



EUROPEAN COMMISSION
DG Competition

***Case M.11093 - LANTMÄNNEN / LRF /
HS HUSHALLNINGSSÄLLSKAPENS
SERVICE / VÄXA SVERIGE / ARLA
FOODS / HKSCAN SWEDEN /
AGRONOD JV***

Only the English text is available and authentic.

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

Article 4(4)
Date: 18/12/2023



EUROPEAN COMMISSION

Brussels, 18.12.2023
C(2023) 9160 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Sweden

Subject: Case M.11093 - LANTMÄNNEN /LRF/ HS
HUSHALLNINGSSÄLLSKAPENS SERVICE/ VÄXA SVERIGE/
ARLA FOODS/HKSCAN SWEDEN/AGRONOD JV
Commission decision following a reasoned submission pursuant to
Article 4(4) of Regulation No 139/2004¹ for referral of the case to the
Sweden and Article 57 of the Agreement on the European Economic
Area².

Date of filing: 13.11.2023

Legal deadline for response of Member States: 04.12.2023

Legal deadline for the Commission decision under Article 4(4): 18.12.2023

Dear Sir or Madam,

1. INTRODUCTION

- (1) On 13 November 2023, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of Sweden.
- (2) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition, and which present all the characteristics of a distinct market.
- (3) A copy of this Reasoned Submission was transmitted to all Member States on 13 November 2023.
- (4) By letter of 1 December 2023, the Swedish National Competition Authority as the competent authority of Sweden informed the Commission that Sweden agrees with the proposed referral.

2. THE PARTIES

- (5) Lantmännen ek för ("Lantmännen") is a Swedish agricultural cooperative owned by 19 000 Swedish farmers. Its operations are divided into three sectors and two business areas; the agriculture, bioenergy and food sectors and the Swecon³ and the real estate business areas. The agriculture sector constitutes Lantmännen's core business.
- (6) Lantbrukarnas Ekonomi AB ("LRF"), (The Federation of Swedish Farmers), is an independent organisation for the agriculture and forestry sector in Sweden with

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 Swecon is a dealer in machinery for the construction and civil engineering industry in Sweden, Germany, Estonia, Latvia and Lithuania.

approximately 140 000 members. Almost all cooperatives within Swedish agriculture (including Lantmännen, Arla and Växa) are also members of LRF. LRF, and its six subsidiaries, contributes to the development of businesses and entrepreneurs in the agriculture and forestry sector.

- (7) Hushållningssällskapet Ekonomi AB (“Hushållningssällskapet”), which was founded in 1791, is an organisation with public law status as its statutes are laid down by the Swedish government. Hushållningssällskapet is a national body made up of 15 independent Rural Economy and Agricultural Societies. Hushållningssällskapet notably provides consultancy services within agriculture and horticulture. It provides advice, knowledge transfer, field trials, research and development for agriculture and rural communities. Hushållningssällskapet also owns a number of agricultural colleges.
- (8) Växa Sverige ek för (“Växa”) is a Swedish cattle farmers association and is owned by approximately 6 300 members, mainly dairy and beef producers. Växa provides advice and services aimed to reduce costs, optimise production and increase profitability in the agricultural businesses. The organization is based at several locations around Sweden, where it employs 330 full-time staff.
- (9) Arla Foods AB (“Arla”) is an international dairy company owned by approximately 8 000 farmers from Denmark, Sweden, the UK, Germany, Belgium, Luxembourg and the Netherlands. It is active in the production and sale of a variety of dairy products (milk, cream, fermented milk products, butter, etc.). The members of the cooperative (i.e. the farmers who own the cooperative) are also the suppliers of the cooperative’s most important raw material, raw milk. In Sweden, Arla is owned by ca. 2 000 dairy farmers.
- (10) HKScan Sweden AB (“HKScan”) is a food company with over one hundred years of experience in responsible Nordic food production for customer and consumer needs. In Sweden, HKScan produces, markets and sells pork, beef and lamb products and prepared meals as well as plant-based products.
- (11) Lantmännen, LRF, Hushållningssällskapet, Växa, Arla and HKScan are altogether referred to as the ‘Parties’.
- (12) Agronod (also referred to as the “JV”), is active in the digital agricultural sector. The JV initiated by the Swedish Government and Board of Agriculture, and owned by the Parties. Agronod’s main activity falls within the market for the provision of data-sharing services of agricultural data. Agronod develops and will, at a later stage, introduce a national data-sharing platform for agricultural data in Sweden. Agronod will collect and purchase agricultural data, in particular from farmers. Agronod aims to accelerate the rate of development in the sector, but also to strengthen the position of the individual farmers by giving them control over their farm data. The farmers must give their consent before their data can be shared with others via the data-sharing platform. The data-sharing platform services will be offered to actors (both the Parties and third parties) willing to purchase agricultural data from the platform. Agronod will also develop a digital agriculture service called Agrosfär which will calculate, based on collected agricultural data, what impact a particular farm or food product has on the climate (mainly CO₂-footprint). Agrosfär will be the first product/service developed, based on data originated from the data-sharing platform.

