

***Case No COMP/M.1348 -
ARCHER DANIELS
MIDLAND / ALFRED C.
TOEPFER
INTERNATIONAL /
INTRADE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

Date: 09/11/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9.11.1999 – SG(99)D8957

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

NOT TO BE PUBLISHED

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties.

Dear Sirs,

Subject: Case No. COMP/M.1348 – Archer Daniels Midland Company/Alfred C. Toepfer International GmbH/InTrade N.V.

Notification of 04.10.99 pursuant to Article 4 of Council Regulation No 4064/89

1. On 4 October 1999, the Commission was notified of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89, as amended,¹ by which the undertaking Archer Daniels Midland Company (ADM) would acquire within the meaning of Article 3(1)(b) joint control of the undertakings InTrade N.V. and Alfred C. Toepfer International GmbH (ACTI), by way of an acquisition of shares.

I. THE PARTIES

- A. Archer Daniels Midland Company (ADM)
2. ADM is a US company active internationally in one business segment – procuring, transporting, storing, processing and merchandising agricultural commodities and products. It is a major worldwide processor of oilseeds, corn and wheat, and in addition, the company processes cocoa beans, milo, oats, barley and peanuts. Its other operations include transporting, merchandising and storing these products.

¹ OJ L 395, 30.12.89, p.1; corrigendum OJ L 257 of 21.09.90, p.13; Regulation as last amended by Regulation (EC) No. 1310/97 (OJ L 180, 09.07.97, p.1, corrigendum OJ L 40, 13.02.98, p.17).

B. InTrade N.V. (InTrade)

3. InTrade is a holding company for the administration of the shares in ACTI. The shareholders of InTrade are 12 agricultural cooperatives from around the world, which collectively acquired ACTI in 1979 through InTrade. Subsequently in this decision, InTrade and the holding company InTrade Holding GmbH (Holding GmbH) are referred to collectively as the “InTrade companies.”

C. Alfred C. Toepfer International GmbH (ACTI)

4. ACTI is not involved in the processing of agricultural commodities, but has international trading and wholesale activities in agricultural commodities (including grains, oilseeds, feedstuff, flour, malt, vegetable oils, and fertilizers). Subsequently in this decision, ACTI and the holding companies, ACT B.V. of Rotterdam, InTract N.V., and InTrade-Toepfer US Holdings, Inc. (US Holdings) are referred to collectively as the “ACTI companies.”

II. THE OPERATION

5. The parties have stated that the objective of this operation is the increase of ADM’s financial participation in the ACTI companies (now at 50%) up to 75%. The remaining 50% of the ACTI companies is currently held by the InTrade companies. At the present time, ADM has no holdings in the InTrade companies, which are solely owned by their 12 shareholder cooperatives. Thus, the operation will take place as follows: ADM will acquire joint control of the InTrade companies, and consequently it will acquire joint control of the ACTI companies. In addition, provisions in the parties’ Shareholders’ Agreement reflect the fact that ADM acquires joint control of both the InTrade and ACTI companies, respectively.
6. Pursuant to the Acquisition Agreement and the Shareholders’ Agreement, ADM will acquire a 50% equity interest in each of the InTrade companies (InTrade and Holding GmbH). The Agreements further provide that the InTrade companies’ Articles of Association will be amended to provide that ADM will acquire certain voting rights, including the right to nominate one-half of the supervisory directors that are members of the InTrade boards, as well as supermajority voting provisions to give joint control to ADM in the InTrade companies over the adoption of key business decisions (including the adoption or approval of the annual budget, and the election or removal of members of the management board). Therefore, such key business decisions can only be adopted jointly by ADM and the 12 cooperatives collectively.
7. As noted, ADM currently has a 50% equity interest in each of the ACTI companies. Through its acquisition of 50% of the InTrade companies, this equity interest would be increased to 75% in the case of ACTI, ACT Rotterdam and InTract, since the InTrade companies own the remaining 50% of these ACTI companies. However, with respect to US Holdings, whose shares are jointly held 50/50 by ADM and the cooperatives directly (rather than by the InTrade companies), ADM will increase its shareholding to 75% through direct acquisition of an additional 25% of the shares from the cooperatives. The 12 cooperatives which are the shareholders of InTrade are currently the sole owners of InTrade, and own 50% of the outstanding equity interest in US Holdings. In this operation, ADM acquires no interest in any of the individual cooperatives and consequently has no participation in them.

8. Consequently, as a result of this operation, ADM would acquire a fifty percent (50%) equity interest in each of InTrade and Holding GmbH, and would increase its equity interest ownership to seventy-five percent (75%) in the ACTI companies, directly as to US Holdings, and indirectly as to ACTI, ACT Rotterdam, and InTract.
9. ADM will acquire joint control over the ACTI companies together with the InTrade companies, which up until now had solely controlled the ACTI companies. While both ADM and InTrade had held 50/50 equity interests in the ACTI companies until now, InTrade held 51% of the voting interests (InTrade's Chairman held the tie-breaking vote) in ACTI. As a result of this operation, joint control in ACTI will be brought about as follows: through ADM's increased shareholdings in the InTrade companies and US Holdings, respectively, and pursuant to provisions in the Shareholders' Agreement and Acquisition Agreement, the Articles of Association of the ACTI companies will be amended to provide that ADM will acquire further voting rights, including the right to nominate one-half of the supervisory directors that are members of the ACTI boards, as well as supermajority voting provisions to give joint control to ADM and InTrade over the adoption of key business decisions (including the adoption or approval of the annual budget, and the election, removal or suspension of members of the management boards of the ACTI companies). Therefore, such key business decisions can only be adopted jointly by ADM and InTrade.
10. Finally, ACTI fulfils the legal (and factual) requirements of a full-function company having all the attributes of an autonomous entity. ACTI has its own resources and will not be dependent on its parent companies in any respect, whether for the purchase of goods to be commercialised or for their sale. Consequently, ADM's acquisition of joint control of ACTI is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

