

***Case No COMP/M.2693 -  
ADM / ACTI***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 11/02/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.02.2002

SG (2002) D/228485

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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  
ARTICLE 6(1)(b) DECISION

**To the Notifying Parties**

Dear Sirs,

**Subject: Case No COMP/M.2693 – Archer Daniels Midland Company/Alfred C. Toepfer International GmbH**

Notification of 09.01.2002 pursuant to Article 4 of Council Regulation No 4064/89

1. On 9 January 2002, the Commission was notified a proposed transaction pursuant to Article 4 of Council Regulation No 4064/89, as amended<sup>1</sup>, by which the undertaking Archer Daniels Midland Company (“ADM”) would acquire within the meaning of Article 3 (1) (b) sole control of the undertakings InTrade N.V. (“InTrade”), InTrade Holding GmbH (“InTrade Holding”) and InTrade-Toepfer U.S Holdings Inc. (“US Holdings”) and thereby sole control of Alfred C. Toepfer International GmbH (“ACTI”), InTract N.V. and Alfred C. Toepfer International B.V. (collectively referred to as “ACTI Companies”), by way of acquisition of shares.

**I. THE PARTIES**

A. Archer Daniels Midland Company

2. ADM is a publicly listed US company world-wide active in procuring, transporting, storing, processing and merchandising of agricultural commodities and products. It is a major worldwide processor of oilseeds, corn and wheat, and in addition, processes cocoa beans, milo, oats, barley and peanuts. Its other operations include transporting, merchandising and storing these products.

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

B. InTrade N.V. / InTrade Holding GmbH / InTrade-Toepfer U.S Holdings Inc.

3. InTrade N.V. and InTrade Holding GmbH (both companies collectively referred to as “InTrade Companies”) are holding companies for the administration of the shares in ACTI. The shareholders of the InTrade Companies currently are 12 agricultural cooperatives from around the world, holding an aggregate share of 50% of the equity, and ADM, holding the remaining 50% of the equity. U.S Holdings is the holding company for the administration of participations, managed by ACTI, in the USA. The equity of US Holdings is currently held by ADM (75%) and the 12 cooperatives (25%).

C. Alfred C. Toepfer International GmbH/ InTract N.V./ Alfred C. Toepfer International B.V

4. ACTI has international trading and wholesale activities in agricultural commodities (including grains, oilseeds, feedstuff, flour, malt, vegetable oils, and fertilizers). Contrary to ADM, ACTI is not involved in the processing of agricultural commodities. InTract N.V. and Alfred C. Toepfer International B.V are holding companies for participations, managed by ACTI. ACTI’s current shareholders are the InTrade Companies and ADM (via its wholly owned subsidiary ADM Beteiligungs GmbH), each of which holds a share of 50%. ACTI, InTract N.V. and Alfred C. Toepfer International B.V. are collectively referred to as “ACTI Companies”.

## II. THE OPERATION

5. The parties have stated that the ultimate of the proposed transaction is the acquisition of sole control of ACTI and the other ACTI Companies by ADM via increase in the holding of the InTrade Companies and changes in the structure of the InTrade Companies, the US Holdings and the ACTI Companies.
6. Currently, the ACTI Companies (as well as the InTrade Companies and US Holdings) are jointly controlled by ADM and the 12 cooperatives. Pursuant to the current Articles of Association of the InTrade Companies, the ACTI Companies and US Holdings and the respective Shareholder Agreement, key business decisions (including the approval of the annual budget and the election or removal of members of the management board) in the InTrade Companies, US Holdings and the ACTI Companies can only be adopted jointly by ADM and the 12 cooperatives. The acquisition of joint control of the ACTI Companies by ADM was assessed in case COMP/M.1348 - Archer Daniels Midland Company/Alfred C. Toepfer International GmbH/InTrade N.V.
7. Pursuant to the Acquisition Agreement the proposed acquisition of sole control by ADM will be realised by the (direct and indirect) increase of ADM’s shareholding in each of the InTrade Companies by 10% to 60% and the amendments of the Shareholders Agreement and the Articles of Associations of the InTrade Companies, US Holdings and the ACTI Companies. As a result of the amendments, ADM’s representatives on the supervisory board will have the majority of votes or at least a tie-breaking vote for board resolutions as well as the majority of votes in the shareholders’ meetings of both InTrade companies. The part of the proposed transaction relating to US Holding consists in the increase of ADM’s shareholding by 5% to 80% and an amendment of the Articles of Association and the Shareholders Agreement. This will result in ADM’s representatives having at least a tie-breaking vote for resolutions adopted by the board of directors and a majority of votes in the shareholders’ meeting. Furthermore, the Acquisition Agreement and the Shareholders Agreement provide that

as a result of the changes described for the InTrade Companies ADM will have a majority of votes on the supervisory board/board of directors of each of the ACTI Companies.

