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***Case No COMP/M.3975 - CARGILL /
DEGUSSA FOOD INGREDIENTS***

Only the English text is authentic.

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

Article 8 (1)

Date: 29/03/2006



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29 III 2006

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PUBLIC VERSION

COMMISSION DECISION

of 29 III 2006

**declaring a concentration to be compatible with the common market
and the functioning of the EEA Agreement**

(Case No COMP/M.3975 - Cargill/Degussa Food Ingredients)

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(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings¹, and in particular Article 8(1) thereof,

Having regard to the Commission's decision of 14.12.2006 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations²,

Having regard to the final report of the Hearing Officer in this case³,

WHEREAS:

1. On 21 October 2005, the Commission received a notification of a proposed concentration by which Cargill Incorporated (“Cargill”, USA) acquires control within the meaning of Article 3 (1) (b) of Council Regulation No 139/2004 on control of concentrations between undertakings (“the Merger Regulation”) of the whole of the

1 OJ L 24, 29.1.2004, p. 1

2 OJ C200. , p....

3 OJ C200. , p....

undertakings Degussa Food Ingredients GmbH, Degussa Food Ingredients US, LLC. and Maxens GmbH (altogether “DFI”, Germany) by way of purchase of shares. Cargill and DFI are hereinafter referred to as “the parties”.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation.
3. On 23 November 2005, the parties submitted undertakings to the Commission. On 14 December 2005, the Commission concluded that the concentration, even in taking into account the undertakings submitted, raised serious doubts as to its compatibility with the common market, and decided therefore to initiate proceedings in accordance with Article 6 (1) (c) of the Merger Regulation. On 4 January 2006, the Commission received a written response by Cargill to the Commission’s decision to initiate proceedings.
4. The Advisory Committee on Concentrations discussed the draft of this decision on 13 March 2005.

I. THE PARTIES AND THE OPERATION

5. **Cargill** is a US-based group active as an international provider of animal feed, food, agricultural products and services. In particular active in the food ingredients business, it has reinforced its position on this segment through the recent acquisitions of a UK-based flavours company and a Germany-based pectin production business.
6. **DFI**, a food ingredients producer, is currently owned by Degussa AG, whose main shareholders are RAG (50.1%) and E.ON AG (42.86%). DFI’s two main business branches are “DFI Texturant Systems” (Degussa Food Ingredients GmbH, Degussa Food Ingredients US, LLC. and their subsidiaries) and “DFI Flavours” (Maxens GmbH and subsidiaries).
7. The operation consists in the acquisition of 100% shares in DFI currently held by Degussa AG.

II. CONCENTRATION

8. The proposed transaction consists in the acquisition of control by Cargill over DFI. It therefore constitutes a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.

III. COMMUNITY DIMENSION

9. The concentration has a Community dimension within the meaning of Article 1 of the Merger Regulation. The parties do not meet the thresholds of Article 1 (2) of the Merger Regulation. However, the alternative thresholds of Article 1 (3) of the Merger Regulation are met: Cargill’s and DFI’s combined aggregate worldwide turnover is more than EUR 2,500 million, Cargill and DFI’s aggregate turnover exceeds EUR 100 million in three member states with each of the undertakings’ turnover in these countries exceeding EUR 25 million, and the aggregate Community-wide turnover of both Cargill and DFI is more than EUR 100 million. Furthermore, Cargill and DFI do not achieve more than two thirds of its EU-wide turnover in one and the same Member State.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

10. The parties' activities overlap exclusively in the production of food ingredients. Both parties produce and market a large number of different food ingredients. However, their activities on these markets (e.g. biopolymers, bioactive ingredients and flavours) overlap only to a minor extent, not giving rise to horizontally affected markets. The only markets affected by the merger are several product markets for lecithin (1.), pectin (2.) and crude seed oil (3.).

1. Lecithin

11. Lecithin belongs to the category of food ingredients called emulsifiers. Emulsifiers derive their names from their ability to stabilize emulsions, that is a mix of hydrophilic (e.g. water) and hydrophobic (e.g. oil) substances⁴.
12. Lecithin is a "natural" emulsifier as, in its basic form ("fluid lecithin"), its production requires only physical operations (centrifugation, degumming, etc), which aim at extracting the lecithin already contained in the original seed ("acetone insoluble"). Lecithin is the only marketed *natural* emulsifier. By contrast, *synthetic* emulsifiers (e.g. mono- or diglycerides) are artificially created products that are produced through chemical reactions.
13. Lecithin is a by-product generated in the process of crushing oilseeds, generally soybeans: the vast majority of lecithin sold on the market is extracted from soy oil (95%) while other sources like rapeseed and sunflower remain marginal⁵. Lecithin is considered as a by-product as it represents less than 1% of the soybean content in volume and well below 5% in value⁶. It also has to be noted that only 25% of the worldwide crushing facilities produce lecithin.
14. Functions of lecithin are generally not limited to its emulsifying properties, but it has also an impact on flavour and other product characteristics. By way of example, lecithin is most often used in chocolate applications to lower the viscosity of the liquid chocolate mass during processing. In fact, in many applications, lecithin's multiple functionalities are used concurrently⁷.

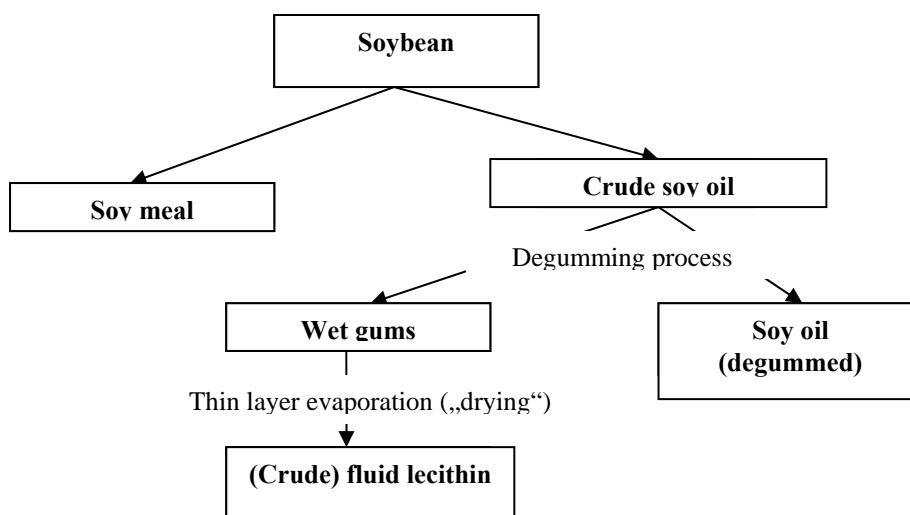
⁴ For example, emulsifiers are used in margarine which consists of 80% of oil and 20% of water.

