



EUROPEAN COMMISSION
DG Competition

***Case M.10659 - VITERRA / GAVILON
AGRICULTURE INVESTMENT***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/07/2022

***In electronic form on the EUR-Lex website under document
number 32022M10659***



EUROPEAN COMMISSION

Brussels, 28.7.2022
C(2022) 5603 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Viterra Limited
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The Netherlands

Subject: Case M.10659 – VITERRA / GAVILON AGRICULTURE INVESTMENT
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

Dear Sir or Madam,

- (1) On 28 June 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Viterra Limited ('Viterra' or the 'Notifying Party', Netherlands)³ acquires sole control of Gavilon Agriculture Investment, Inc. ('Gavilon' or the 'Target', USA) (together referred to as the 'Parties') under the meaning of Article 3(1)(b) of the Merger Regulation (the 'Transaction').⁴

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 Viterra was formerly known as Glencore Agriculture Limited and is now jointly controlled by Glencore plc and the Canadian Pension Plan Investment Board (COMP/M.8208 – *CPPIB / Glencore / Glencore Agri*).

⁴ Publication in the Official Journal of the European Union No C 260, 6.7.2022, p. 10.

1. THE PARTIES

- (2) Viterra is active in the origination, marketing, processing, refining, storage and handling of agricultural commodities globally. Viterra sources agricultural commodities directly from producers, stores and handles the commodities in its facilities near growing regions and transports the commodities from the growing regions to its port terminals to export those agricultural commodities to various countries.
- (3) Gavilon's main activities include the origination, storage, handling, logistics, marketing and distribution of grains and ingredients.

2. THE OPERATION

- (4) The Transaction consists in the acquisition by Viterra of 100% of the issued and outstanding shares of Gavilon from Marubeni Corporation ('Marubeni').⁵ As a result, Viterra will acquire sole control over Gavilon within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (5) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Viterra: EUR 24 868 million; Gavilon: EUR [...]).⁶ Each of them has a Union-wide turnover in excess of EUR 250 million (Viterra: EUR [...]; Gavilon: EUR [...]), 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 a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. MARKET DEFINITIONS

- (6) The Parties' activities overlap with respect to the wholesale supply of various agricultural products and in particular the supply of wheat in Italy, as well as rye and corn in Spain.⁷

4.1. Product market

4.1.1. The Commission's decisional practice

- (7) In previous decisions, the Commission contemplated the definition of a distinct market for the wholesale supply of grains. In this respect, the Commission left open a further segmentation by type of grain (e.g. corn, barley, wheat).⁸ With

⁵ The Crop Nutrients (i.e. fertilizers) business of Gavilon is not part of the Transaction and will stay with Marubeni.

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

⁷ The Parties' activities also overlap for the supply of other types of grains as well as for the supply of oilseeds, pulses, oilseed meals, dried distillers' grains and dried distillers' grain with soluble. In addition, the Transaction gives rise to vertical relationships but none of these horizontal and vertical relationships gives rise to horizontally or vertically affected markets under any plausible market definition.

⁸ For instance, M.6383 – *Cargill / Korofrance*, paras. 19-22.

respect to wheat, while ultimately leaving the question open, the Commission contemplated a further segmentation between durum wheat and soft wheat.⁹

4.1.2. *The Notifying Party's view*

- (8) According to the Notifying Party, one overall market for the marketing of grains should be considered because, first, retailers expect to be able to purchase a broad range of grain types and, second, the different types of grain are substitutable for animal feed compounders which represent a large part of the market.¹⁰

4.1.3. *Commission assessment*

- (9) The results of the market investigation suggest that a distinction by type of grain may be relevant. From a demand-side perspective, the investigation confirmed that different customers purchase different types of grain.¹¹ Customers also confirmed the existence of significant differences across different types of grain with respect to prices, end-use applications, origin and harvest seasons.¹² Likewise, from a supply-side perspective, the investigation confirmed that suppliers do not all supply the same types of grain (i.e. their product portfolios are different).¹³
- (10) In any event, the question whether a segmentation by type of grain is relevant can be left open as the Transaction does not give rise to competition concerns under any plausible market definition. For the purpose of this case, the assessment will make a distinction between the wholesale supply of different types of grain (i.e. rye, corn and wheat) with a further distinction between soft wheat and durum wheat, which corresponds to the market definitions for which the Parties' market shares are the highest.

4.2. **Geographic market**

4.2.1. *The Commission decisional practice*

- (11) As to the geographic market definition, while leaving the exact market definition open, the Commission contemplated the definition of national or EEA-wide markets for the supply of grains in several previous decisions.¹⁴

4.2.2. *The Notifying Party's view*

- (12) The Notifying Party considers that the relevant geographic market is at least EEA-wide because of the level of trade flows within the EEA, the fact that products are traded on international commodity markets and the existence of significant imports.¹⁵

⁹ For instance, M.10251 – *Invivo Group / Etablissements J Soufflet*, paras. 259 – 261.