8. As a result of this operation, ADM would acquire a majority or at least a tie-breaking vote on the board of directors/supervisory board of each of the InTrade Companies, US Holdings and the ACTI Companies as well as in the shareholders' meetings of each of these companies. ADM can, by its voting majority in the supervisory board/board of directors, adopt resolutions regarding all kind of business issues, including the approval of the annual budget and the election or removal of members of the management board. The current veto rights of the co-operatives in this regard are eliminated in all of these companies. The co-operatives will retain veto rights only with respect to issues which are relevant in order to protect their financial interest as investors in the respective company.
9. Consequently, ADM's acquisition of sole control of the InTrade Companies, US Holdings and the ACTI Companies is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### **III. COMMUNITY DIMENSION**

10. The combined aggregate world-wide turnover of the undertakings concerned exceeds EUR 5 billion<sup>2</sup> (for the fiscal year 2000/2001, ADM: EUR 22,8 billion; and ACTI: EUR 5,9 billion). Both ADM and ACTI had Community-wide turnover in excess of 250 million EUR (for fiscal year 2000/2001, ADM: 1,7 billion EUR; and ACTI: EUR 3,1 billion), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

### **V. COMPETITIVE ASSESSMENT**

#### **A. Relevant Product Markets**

11. ADM and ACTI have overlapping activities in the markets for international trading and wholesaling of crude seed oil and feedstuff.
12. Both parties are active in international trading, which refers to the paper trade of agricultural commodities between international traders. Trading takes place both in open cash markets and in organised futures markets, such as the Chicago Board of Trade (CBOT) or the MATIF in Paris, with numerous traders involved in these trading activities throughout the world. The products are commodities with prices quoted daily in newspapers' financial sections, with the result that prices are fully transparent and available to customers on a worldwide basis, and therefore there appear to be no competition concerns in trading.

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

13. The parties also sell physical quantities of oil to oil processing companies and feedstuff components to manufacturers of compound feed and to national wholesalers and head co-operatives for sale to the end-consumer. To a very minor extent, ADM, who, unlike ACTI, owns considerable processing and oilmilling capacities in Europe, sells seed oil directly to large-scale end users such as McDonalds. All market share figures are based on the volume physically delivered to third parties and exclude paper trade.
14. The parties submit that the relevant product market for oil comprises not only seed oil but also fish oil and tropical oil (coconuts, palmoil, palmkerneloil) due to their high degree of substitutability and interchangeability. The parties would have a share of [10-20]% of such a market in the Community (ADM [10-20]%, ACTI [less than 2]%). However, an initial distinction has to be made between vegetable oils (crude seed oils and tropical oils) and animal oils. Vegetable oils are used primarily by the food processing industry, whereas the technical and chemical industries process primarily animal oils, such as fish oil, used as an ingredient in detergents and soaps. In previous decisions, the Commission has found that a separate relevant product market exists for crude seed oil.<sup>3</sup> The market for crude seed oil is affected by the operation. The Commission has so far left open the question of the precise segmentation of the crude seed oil markets.<sup>4</sup> In this case, the precise product market definition can also be left open, since even with the narrowest possible product market definition, effective competition would not be significantly impeded.
15. Feedstuff is primarily composed of protein, starch and crude fibre. It consists of several components, including grain, oilseed meal, corn gluten, fish meal and citrus pellets. The parties submit that there is one market for feedstuff comprising all feedstuff components, as manufacturers of compound feed can and do determine the minimum cost composition of their feedstuff on the basis of linear optimisation models by purchasing the most cost-effective feedstuff components to achieve the required nutritional content. If this were the case, the combined market share of the parties in such a market would amount to [10-20]% (ADM [0-10]%, ACTI [5-15]%). However, in previous decisions the Commission found it appropriate to assess the various components of feed stuff separately since there are nutritional, technical and toxicity limits to the interchangeability of the various components of feedstuff.<sup>5</sup> For instance, poultry feed must not contain too much wheat because it reduces the fluidity of intestine content. Therefore, it appears to be more appropriate to split the market for feedstuff into component groups, e.g., the following groups: feedgrain and sub-products, oilseed meal, animal meal, and pulp. The activities of the two parties overlap with regard to oilseed meal. The Commission has previously held that a separate market exist for oilseed meal.<sup>6</sup> The parties maintain that there is significant substitutability among the different oilseed meals. The Commission has so far left open

