

***Case No IV/M.941 -
ADM / ACATOS &
HUTCHESON - SOYA
MAINZ***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/08/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.08.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

**Subject: Case No IV/M. 941 - ADM/ACATOS & HUTCHESON/SOYA MAINZ
Notification of 08.07.1997 pursuant to Article 4 of Council Regulation
(EEC) No 4064/89.**

1. On 08.07.1997, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings ADM Beteiligungsgesellschaft mbH, which is controlled by ADM International Ltd. ("ADM") on the one and Acatos & Hutcheson plc ("Acatos & Hutcheson") on the other side will acquire joint control of Soya Mainz GmbH & Co. KG and Soya Mainz GmbH ("Soya Mainz").
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. ADM international is a US group, active in procurement, transport, processing and merchandising of agricultural commodities and products. It ranks among the world's largest agricultural processors and commodity traders. ADM operates several oil seeds crushing plants within the EC.
4. Acatos & Hutcheson is a public company listed in London, which processes and markets edible oil and fats, mainly in the UK. ADM currently owns [...] % of Acatos & Hutcheson's shares. [...] %¹ are held by Mr Hutcheson and approximately [...] %

¹Business secrets - deleted for publication

[...]¹ are placed in discretionary trusts for the benefit of members of the family Hutcheson. The remaining shares of Acatos & Hutcheson are traded on the Stock Exchange. ADM is not represented on the Board of Acatos & Hutcheson nor the committee nominating directors, and there is no agreement or understanding between ADM and Mr Hutcheson for the common exercise of their voting rights. Therefore, ADM does not exercise either sole or joint control over Acatos & Hutcheson.

5. Soya Mainz is a German company operating a soybean crushing plant. Soya Mainz produces and sells soy meals and crude soy oil, as well as lecithin as a by-product. In addition, Soya Mainz also sells soy protein concentrate (SPC) produced by the Israelian company Solbar, in which it holds a[...] ² stake.
6. The concentration involves the acquisition by ADM Beteiligungsgesellschaft mbH and Acatos & Hutcheson respectively of [...] ³ and [...] ³ of the shares of both Soya Mainz GmbH and Soya Mainz KG, where ADM will act as industrial leader of the new entity.

II. CONCENTRATIVE JOINT VENTURE

Joint control

7. Soya Mainz GmbH will be the managing body of the limited partnership Soya Mainz. Both companies will have the same board of directors. According to the shareholders agreement (“Gesellschafterbeschluss”), decisions on the annual budget, investment, financing and personnel will be taken by the shareholders’ meeting and will request a qualified majority of [...] ⁴ of the votes recorded. The same qualified majority will apply to decisions on the nomination or removal and suspension of members of the board
8. ADM will be the main shareholder and will have the industrial leadership of the joint venture. However, Acatos & Hutcheson will be able to veto decisions related to strategic matters, notwithstanding its minority share. Therefore, ADM and Acatos & Hutcheson will have joint control over Soya Mainz.

Autonomous full function entity operating on a lasting basis

9. The joint venture will continue the current activities of Soya Mainz and thus will perform the functions normally carried out by other undertakings operating on the same market. Both ADM and Acatos & Hutcheson are present on upstream or downstream markets. Nevertheless, even if this presence would lead to substantial sales or purchases between the parent companies and the joint venture, it would not call into question the full function nature of the joint venture. As Soya Mainz is geared to play an active role on the market, and since the added value of its current activity is comparable to that of other undertakings active in the same business, it can be concluded that the joint venture will operate on a lasting basis, and will perform all the functions of an autonomous economic entity.

