

***Case No COMP/M.3884 -
ADM POLAND /
CEFETRA / BTZ***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 14/10/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.10.2005

SG-Greffe(2005) D/205528/29

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

PUBLIC VERSION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.3884 – ADM Poland/Cefetra/BTZ
Notification of 09.09.2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 09.09.2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Wielkopolskie Zakłady Tłuszczowe ADM Szamotuły Sp. z.o.o. (“ADM Poland”, Poland) belonging to the ADM Group and Cefetra B.V. (“Cefetra”, The Netherlands) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Bałtycki Terminal Zbożowy sp. z.o.o. (“BTZ”, Poland), currently under control of the Gdynia Port Authority by way of purchase of shares.
2. After examination of the notification, the Commission concluded that the notified operation falls within the scope of the Merger Regulation and that it does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

¹ OJ L 24, 29.1.2004 p. 1.

3. ADM Poland is active in the production of oils, in particular rapeseed oil, and is part of the ADM Group, a US-based group of companies, engaged in the sector of agricultural commodities and products.
4. Cefetra is active in trading of compound feed raw materials and has subsidiaries in the Netherlands, Hungary, Poland and the UK.
5. BTZ is a terminal service provider in Gdynia. BTZ belongs to the Port of Gdynia, which has recently decided to privatise BTZ. BTZ's activities in the EEA are very limited with a turnover of only [...] Euro and the total value of its assets is approximately [...] Euro.

II. THE OPERATION

6. The operation concerns the sale of BTZ by the current owner, the Port of Gdynia. The operation forms part of a wider scheme to privatise certain port terminals in the port of Gdynia.

III. CONCENTRATION

7. Through the operation, ADM Poland and Cefetra will acquire joint control over an already existing company, BTZ. Both ADM Poland and Cefetra will acquire 50 % of the shares, and will have equal voting rights concerning decisions influencing BTZ's commercial policy, such as the appointment of the managing directors and a number of decisions concerning BTZ's strategic commercial behaviour.
8. BTZ is intended to operate on a lasting basis and has a management dedicated to its day-to-day operations and access to sufficient resources to carry out its functions autonomously. The parent companies will not be the only users of BTZ. Services to both parent companies and third parties will be provided on non-discriminatory terms. Under the terms of the Sale and Purchase Agreement, both parent companies are under a contractual obligation vis-à-vis the Port to guarantee the public nature of BTZ and to invest in BTZ in order to expand its capacity.
9. The notified operation therefore involves the creation of a joint-venture performing on a lasting basis all the functions of an autonomous economic entity and constitutes a concentration within the meaning of Article 3(4) of the Merger Regulation.

IV. COMMUNITY DIMENSION

10. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion²(ADM Group EUR [...], Cefetra EUR [...]). Each of ADM Group and Cefetra have a Community-wide turnover in excess of EUR 250 million (ADM Group EUR [...], Cefetra EUR [...]) 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.

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).

V. COMPETITIVE ASSESSMENT

RELEVANT PRODUCT MARKET

11. BTZ is active on the market for terminal services (cargo handling and storage). In this market a distinction can be made between terminal services for different types of cargo. The three main types of cargo are: i) parcel goods ii) dry bulk goods and iii) liquid bulk goods. The parties submit that these three submarkets constitute separate markets. There are some indications that the market for terminal services for dry bulk cargo could be further subdivided into markets for agricultural goods, coal, metal and other dry bulk good³.
12. BTZ is only active in terminal services for dry bulk agricultural goods (feedstuff components) and handles various kinds of grains and seeds, such as wheat, barley, rye, corn, oat and colza and extracted oilseed meals, such as soya, rapeseed and colza meal.
13. However, the exact definition of the product market can be left open as even under the narrowest market definition, the concentration would not significantly impede effective competition.

RELEVANT GEOGRAPHIC MARKET

14. Terminal services are related to a particular hinterland that is connected to the port or origin or final destination (hinterland traffic), but traffic may also be brought to a port for further sea transportation to and from other ports (transshipment traffic).
15. The parties consider that the geographic scope of the market for terminal services for dry bulk agricultural goods is the range of all Polish seaports, which have grain terminals and which have the capacity to offer terminal services for the handling of feedstuff components. The parties consider other terminal facilities in Poland located in Gdynia and Gdańsk as the most important competitors as these facilities share the same hinterland as BTZ.
16. However, the exact definition of the geographic market can be left open because the concentration will not lead to competition concerns, whatever geographic market is considered.

ASSESSMENT

17. On a narrowly defined market for terminal services for handling of dry bulk agricultural goods in the Gdynia and Gdansk region, BTZ has a market share (2004) of approximately [40-50]%. Other competitors such as Morski Terminal Masowy Gdynia ([20-30%]), ZMPG SA Port Gdański Eksploatacja ([0-10%]), Gdańskie Młyny i Spichlerze Dr Cordesmeier ([0-10%]), Olvit Trade ([0-10%]), Baltic Malt ([0-10%]), Magrol PP-H ([0-10%]) are active on the market.

³ Report of the Dutch Competition Authority : “Havenbedrijf Rotterdam”

18. If a wider geographic market consisting of the four major Polish ports (Gdynia, Gdansk, Szczecin, Świnoujście) were to be considered, the market share (2004) of BTZ is [20-30%]. Other competitors such as Przedsiębiorstwo Usług Portowych Elewator Ewa ([30-40%]), Morski Terminal Masowy Gdynia ([10-20%]), ZMPG SA Port Gdański Eksploatacja ([0-10%]), Gdańskie Młyny i Spichlerze Dr Cordesmeier ([0-10%]), Olvit Trade ([0-10%]), Baltic Malt ([0-10%]), Magrol PP-H ([0-10%]) and others are active on the market.
19. The ADM Group also holds interests in a number of grain terminals worldwide, but it does not hold a controlling interest in any grain terminal in the Polish, Baltic or Eastern European region which shares the same hinterland with BTZ. Cefetra does not operate terminal services. Therefore, no horizontal overlap exists on this market. It can be concluded that the concentration does not raise serious doubts as to its compatibility with the common market on the market for terminal services.

