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Case No COMP/M.3188 - ADM / VDBO

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

Subject: Case No COMP/M.3188 - ADM/VDBO
Notification of 27/06/2003 pursuant to Article 4 of Council Regulation No 4064/89[1]

1. On 27/06/03, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, by which the undertaking Pura Foods Limited ("Pura") (United Kingdom) controlled by Archer Daniels Midland Company ("ADM") (USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of Van den Bergh Oils ("VDBO") (United Kingdom), a division of Unilever Bestfoods UK Limited, by way of purchase of assets.

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 that it does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

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).

I THE PARTIES

3. ADM is an international group of companies engaged in procurement, processing, transport, storage and merchandising of agricultural products and commodities. It is a major world-wide processor of oil seeds, corn and wheat. In addition to that, it also processes cocoa beans, milo, oats, barley and peanuts. Pura operates a refinery and packaging site for long life oils, retail spreads and bakery fat products, bottling and canning facility for refined oil and sells refined seed oil in the UK.

4. VDBO, a division of Unilever Bestfoods UK Limited ("Unilever"), runs a seed oil refinery situated in Purfleet, Essex. In addition to that, VDBO is selling packed bakery fats processed and packed by another division of Unilever.

II. THE OPERATION AND THE CONCENTRATION

5. Under the proposed operation ADM (Pura) will acquire from Unilever all the assets forming VBDO and some other assets by means of a Business Sale Agreement and of a set of supplementary agreements annexed thereto, dated 14 May 2003. The acquired assets include (a) a crude seed oil refinery situated in Purfleet, Essex, UK (b) a refined oil bottling facility located in Kent, UK and (c) a bakery fats business including manufacturing and packaging facility, sales and marketing.

6. The acquisition of the above referred assets will occur in three subsequent phases. Firstly, upon completion of the Business Sale Agreement, ADM (Pura) will acquire the crude seed oil refinery and a part of the bakery fats business (marketing and sales, i.e. the customer base). Secondly, at latest upon expiry of 12 months of the Business Sales Agreement completion, ADM (Pura) will acquire the refined oil bottling facility. Thirdly, at latest upon expiry of 18 months of completion of the Business Sale Agreement, ADM (Pura) will acquire the remaining part of the bakery fats business (i.e. the manufacturing and packaging facility).

7. The above described operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation, namely the acquisition of a sole control over a part of business of Unilever (VDBO and other assets) by ADM (Pura) by means of purchase of assets.

III. COMMUNITY DIMENSION

8. The undertakings ADM (Pura) and VDBO have a combined aggregate world-wide turnover of more than EUR 5 billion[2] (ADM (Pura) EUR 26,489.9 billion and VDBO EUR 259.2 million. Each of the undertakings have a Community-wide turnover in excess of EUR 250 million (ADM (Pura) EUR [2,500-5,000] billion and VDBO [>250] 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.

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[2] 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).

IV. COMPETITIVE ASSESSMENT

A. Relevant Product Market

9. The sector affected by the notified operation is that of manufacturing, processing, packaging and sale of edible oils and fats. Oil seeds, such as sunflower seed, rapeseed, soyabean, palm, coconut, etc. are crushed to produce crude seed oil. Crude seed oil is then refined to produce refined seed oil, which may be further processed at the refining stage by hardening, blending or other processes. Refined seed oil may be (a) sold in bulk to food manufacturing industry for further processing, (b) packed in bottles or cans for sale to retailers or food service customers, (c) processed further into white and yellow fats. Consequently, in accordance with the Commission's previous practice[3] covering the same sector, four main segments for edible seed oils and fats may be distinguished: (i) crude seed oil, (ii) bulk refined seed oil, (iii) packed refined seed oil and (iv) white and yellow fats. Based on the above, the following relevant markets may be distinguished:

Crude Seed Oil

10. The notifying party submits that there is a separate relevant product market for crude seed oil encompassing all seed oils. Previous Commission decisions have suggested that a distinction can be drawn between crude seed oil and refined seed oil insofar as there are specific customers for crude seed oils (irrespective of the fact that the value added by refining is low)[4], but have left open the question whether a distinction should be drawn between different crude seed oils[5]. The market investigation undertaken by the Commission confirmed that refined seed oil and crude seed oil form two distinct relevant product markets[6].