3. THE OPERATION AND CONCENTRATION

- (13) The transaction in question involves a change in the activity of an existing non full-function joint venture named Agronod AB (“Agronod”), which will result in the creation of the full-function joint venture, Agronod, will be jointly controlled post-Transaction by Lantmännen, LRF, Hushållningssällskapet, Växa, Arla and HKScan (altogether referred to as the ‘Parties’) within the meaning of Article 3(1)(b) and Article 3(4) of the Merger Regulation (the “Transaction”).
- (14) Prior to the Transaction, Agronod could not be considered a full- function joint venture due to the lack of a business plan and clear vision on how the JV would operate and when it would have a market presence. Post-Transaction, pursuant to its Draft Business Plan, in 2024, Agronod will establish its market presence with its Agrosfar service which is expected to generate the first turnover of the JV. [DETAILS OF DEVELOPMENT POLICY], Agronod will continue to develop its data-sharing platform for agricultural data and its products/services in Sweden, for all types of crops and stock. Agronod will act as a hub and collect and purchase agricultural data from Swedish farmers and from the Parties. It will then sell its data and services in addition to the Parties, also to third parties (banks, IT developers, etc).
- (15) The Commission considers that the JV will be full-function because:
- (a) Agronod will have its own management dedicated to its day-to-day operations which will be commercially independent from the Parties. Agronod has dedicated personnel and plans on recruiting more employees, further to its access to seconded personnel from the Parties (i.e. IT and data-specialists, scientists) [DETAILS OF DEVELOPMENT POLICY] on the basis of management contracts at arm’s length conditions. Agronod also has access to capital and received significant financial support from various Swedish authorities. While during the development phase Agronod will be mainly funded through financial support from the Swedish state, the Parties expect the JV to be [DETAILS OF DEVELOPMENT POLICY] when the data-sharing platform is fully established on the market. In addition, Agronod has offices, leased on market terms from one of the Parties.
 - (b) Once Agronod has a market presence in 2024, Agronod’s activities will go beyond the activities of the Parties by offering a data-sharing platform and data also to third parties.
 - (c) With regards to its purchase and sale relationships, Agronod is set-up to sell its data-sharing services to third parties such as banks and insurance companies. While it can also provide such services to the Parties, it expects to make more than half of its sales with third parties [Year]. While Agronod will buy a non-negligible amount of data from the Parties, these sales will be made at arm’s length conditions, on a non-exclusive basis and without purchase commitments.
 - (d) Lastly, Agronod has been created to operate on a lasting basis, for a minimum period of 10 years.