11. The combined aggregate world-wide turnover of the undertakings concerned exceeds 5 billion EUR (for fiscal year 1997/98, ADM: 15.5 billion EUR; and ACTI: 4.7 billion EUR). Both ADM and ACTI had Community-wide turnover in excess of 250 million EUR (for fiscal year 1997/98, ADM: 3.4 billion EUR; and ACTI: 2.2 billion EUR), and they did not achieve more than two thirds of their aggregate Community-wide turnover in one and the same Member State. Therefore, this concentration has a Community dimension.

IV. COMPETITIVE ASSESSMENT

A. Relevant Product Markets

12. ADM and ACTI have overlapping activities in the markets for international trading and wholesaling of crude seed oil and oilseed meal.
13. 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.

14. 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.
15. According to the parties there is one market for oils comprising eleven major oils, due to their high degree of substitutability and interchangeability. These eleven oils are soybean oil, rapeseed oil, sunflowerseed oil, groundnut oil, palm oil, palmkernel oil, linseed oil, coconut oil, castor oil, maize oil and fish oil. The combined market share of the parties in such a market would amount to [10-20]% (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. Moreover, the Commission has indicated that a separate relevant product market exists for crude seed oil.² 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.³ 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.
16. Feedstuff is composed primarily of protein, starch and crude fibre. It is a mixture of several components, including grain, oilseed meal, corn gluten, animal meal, fishmeal, citrus pulp, and so forth. According to information submitted by third parties, manufacturers of compound feed can and do determine the minimum cost composition of their feedstuff on the basis of linear optimization models by purchasing the most cost-effective feedstuff components to achieve the required nutritional content. According to the parties there is one market for feedstuff comprising all feedstuff components. 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]%).
17. However, the market investigation has shown that there are nutritional, technical and toxicity limits to the interchangeability of the various components of feedstuff. For instance, poultry feed must not contain too much wheat because it reduces the fluidity of intestine content. Citrus pulp contains starch, whereas oilseed meals are fed because of their high protein 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. Only ACTI supplies a broad range of feedstuff components including grain, corn gluten feed, citrus pulp and fish meal, but both parties have overlapping activities as regards oilseed meal resulting in an

² Case IV/M.1376 *Cargill/Continental Grain*

³ Cases IV/M.866 *Cereol/ÖSAT-Öhlmühle*; IV/M. 1225 *Cereol/Sofiproteol-Saipol*; IV/M.1126 *Cargill/Vandermoortele*

affected market. The Commission has previously held that a separate relevant product market exists for oilseed meal.⁴ The parties maintain that there is significant substitutability among the different oilseed meals. The Commission has so far left open the question of the precise segmentation of the oilseed meal markets.⁵ 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.

B. Relevant Geographic Markets

18. The Commission has concluded in previous decisions, most recently in the *Cargill/Continental Grain* case,⁶ that the markets for crude seed oil and oilseed meal, respectively, are at least Community-wide and probably even wider. 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

19. If one considers the market for all crude seed oil, the market share of the parties would amount to [20-30]% (ADM [20-30]%, ACTI [less than 2]%) in the Community in the crop year 1997/98. Cargill remains the market leader with a market share of [20-30]%. If one considers the market for crude seed oil at the level of the different types of seeds, the parties would have the highest combined market share for soybean oil, which amounts to [30-40]% (ADM [30-40]%, ACTI [less than 2]%). In both cases, ACTI adds only [less than 2]% 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 and André & Cie. Therefore, the proposed operation does not raise any competition concerns in this market.
20. If one considers all oilseed meals to be in the same market, the parties would have a share of [20-30]%, of which [5-15]% can be attributed to ACTI. Cargill remains the market leader with a market share of [20-30]%. The combined market share of the parties is highest for rapeseed meal, where it would account for [25-35]% in the crop year 1997/98 (ADM [15-25]%, ACTI [5-15]%). In the market for oilseed meals there are also 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 operation does not raise any competition concerns in this market.

⁴ Case IV/M.1376 *Cargill/Continental Grain*

⁵ Cases IV/M.866 *Cereol/ÖSAT-Öhlmühle*; IV/M. 1225 *Cereol/Sofiproteol-Saipol*; IV/M.1126 *Cargill/Vandermoortele*

⁶ Case IV/M.1376 *Cargill/Continental Grain*

21. Consequently, the proposed transaction does not create or strengthen a dominant position in the markets for crude seed oil or oilseed meals.

V. CONCLUSION

22. For the above reasons, the Commission decides 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, as amended.

For the Commission,

Signed,
Mr Monti
Member of the Commission