²Business secrets - deleted for publication

³ Business secrets - deleted for publication

⁴ Deleted for publication - the qualified majority exceeds ADM’s voting rights

Absence of co-ordination

10. The oilseed processing chain is composed by several processing and business levels, such as crushing and extraction of meals, distillation/degumming and production of crude oil, refining, bottling/packaging and processing of fats, and marketing of edible oil and related products. Within the EC, ADM is mainly active on upstream market levels, such as procuring of oilseeds, crushing and refining as compared to Acatos & Hutcheson which bottles, processes and markets edible oils and fats. Acatos & Hutcheson does not crush oilseeds apart from capacities in an existing joint venture with ADM at Erith (UK), which refines crude oil supplied by ADM. The refined oil is further processed by Acatos & Hutcheson and partly exported outside the EU by ADM. ADM does not process or market edible oils in the EU apart from a subsidiary located in Hamburg (ÖLAG), which operates a refinery. It sells small quantities ([...] tons) of bottled non-branded refined oils to large customers like canteens around Hamburg.
11. Amongst the parent companies, only ADM is active in the markets of Soya Mainz. As regards the joint venture at Erith, ADM is active on the supply side or as a distributor of crude or refined oil, whereas Acatos & Hutcheson uses the refined oil for further processing. Therefore, although both ADM and Acatos & Hutcheson are active on markets which are upstream, downstream or neighbouring to those of the joint venture, they are not significantly active together on the same markets, at least within the EU. As far as ÖLAG is concerned, it is only involved to a negligible extent on a market on which Acatos & Hutcheson is active.

Co-ordination can therefore 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

The undertakings concerned have a combined aggregate world-wide turnover of more than ECU 5,000 million (ADM [...] mECU, Acatos & Hutcheson [...] mECU). These undertakings have a Community-wide turnover in excess of ECU 250 million (ADM [...] mECU, Acatos & Hutcheson [...] mECU) and ADM 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

Crude seed oil

12. 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

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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.

13. 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 (M.866 Cereol / Ösat-Ölmuehle, 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 seed oils markets has been left open by the Commission. In the present case it is neither necessary further to delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Oil meals

14. Soy bean meals are used as source of protein in compound feedstuff and directly by farmers feeding it to their cattle. The parties claim that soy bean meal is totally interchangeable with other seed meals like sunflower and rape meal as well as with grain. However, a large part of competitors and users tend to distinguish between starch and protein meals. Investigations indicate that, although compound feedstuff producers can decide freely about a particular mix of feedstuff based on the optimisation in terms of price and quality of the ingredients available, the animal diet has to contain a balanced mix of protein and energy components. This requirement limits the substitutability of oilmeals with other ingredients, in particular in the processing of pig and poultry feed. In addition, oilseeds and in particular soy beans are not subject to the same market conditions as grains, since the Common Market Regulation for Grain does not apply to them.
15. Nonetheless, it is not necessary to delineate further the relevant product market because, even on the narrowest possible product market definition, effective competition would not be significantly impeded.

Lecithin

16. Lecithins are mainly used as emulsifiers in both the food processing industry and the cosmetics and pharmaceutical industries. Lecithin is contained in oils of soy beans and other seeds from which it is extracted by means of heating and centrifugation. According to the information received by the Commission, although lecithin may be replaced by synthetic emulsifiers in certain applications, there is no overall substitutability between both natural and synthetic emulsifiers, in particular in the food industry. In many food processes where natural lecithin play an indispensable role as an ingredient, it is difficult to replace it by other products. Lecithin is a by-product of the oilseeds crushing activity. Nevertheless not all the oilseed crushers extract or purify lecithin as this requires specific equipments. The crude lecithin produced by some oilseed crushing plants can be either sold as an end product or further purified to standard qualities, either by the same undertakings or by third undertakings which are also active as lecithin processors and supply the food industry. While it is possible that different varieties or grades of Lecithin constitute distinct markets, it is not necessary to further define the relevant product market since the operation does not give rise to competition concerns under alternative narrower market definitions.

