparable. Nevertheless, the question of the precise segmentation of the seedoils markets has been left open by the Commission. In the present case, a precise segmentation of the relevant product markets for seedoil is not required for the assessment of the operation since, in all alternative market definitions considered, effective competition would not be significantly impeded.

### Bio-diesel

19. Bio-diesel is a biological fuel resulting from further processing of rapeseed or sunflower seed oil. It consists of methyl ester of vegetable oil obtained from a reaction with methanol in the presence of catalyst. Bio-diesel is used in heating systems or vehicles, either in pure form or in mixture with mineral diesel. The production of bio-diesel entails the formation of a co-product, glycerine. Ölmühle's marketed quantities of glycerine are however negligible. The development of the bio-diesel industry has been supported by the EU for economical and environmental reasons and Member States are allowed to reduce or exempt excise duties on bio-diesel, under certain conditions.
20. Producers of bio-diesel generally resell to existing distributors, for distribution to end users, or to major oil companies, which blend it with mineral diesel. According to the parties, the switching between bio-diesel and mineral diesel does not require any modification of engines or heating burners. Moreover, both types of diesel have similar prices for the consumer. For these reasons, the parties state that both bio- and mineral diesels are interchangeable. Nevertheless, the similar level of both bio- and mineral diesel prices are due to the exemption of excise duties, which may be granted to limited quotas, whereas the cost prices of bio-diesel are significantly higher than those of mineral diesel. Bio-diesel thus is still used in limited quantities, often for specific purposes, such as motor fuel for public transport or agricultural vehicles. However, it is not necessary for the purpose of the present case to decide whether bio-diesel does constitute a relevant product market, separated from mineral diesel, because, in all alternative market definitions considered, effective competition would not be significantly impeded.

## **B. Relevant geographic markets**

### Meal and crude seed oil

21. The prices of both meal and seed oil are determined on international markets such as the Chicago Board of Trade and Rotterdam. Imports from third countries into the European Union, as well as trade flows within the EU are significant. Therefore, as already considered in the case IV/M.720-CEREOL/ACEPROSA, the relevant geographic markets can be considered at least as Community wide.

### Bio-diesel

22. The parties state that the market has a Community dimension, although they admit that there is not a significant bio-diesel market in all countries, due to the diversity of the fiscal treatment of fuels throughout the EU. In particular, the allocation of quotas for the exemption from excise duties, by Member States whose consumption amounts to 80% of the EU (France and Italy), has led to a limitation of the interstate trade of bio-diesel. However, it is not necessary for the purpose of the present case to delimit further the relevant geographic market, since, even on the national level, effective competition would not be significantly impeded.

## **V. Assessment**

### Meal and crude seed oil markets

23. The joint venture only produces small quantities of meal and seed oil compared to the total EU volumes : Ölmühle's EU meal and seed oil market shares amount to respectively [...] <sup>5</sup> % and [...] <sup>5</sup> %. Furthermore, Cereol is not active in Austria, where Ölmühle sells almost its entire production. Therefore, whatever the definition of the product market, the market share addition will remain insignificant, and 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.

### Bio-diesel

24. With 0,17% of the EU diesel consumption, bio-diesel still plays a marginal role in the overall market. In the bio-diesel industry there are two international producers, Diester Industrie and Novaol, a few strong national players and a number of very small producers. The market is characterized by the presence of national leaders. The parties estimate that Novaol (a subsidiary of EBS) produces approximately [...] <sup>6</sup> % of the total EU volume. Novaol sells its bio-diesel in France; in Italy where it is market leader; as well as Germany; but not in Austria, where Ölmühle is market leader. The combined volume of both Novaol and Ölmühle should not exceed [...] <sup>6</sup> % of the EU total volume and the concentration does not lead to any addition of national market shares. The largest producer, Diester Industrie, which is indirectly controlled by a federation of French farmer syndicates, produces approximately 39,8% of the EU volume and is market leader in France. The third largest producer,

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<sup>5</sup> Deleted - Business secret : between 0 - 20 %

<sup>6</sup> Deleted - Business secret : between 20 - 50 %

Conneman, which is market leader in Germany, produces approximately 11% of the EU volume.

25. Accordingly, whatever the definition of both product and geographic markets, 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 restraint**

26. The notifying parties have requested that the provisions described below be considered as ancillary to the concentration.
27. Section 7.2 of the Frame Agreement as well as Section 7 of Ösat's Articles of Association provide that Ölmühle's shareholders undertake not to, directly or indirectly, engage in the crushing and refining of oil seeds within Austria, and not to participate in competing companies in Austria. These provisions express the reality of the lasting withdrawal of the parent undertakings from the market assigned to the joint venture and are considered as an integral part of the concentration.

**VII. Conclusion**

28. 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 No 4064/89.

For the Commission,