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<sup>3</sup> Cases COMP/M. 1348 – *Archer Daniels Midland Company/Alfred C. Toepfer International GmbH/InTrade N.V.*; COMP/M.1376 *Cargill/Continental Grain*.

<sup>4</sup> Cases IV/M.866 *Cereol/ÖSAT-Öhlmühle*; IV/M. 1225 *Cereol/Sofiproteol-Saipol*; IV/M.1126 *Cargill/Vandermoortele*

<sup>5</sup> Cases COMP/M:2330 – *Cargill/Banks*; COMP/M. 1348 – *Archer Daniels Midland Company/Alfred C. Toepfer International GmbH/InTrade N.V.*

<sup>6</sup> Case IV/M.1376 *Cargill/Continental Grain*

the question of the precise segmentation of the oilseed meal markets.<sup>7</sup> In this case, the precise product market can also be left open, since even with the narrowest possible market definition, effective competition would not be significantly impeded.

B. Relevant Geographic Market

16. The Commission has concluded in previous decisions that the market for crude seed oil and oilseed meal, respectively, are at least Community-wide and probably even wider.<sup>8</sup> The examination of the present case has shown that this conclusion still holds good. The products concerned are commodities traded internationally at the futures market in Chicago or on the spot market in Rotterdam. With regard to the EEA, there are no barriers to trade for oil seeds and intermediate products. Therefore, for the purpose of this decision, the relevant geographic markets for crude seed oil and oilseed meal are considered as at least Community-wide.

C. Assessment

17. If the market for all crude seed oil is considered, the market share of the parties would amount to [20-30]% in the Community in the crop year 2000/01. ACTI adds only [less than 2]% to the market share of ADM ([20-30]%). Cargill would remain market leader with a market share of [30-40]%. If the market for crude seed oil is considered at the level of the different seeds, the parties would have the highest combined market share for soybean oil, which amounts to [more than 40]% whereby ACTI adds only [less than 2]% to the market share of ADM ([30-40]%). In both cases, ACTI adds only a very limited amount to ADM's existing market share, which mirrors ADM's strong position as a crusher of oilseeds. Moreover, there are a number of other significant, internationally active competitors in the market for crude seed oil, such as the vertically integrated firms Cargill and Cereol and pure traders, such as Glencore. Therefore, the proposed transaction does not raise any competition concerns in the market for crude seed oil.
18. If one considers all oilseed meals to be in the same market, the parties would have a share of [20-30]%, of which [less than 10]% can be attributed to ACTI. The combined market share of the parties is highest for rapeseed meal, where it would account for [20-30]% in the crop year 2000/01 (ADM [20-30]%, ACTI [less than 5]%). In the market for oilseed meals there are again significant, internationally active competitors, such as the vertically integrated firms Cargill and Cereol and pure traders, such as Glencore and Louis Dreyfus. Therefore, the proposed transaction does not raise any competition concerns in the market for oilseed meals.
19. Consequently, the proposed transaction does not create or strengthen a dominant position in the markets for crude seed oil or oilseed meals.

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<sup>7</sup> Cases IV/M.866 *Cereol/ÖSAT-Öhlmühle*; IV/M. 1225 *Cereol/Sofiproteol-Saipol*; IV/M.1126 *Cargill/Vandermoortele*

<sup>8</sup> Cases COMP/M:2330 – *Cargill/Banks*; COMP/M. 1348 – *Archer Daniels Midland Company/Alfred C. Toepfer International GmbH/InTrade N.V.*; COMP/M.1376 *Cargill/Continental Grain*.

## VI. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission

*(Signed)*  
Mario MONTI  
Member of the Commission