Soy Protein concentrate (SPC)

17. SPC can be used for human food and for animal feeds for instance as a milk replacer. In human food, SPC is used as a protein source and for functional properties in many applications, such as meat products, dietetic, baby food or bakery, where it increases the quality and nutritional value of food products. In animal feed, SPC is used as a protein source for instance in pet food, calf and fish feeds. Depending on the applications, SPC can be replaced by other products, such as Soya isolates, wheat gluten, potato protein or fish meal, at least to a certain extent. SPC for food and feed application differ in their qualities (degree of purity) and in their prices. However, for the assessment of the present operation, it is not necessary further to define the relevant product market since in all alternative market definitions considered, the operation does not give rise to the creation or strengthening of a dominant position.

B. Relevant geographic markets

Oilmeal and crude seed oil

18. 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. Some competitors and clients are of the view that a regional northern European market should be distinguished. Others argue that special circumstances in Greece, Spain and Italy, like the higher transport costs of soy beans compared to the regions around the main import harbours, Rotterdam and Hamburg, should be taken into account. Accordingly, it is argued that these countries should therefore be left out when defining the relevant geographic market. However, even on such a narrower geographic market the operation would not change significantly the market shares of the parties. Therefore, within the line of previous decisions (M.720 Cereol/Aceprosa and M.866 Cereol/Ösat-Ölmühle), the relevant geographic market can be considered at least as Community wide.

Lecithin and SPC

19. The main operators processing lecithin purchase and sell in various countries within the EU. Transportation costs do not impede EU trade. Furthermore, there are significant imports from the USA and South America into the EU. SPC is also sold without any geographical limitation throughout the EU, as there is no significant product or price differentiation between the various countries. In addition some companies import SPC from the USA and Israel. Furthermore, approximately 10% of the production are exported to third countries. Therefore, the relevant geographic markets can be considered at least as Community wide.

C. Assessment

meal and crude oils

20. The seed crushing industry is highly vertically integrated. Global players like ADM and Cargill cover the whole process of processing seeds. In the case of soy beans this includes the import, crushing, refining and trading. Therefore the possibility of new entrants at any of these market levels appears to be limited unless they are also

integrated firms. The current operation is another example and reinforcement of the vertical integration of ADM.

21. The present joint venture has to be examined in the context of a general expansion of ADM's activity in the EU. ADM's market position increased further in the past, following several take-overs of oil mills in the EU (Ölmühle Hamburg in 1989, Noble & Thörl in 1987).
22. On upstream market levels, ADM also enjoys strong market positions. Oil seeds, including soy beans, are mainly grown in North and South America. Most imports are achieved through shipments to Rotterdam and Hamburg. The main crushers of oil seeds, ADM and Cargill, are also the biggest traders. Together with Toepfer, an agricultural commodity trader in which it holds a[...] %⁷ stake, ADM is the leading supplier of oilseeds imported through Rotterdam and Hamburg. On the demand side, unlike crushers linked to the largest producers and traders operating on a global level, independent oil mills need to group their purchases and to form consortia in order to get competitive raw material prices and conditions. The proposed concentration may diminish this possibility by reducing the non captived demand for oilseeds in the EU.
23. However, taking the narrowest definition of the product market, the operation leads to a combined share of ADM/Soja Mainz which does not exceed [...] %⁸ of soy meal whilst the next biggest competitor amounts to 15 - 25 %. Furthermore, the concentration only adds small market shares to the existing shares of the parties. Although the number of competitors is reduced, there are still large operators having significant market shares on each market levels. Amongst them Cargill, Cereol and Vamo Mills also belong to international groups and compete over almost all the businesses of the oilseed chain. Therefore, in the light of the information provided by the investigation, the Commission considers that the proposed concentration would 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.