11. Both parties to the operation are active in this market only on the demand side, and VDBO (the target) has no own crushing facility. Moreover, after the implementation of the operation, on the basis of some transitional agreements, Unilever will continue for certain time to purchase crude seed oil for the refinery sold to Pura (i.e. VDBO), whereas Pura will continue purchasing crude seed oil for its refinery in Kent on an independent basis. Therefore, the conditions in the market will not be materially affected by the operation. For this reason no further inquiry into whether the crude seed oil market should be segmented according to the different seed oils was necessary, as in all alternative product market definitions the assessment of the effects of the operation would not change.

Bulk Refined Seed Oil

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3 Case No. COMP/M.3044 ADM/Pura of 3 April 2003.

4 Case COMP ADM/Pura April 2003 para 9 and Case COMP/M.3039 Soprol/Cereol – Lesieur of 30.01.2003

5 Case M.1376 Cargill/Agribrands [1999], case M.866 Cereol/Ösat-Ölmühle [1997], case M.1126 Cargill/Vandemoortele [1998].

6 The majority of customers and competitors confirmed that crude seed oil and refined seed oil form separate relevant product markets.

12. As indicated above, crude seed oil and bulk refined seed oil form separate relevant product markets. The notifying party submits that bulk refined seed oil market should not be further segmented according to different groups of seed oil or different seed oils. According to the notifying party the market encompasses all types of seed oils; a distinction between "hard oils" and "soft oils" made by the industry is not a plausible alternative for a possible segmentation of the bulk refined seed oil market. The distinction between "hard oils" and "soft oils" is based on condition of different oils at room temperature[7]. It was submitted that "hard oils" and "soft oils" are not separate product markets because for a large number of applications both soft oils and hard oils are used and customers do not think in terms of hardness or softness of oils, but look for blends with particular physical characteristics. Although some customers and competitors indicated that a distinction between different oil varieties could be made based on condition and physical characteristics of oils (such as the melting point), the market investigation did not reveal that, at this stage of market development, a segmentation of the bulk refined seed oil could be based on the above described oil groups.

13. The notifying party further submits that the bulk refined seed oil market cannot either be segmented based on particular seed varieties. This would be so because all refined seed oils are claimed to be generally substitutable and all refined seed oils are commonly blended by the food manufacturers. In addition, according to the notifying party, varieties of crude seed oils may be sourced in the commodity markets as they are all freely traded on commodity exchanges in physical or "paper" form. This would results in transparent prices. The notifying party further submits that prices of different crude seed oil types broadly correlate over time. In its previous decisions the Commission had not considered necessary to distinguish between different types of refined seed oil based on different seed variety[8] (apart from the olive oil).

14. The market investigation carried out by the Commission did not provide a clear-cut reply to this issue. Some arguments appear to possibly support further segmentation of the market based on different seed oil varieties. As regards the demand side, substitutability between seed oils does not appear to be perfect : (a) some types of seed oil (such as rape seed oil) are - due to specific purposes of use in food processing (e.g. processing of mayonnaise) - not entirely interchangeable for other types of seed oils; (b) price of sunflower oil is substantially higher than prices of other varieties of seed oils; (c) customer preferences for specific seed oils. On the other hand, a significant number of respondents submitted that the characteristics and prices of most refined seed oil varieties nevertheless allow for sufficient demand-side substitution, in particular for blending and for use in food processing.

15. As regards supply side substitutability, respondents indicated that supply side substitution for different seed oil varieties is not perfect. Switching production between some seed oil varieties appears to be more or less feasible depending on the variety of seeds already in use and its possible alternative. In any event, it was put forward that refineries may rather easily switch production between most of the different seed oil varieties without a need for substantial additional investment.

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7 i.e. whether oil is liquid at room temperature ("soft oils", such as rapeseed oil, sunflower oil and soyabean oil) or solid ("hard oils", such as palm oil, palm kernel oil, coconut oil).