⁵ Other sources (mainly sunflowers (production of 2 000 tons worldwide) and rapeseeds (production of 5000 tonnes worldwide)) do not play a significant role. To a minor extent, lecithin can also be produced from egg-yolk. However, as the sales of these "alternative" lecithins remain marginal and account for less than [0-10%]* of the market, no distinction between soy lecithin and lecithin from other sources will be made for the purpose of this decision.

⁶ The price of one ton of soybeans is around \$[200-250]*. Out of this ton of soybeans, 750kg of soybean meal can be produced and sold for \$[100-200]*, and 250kg of soy oil are extracted with a rough value of \$[100-150]* on the market. Finally, 5kg of (fluid) lecithin are produced with a price that can vary from \$[0-5]* to \$[5-10]*.

⁷ For example, "Emulgum", a lecithin product marketed by DFI for the production of chewing-gum, has the following effects: "good keep-fresh properties, separating agent for softening components, reduces stickiness during production, packing and chewing, increases the elasticity and ductility, intensifies the flavour, delays drying out.

15. Lecithin is added in small quantities in food and animal feed products, cosmetics and pharmaceutical products, as well as industrial products (such as herbicide and leather). Although it generally represents less than 1% of total production costs, it is usually essential to the industrial process of end-users and can change radically the quality of final products.
16. According to estimates provided by the parties, the demand for lecithin stems primarily from the food industry (almost [55-65%]*) with confectionary (chocolate) manufacturers representing the highest proportion of lecithin purchases within the food segment⁸. Animal feed applications account for almost [25-35%]* of total lecithin demand whereas industrial as well as pharmaceutical and other non-food applications are of minor importance with each type of application accounting for less than [5-15%]* of total lecithin demand.
17. Different types of lecithin are produced. The basic raw material for all these different types of lecithin is crude lecithin extracted in mills from the crushing of soybeans into soy meal and crude soy oil (see flow chart below)⁹. The crude soy oil is, in a so-called “degumming” process, separated into degummed soy oil and so-called “wet gums”.



18. The “wet gums” are then further processed¹⁰ to “crude” fluid lecithin by a drying process (“evaporation”). This crude fluid lecithin extracted in mills is not yet suitable for use in most applications, in particular in food applications, since variations in the degumming process and the quality and origin of the soybeans result in some heterogeneity (e.g. in viscosity) in the overall production of crude lecithin¹¹. Therefore,

* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

⁸ Form CO, p. 25.

⁹ For details of the production process: Bueschelberger, Hanns-Georg, Lecithin, in: Whitehurst, Robert J. (ed.), Emulsifiers in Food Technology, Oxford 2004, pp. 1-39 (“Bueschelberger, Lecithin”), p. 4 et seq.

¹⁰ Crushers that do not produce lecithin may spray back the wet gums to the soy meal.

¹¹ See question 1 of the first Commission’s questionnaire sent to customers.

producers usually refine the crude lecithin by blending different crude lecithins and by adding fatty acids in order to reduce the viscosity. These operations produce “standardised” or “basic” *fluid lecithin*.

19. Different operations can be applied to basic fluid lecithin creating more differences in the composition and functionalities of fluid lecithin (e.g. enzymatic modification, hydrogenation¹²). These modifications of the basic fluid lecithin produce different types of “special” fluid lecithin destined for specific applications.
20. Fluid lecithin can be further refined by removing the oil still present in the fluid lecithin. This operation produces lecithin in granule and/or powder form, the so-called “*deoiled*” lecithin (also: “pure” lecithin), which consists almost only of emulsifying molecules. Different technologies can achieve this result: the conventional method is to use acetone which yields a mix of powder and granules. Another technology is based on the use of CO₂ and yields only powder. Typical applications for deoiled lecithin are food applications (oil and fat spreads, instant products, bakery) and the health and nutrition segments (food additives, sports nutrition). Similarly to fluid lecithin, there exist different kinds of deoiled lecithin and both parties sell several types of “off the shelf” deoiled lecithin products assigned to different applications.
21. Finally, the different types of molecules that constitute lecithin can be chemically sorted out from fluid lecithin. e.g. by the use of ethanol, to produce even purer lecithin products. These products belong to the fractionated lecithin category. This type of lecithin is mainly used for sophisticated non-food applications such as pharmaceuticals, cosmetics and personal care products.

a) *Lecithin and synthetic emulsifiers are not on the same product market*

22. The Commission has analysed the oilseeds and emulsifier markets in previous decisions¹³ but left open whether lecithin and synthetic emulsifiers belong to the same market while stating that the substitutability appears to be limited¹⁴.
23. The parties submit for this case that all emulsifiers belong to the same relevant product market, claiming that, from the demand-side and at least for the food industry, the degree of substitutability between lecithin and synthetic emulsifiers (such as mono- and diglycerides) is high¹⁵. According to the parties, synthetic emulsifiers are technically and economically credible alternatives to lecithin since “*there is a strong chain of substitution between the various natural and synthetic emulsifiers currently on the market*”¹⁶.

¹² Bueschelberger, Lecithin, p. 7 et seq.

¹³ M.941 – ADM/ACATOS & HUTCHESON/SOYA MAINZ, M.1126 CARGILL/VANDERMOORTELE, M.2886 – BUNGE/CEREOL.

¹⁴ M.941 – ADM/ACATOS & HUTCHESON/SOYA MAINZ, para. 16; M.2886 – BUNGE/CEREOL, para. 10.

¹⁵ Form CO, p. 27 et seq.

¹⁶ Form CO, p. 29.