Vertically related markets : trade in agricultural commodities (feedstuff components)

20. There exist vertical relations between the market for the supply of feedstuff components (in which ADM and Cefetra are active) and the market for terminal services for dry bulk agricultural commodities (in which BTZ is active).

RELEVANT PRODUCT MARKET

21. Both ADM and Cefetra are active in the market for trading of feedstuff components and they are mainly active in the trading of grains and oilseed products, which are both animal feed components. Animal feed is primarily composed of protein, starch and crude fibre and consists of several components, including grain, oilseed meal, corn gluten, fishmeal and citrus pulp. The parties submit that there is one market comprising all feedstuff components, since the various components are interchangeable and customers switch between these components depending on the availability and price of one of these components.
22. However, in previous Commission decisions⁴ it was indicated that there could exist separate markets for specific subgroups such as feed grain and sub-products, oilseed meal, animal meal and pulp. However, the exact definition of the product market can be left open as even on the narrowest market definition the concentration will not significantly impede effective competition.

RELEVANT GEOGRAPHIC MARKET

23. The parties state that the market for feedstuff components is at least Community-wide and possibly worldwide as 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. In previous decisions⁵ of the Commission it was concluded that the market for feedstuff components is at least Community-wide.

⁴ M1348 ADM/Alfred C. Toepfer International/Intrade

⁵ M.1376 Cargill/Continental Grain, M.557 Alfred C. Toepfer/Champagne Céréales

24. However, the exact definition of the relevant geographic market can be left open as even on the narrowest market definition the concentration would not significantly impede effective competition.

ASSESSMENT

25. In the EU-market for feedstuff components the combined market share (2004) of ADM and Cefetra amounts to approximately [20-30%] (ADM [10-20%], Cefetra [0-10%]). Other important international competitors such as Bunge ([20-30%]), Cargill ([20-30%]) and Louis Dreyfus ([0-10%]) are active on the market.
26. On a narrower Polish market for feedstuff components, the combined market share of ADM and Cefetra amounts to [30-40%] (ADM [20-30%], Cefetra [0-10%]). Other competitors at Polish level are Zakłady Tluszczowe Kruszwica ([10-20%]), Louis Dreyfus ([20-30%]), Cargill ([20-30%]) and Thegra Poland.
27. On the different sub segments of feedstuff components, the parties estimate that they have the following market shares (2004) at EU-level: [10-20%] for grains (ADM [0-10%], Cefetra [0-10%]), [30-40%] for non-grain feed ingredients (ADM [20-30%], Cefetra [0-10%]) and [30-40%] for proteins (ADM [20-30%], Cefetra [10-20%]). As stated above, on a narrowly defined market for terminal services for handling of dry bulk agricultural goods in the Gdynia and Gdansk region, BTZ has a market share (2004) of approximately [40-50%].
28. Based on the above, it can be excluded that ADM or Cefetra would be able to foreclose the market for feedstuff components as other international competitors are active as alternative suppliers which can supply their products also via other European and/or Polish terminal service providers to the relevant customers of feedstuff components. In addition, if one of the parties were to try to foreclose the Polish market for one feedstuff component category, customers could potentially shift to components from other categories.
29. Moreover, it can be excluded that the parties would be able to foreclose the Polish market for terminal dry bulk services from input of feedstuff components. The parties have stated that they will not coordinate future usage of BTZ between themselves and there is no business plan concerning parties' usage of BTZ between themselves. In addition, there are no plans to shift capacity from other ports to BTZ and there is a sufficient number of international feedstuff components suppliers to which the other Polish terminal service providers can offer their services.
30. It is also important to state that both parent companies are under a contractual obligation vis-à-vis the Gdynia Port Authority to guarantee the public nature of BTZ and to provide services to all interested third parties at prices on arms length basis. In addition, ADM Poland and Cefetra have agreed to guarantee minimum volumes of agricultural products to be handled by BTZ. These minimum volumes cannot be realised if ADM and Cefetra were to decide to use BTZ's capacity exclusively to handle their own turnover. Over the last three years the products of ADM handled by BTZ accounted for only [10-20%] of BTZ's turnover. Cefetra has not used BTZ over the last three years and has only started recently to do so. In addition, in order to earn back investments and make profits the parties have to use BTZ at the highest possible capacity.

31. The Port Authority of Gdynia confirmed that the parties are under the obligation to guarantee the public access of BTZ and several control mechanisms by the Gdynia Port Authority in case of breach of the public access obligation are foreseen. Cases of refusal of making the handling services on BTZ will be constantly monitored by the Chief Dispatcher of Port and analysed in detail by the respective services of the Gdynia Port Authority. Breaking of the public access obligation will be followed by several sanctions mechanisms.
32. Therefore it can be excluded that through the concentration the parties will have the incentive to foreclose their competitors and third parties from BTZ's terminal services for dry bulk agricultural commodities. It can be concluded that the vertical effects of the concentration do not raise serious doubts as to its compatibility with the common market.

VI. CONCLUSION

33. 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 (EC) No 139/2004.

For the Commission, signed
Neelie KROES
Member of the Commission