8 Case COMP/M.3044 ADM/Pura.

16. In view of the above, the question whether various types of seed oil sold in bulk constitute different markets should be left open, given that, on the basis of all alternative market definitions considered, the assessment of the impact of the transaction will not change.

Packed Refined Seed Oil

17. After refining and blending, bulk refined seed oil may either be transported by pipe or road tanker for further processing (votation) or packed (canned or bottled) for retail sale. Previous Commission's investigations and decisions have distinguished packed refined seed oil (PRSO) from bulk refined seed oil[9]. In addition, within PRSO, supply to retail channel (supermarkets, etc.) has been identified as separate market to be distinguished from supply to food manufacturers (restaurants, caterers, etc.) due to differences in the level of service and type and size of pack supplied[10]. As there is no overlap between the parties' activities in relation to the supply of PRSO to the foodservice sector this market is not discussed.

18. Regarding the supply of PRSO to retailers, there are essentially three modalities in which bottled refined seed oil is sold: a) national brands (generally at premium price, reflecting the level of investment into the brand image), b) private label (accounting for the majority of sales) and c) price-first brands (alternative to private labels for small customers who are not able to commission private labels). The parties submit that these three types of supply of PRSO to the retail market should not be considered as separate product markets as all the three products are identical in terms of composition, packaging and cost. [...].

19. Regarding supply of PRSO to the retail channel, the Commission has investigated whether the three mentioned routes to customers (according to the type of brands) could also represent different product markets. Most retailers indicated that the three kinds of brands are largely substitutable and that this is reflected by recent sales trends: the share of sales of non-branded seed oil bottled products (private label and first price label) has increased over the last few years as opposed to brands. This appears to be particularly true in UK where unbranded seed oil bottled products represent the vast majority of sales. Furthermore, packaging and quality of unbranded products are increasingly similar to those of national brands. Thus, innovations launched by "national brand" seed oil players are easily replicated by private label producers (for example, the recent products in blended seed oils).

20. In any event, the question whether various separate markets could be envisaged can be left open given that, on the basis of all alternative market definitions considered, the assessment of the impact of the transaction will not change.

Bakery Fats

21. Refined seed oil may also be put through further processing to transform oils into a crystallised product. The production process generally comprises of three phases: (a) blending (unless blending was already perform at the stage of refining), where different

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9 Case COMP/M.3044 ADM/Pura, case COMP/M.1227 Cargill/Vandermoortele/JV of 20 July 1998.

10 Case COMP/M.1990 Unilever/Bestfoods of 28 September 2000.

blends provide for different product characteristics, (b) mixing the blended oil with (i) water; (ii) emulsifiers and often (iii) other ingredients such as vitamins, colourings and whey powder, resulting in the production of an oil/water emulsion (c) crystallisation (the so-called "votation"), the purpose of which is to form a solid end-product. The oil/water emulsion is chilled by passing it through a tube which is chilled on the outside (a "scraped surface heat exchanger"); as it is chilled, crystals form in the emulsion and it begins to solidify.

22. The described production process allows for processing of a variety of products ranging from soft yellow to completely hardened white fats. A kind of products obtained through the above described production process are the so-called bakery fats (which, according to the parties, belong to the category of yellow fats). The parties submit that due to the supply-side substitutability no distinction should be made between yellow fats and white fats and all should be viewed as belonging to a single product market.

23. As regards white and yellow fats, previous Commission's decisions pointed out that intended use may be different: while "white fats are predominantly used for cooking, baking, pastry making and shallow frying, yellow fats are mostly used as spreads."; production processes are to a certain extent similar or adjustable. In the end, it was not necessary to address the question whether white and yellow fats constitute separate markets.[11] The market investigation carried out in the present case did not provide a clear-cut reply to the question whether white and yellow fats belong to the same product market. While it is recognised that differences exist between the two fats as regards their intended use, a certain degree of supply-side substitution appears to exist, as put forward by competitors. In any event, the issue can be left open, as it does not affect the assessment of the transaction.

