

***Case No COMP/M.3044 -
ADM / PURA***

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/04/2003

*Also available in the CELEX database
Document No 303M3044*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.04.2003

SG (2003) D/229291

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the Notifying Party

Dear Sir/Madam,

**Subject: Case No COMP/M.3044 – ADM / PURA
Notification of 28 February 2003 pursuant to Article 4 of Council
Regulation No 4064/89¹**

1. On 28.2.2003 the Commission received a notification of a proposed concentration by which the undertaking Archer Daniels Midland International Ltd. (“ADM International”, United Kingdom), belonging to the group Archer Daniels Midland Company (“ADM”, United States), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Pura plc (“Pura”, United Kingdom) by way of a public bid.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

¹ 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), the “Merger Regulation”.

I. THE PARTIES

3. ADM is active in procuring, transporting, storing, processing and merchandising agricultural commodities and products. Its principal businesses are the processing of oil seed, maize and wheat and the resale of agricultural commodities.
4. Pura is active in the refining, processing and packing of edible oils and fats predominantly in the United Kingdom. It has a hydrogenation, refinery, packing and warehouse facility in London.
5. ADM and Pura presently co-control two joint ventures: Erith Edible Oil (“EEOL”), a refinery and bottling/canning plant in Erith (UK), where ADM International and Pura Foods Limited (a subsidiary of Pura) have a 50% stake each, and Soya Mainz², a company operating a soybean crushing plant in Germany, where ADM holds 75% stake and Pura holds the remaining 25%.

II. THE OPERATION AND THE CONCENTRATION

6. ADM International currently holds 28.3% of the issued share capital of Pura, a shareholding which does not give ADM any form of control. The operation consist in the acquisition by ADM International of sole control of the whole of Pura by way of public bid announced on 7 February 2003, thus constituting a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (ADM EUR 26,204 million, Pura EUR 286 million). Each of ADM International and Pura have a Community-wide turnover in excess of EUR 250 million (ADM EUR [...] million; Pura EUR [...] million), 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.

IV. COMPETITIVE ASSESSMENT

Relevant product markets

8. The sector affected by the notified operation is that of edible oils and fats. Oil seeds such as rape, soya and sunflower are crushed to produce crude seed oil, which is then refined. Refined seed oil is either sold in bulk to the food manufacturing industry for use in other food products or sold to bottlers or canners, who will pack the refined seed oil into smaller quantities for sale to retailers or food service customers. Refined seed oil can also be further processed into white and yellow fats. Consequently, four main segments for edible seed oils and fats can be differentiated: (i) crude oils, (ii) bulk refined oils, (iii) packed refined oils for sale to retailers and (iv) white and yellow fats for sale to retailers.

Crude seed oils

² Case COMP/M.941 *ADM/Acatos and Hutcheson/Soya/Mainz* of 11 August 1997

³ 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).

9. Some market participants are of the opinion that the value added by refining is so low (between 5% and 10%) that the assumption of two separate markets is not warranted. There are, nevertheless, customers who buy crude seed oil. Therefore, in previous decisions⁴, the Commission based its assessment on two separate markets but left the question open whether crude seed oil and refined seed oil constitute separate markets. Furthermore, the Commission has so far left open the question whether the various types of seeds, i.e. sunflower, rape, soya, etc., constitute separate product markets.⁵ Both questions can also be left open in this case, since in all possible market delineations no competition concerns would arise.

Bulk and packed refined seed oils

10. In previous decisions the Commission based its analysis on a market for packed refined seed oil which is separate from bulk sales of refined seed oil⁶. The market investigation has largely confirmed this view. Packed refined oils represent a consumer market, whilst bulk refined seed oils are for industrial use and sold to food manufacturers and third party packers by road tankers without further packing. As with crude oil, the question whether the various types of refined seed oils sold in bulk constitute different markets can be left open in this case since it does not change the assessment. For packed refined seed oils the Commission has defined the market as comprising all seed oils in previous decisions.⁷

Supply of packed refined seed oil to the retail channel

11. The Commission has also decided in previous cases that within packed refined seed oil there is a separate market for sales to the food retailing channel, as opposed to sales to food service customers.⁸ The food service distribution channels have important features which distinguish them from the retail channels such as the level of service expected, different price structures, different pack sizes and different health and safety regimes.

Supply of white and yellow fats to the retail channel

12. Refined seed oil can be further processed by a votation process into fats. As with packed refined seed oils one may differentiate between different sales channels such as retail, food service and food manufacturers. However, only Pura is active in the market for fats and only sells to the retail channel. Therefore, the question, whether also for fats a distinction has to be made with regard to the sales channels, can be left open.
13. There are two basic types of fats, white and yellow fats, which have primarily different uses. White fats are predominantly used for cooking, baking, pastry making and shallow frying, whilst yellow fats are mostly used as spreads. The parties submit that, although the

⁴ Case COMP/M.3039 *Soprol/Cereol – Lesieur* of 30.01.2003 .

⁵ Case COMP/M.1126 *Cargill/Vandemoortele* of 20 July 1998

⁶ Case COMP/M. 1227 *Cargill/Vandemoortele/JV* of 20 July 1998.

⁷ Case COMP/M.3039 *Soprol/Cereol – Lesieur* of 30.01.2003; case COMP/M.1802 *Unilever France/Amora-Maille* of 8 March 2000.

⁸ Case COMP/M.1990 *Unilever/Bestfoods* of 28 September 2000; Case COMP/M.1802 *Unilever/Amora Maille* of 08 March 2000

uses are different both products form a single relevant product market due to the similarity of processing, packaging and raw materials required to their production. In any event, the precise market definition can be left open as it does not affect the assessment of the notified concentration.