4. EU DIMENSION

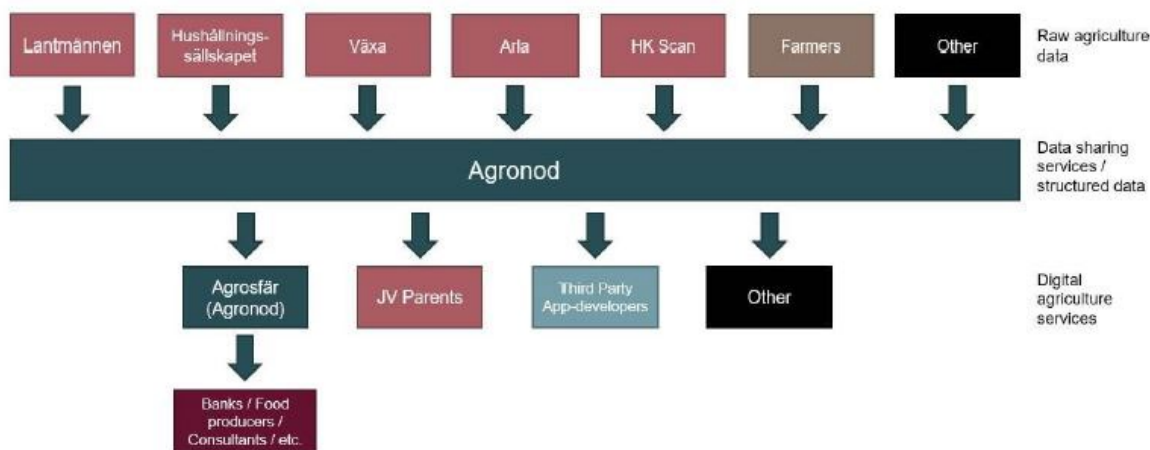
- (16) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Lantmännen: EUR [... millions], LRF: EUR [... millions], Hushållningssällskapet: EUR [... millions], Växa: EUR [... millions], Arla: EUR [... millions], and HKScan: EUR [... millions]) and each of at least two of them has an EU-wide turnover in excess of EUR 250 million (Lantmännen: EUR [... millions], LRF: EUR [... millions], Hushållningssällskapet: EUR [... millions], Växa: EUR [... millions], Arla: EUR [... millions], and HKScan: EUR [... millions]). - Each of the undertakings concerned does not achieve more than two thirds of their EU wide turnover in one and the same Member State. The notified operation therefore has an EU dimension within Article 1(2) of the Merger Regulation.

5. ASSESSMENT

5.1. Relevant markets

- (17) Agronod is currently developing a data-sharing platform for agricultural data and will be active in the development and provision of data-sharing services for agricultural data through its platform as of 2024.
- (18) For its activities Agronod will be purchasing raw agricultural data from farmers, the Parties and other third parties (upstream market). The raw data will then be processed to continuously develop and feed the data-sharing platform. Through its data-sharing platform, Agronod will also be active in the provision of digital agricultural services/products (downstream market). As an example, Agronod is developing Agrosfär (a digital climate impact calculator service) based on the agricultural data it purchases.
- (19) Considering that Agronod is intended to act as a hub for agricultural data in Sweden, the Parties submit that the market for digital agriculture, can be sub-segmented as follows according to the various steps of the value chain: : (i) the market for the provision of raw agricultural data, (ii) the market for the provision of data-sharing services for agricultural data (Agronod), and (iii) the market for digital agriculture services/products (e.g., Agrosfär).