24. There are mainly three types of bakery fats (yellow fats) that are produced by the parties: (a) Cake Margarine (which must be able to "cream" a cake); (b) Pastry Margarine (used to produce light puff pastry); (c) Shortening (used to achieve rich texture in pastries). Cake margarine and pastry margarine have similar fat contents and other ingredients, but pastry margarine is produced as a harder product through a votation process. Shortening is instead a 100% fat product, essentially used as an ingredient, rather than as a cooking fat. According to the parties, demand-side substitutability of the above products is not perfect. From the supply-side perspective the main difference between the three groups of bakery fats stems from the different composition of oil blends used for their processing, whereas the basic manufacturing process of mixing, and votating is similar.

25. The market investigation indicated that, although cake margarine, pastry margarine and shortening may have distinctive end-usage, supply-side substitution within yellow fats appears to be possible in relatively short time and without significant additional cost. Nevertheless, the question whether the three products indicated above belong to separate relevant markets can be left open as, regardless of the alternative definitions, the assessment is not changed.

26. Furthermore, there are essentially two types of customers for bakery fats: Craft (artisan) bakers (who tend to purchase in relatively small quantities) and Plant (large scale) bakers (who will purchase in much larger quantities and may require customised products).

[11] Case COMP/M.3044 ADM/Pura of 03 April 2003.

Although most suppliers are active across the spectrum of possible customers groups, the market investigation provided some indications that these two categories could be regarded separately: for instance, some plant bakers operate direct purchases through tenders, which is not the case for smaller customers which tend to purchase on the basis of price lists, on a customer by customer basis and mainly through wholesalers. In any event, due to the absence of material overlap in respect of craft bakers, the issue can be left open as the assessment of the impact of the transaction is not changed regardless of any possible customer segmentation.

B. Relevant Geographic Market

Crude Seed Oil

27. The notifying party submits that the relevant geographic market for crude seed oil is at least Community-wide. This conclusion of the notifying party is based on the previous Commission practice[12] and on demand-side considerations. Taking into account that, as mentioned above, both parties to the operation are active in this market only on the demand side and that after the implementation of the operation, Unilever will continue to purchase crude seed oil for the refinery sold to Pura (VDBO), whereas Pura will continue purchasing the crude seed oil for its refinery in Kent on an independent basis, the conditions in the market will not be materially affected by the operation. For this reason no further inquiry was necessary to determine whether the relevant geographic market is Community-wide, as in any case even a narrower relevant market definition would not change the assessment of the effects of the operation.

Bulk Refined Seed Oil

28. The parties submit that the relevant geographic market for bulk refined seed oil is at least Community-wide. This submission is predominantly based on demand-side considerations: i) similar prices for seed oils throughout the EEA mirroring the prices for crude seed oil on the commodity markets; ii) substantial cross-border trade for refined seed oils between the UK and other Member States; iii) low transportation costs.

29. Contrary to previous cases[13], the market investigation did not lead to a clear conclusion as to whether the relevant geographic market is Community-wide. It has nevertheless confirmed that transportation costs and reasonable transportation distances play a rather important role in the purchasing decisions of customers. Some respondents also indicated that prices in other regions/Member States have minor impact on the prices at the customer's place of business. The assessment of the volume and patterns of imports and exports did not provide conclusive evidence as to the geographic market definition.

30. In any event, for the purpose of this case, it is not necessary to take a final position regarding the scope of the geographic market for bulk refined seed oil, given that, on the

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[12] Case M.2693 ADM/ACTI [2002], case M.1348 ADM/ACTI/InTrade[1999], case M.1376 Cargill/Continental Grain [1999], case M.1126 Cargill/Vandemoortele [1998].

[13] Case COMP/M.3044 ADM/Pura of 3 April 2003.

basis of all alternative market definitions considered, the assessment of the impact of the transaction will not change.