Relevant geographic markets

14. ADM submits that the relevant geographic markets are: at least European-wide for crude and bulk refined seed oils, and North West Europe⁹ for packed refined seed oils and white and yellow fats.
15. In a previous decision¹⁰ the Commission has stated that crude and bulk refined seed oils are at least EEA-wide markets, which has been confirmed by the market investigation.
16. Regarding packed refined seed oils, the market has been considered¹¹ in previous decisions as being national although with indications that there could be possible cross-border effects with some neighbouring areas where bottling plants are located within a reasonable distance (at least 300 km). Although the market investigation in this case seems to confirm this conclusion, for the purpose of this decision, the final definition can be left open since the notified concentration would not raise competition issues under any of the alternative definitions.
17. The market investigation also has given indications that the market of white and yellow fats could be wider than national and maybe even EEA-wide. Many producers have global brand positioning in Europe and cross-border sourcing is common. Nevertheless, for the purpose of this decision the final definition can be also left open for this market since the notified concentration would not raise competition issues under any of the alternative definitions.

Assessment

18. The notified transaction will lead to four affected markets, two horizontally and two vertically affected markets.

i) Crude seed oils

19. Both ADM and Pura (through its interest in Soya Mainz) are present in the EEA crude seed oils market. The combined market share after the operation at EEA level will be [10-20]% (ADM [10-20]% and Soya Mainz [<5]%). The two market leaders are Cargill ([20-30]%) and Cereol International S.A. ([20-30]%).
20. Were the various seed oils to be considered as separate relevant product markets, there would only be an overlap in the market for crude soya seed oil, since Soya Mainz is not active in rape and sunflower seed oils. The combined market share after the operation in

⁹ Defined by the parties as United Kingdom, Belgium, Luxembourg, the Netherlands, Ireland and Northern France.

¹⁰ Case COMP/M.2980 – *Cargill/AOP*, of 19 December 2002

¹¹ Case COMP/M.2980 – *Cargill/AOP*, of 19 December 2002; Case COMP/M.1227 *Cargill/Vandemoortele/JV* of 20 July 1998.

this market is [30-40]% (ADM [20-30]% and Soya Mainz [<10]%). Two strong competitors will remain in this segment: Cargill ([20-30]%) and Cereol International S.A. ([20-30]%). Bearing in mind all these data, no competition concerns are liable to arise from the operation. This would hold true even if that operation were to be assimilated to an acquisition of *ex novo* control of ADM over Soya Mainz. It is thus not necessary either to examine whether, given that ADM has already joint control over Soya Mainz, the present operation brings about a real change in the competitive structure of this market.

ii) Bulk refined seed oils

21. Both ADM and Pura are present in the EEA bulk refined seed oils market. They are present independently and through their common interests in EEOL and Soya Mainz. The parties submitted that this market is not affected by the transaction. However, the market investigation revealed, that the combined market share is higher than around [5-15]%, as notified by ADM, and rather between [15-25]% and [15-25]%. Main competitors are Cargill ([15-25]%) and Cereol ([10-20]%). The assessment would not be materially different if it were based on the various types of seeds separately. Given the assessment of both the markets for bulk refined and crude seed oil, no competition issues would arise either if these two were considered as belonging to the same product market.

iii) Supply of packed refined seed oils to the retail channel

22. ADM is present in this market only in Germany, where Pura is not active. ADM, however, sells crude and bulk refined seed oil to refiners and packers. Due to Pura's position in this market for packed refined seed oil sold to the retail channel that markets constitute a vertically affected market at national level in the UK, where Pura's market share is [40-50]%. ADM, however, submits that the relevant geographic market is rather North West Europe, comprising the UK, Ireland, Benelux and Northern France. If the relevant geographic market were North West Europe as defined by the notifying party, Pura would have a market share of [20-30]%.
23. There will be no competition problems in this market for the following reasons. Even if ADM discriminates against the competitors of Pura this will not lead to a strengthening of Pura's market position in the market for packed refined seed oil, since ADM has only a share of below 20% in the upstream markets and there are enough other strong suppliers of crude and bulk refined seed oil. Equally, there is no danger of ADM becoming dominant on the upstream market since already today ADM supplies [>75]% of Pura's requirements of crude and bulk refined seed oils to produce packed refined seed oils. The main reason for this supply relationship is that ADM operates a crushing plant in Erith next to EEOL. Both sites are connected by a pipe and the crude seed oil is simply pumped over to the neighbouring EEOL refining plant by ADM. Furthermore, Pura's non-ADM purchases are related to types of oil not currently produced by ADM, such as palm, maize and coconut oils, so any foreclosure effects are unlikely.

iv) Supply of white and yellow fats to the retail channel

24. Pura but not ADM is active in this market. Since ADM sells crude and bulk refined seed oil to producers of fats the market for fats becomes vertically affected. On the basis of a national market definition Pura would have shares of below 25% in all national markets considered. However, if white fats were to be considered a separate relevant product market, the transaction would lead to a vertically affected market since Pura's market share

for white fats would be [40-50]% in the UK. On the basis of a wider geographic market as submitted by the parties i.e. North West Europe, Pura has [20-30]%. For the same reasons as stated in para. 23, any competitive harm is unlikely in this market.

25. In the light of the above, the Commission has concluded that the proposed transaction is not likely to create or strengthen a dominant position as a result of which competition would be significantly impeded in the EEA or any substantial part of that area.

V. CONCLUSION

26. 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

Mario MONTI
Member of the Commission