24. While it is true that some synthetic emulsifiers have become cheaper than some types of lecithin¹⁷, the Commission's market investigation has clearly established that the demand-side substitutability between lecithin and synthetic emulsifiers is weak for both, technological and quality reasons. This applies to feed and food manufacturers. Customers in their replies to the market investigation indicated that they are very reluctant to replace lecithin by synthetic emulsifiers in most applications¹⁸. Virtually no customer of non-genetically modified (non-GM) lecithin (that is, as explained below, mainly the food manufacturers) has switched to synthetic emulsifiers in the past even though prices of the non-GM lecithin have doubled over the last two years. Also, a vast majority of all customers who have replied and almost all customers active in food manufacturing¹⁹ indicated that they would not switch to synthetic emulsifiers should the price for soy-based lecithin increase by 10% on a lasting basis in the future.
25. There exist many reasons why customers of lecithin, in particular in the food industry, do not want to change to synthetic emulsifiers: the purchasers of lecithin are not ready to incur the costs, the uncertainty, and the time of adaptation that would be elicited by a change of their industrial recipe; lecithin has many functionalities beyond its emulsifying properties (in particular taste and flavour related); lecithin has a natural and "good-for-you" image that synthetic emulsifiers do not boast; and lecithin represents a very low share of the production costs (typically around 1%) so that end-customers of lecithin are very reluctant to seek credible alternatives and avoid any risk related hereto.
26. Confirming the results of the market investigation, also according to third party market analysis "*there are relatively few applications where synthetic emulsifiers and natural products are in close competition*"²⁰. In fact, while lecithin currently accounts for 20% of total emulsifier sales by value and 25% of sales by volume in the European food industry, these figures have been stable in the past few years and are not expected to change significantly in the near future²¹. These two facts support the view that almost all current users do not consider synthetic emulsifiers as a substitute for lecithin.
27. The low degree of substitutability is also substantiated by internal documents provided by the parties which state that [...] and that [...]*²². In their response to the market investigation lecithin producers and suppliers different from the parties also confirmed the view that lecithin is difficult to replace.

¹⁷ In particular after the prices for non-GM lecithin have dramatically increased in 2004.

¹⁸ The 228 replies to the market investigation cover the different industries using lecithin. The structure of the sample of customers' replies to the market investigation largely corresponds with the demand structure for lecithin described above. Two thirds of the replies can be assigned to several food application, including large multinational food manufacturers as well as small and medium sized companies. Those replies which can be assigned to the different non-food applications of lecithin cover animal feed as well as the production of industrial goods (e.g. leather), cosmetics and pharmaceuticals.

¹⁹ The market investigation indicates that the greatest substitutability, although very limited, is achieved for bakery applications.

²⁰ Frost & Sullivan, European Food Emulsifier Markets, January 2004, pp. 6-17, 6-20 (chart 6-5).

²¹ Frost & Sullivan, European Food Emulsifier Markets, January 2004, p. 5-12.

²² PWC, Vendor Due Diligence Report, pp. 138.

28. Finally, the parties submitted in their notification²³ that there is “*consumer pressure, particularly in many north European countries, to remove ‘E’ numbers from food products*” as consumers perceive that “*all E-numbers indicate a synthetic ingredient or additive, which are associated with non-beneficial health effects*”²⁴. This has been confirmed by third parties’ studies²⁵. As opposed to synthetic emulsifiers, it is possible to remove the E-number of lecithin from the label and just to mention “soy lecithin” as an ingredient. As a result, synthetic emulsifiers suffer from an image disadvantage compared to lecithin.
29. Therefore, the Commission considers that synthetic emulsifiers exert a weak competitive pressure on lecithin and that synthetic emulsifiers and lecithin belong to different product markets.
- b) *GM and non-GM lecithin have to be assessed separately***
30. Since the emergence of genetically modified (GM) products, the question of their marketing in Europe has been controversial and European customers have proved to be very sensitive to this issue. Not the least as a result of European customers’ reluctance to accept GM products, the Community has adopted several regulations that require labelling and traceability for genetically modified food, feed and ingredients since April 2004²⁶.
31. The traceability rules oblige the operators concerned (e.g. companies who place a product on the market) to identify their supplier and the companies to which the products have been supplied (traceability of the “supply chain”). Accordingly, lecithin can only be certified as non-GM lecithin where there is an established certification process (“audit trail”) that covers the entire production and supply chain, proving that the relevant soy crop is non-GM, and that the inputs for the intermediate and finished products have been kept separate from GM material during planting, harvesting, storage, processing and distribution.
32. With respect to labelling, for all pre-packed food products consisting of or containing genetically modified organisms (GMO), Regulation 1830/2003 requires that this be *indicated on the product label*. For non pre-packed food products the presence of GMO must appear on (or in connection with) the display of the product.
33. The same rules also apply to animal feed, including compound feed, even though food coming from livestock fed with GM products does *not* require any specific labelling. As a result, while some feed manufacturers purchase non-GM lecithin, the vast majority of non-GM purchasers is food manufacturers.

²³ Form CO, p. 24.

²⁴ E numbers are assigned to food additives. For example, lecithin’s E number is E322.

²⁵ Frost & Sullivan, European Food Emulsifier Markets, January 2004, pp. 6-17, 6-20.

²⁶ Regulation EC No. 1829/2003 of the European Parliament and the Council on genetically modified food and feed, Regulation EC No. 1830/2003 of the European Parliament and the Council concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms.

34. In a previous decision the question whether distinct relevant product markets for GM and non-GM lecithin should be defined was considered but was finally left open²⁷. For this case, the parties submitted that GM lecithin and non-GM lecithin belong to the same market²⁸.
35. The parties argue that non-GM lecithin might disappear in the future, and, in any case, that a high degree of uncertainty is currently surrounding the future availability of non-GM soybeans: the parties submit²⁹ an independent third party market analysis which confirms³⁰ that, at least in the long term, there may be the risk of a shortage of non-GM soy seeds.
36. Brazil is currently the main source of non-GM soybeans due to its large crop and a national ban on the planting of GM soybeans. However, in 2004, Brazilian's legislation lifted this ban and permitted GM soybeans to be grown since the 2004/2005 crop year. Given that the cost of growing GM-soybeans is lower than the cost of growing non-GM soybeans, Brazilian producers have an incentive to stop growing non-GM soybeans if the premiums on the sales price of products derived from non-GM soybeans are not high enough³¹. It is not clear yet what the decision of Brazilian farmers will be and whether there will be a lack of non-GM soybean grown. For the planting period 2004/2005, according to CONAB, the Brazilian ministry for agriculture, only 20% of Brazilian farmers planted GM-soybeans³².
37. Besides the uncertainty associated with the future availability of non-GM lecithin, the parties argued that the switch from producing GM to non-GM lecithin can be done rapidly and without significant costs³³. In addition, the parties believe that the current reluctance of European customers to buy "GM"-labelled food might disappear in the near future³⁴. Finally, the parties argue that the parties' market positions are comparable in the GM and non-GM lecithin segments and, thus, a distinction between GM and non-GM lecithin will make no difference in the competitive assessment³⁵.