Packed Refined Seed Oil

31. In relation to the packed refined seed oil market (PRSO), the notification submits that the relevant geographic market is North West Europe (UK, Ireland, Benelux and Northern France). The Commission had previously suggested that the geographic market for the supply of PRSO to the retail channel is national in scope with possible cross-border effects within a reasonable distance of supplies from the customers (around 300 km)[14]. The parties nevertheless put forward that in the UK supplies to supermarkets are usually made cross-border and even small independent retailers are able to purchase cross-border. According to the parties, limiting the geographic market definition solely to the territory of the UK would fail to take into account competitive pressure from Belgian, Dutch and French competitors. The market investigation has confirmed that the market for the supply of PRSO to the retail channel is mainly national in scope with possible cross-border effects within a reasonable distance from the location of the plants to final customers (within a variable distance of 300-500 km) essentially due to transportation costs. It has however also been confirmed that certain competitive constraints exist from operators outside the UK, namely those located near the borders of France, Belgium, and the Netherlands. In any event, for the purpose of this case, the geographic scope can be left opened since the notified concentration would not raise competition concerns under any of the alternative definitions.

Bakery Fats

32. As regards the market of bakery fats, the parties submit that the relevant geographic market is at least Community-wide as bakery fats would be sold on standardised, commodity-like basis and traded across the borders. Previous Commission's investigations considered whether the market for white and yellow fats is wider than national and did not need to conclude on the issue[15]. In relation to bakery fats the issue was not at stake.

33. The market investigation carried out in this case provided indications that the geographic scope of the possible bakery fats market would be mainly national or, at most, encompassing close countries within a limited distance allowing timely supply delivery and limited transport cost. These features would also vary in function of the customer type and of purchasing patterns. In any event, the question can be left open given that, on the basis of all alternative market definitions considered, the assessment of the impact of the transaction will not change..

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[14] Case M.1127 Cargill/vandemoortele [1998], case M.1802 Unilever/Amora-maille [2000].

[15] Case COMP/M.3044 ADM/Pura of 03 April 2003.

C. Assessment

34. The operation will lead to various possible affected markets:

Bulk Refined Seed Oil

35. Both parties are active in the market for supply of bulk refined seed oil at both national and EEA-wide levels. BRSO market is horizontally affected both on an EEA-wide or on a narrower geographic basis, as the combined market shares of the parties exceed 15% in both cases. The assessment is based on volume data submitted by the parties in respect on the overall market, encompassing both captive and non-captive supplies. In this respect, it is worth noting that all the main players in the market are characterised by high level of vertical integration and that captive and merchant markets are highly dependent at this stage of industry development. This is so *inter alia* because the use of captive spare capacity tends to be optimised by selling into the merchant market. Due to the interdependence of captive and merchant markets, assessing the impact of the merger on the free market only would be inaccurate.

36. This transaction will open to the market a substantial portion of bulk refined seed oil sales previously "captive" within Unilever. At the same time, however, it should be noted that, in view of transitional agreements between the parties, for at least 5 years after the completion of Business Sale Agreement, ADM (Pura) will supply Unilever with bulk refined oil blends. For this reason, most of the bulk refined seed oil capacity of the refinery acquired by ADM (Pura) will remain devoted to production of bulk refined seed oil blends for Unilever. Hence, the market situation will not substantially change for at least 3 to 5 years after completion of the operation compared to the pre-merger situation.

37. Bearing in mind the above, were the geographic market to be EEA-wide, the parties' combined market shares would be [10-25]% ([<10]% increment) for "all refined oils". In this market, the parties face substantial competition: Cargill with [15-25]% market share, Bunge with [15-25]% market share and number of smaller competitors with market shares ranging from [1-5] to [1-5]%. The conclusion would not differ if the assessment were based on different types of seed oils: the combined market share of the parties at the EEA level is [15-25]% (with an increment of [<10]%) regarding rapeseed oil, while for other seed types there would not be affected markets at EEA level, because either the combined market share is below 15% or there is no overlap. As regards rapeseed oil, the EEA leader appears to be Cargill ([20-30]%).