Figure 1: Relevant markets – chart



Source: Form RS

5.1.1. *Commission precedents*

- (20) In past decisions the Commission has considered the market for digital agriculture (or digital farming) which refers to the collection of data and information about fields, crop and farms with the aim of providing tailored advice or aggregated data to farmers. Digital agriculture makes use of precision farming technology ⁽⁴⁾. In M.8084 – Bayer/Monsanto, the Commission also considered the market for digitally enabled agronomic prescriptions (an example of digital agricultural services/products) which refers to recommendations or advice provided to growers on the selection and application (e.g. dosage, timing, etc.) of agronomic inputs (e.g. seeds, crop protection products, fertilisers, etc.), and generated by an analytics agronomic engine based on a large sets of public and proprietary data.⁵ The Commission has defined the differentiated market for the provision of digitally enabled agronomic prescriptions as a subsegment of the digital agriculture sector. ⁽⁶⁾
- (21) In the Bayer/Monsanto and BASF/Bayer Divestment Business cases, the Commission considered that the market for digitally enabled prescriptions was national in scope but ultimately left the exact market definition open. - ⁽⁷⁾ The Commission took into account several elements stating that: “ farming practices, language, government regulations and specific local laws would need to be taken into account to be able to provide digital agriculture services [...]. ⁽⁸⁾
- (22) There are no past Commission decisions related to the product and geographic market definitions for (i) the provision of raw agricultural data and (ii) the provision of data-sharing services for agricultural data.

5.1.2. *The Notifying Parties’ views*

5.1.2.1. Product market definition

- (23) According to the Notifying Parties, the market for the provision of raw agricultural data (upstream from the provision of data-sharing services for agricultural data) entails the collection of data related to agricultural production such as farm data and all types of data generated through farming processes (i.e. livestock data, agronomic data, etc.). Such data is to be purchased from the Parties, farmers, third parties active in the Swedish agricultural sector and public authorities (e.g. Swedish Food Agency).
- (24) The market for the provision of data-sharing services for agricultural data (intermediary, downstream from the provision of raw agricultural data and upstream of the market for digital agriculture services/products), for which

⁽⁴⁾ Commission decision of 21 March 2018 in Case No COMP/M.8084 – BAYER / MOSANTO, Summary of 20 December 2018 paragraph 56; Commission decision of 30 April 2018 in Case no COMP/M.8851 - BASF / BAYER DIVESTMENT BUSINESS, paragraph 264-267

⁵ Case No COMP/M.8084 – BAYER / MOSANTO, Summary of 20 December 2018, paragraph 2563

⁽⁶⁾ Commission decision of 21 March 2018 in Case No COMP/M.8084 – BAYER / MONSANTO, Summary of 20 December 2018, paragraphs 56-58

⁽⁷⁾ Commission decision of 21 March 2018 in Case No COMP/M.8084 – BAYER / MONSANTO, Summary of 20 December 2018, paragraph 59.

⁽⁸⁾ Commission decision of 30 April 2018 in Case no COMP/M.8851 - BASF / BAYER DIVESTMENT BUSINESS, paragraph 293.

Agronod will be the only active player in Sweden, relates to the gathering of all types of agricultural data in one place, so as the datasets collected from the different clients can complement each other. For instance, Lantmannen collects crop production data, which can be complementary to Arla's data which relates to milk production and Växa's data which focuses on cattle farming data. The end-users of the data-sharing platform will primarily be businesses who provide various types of services to the agricultural industry.

- (25) The market for digital agriculture services/products (downstream from the provision of data-sharing services for agricultural data) relates to services that are offered to companies active in the agricultural industry such as digitally enabled agronomic prescription services, climate impact calculator services and farm management systems. In the present case, Agrosfär – the first digital service provided by Agronod – will be a climate impact calculator service tool which will be data driven for all sort of crops and stocks (while until today, the Parties claim that these services are only provided per type of product).

5.1.2.2. Geographic market definition

- (26) The Parties consider that the market for (i) the provision of raw agricultural data, (ii) the provision of data-sharing services for agricultural data (Agronod), and (iii) the market for digital agricultural services/products are likely to be national mostly due to language differences, different farming practices and different national government regulations and differences in climate and soil conditions. More specifically, in line with the requirements set out by the Swedish Government and the Swedish Board of Agriculture, the Parties will limit the geographic scope of Agronod's business to the Swedish market. Hence, agricultural data will only be collected from Swedish farmers, processed in Sweden and then sold only to companies who have a market presence in Sweden.
- (27) The Parties however consider that the exact geographic market definition for (i) the provision of raw agricultural data and (ii) the market for digital agricultural services/products can be left open given that the concentration does not raise competition concerns under any plausible market definition.