Lecithin

24. As already stated, lecithin is being sold by the oil mills either to traders/wholesalers or directly to the end-users. The traders/wholesalers also have processing capacities for crude lecithin delivered to them by the oil mills. According to the parties, oil mills and traders/wholesalers compete on different market segments, principally where the customers are smaller refining/purifying companies, end-users and customers in export markets. Lecithin is in amount and value a minor affected market by the concentration.
25. The parties estimate the 1996 consumption of lecithin in the EC at 88000 tons, in expansion over the last three years. However, according to the information received by the Commission, the total market volume varies from 45000 to 80000 tons. Depending on the source, the estimated combined market share of ADM and Soja Mainz also varies from [...] %⁹ to more than [...] %⁹, while the increment resulting

⁷ Deleted for publication

⁸ Business secret - between 20 - 50

⁹ Business secret - between 20 - 50

from the concentration amounts to at least [...]%.¹⁰ The main competitors are the two large traders/wholesalers Lucas Meyer and Stern Chemie, with respective market shares of approximately 30% each. Whereas Stern Chemie is controlled by the Cereol Group, which itself produces lecithin, Lucas Meyer has to procure its crude lecithin from other oil mills, in particular Soya Mainz. In addition Vamo Mills, a subsidiary of the Vandermoortele Group (“VDM”), is estimated to have a market share of 6%.

26. Unlike Soya Mainz, ADM not only supplies lecithin to traders/wholesalers but also sells lecithin to end-users. Some of ADM’s customers thus are competing on the same market. The effects of the concentration have to be assessed, taking into account the potential increased involvement of ADM as a lecithin processor and wholesaler. In 1994, ADM doubled its sales as it started lecithin production in its plant at Europort. Currently, ADM and Soya Mainz supply large quantities ([...] tons) to both Stern Chemie and Lucas Meyer, which are at the same time its main competitors. Although the Cereol Group produces lecithin, it does not satisfy the entire demand of Stern Chemie.
27. As the leading soybeans crusher and trader, ADM is also a main producer of lecithin EU-wide. Since Cargill, another large international processor and trader of agricultural commodities, does not produce or trade this product, only the Cereol Group and Vamo Mills will remain as competing producers after the concentration. Given that Cereol does even not entirely supply its own lecithin to Stern Chemie, it appears unlikely to be in position to offer an alternative to ADM and Soya Mainz in the event that both would cease their sales to independent wholesalers. Since alternative purchases from other suppliers or through direct imports do not seem easy to achieve without a reasonable transition period, the market shares that would be lost by the wholesaler (up to [...]%)¹², may fall to an important extent to ADM’s share. Such a potential development, triggered by the concentration, would indeed raise competition concerns. However, alternative import sources argue against such a development. Indeed, the readiness of the parties to guarantee continuous supply to Lucas Meyer for a transition period of three years of half the production ([...] tons)¹³ of Soya Mainz further suggests that this development is unlikely to happen. Furthermore, according to estimates, world-wide supply seems to exceed demand. The parties also state that potential competition, for instance from Cargill, should be taken into account. Taking into account the information provided by its investigation, the Commission concludes that the operation as such does not lead to the creation or the strengthening of a dominant position.

SPC

28. In the EC, the SPC market volume is estimated at 80000 to 100 000 tons. Few producers and sellers operate on this market. Among them ADM is the first with a

¹⁰ Business secret - between 0 - 15

¹¹ Business secret - deleted for publication

¹² Business secret - between 20 - 50

¹³ Business secret - deleted for publication

market share of [...] %¹⁴. It is followed by Central Soya (Cereol) with approximately 30% and SOGIP (VDM) with approximately 15%. The strong position of ADM reflects its world-wide leadership in this business. As ADM only sells SPC to the feed sector, it has an even higher share on this segment. However, ADM's products also have to compete with substitutes for SPC, such as wheat gluten and potato protein. The SPC is also considered as a very open market in particular as a result of imports from third countries. Soya Mainz does not produce SPC, so no capacity is added through the concentration. The small quantities ([...] ⁵ tons in 1995) sold by Soya Mainz to the food industry, which are purchased from the Israeli producer Solbar, do not account for a significant addition of market share. Therefore, given the competitive nature of the market and the minor role played by Soya Mainz, the concentration is unlikely to lead to the creation or the strengthening of a dominant position.

VI. CONCLUSION

29. 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,

¹⁴ business secret - between 35 - 55

¹⁵ business secret - deleted for publication