¹⁰ Form CO, paras. 111-112.

¹¹ Non-confidential responses from customers for Spain (Q1), question A.2 and for Italy (Q3), question A.2.

¹² Non-confidential responses from customers for Spain (Q1), question B.1 and for Italy (Q3), question B.1; non-confidential responses from competitors for Spain (Q2), question B.1.

¹³ Non-confidential responses from competitors for Spain (Q2), question A.1 and for Italy (Q4), question A.1.

¹⁴ For instance, M.6751 – *Baywa / Wilhelm Bohnhorst / Bohnhorst Agrarhandel JV*, paras. 38-39.

¹⁵ Form CO, paras. 113-114.

4.2.3. Commission assessment

- (13) The results of the market investigation suggest that the relevant markets for the supply of rye, corn and wheat could be EEA-wide in scope. First, most competitors confirmed that they supply grains at worldwide level or at least across the EEA.¹⁶ Second, both competitors and customers explained that imports represent an important part of the overall market for the supply of corn¹⁷ and rye¹⁸ in Spain, as well as wheat in Italy.¹⁹ Third, imports of corn in Spain and wheat in Italy mainly come from distant countries. This is confirmed by the Parties' data²⁰ as well as their internal documents:

Figure 1 – Internal documents

[...]

Source: Form CO, Annex 5.4(p)

- (14) In any event, the exact geographic market definition can be left open as the Transaction does not give rise to competition concerns under any plausible geographic market definition. For the purpose of this case, the assessment will be carried out at national level, which is where the Parties' market shares are the highest.

5. COMPETITIVE ASSESSMENT

- (15) The Transaction does not give rise to any affected markets if these are defined at the EEA-level. The Transaction only gives rise to (horizontally) affected markets if defined by grain type and at the national level: for the wholesale supply of rye and corn in Spain, and the supply of wheat in Italy. The table below provides the Parties' and their main competitors' volume market shares on each of these markets:

Table 1 – Market shares

2020-2021 (Volume market shares)	SPAIN		ITALY
	Rye	Corn	Wheat
Viterra	[50-60]%	[20-30]%	[10-20]%
Gavilon	[0-5]%	[10-20]%	[0-5]%
Combined	[60-70]%	[30-40]%	[20-30]%
Competitor 1	COFCO: [20-30]%	COFCO: [10-20]%	Agri Viesti: [5-10]%
Competitor 2	Riera: [10-20]%	Bunge: [5-10]%	Cerealsud: [5-10]%
Competitor 3	Cefetra: [5-10]%	Louis Dreyfus: [5-10]%	Amber Agriculture: [5-10]%

Source: Form CO, Sections 6 and 7

¹⁶ Non-confidential responses from competitors for Spain (Q2), question A.2 and for Italy (Q4), question A.2.

¹⁷ Non-confidential responses from competitors for Spain (Q2), question B.3; non-confidential responses from customers for Spain (Q1), question B.2.

¹⁸ Non-confidential responses from competitors for Spain (Q2), question B.6; non-confidential responses from customers for Spain (Q1), question B.7.

¹⁹ Non-confidential responses from competitors for Italy (Q4), questions B.3; non-confidential responses from customers for Italy (Q3), question B.3.

²⁰ Response to P1 RF11, question 4.

- (16) If a further distinction is made between durum wheat and soft wheat, the Transaction gives rise to only one affected market for the wholesale supply of soft wheat in Italy, where the Parties have a combined market share of [20-30]% (Viterra: [10-20]%; Gavilon: [10-20]%).
- (17) The Parties were unable to provide value market shares but confirmed that they would not be significantly different from volume market shares and in particular that no other market would be affected based on such market shares.²¹ Finally, the Parties confirmed that their market shares remained stable over the past three years.²²

5.1.1. *Rye (Spain)*

- (18) On the market for the wholesale supply of rye in Spain, despite a high combined market share ([60-70]%), the increment brought about by Gavilon remains limited ([0-5]%). In any event, the investigation confirmed that the Transaction would not give rise to competition concerns in this regard.
- (19) First, a majority of customers confirmed that Gavilon is not a significant supplier of rye in Spain.²³ A majority of competitors also confirmed that the Parties are not close competitors.²⁴
- (20) Second, a number of credible competitors, all of which with a higher market share than the target – and two with a sizeable market share – and in any event facing low barriers to expansion, will remain active on the market, including COFCO ([20-30]%), Riera ([10-20]%) and Cefetra ([5-10]%). Customers confirmed that credible alternatives will remain available,²⁵ including each of the above competitors,²⁶ and that switching costs are low.²⁷ This is consistent with the responses received from competitors who also listed ETG, Bunge and ADM as credible competitors of the Parties.²⁸
- (21) Third, barriers to entry appear to be limited. As explained by competitors and customers during the investigation, it would be easy for a potential competitor active in a neighbouring country to enter the Spanish market and start selling rye.²⁹ By way of example, several market participants mentioned the recent entry of ETG as an example of successful organic entry.³⁰

²¹ Response to P1 RF11, questions 2 and 3.