5.1.3. Commission's assessment

- (28) For the purpose of this decision, the Commission considers that the plausible relevant product markets to be taken into account are (i) the provision of raw agricultural data, (ii) the provision of data-sharing services for agricultural data (Agronod), and (iii) the market for digital agricultural services/products.
- (29) In light of all the information provided by the Parties and the preliminary assessment thereof, the Commission preliminarily considers that for the purpose of this case, a market for the provision of agricultural data-sharing services has at most a national geographic dimension for the following reasons:
- (a) Agronod will only collect and purchase agricultural data from Swedish farmers.
 - (b) the data gathered by Agronod will be sold to its Swedish-based third parties with a market presence in Sweden.
 - (c) when sold to the Parties, the data will only be sold to the Swedish-based entities.

- (d) the Agrosfär service is unlikely to be sold to third parties located outside of Sweden or lacking market presence in Sweden.
 - (e) the data collected and purchased, and the data and services supplied will be only in the Swedish language.
 - (f) the data purchased and services provided are related to national soil and weather conditions, national farming and breeding practices and national regulations and laws.
- (30) For the purpose of this case and in the light of all the information available to it the Commission will therefore consider for the purpose of this decision, that the market for the provision of agricultural data-sharing services is at most national in scope.
- (31) With regards to the geographic market for (i) the provision of raw agricultural data and (ii) the market for digital agricultural services/products - for the same reasons explained in paragraph 29 above -the Commission considers for the purpose of this decision that these markets are likely to be national, but the exact geographic market definition can be left open given that the conclusion does not change irrespective of the exact market definition.

5.2. Assessment of the referral request

5.2.1. Legal requirements

- (32) According to the Commission Notice on Case Referral in respect of concentrations ('the Notice on Case Referral')⁹, in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled:
- (a) there must be indications that the concentration may significantly affect competition in a market or markets,¹⁰ and
 - (b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.¹¹

5.2.1.1. The Transaction may significantly affect competition in a market or markets

- (33) According to paragraph 17 of the Notice on Case Referral, the existence of an affected market (within the meaning of recital 23(g) Annex III to Implementing Regulation (EU) 2023/914¹²) is generally considered sufficient to meet the requirement set forth in Article 4(4) of the Merger Regulation.

⁹ Commission Notice on Case Referral in respect of concentrations, OJ C 56, 5.3.2005, p. 2–23.

¹⁰ Further developed in point 17 of the Notice on Case Referral.

¹¹ Further developed in point 18 of the Notice on Case Referral.

¹² Commission Implementing Regulation (EU) 2023/914, implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ L 119, 5.5.2023, p. 22. Recital 23(g) provides that “*Affected markets are all relevant product and geographic markets, as well as plausible alternative relevant product and geographic markets where the parties’ activities overlap horizontally or are vertically related and which do not meet the conditions for review under point 5 of the Notice on Simplified Procedure and do not benefit from the flexibility clauses of point 8 of the Notice on Simplified Procedure.*”

- (34) However, other factors may be relevant for the competitive analysis of the case (market overlap, vertical integration, etc).
- (35) In the present case, the Transaction gives rise to vertical relationships between the Parties and the JV because Agronod will (i) purchase raw agricultural data from the Parties (upstream), (ii) sell agricultural data to the Parties via the data-sharing platform (intermediary) and (iii) sell the Agrosfär service to the Parties (downstream).
- (36) All three relevant markets (i.e. (i) the market for the provision of raw agricultural data, (ii) the market for the provision of agricultural data-sharing services and (iii) the market for digital agricultural services/products) are nascent in Sweden. With regards, to (i) the market for the provision of raw agricultural data and (iii) the market for digital agricultural services/products, the Parties were not able to provide reliable market share estimates.
- (37) However, for the market for the provision of agricultural data-sharing services, Agronod is and will be the first and main player. The Parties therefore expect Agronod to hold close to a [80-100]% market share in the near future. While the Parties submit it is likely that other companies will enter the nascent market for agricultural data-sharing service market in Sweden, the Parties expect that Agronod will [still be a main player].
- (38) Thus, due to the vertical relationships between the three relevant markets, the Transaction may significantly affect competition in the markets for (i) the provision of raw agricultural data, (ii) the provision of agricultural data-sharing services and (iii) digital agricultural services/products in Sweden as there are risks of input and/or customer foreclosure.
- (39) Therefore, the first legal requirement set forth by article 4(4) of the Merger Regulation also appears to be met.