38. If the geographic market were considered as national, with regard to "all refined oils" in the UK the combined market share of the parties would amount to [40-50]% with an increment of [10-20]%. However, the parties face two substantial competitors Cargill with [25-40]% market share and Aarhus with [5-15]%. These two competitors can exercise a competitive constraint on the merging parties, while capacity shortage is not an issue in the UK. In addition, should this be the case, refineries located across the channel (in the Netherlands, Belgium and France) can deliver large amounts of refined seed oils to customers that could indeed switch to them. In Member States other than the UK the horizontal overlap brought about by the merger is not significant.

39. The combined market share of the parties is higher on a narrower product market definition, based on separate seed oil types, particularly within the UK. This is the case of bulk refined sunflower oil in the UK where the combined market share is around [70-

85]% (ADM [15-25]%+VDBO [35-50]%) and of bulk refined rapeseed oil in the UK where parties' combined share reaches [35-50]% (ADM [15-30]%+VDBO [5-15]%). Regarding sunflower oil UK competitors would be Cargill ([5-15]%) and Saipol ([<10]%), while as regards rapeseed oil, the main competitor would be Cargill ([20-35]%). The parties' high market share is however not an indication of market power in this case. A significant level of imports of refined seed oils (including sunflower and rapeseed) in the UK (18,5% of UK total supply in 2001) contributes to discipline the behaviour of the players on the UK market as it shows that constraints from outside the UK exist. Imports are originated essentially from other players than the parties.

40. The market investigation, as mentioned earlier, has shown that there is excess capacity that needs to be optimised. It also confirmed that nearly all of the merging parties' competitors (also through their refineries in the neighbouring areas across the UK channel) have the ability and the incentive to supply UK customers in case the parties were to implement a price increase above competitive levels both as regards sunflower and rapeseed oils.

41. In any event, the market investigation also confirmed that prices of various seed oils are somewhat interdependent and exercise competitive constraint on one another, as the commodity market is used as a benchmark for pricing (plus a refinery premium). Since the sunflower oil price is higher than the prices of other oil varieties, if the price of sunflower oil were to increase above competitive levels, customers would switch to other oil varieties, even not being necessarily perfect substitutes for it, as their prices are in any case lower than the price of sunflower oil.

42. Taking into account the fact that on other seed oil varieties, the parties face substantial competition from other suppliers of bulk refined seed oils, it appears unlikely that the parties would be able to successfully raise prices in any of the alternative relevant product markets based on different seed oil types.

Packed Refined Seed Oil

Horizontal effects

43. The parties claim packed refined seed oil (PRSO) is not an horizontally affected market, as VDBO is not active in supplying PRSO to retail channels, Unilever will retain control over marketing, pricing and sales to end consumers of the branded packed refined seed oil it owned prior to the concentration and will continue to market them as before. As a consequence of the merger, Pura will acquire the bottling facility and will – under a transitional agreement - bottle refined seed oil for Unilever (in a sort of outsourcing scheme). At the same time, Pura will retain its own PRSO business (mostly for private labels) as before. The bottling arrangement between Unilever and Pura is entered into for the period of [<5] years. After that, unless Unilever calls for a renewal of bottled oil supply, the bottling facility will be open to other possible use (also to supply bottled oil to third parties).

44. There are not significant adverse effects of this arrangement on competition in the marketplace, as the bottling capacity transferred from Unilever to ADM (Pura) will be used at least for [<5] years in exactly the same way as it was before, when this bottling facility was vertically integrated within Unilever (in-house bottling). Despite of the loss of its bottling capacity, Unilever will remain post-transaction the operator in charge of supplying retailers for its own brands. Nothing will change as regards this aspect.

Vertical effects

45. Supply of PRSO to the food sector is not a vertically affected market as the parties hold a market share below 25% whatever the geographic market definition taken into account.