Demand-side substitutability

38. As regards *demand-side substitutability*, the customers' and competitors' replies to the market investigation provide strong indications that non-GM lecithin and GM-lecithin constitute distinct product markets:

²⁷ M.2886 – BUNGE/CEREOL, Para. 10.

²⁸ Form CO, p. 31 et seq.

²⁹ Form CO, pp. 23, 33; Cargill's supplemental paper, 23 November 2005, p. 5 et seq.

³⁰ Frost & Sullivan, European Food Emulsifiers Market, January 2004, p. 6-5; Brookes, Craddock, Kniel, The Global GM Market – Implications for the European food chain, September 2005, p. 35 et seq.

³¹ It should be emphasized that any development in this regard will be independent of non-GM and GM lecithin, as farmers' decision to grow non-GM soybeans will depend on returns on non-GM soybean meal and oil and not on the "by product" lecithin which only represents 1% of the content of a soy bean.

³² The Non-GMO Report, January 2005, p. 6; contamination might yet be higher since many farmers have reportedly planted GM seeds without authorisation of the government.

³³ Form CO, p.34.

³⁴ Form CO, p. 32; Cargill's supplemental paper, 23 November 2005, p. 8.

³⁵ Cargill's supplemental paper, 23/11/2005, p. 5.

39. According to the replies of the vast majority of customers and competitors to the market investigation, the new labelling requirements for GM-products have a *significant* impact on the demand-side substitutability between GM and non-GM lecithin, in particular for food applications. Almost all respondents sourcing lecithin for food applications indicated that they can not substitute GM lecithin due to the strong preference of the final consumer for non-GM products. Also, any food producer willing to switch would have to deal with the awareness and pressure campaigns of NGOs (e.g. Greenpeace).
40. Thus, the parties' assertion that the current reluctance of European customers to buy "GM"-labelled food might disappear in the next few years does not find support in the results of the market investigation. The vast majority of customers indicated that final consumers' preferences currently militate for an exclusive use of non-GM lecithin in food production in the EEA also in the future.

Availability of non-GM lecithin

41. As regards the issue of non-GM soy lecithin availability in the future, the Commission considers that several factors strongly militate for the expectation that non-GM soy lecithin will still be marketed in the future to meet the increasing demand in Europe.
42. Firstly, the parties submitted that "*a number of important Brazilian producers have shown themselves willing to invest in the necessary certification processes*"³⁶. Secondly, it has to be stressed that the incentive of Brazilian farmers to crop non-GM soybeans crucially depends on the "price-premium" they get for non-GM soybeans. Furthermore, the parties concede that – as long as the demand for certified non-GM lecithin remains high – other suppliers from countries outside Europe (in particular China and India) may seek to offer the necessary certified raw materials³⁷.
43. Indeed, while expecting a significant decrease of the demand for non-GM products, the parties claim that "*there is likely to be continued demand for certified non-GM products given growing consumer interest in 'healthy eating' generally*"³⁸ and that there is currently some "*uncertainty as to the timeframe within which 'GM' products may become more widely accepted for use in food in Europe*"³⁹. Furthermore, the parties submitted that "*for the most part, the branded processed food industry remains reluctant to purchase ingredients which would require them to GM-label*"⁴⁰ and that "*it seems likely that a core of food processors will continue to specify requirements for non-GM lecithin for at least some of their need, including for end products destined for consumers in the EU*"⁴¹.

³⁶ Form CO, p. 23.

³⁷ Form CO, pp. 23, 33; Cargill's supplementary paper, 23 November 2005, p. 6 et seq.; Response to request for information of 22 November 2005, p. 2 et seq.

³⁸ Form CO, p. 33.

³⁹ Form CO, p. 33.

⁴⁰ Cargill's supplemental paper, 23/11/2005, p. 4.

⁴¹ Cargill's supplemental paper, 23/11/2005, p. 8.

44. The notion that the non-GM production of soybeans will not stop is also confirmed by competitors to the parties. By way of example, as regards further price increases and shortages of non-GM lecithin supply, the biggest Brazilian non-GM lecithin producer, Imcopa, expects that the premium paid to the farmers on non-GM soy-beans will not significantly increase further and that the prospect of customers of non-GM soy products will start switching to GM soy products is thus rather improbable. The fact that the biggest Brazilian non-GM lecithin producer, Imcopa, is just about to install a European distribution base for non-GM lecithin in Rotterdam shows also that competitors do not regard the non-GM lecithin market as a market which is about to disappear.
45. Finally, internal documents of the parties show that their reaction to a shortage of non-GM soybeans would not be to [...]*

Supply-side substitutability

46. As regards supply-side substitutability, several aspects limit the substitutability between GM and non-GM lecithin, at least as regards a switch-over from producing GM to non-GM lecithin.
47. Firstly, such a switch-over requires, according to EU-regulation, the establishment and maintenance of traceability and certification procedures (also known as “identity preservation” (IP)) which can involve very high administrative burdens. Secondly, significant adaptations of the production process and of the logistic and supply chain are needed to avoid any risk of “contamination” of non-GM products with GMO (“segregation” of GM and non-GM production). Lecithin can only be certified as non-GM where there is an audit that covers the entire production trail, proving that it has been obtained from non-GM soy beans and that, in order to avoid contamination, the inputs for the intermediate and final products have been kept segregated from GM products during the processing, storing, transporting and distributing phases. In particular, different vessels should be used for shipping GM and non-GM products when dry bulk shipping is used.
48. As a result, the production costs of non-GM lecithin are significantly higher than those of GM lecithin: the parties submitted that the production cost of 1 tonne of GM fluid lecithin is roughly [...]* EUR, whereas, currently, the production cost of 1 tonne of non-GM fluid lecithin is above [...]* EUR. The cost “premium” for non-GM material stems from the different prices in raw material, the processing, and the non-GM certification. These cost differences also apply to the other types of lecithin.
49. As regards the claim that the similar market positions of the parties reflect the fact that market conditions are similar for non-GM and GM lecithin, the Commission considers that this is not the case.
50. Firstly, the supply chain of non-GM lecithin is very different from that of GM lecithin. In addition to the extra costs due to certification and traceability requirements, the main actors on the non-GM lecithin markets (such as the parties, and Solae) have to source partially their non-GM material from a few Brazilian suppliers of fluid lecithin. By contrast, save DFI, the sellers of GM lecithin, such as Cargill, Solae, and ADM are vertically integrated and crush soybeans for their own requirements of lecithin production. The very fact that the availability of non-GM lecithin is not certain so that

market players have to deal with a lot of uncertainties and risks demonstrates that market conditions are different.