5.2.1.2. *The market(s) in question must be within a Member State and present all the characteristics of a distinct market.*

- (40) According to paragraph 18 of the Notice on Case Referral, the second requirement set forth by Article 4(4) of the Merger Regulation is satisfied if the geographic scope of the markets where competition is affected is national or narrower than national.
- (41) As mentioned above, for a number of reasons listed in paragraph (29), the Commission considers – for the purpose of this decision - that the market for the provision of data-sharing services for agricultural data is likely national in scope.
- (42) Therefore, the second legal requirement set forth by article 4(4) of the Merger Regulation also appears to be met.

5.2.2. *Additional factors*

- (43) In addition to the verification of the legal requirements, paragraph 19 of the Commission Notice on Case Referral provides that a referral request should consider whether the competition authority to which the case would be addressed is the most appropriate authority to deal with the case. To this end, consideration

should be given both to the likely focus of the competitive effects of the transaction and to how appropriate the national competition authority would be to scrutinise the transaction. In addition, paragraph 23 of the Notice on Case Referral states that consideration should also, to the extent possible, be given to whether the national competition authority to which the referral of the case is contemplated may possess specific expertise concerning local markets.

- (44) *First*, the Parties consider that the Swedish NCA is the most appropriate authority to assess the Transaction, since it has specific expertise in the assessment of the agricultural sector in Sweden and is closer to the competitors and customers active on the relevant markets. Therefore, it is well suited to carry out any market investigation needed to assess any effects of the Transaction on those markets.
- (45) *Second*, in light of the information submitted in the Reasoned Submission by the Parties, the Commission considers that the effects of the Transaction are confined only to Sweden at national level. Thus, the case may require investigative efforts at national or even local level, which the Swedish NCA is better placed to conduct. Specifically:
- (a) Agronod is partially funded by public financial support and one of the requirements for the creation of Agronod was that its activities are limited to Sweden and that Agronod only buys agricultural data from Swedish farmers.
 - (b) Both the suppliers of agricultural data (the Parties and Swedish farmers) and the customers in the market for the digital agricultural data are required to have market presence in Sweden.
 - (c) The relevant markets are characterised by national elements such as language specificity, country-specific farming practices and specific national government regulations and climate and soil conditions specific to Sweden which entails that the Transaction would be better assessed by the Swedish Competition Authority.
- (46) Therefore a market investigation carried out by the Swedish Competition Authority appears to be better suited to properly assess the Transaction.
- (47) *Third*, a referral of the Transaction to the Swedish Competition authority satisfies the need to preserve the benefit of the “one-stop-shop” because due to the national dimension of Agronod - explained above and required by the Swedish government - there are no affected markets outside Sweden. The case would thus be referred in its entirety to a single competition authority (i.e. the Swedish NCA), which is an important factor of administrative efficiency.

5.2.3. *Conclusion on referral*

- (48) In light of the foregoing and on the basis of the information provided by the Parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market.
- (49) Moreover, the requested referral would be consistent with paragraphs 19-23 of the Notice on Case Referral, in particular because the Swedish NCA appears to be the most appropriate authority to examine the Transaction.

5.3. CONCLUSION

- (50) For the above reasons, and given that Sweden has expressed its agreement, the Commission has decided to refer the Transaction in its entirety to be examined by the competition authority of Sweden. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Olivier GUERSENT
Director-General