46. As regards supply of PRSO to the retail channel, it appears to be a vertically affected market since ADM holds [15-30]% (in volume) of the PRSO supplies to the retail channel (downstream market), within the North West Europe as defined by the notifying parties. In the UK, ADM's market share would be even higher ([35-50]% both in volume and in value). As noted above, the transactions brings about additional capacity in the upstream market to ADM (Pura) (due to the acquisition of VDBO) as regards the (also captive) supply of BRSO (upstream market) in the UK ([35-50]% market shares in "all refined oils" BRSO market). This combination is not likely to lead to foreclosure effects of third parties (essentially retailers) downstream (PRSO market). First of all, it has to be borne in mind that VDBO already pre-merger, being vertically integrated within Unilever, was not a supplier of bottled seed oil for third parties. As far as supply of PRSO to the retail channel is concerned, pre-merger VDBO was essentially meant to provide Unilever with their own requirements for resale to customers. As a result of the transaction, third parties retailers will not be deprived of capacity resources (including in relation to private label supplies). Furthermore, the marked investigation indicated that third party retailers still have sufficient alternative suppliers in the upstream market (located in the UK but also in France, Belgium and the Netherlands) so as to rule out possible vertical adverse effects of the transaction in the UK. This conclusion is the same whatever the individual type of seed oils taken into consideration. Furthermore, any risk of foreclosure must be discarded concerning competitors of the parties as regards supplies of PRSO to UK retailers. Post transaction, these competitors will still have access to a wide share of outlets (i.e. of possible purchases from retailers), under all of the alternative possible route to customers (national brands, private label and first price) considered.

Bakery Fats

Horizontal effects

47. Both ADM and VDBO are active in the bakery fats business, but their combined market share according to data submitted on notification does not exceed 5% on a EEA-wide basis. On a narrower geographic definition, the combined market shares of the parties in the bakery fats market would be [25-40]% (ADM [5-15]%+VDBO [10-20]%) in the UK, based on 2002 volumes. In any event, in the UK, the parties would face substantial competition from Anglia ([5-15]% market share), VAMO and Cardowan (each [5-15]%), Arkady Craigmillar ([5-15]%) and from a number of other smaller competitors. It should be noted that the above picture includes overall volume sales of bakery fats, stemming both from manufactures and from wholesalers such as Arkady Craigmillar (which purchases bakery fats from VdBO on exclusive basis for resale mainly to craft bakers).

48. When considering direct supplies of bakery fats by manufacturers only (ex factory sales), i.e. excluding wholesalers from the market picture, the combined share of the merging parties in the UK would be around [25-40]% (due to the absorption of Arkady Craigmillar's share of sales). Also at this level of trade though, sufficient competition appears to constraint the merging parties, as the position of competitors would not be materially different as compared to the previous picture.

49. Furthermore, on the basis of the information available, the above assessment would not appear materially different under neither of the two hypothesis of further possible market segmentation i) according to customer size (Craft bakers / Plant bakers); i) according to type of bakery fats (cake margarine; pastry margarine; shortening). As regards ii), VDBO does not specifically target Craft bakers, while the combined share as regards sales to Plant bakers - where the bulk of the overlap occurs - is already reflected in the market share indicated above. As regards ii), the market investigation has shown no elements that the parties would have particularly strong positions in individual type of bakery fats as opposed to the overall market for bakery fats.

<u>Vertical effects</u>

50. As a result of the transaction there is no risk of foreclosure - due to the reinforcement of the parties' position on the upstream market for BRSO in the UK - of UK bakery fats competitors in getting supplies of bulk refined seed oil. These competitors will still benefit from several options as regards their supply of BRSO to be used for bakery fats manufacturing and sale. It is true that upstream UK BRSO competitors of the parties both have the incentive and the ability to make sales to third parties in addition to any captive sales that they may make in order to achieve a high level of utilisation rate of their refineries. In addition, the parties themselves have no interest in refusing to supply BRSO to their downstream competitors for bakery fats at a reasonable price given that spare capacity exists in the BRSO market. In this respect, it is also worth noting that BRSO price depends on crude oil price, which is used as a reference for establishing prices of bulk refined seed oils (plus a premium for refining). Given that crude refined seed oils are traded in a commodity market, the parties have a very limited influence on that price.

51. The above conclusions as regards both horizontal and vertical effects would not be different if, bakery fats (yellow fats) and white fats were considered to belong to the same relevant market.

V. CONCLUSION

52. 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