51. Secondly, the demand for non-GM lecithin and GM lecithin covers different types of customers. As already noted, most of non-GM lecithin users are food processors while, for other purposes, purchases focus overwhelmingly on GM lecithin.
52. Due to the different supply and demand structures, also the prices of GM and non-GM lecithin differ significantly. According to third party market analysis⁴² as well as to internal documents provided by the parties, average prices for GM and non-GM lecithin developed differently in the last few years providing a significant and increasing price premium for non-GM lecithin. The following table presents the differences in the average selling prices of non-GM and GM lecithin products marketed by Cargill and that can be used in the food industry:

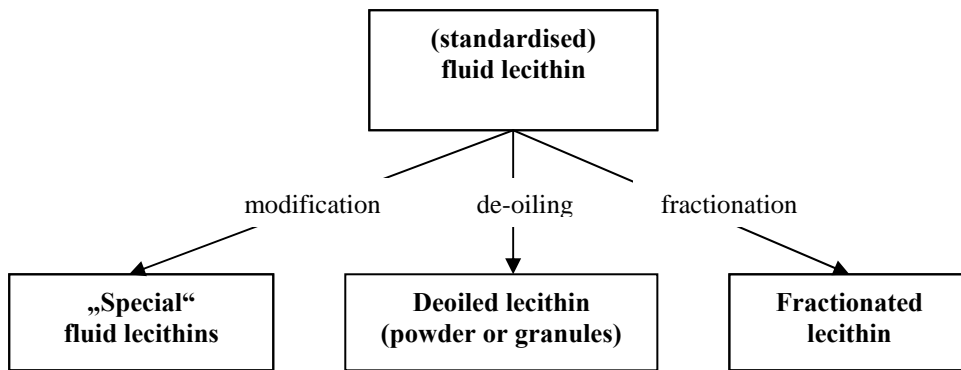
Name	Type	Price (EUR/kg)		Price premium for non-GM
		GM	non-GM	
LECIPRIME 1000	Fluid	[...]*	[...]*	[> 50%]*
LECIPRIME 1800	Fluid	[...]*	[...]*	[> 50%]*
LECIGRAN 1000 P	Deoiled	[...]*	[...]*	[> 50%]*
LECIGRAN 1000 CP	Deoiled	[...]*	[...]*	[> 50%]*
LECIGRAN 3000 P	Deoiled	[...]*	[...]*	[> 50%]*
LECIGRAN 6000 P	Deoiled	[...]*	[...]*	[> 50%]*

53. The results of the market investigation confirmed that the average prices for non-GM lecithin are almost [...]* those of the respective GM product, implying a price premium for non-GM lecithin of nearly [> 50%]*. These differences in prices are also reflected in significant margin differences between non-GM and GM lecithin, the former yielding in general higher margins.
54. For the foregoing reasons the Commission considers that GM lecithin and non-GM lecithin do not belong to the same market.

c) Fluid, deoiled and fractionated lecithin have to be assessed separately

55. Fluid lecithin can, as summarised in the chart below, be further refined into three different grades of lecithin: special fluid lecithin, deoiled lecithin and fractionated lecithin.

⁴² Frost & Sullivan, European Food Emulsifiers Market, January 2004, p. 6-16, 6-17.



56. Cargill and DFI both offer different products of fluid (standard and “special” qualities), and deoiled lecithin. Contrary to DFI, Cargill is currently not active in the manufacture and sale of fractionated lecithin.
57. In its previous decisions the Commission left open whether there is a single market for lecithin, while stating that it is possible that the different grades of lecithin constitute distinct markets⁴³.
58. In the present case, the parties submit that all types of lecithin belong to the same market because of the high degree of supply-side substitutability; all major actors on the lecithin segment produce, according to the parties, at least fluid and deoiled lecithin⁴⁴. The parties also submit that crude lecithin (as extracted from “crushing”) and “standardised” fluid lecithin are essentially the same products and should not be distinguished. The parties finally argue that some degree of demand-side substitutability exists between fluid and deoiled lecithin.
59. However, the market investigation has identified several elements that militate for a distinction between fluid, deoiled, and fractionated lecithin⁴⁵.

Deoiled lecithin

60. From the demand-side perspective, nearly all customers indicated in their replies to the market investigation that – due to the different performance of the products and the need to adapt the production process and to perform extensive, sometimes risky, and costly test procedures – they can *not* switch between fluid and deoiled lecithin. Also, a 10%-increase in one type of lecithin would not spur a switch to another lecithin type.

⁴³ M.941 – ADM/ACATOS & HUTCHESON/SOYA MAINZ, Para. 16.

⁴⁴ Form CO, p. 34.

⁴⁵ A further distinction between crude (that would be used for industrial applications) and “standardized” or basic fluid lecithin (appropriate for human consumption) is not necessary as all market players produce basic fluid lecithin. As set out above, the only difference between crude and basic fluid lecithin is the AI (“acetone insoluble”) content which has to be on a certain level (60-62%) for lecithin appropriate for human consumption and which can be reached by “blending” crude lecithin derived from different soy crops or by adding fatty acids.