²² Form CO, paras. 197, 201 and 205.

²³ Non-confidential responses from customers for Spain (Q1), questions D.3 and D.3.1.

²⁴ Non-confidential responses from competitors for Spain (Q2), question D.1.

²⁵ Non-confidential responses from customers for Spain (Q1), questions D.2 and D.3.

²⁶ Non-confidential responses from customers for Spain (Q1), question D.5.

²⁷ Non-confidential responses from customers for Spain (Q1), question D.6.

²⁸ Non-confidential responses from competitors for Spain (Q2), questions D.3. The fact that these other competitors were not taken into account by the Parties in their market share estimates means that the Parties' market shares above are likely to overstate their actual market shares.

²⁹ Non-confidential responses from competitors for Spain (Q2), questions B.7; non-confidential responses from competitors for Spain (Q2), questions B.4; non-confidential responses from competitors for Italy (Q4), questions B.4.

³⁰ Non-confidential responses from competitors for Spain (Q2), questions D.6.1.

(22) The above results are consistent with the fact that imports represent an important part of the market³¹ and that no market participant expressed concerns in connection with the supply of rye in Spain.

(23) Overall, the Commission thus concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market and with the EEA Agreement for the wholesale supply of rye in Spain.

5.1.2. *Corn (Spain)*

(24) For the wholesale supply of corn in Spain, the Parties' combined market share remains below 40% ([30-40]%) and the investigation confirmed that the Transaction would not give rise to competition concerns on this market.

(25) First, the majority of customers confirmed that credible alternatives would remain available,³² including COFCO ([10-20]%), Bunge ([5-10]%) and Louis Dreyfus ([5-10]%).³³ Some participants also mentioned ETG, ADM and Cargill as credible competitors.³⁴

(26) Second, the results of the investigation show that customers could easily switch to other suppliers in response to a price increase, including to suppliers from neighbouring countries.³⁵

(27) Again, the above results are consistent with the fact that imports represent an important part of the market and that no market participant expressed concerns in connection with the supply of corn in Spain.³⁶

(28) Overall, the Commission thus concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market and with the EEA Agreement for the wholesale supply of corn in Spain.

5.1.3. *Wheat (Italy)*

(29) With respect to the wholesale supply of wheat in Italy, the Parties' combined market share remains below 25% under any plausible market definition ([20-30]% for wheat overall and [20-30]% for soft wheat only).

(30) The majority of customers also confirmed that credible alternatives will remain available on the market³⁷ and that the merged entity would continue to face credible competitors, including Amber Agriculture and Cargill,³⁸ as well as ADM, COFCO, Cefetra and Ameropa.³⁹ This is consistent with the fact that no market participant expressed concerns in connection with this market.

³¹ Response to P1 RFI 1, question 4. As one competitor explained: 'Out of the 300-600 Kmt of Rye consumed in Spain each year [...] only 100 Kmt are produced in Spain and the rest is imported. Imported represent roughly 70-80% of the Rye market in Spain' (non-confidential response of a competitor in Spain (Q2), question B.6.1).

³² Non-confidential responses from customers for Spain (Q1), questions C.2 and C.3.

³³ Non-confidential responses from customers for Spain (Q1), question C.5.

³⁴ Non-confidential responses from customers for Spain (Q1), question C.4.

³⁵ Non-confidential responses from customers for Spain (Q1), questions C.6, C.7 and C.8; non-confidential responses from competitors for Spain (Q2), questions B.4 and B.4.1.

³⁶ Non-confidential responses from competitors for Spain (Q2), question B.3.

³⁷ Non-confidential responses from customers for Italy (Q3), questions C.2 and C.3.

³⁸ Non-confidential responses from customers for Italy (Q3), questions C.4 and C.5.

³⁹ Non-confidential responses from customers for Italy (Q3), question C.5.2.

- (31) Overall, the Commission thus concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market and with the EEA Agreement for the wholesale supply of wheat in Italy.

6. CONCLUSION

- (32) 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

Executive Vice-President