



Final Report of the Hearing Officer¹

Cargill / ADM Chocolate Business

Case M.7408

1. On 19 January 2015, the European Commission (the "Commission") received a notification of a proposed concentration by which Cargill, Incorporated ("Cargill") will acquire sole control of the industrial chocolate business of Archer Daniels Midland Company ("ADM's industrial chocolate business") within the meaning of Article 3(1)(b) of the Merger Regulation² by way of purchase of shares and assets (the "Proposed Transaction").
2. On 23 February 2015, the Commission adopted a decision initiating proceedings pursuant to Article 6(1)(c) of the Merger Regulation. In that decision, the Commission indicated that the Proposed Transaction falls within the scope of the Merger Regulation and that it raised serious doubts as to its compatibility with the internal market with regards to the sale of industrial chocolate to customers in Germany and the United Kingdom.
3. The Commission provided non-confidential versions of certain key submissions of third parties collected during the first phase investigation to Cargill on several dates between 23 February and 2 March 2015.
4. Cargill submitted written comments on the concerns raised by the Commission pursuant to Article 6(1)(c) of the Merger Regulation on 4 March, 6 March and 10 April 2015.
5. On 25 March 2015, the Commission, with the agreement of Cargill, extended the time limit to review the Proposed Transaction by ten working days in accordance with Article 10(3) of the Merger Regulation. The time limit was further extended by ten working days on 28 April 2015 by means of another decision under that Article 10(3).
6. Upon reasoned request, on 22 April 2015, I admitted Barry Callebaut AG ("Barry Callebaut"), a competitor of the involved parties, to be heard as interested third person pursuant to Article 5 of Decision 2011/695/EU. Barry Callebaut received

¹ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 ("Decision 2011/695/EU").

² Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

information of the nature and subject matter of the procedure and was given the opportunity to make known its views.

7. On 4 May 2015, Cargill submitted commitments to the Commission. Following a market test of those commitments, Cargill submitted, on 22 May 2015, an amended version of the proposed commitments (the "Final Commitments").
8. The Commission did not issue a statement of objections pursuant to Article 13(2) of the Merger Implementing Regulation.³ There was no formal oral hearing in accordance with Article 14 of that regulation.
9. The Commission takes the view that the Final Commitments remove the competition concerns identified. The draft decision therefore declares the Proposed Transaction compatible with the internal market and the EEA Agreement, subject to compliance with the Final Commitments set out as conditions and obligations attached to the draft decision.
10. Pursuant to Article 16 of Decision 2011/695/EU, I have examined whether the draft decision deals only with objections in respect of which the parties have been afforded the opportunity of making known their views. I conclude that it does.
11. Overall, I consider that the effective exercise of procedural rights has been respected during the present proceedings.

Brussels, 6 July 2015

Wouter WILS

³ Commission Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p.1; corrigendum OJ L 172, 6.5.2004, p. 9) as last amended by Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 (OJ L 336, 14.12.2013, p. 1) (the "Merger Implementing Regulation").