61. In this regard, as already noted above, it has to be emphasised that the use of lecithin in an industrial recipe meets very specific needs of customers. Accordingly, suppliers offer technical support to their clients to help them to test and eventually to choose the best suited lecithin for their production.
62. The low degree of substitutability between fluid and deoiled lecithin is illustrated by the replies of food manufacturers to the market investigation. Although they purchase both fluid and deoiled lecithin, they cannot switch between the two types as its manufacturing processes are adapted to different manufacturing processes for fluid and deoiled lecithin.
63. Also from the supply-side, the substitutability among different types of lecithin seems limited. According to the evidence gathered, fluid and more advanced types of lecithin are produced in different plants: as regards the parties, DFI currently runs plants of fluid lecithin in Decatur (US), Zaandam (Netherlands) and Vigonza (Italy), while its deoiled and fractionated lecithin plant is located in Hamburg, Germany; Cargill's facilities for the refinement of fluid lecithin are located in Uberlandia (Brazil) and Liverpool (UK), whereas it has engaged in a tolling agreement with a US-based company⁴⁶ to produce deoiled lecithin.
64. Secondly, starting a new business of deoiled lecithin requires, besides putting together a new logistics and establishing an image of a credible supplier, between €[...] * and €[...] * million for a "greenfield" plant in Europe (catering for 1 800 tons) and such a plant would only be operational within two years.⁴⁷ Margin data of the parties as well as the market investigation suggests that this investment is significant.
65. Thirdly, according to internal documents provided by the parties⁴⁸, deoiled lecithin has to be considered as a specialised premium/"high-margin product", whereas more producers are able to produce fluid lecithin. This is due to the fact that the production of deoiled lecithin requires a more advanced technology and involves more specific production know-how. By way of example, many market players that are active on the fluid market are not present on the deoiled market.

Fractionated lecithin

66. As regards *fractionated lecithin*, due to the very high degree of specialisation/customisation and production know-how involved in non-food applications (e.g. pharmaceuticals, cosmetics), prices of fractionated lecithin can reach ten or a hundred times those of deoiled lecithin so that the degree of substitutability between fractionated lecithin and other types of lecithin appears extremely limited.
67. Also, its production appears to involve a significantly different production process and is very much technology-driven compared to the production of both, fluid lecithin and deoiled lecithin. For instance, certain fractionated lecithin products must be prepared under strict laboratory conditions.

⁴⁶ Response to request for information of 16. November 2005, Annex 2; response to request for information of 22. November 2005, p. 1.

⁴⁷ Cargill's supplemental paper, 23/11/2005, p. 13.

⁴⁸ PWC, Vendor Due Diligence Report, pp. 142, 296.

68. Accordingly, most competitors in their replies to the market investigation indicate that the supply-side substitutability between the different grades of lecithin (i.e. fluid, deoiled, and fractionated) is very limited.
69. For the foregoing reasons the Commission concludes that fluid lecithin and deoiled lecithin on one hand and fractionated lecithin on the other are not part of the same relevant product market.

Further product market distinctions

70. The Commission has also considered market delineation according to the different applications of lecithin. Many customers and competitors indicated in their replies to the market investigation that a distinction of lecithin markets *according to the different applications*, in particular the distinction between “food” and “non-food” lecithin, is appropriate. This is mainly due to the fact that the distinction between “food lecithin” and “non-food lecithin” largely corresponds to the distinction between the markets for GM and non-GM lecithin. Due to the relevant regulatory background in Europe (labelling requirements), the demand for non-GM lecithin currently is driven and largely determined by customers active in the manufacture and sale of food products, while GM lecithin predominantly is used by non-food customers.
71. This assessment has been confirmed by the information provided by the parties: According to Cargill’s and DFI’s own estimates⁴⁹, the vast majority of its overall sales of non-GM lecithin and its sales of non-GM *fluid* lecithin can be assigned to food applications. Sales of GM-lecithin to food customers are, according to the results of the market test, likely to further decrease. The GM lecithin customer lists for the years 2004 and 2005 provided by DFI clearly that most customers active in food manufacturing [...]*. Accordingly, internal documents provided by DFI point at a [...] ^{*50} [...] ^{*51} and state that [...] ^{*52} It is therefore not necessary to decide whether a distinction according to applications is appropriate in this case, since the competitive assessment would not significantly change even if different product markets according to applications were to be defined.
72. Also, a further distinction within the deoiled segment between *granulated* and *powder* lecithin seems not to be appropriate, since all main producers are able to produce granulated and powdered deoiled lecithin. As for a further distinction between “special” and other forms of lecithin, such a distinction is not necessary. Although lecithin can be blended or refined (e.g. by adding acids) in order to meet the specific needs of some customers and producers small amounts of such “special” lecithin, special lecithin does not play an important role on the fluid and deoiled lecithin market. What is more, the different kinds of fluid and deoiled lecithin marketed by lecithin producers as “special” lecithin is not necessarily different from “basic” lecithin. The differences often stem more from a marketing strategy than from a significant difference of quality. The difference of the products in most cases just stems from a quality-guarantee given from

⁴⁹ Response to the request for information of 7./8. November 2005, Annex 7, confidential to Cargill/DFI respectively.

⁵⁰ NGM = non-GM.

⁵¹ PWC, Vendor Due Dilligence Report, p. 290.

⁵² PWC, Vendor Due Dilligence Report, p. 292.

the supplier with regard to an additional bio-chemical feature of the product. Furthermore, and despite this strategy, most of the sales of the companies are sales of the basic product of fluid lecithin (e.g. Topcithin NGM for DFI) and of deoiled lecithin (e.g. Emulpur IP for DFI). Thus, the different products of one type of lecithin (i.e. fluid and deoiled) can be considered as belonging to the same respective product market.

Conclusion

73. For the foregoing reasons the Commission concludes that the relevant product markets for lecithin affected by the transaction are
- **GM fluid lecithin,**
 - **GM deoiled lecithin,**
 - **non-GM fluid lecithin and**
 - **non-GM deoiled lecithin.**
74. Considering that Cargill is currently not active in the manufacture and sale of *fractionated* lecithin, the competitive assessment of this market can be left open for the purpose of this decision.

2. Pectin

75. The parties' activities overlap also in the production of pectin, since Cargill acquired Citrico, a global producer and supplier of pectin, in June 2005. DFI (active through Degussa Texturant Systems) is the third largest pectin producer worldwide.
76. Pectin is, in a nutshell, used to gelatinize, stabilise and jellyfy products so that they get another grade of viscosity. The industrial extraction of pectin uses by-products from the fruit juice industry to produce pectin.
77. The parties take the view that pectin as a whole is part of a broader market for so called "*specialty hydrocolloids*". Specialty hydrocolloids are food additives that react with water to form gels, pastes and emulsions. The category of hydrocolloids consists, besides pectin, of galactomannans, gum arabic, biopolymers, carrageens and alginates and must be distinguished from basic food ingredients which may have also thickening properties like starch or gelatine. The parties argue that pectin form part of the broader market for all specialty hydrocolloids because all hydrocolloids have the ability to gelatinize aqueous products.
78. The market investigation has, however, identified several elements that militate for a distinction between pectin and other specialty hydrocolloids. It provided evidence that the vast majority of customers in recent years did not switch from pectin to other specialty hydrocolloids. Furthermore, most of the customers indicated in their replies to the market investigation that they would not switch to other specialty hydrocolloids should the price for pectin increase significantly. According to the results of the market investigation, this very limited substitutability is mainly due to technical reasons and the impact on taste.

Possible distinction between apple pectin and citrus pectin

79. Pectin is mainly⁵³ extracted from *apple* pomace⁵⁴ (apple pectin) and *citrus* peels⁵⁵ (citrus pectin) and sold in powder form. Apple pectin is of darker colour and is the richest in neutral sugars and in starch but is less rich in proteins and calcium than citrus pectin. Sugar acts as a dehydrating agent (it lowers the water activity) and provides the energy required for gelation. The presence of starch decreases the brittle aspect of the gel. Apple pectin is therefore mainly used in *fruit applications* (jam, fruit preparations, fillings glazes, confectionery and beverages) while citrus pectin is more suitable for *dairy applications* (yoghurt, acid dairy drinks, some neutral dairy desserts and low fat spread). The parties take the view that no distinction should be made between apple and citrus pectin, because both of them have the function of a thickening agent. According to the replies to the market investigation of a majority of customers, both types of pectin are used but for different applications.

Possible distinction between LM-pectin and HM-pectin

80. Irrespective of the different natural *sources* of fruit pectin, the pectin markets might be further segmented according to the *quality* of pectin, into *low-methoxyl pectin*⁵⁶ (“LM pectin”) and *high-methoxyl pectin*⁵⁷ (“HM”). The degree of esterification (= methoxylation⁵⁸) is the characteristic used to define the quality of pectin. Indeed, the production process for HM pectin and LM differs: different processes of “demethylation” (e.g. using acid or alkali) result in a different degree of esterification, i.e. in lower or higher methoxyl content. Product characteristics of LM and HM Pectin differ, as the lower degree of esterification, the lower the gelation temperature will be.
81. For the purpose of this decision, the question whether pectin forms a separate market from other hydrocolloids and whether the market for pectin should be further subdivided into apple and citrus pectin and/or LM and HM Pectin can, however, be left open, since the transaction is not likely to significantly impede competition under either market definition.

3. Vertically affected market(s): Crude seed oil or soy oil

82. Cargill (unlike DFI) is also active in the production of crude seed oil. Crude seed oil is obtained by crushing oilseeds such as soy, rapeseed or sunflowers. As set out above, crude soy oil can be further refined in a degumming process in order to produce soy oil and wet gums with the latter being an intermediate product for the production of lecithin. Therefore, Cargill’s activities in the production of crude seed oil and in particular of crude soybean oil have to be considered as an upstream market for the

⁵³ Other sources have been considered for the extraction of pectin such as sunflower or sugar beet but have not yet been subjected to intensive industrialization.

⁵⁴ Apple pomace contains 10-15 % of pectin.

⁵⁵ Citrus peel contains 20-30 % of pectin.

⁵⁶ LM pectin has a degree of esterification (“DE”) of less than 50 and is therefore used in certain applications like fruit preparations and yoghurt.

⁵⁷ HM pectin has a DE of 50 or more and is therefore used in special applications like gel jams.

⁵⁸ The degree of esterification/methoxylation is proportionate to the percentage of galacturonic acid in the pectin.

production of lecithin. A further delineation between GM and non-GM might also be appropriate.

83. As the proposed transaction does not lead to competition problems related to Cargill's upstream activities regardless whether possible markets for crude seed, for crude soybean or for GM- and non-GM crude soybean oil are considered, the market definition can be left open for the purpose of this decision.

B. Relevant geographic markets

1. Lecithin

84. The parties argue that the possible markets for emulsifiers and lecithin should be regarded as worldwide in scope as the main emulsifier suppliers sell in various countries, transportation costs do not impede trade at global level, and there are significant imports from the USA and South America into the EEA.
85. In previous decisions, the Commission has left the geographic market definition open. Nevertheless, the recent developments of the regulatory framework in Europe as well as the results of the market investigation militate for an *EEA-wide definition* of the non-GM lecithin markets (i.e. non-GM fluid and non-GM deoiled lecithin):
86. Contrary to US customers and their far reaching acceptance of GM products, European final customers and – as an immediate consequence – retailers in the EEA are currently reluctant to buy and store GM products which would force them to label their products as containing GM ingredients. Since the development in the food ingredients industry is largely buyer-driven and since consumer demand in downstream product markets have a leading impact on the needs and expectations of the customer (i.e. food manufacturers), the structure of demand for lecithin in the EEA differs, as noted above, significantly from the rest of the world. Accordingly, accounting for only 45% of the total world-wide sales of (fluid and deoiled) lecithin in 2004, the EEA currently already accounts for more than 80% of the world-wide sales for non-GM lecithin and only for less than 25% of the world-wide sales of GM lecithin.
87. The parties submit that customers are increasingly willing to purchase lecithin from suppliers located outside Europe⁵⁹. Although this might be true for sophisticated and larger companies, the vast majority of customers, representing also the majority of the European lecithin demand, indicated in their replies to the market investigation that they source lecithin on an EEA-wide basis, that is they have to resort to suppliers/distributors of lecithin that have a distribution network and a sales force present in Europe. In addition, for fluid lecithin, transportation cost sensitivity is a significant factor. Customers who do not buy very large volumes can not afford to bear the additional cost of transport in the case of sourcing lecithin from suppliers located outside Europe.
88. In this respect, the service provided by these distributors/suppliers is of paramount importance for their customers from the food industry, in particular for the non-GM certification of lecithin. Consequently, large distributors that team up with lecithin producers had to develop an expertise in IP certification, on which customers can rely.

⁵⁹ Form CO, p. 26.

89. For the foregoing reasons, the Commission considers that the non-GM markets for lecithin are EEA-wide in scope.
90. On the other hand, as regards the markets for *GM lecithin* (fluid and deoiled), regulation requirements do not differ significantly across the world. For example, according to the parties, 100% of lecithin sold in Europe meets the US standard (GRAS), while 80-90% of lecithin sold in the US meets the EU standard (E322). Furthermore, the transport costs and tariffs are low enough to make prices in the EEA and in the US very similar. Also, while the same actors are active on the EEA and the US, a GM lecithin producer can relatively easily start operations in a new geographic area by resorting to a distributor which, unlike in the case of non-GM products, does not need to develop an expertise in IP certification.
91. For these reasons, the Commission considers that the GM markets for lecithin are likely to be worldwide in scope. However, for the purpose of this decision, the exact geographic market definition can be left open.

2. Pectin

92. The parties claim that the market for pectin is worldwide in scope. Even if the market investigation provided indications that the geographical scope of the markets may be limited to the EEA, the exact geographic market definition can be left open, because no competition concerns occur under either delineation.

3. Crude seed oil or soy oil

93. The parties consider it appropriate to identify a worldwide market for crude seed oil, irrespective of the seed type. In any event, due to the fact that the transaction will not have any significant vertical effect, the precise market definition can be left open.

V. SUBSTANTIVE ASSESSMENT

1. Non-GM fluid lecithin

94. As regards the EEA market for non-GM *fluid* lecithin, the results of the in-depth market investigation effectively removed the serious doubts as to the proposed transaction's compatibility with the common market and the EEA agreement.

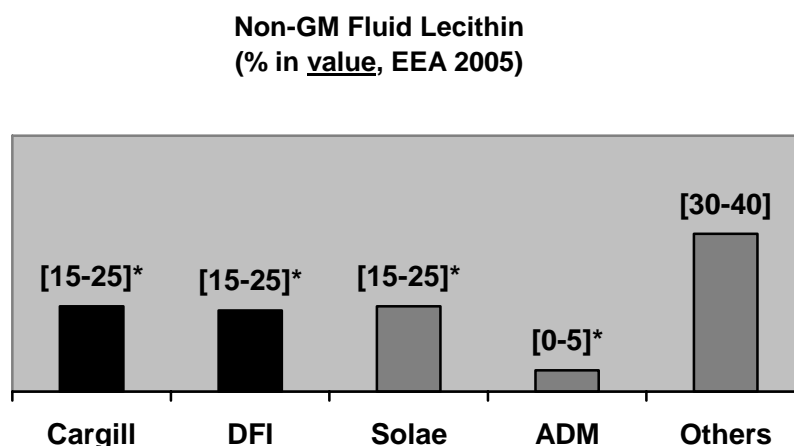
a) Non-coordinated effects

95. According to the market share estimates provided by the parties in the *notification*, Solae as the market leader held [30-40%]* of the market in 2004. Cargill and DFI, then No. 2 ([15-25%]*) and No. 3 ([15-25%]*) in the market, would become market leader after the merger, holding a combined market share of [30-40%]*. Besides the three major players Cargill, DFI and Solae, according to the parties' submission, several distributors are active in the market, reaching altogether a market share of [25-35%]*, however with smaller individual shares below [5-15%]*. The market share estimates provided by the parties for the time period 2002 – 2004⁶⁰ indicate that Cargill has successfully expanded its market position in non-GM fluid lecithin in recent years. Indeed, Cargill has, based on the acquisition of a lecithin production facility near

⁶⁰ Form CO, Annex 9, 10; Cargill's supplemental paper, 23/11/2005, Annex 1.

Liverpool (UK) in the 1980s and of the Belgian company Vandemoortele International in 1998⁶¹, successfully expanded its range of fluid lecithin, including “premium” standardised fluid lecithin products for specific applications.

96. The Commission’s market investigation has shown that the market for non-GM fluid lecithin accounted for approximately EUR 60 million in 2005. Its results, which are set out in the chart below, confirm, however, only partly the parties’ market share estimates:



97. Based on the sales data provided by the different suppliers, the leading players Cargill, DFI and Solae in the year 2005 hold a quite similar market position accounting for roughly [15-25%]* each. Consequently, the proposed transaction combines two of the three leading players in the market and creates a clear market leader holding a market share of roughly [35-45%]*. However, contrary to the parties’ submission, ADM is active in the market of non-GM fluid lecithin at least to a limited extent, holding a market share of [0-5%]*. Other suppliers, including producers such as Denofa and distributors like Helm AG, Nore Ingredients and Lasenor, reach a combined market share of [30-40%]* with the largest player (Nore Ingredients) holding a share of [5-15%]*.
98. In its preliminary market assessment, the Commission has found some indications that the competitive constraint stemming from other suppliers and potential entrants may not be sufficiently strong to avoid an increased leeway of the merged entity for unilateral price increases. In this respect, the Commission has considered the following elements of the general market environment to be relevant:
99. While representing only a small ingredient from a quantitative point of view, lecithin plays an important role in the production process and significantly affects the quality of the food. For the food producers, it is therefore essential to have lecithin of renowned and established quality and to avoid any risk in this respect. Reliability of the non-GM lecithin suppliers is therefore one of the main elements which the food producers take into account when adopting their purchasing decisions. Consequently, as confirmed by the market investigation, food manufacturers tend to primarily value quality over price. This means that, in terms of barriers to entry, suppliers of lecithin need some reliability

⁶¹ M.1126 CARGILL/VANDERMOORTELE

as to the quality of their products in order to compete for the supply of non-GM lecithin to food producers. Next, for most of the food producers, changing lecithin supplier may entail significant costs and organisational constraints since it can require a burdensome adaptation of the recipes and a significant testing period. Most respondents active in the food sector confirmed that the risk of inadequate lecithin quality of other suppliers as well the reluctance to change recipes for their products are the main factors that inhibit a switch to other suppliers. Furthermore, a good distribution and logistics network is also crucial in order to become a credible supplier of lecithin to food producers. Finally, although Solae and ADM would have sufficient production capacity to expand their non-GM lecithin production, the preliminary market investigation had confirmed that Solae's and ADM's incentive to expand their non-GM lecithin business might be limited by the fact that both companies are mainly active in the crushing of GM soybeans⁶².

100. However, the in-depth market investigation provided sufficient evidence showing that the transaction will not lead to a significant impediment of effective competition on the market for non-GM fluid lecithin.
101. Most importantly, the investigation has confirmed that the competitive constraint stemming from other competitors than Solae and ADM is of strong and even growing significance. This competition dynamics is reflected in the steady and significant increase in the market share of the former "fringe" players in recent years, holding a market share of already [30-40%]* in 2005.
102. According to the information gathered in the course of the in-depth investigation, the following dynamic elements of the competitive environment have also to be considered: As set out above, Brazil is currently the most important source for non-GM raw material. DFI runs no own soy-bean crushing facility and sources [...] % of its needs of non-GM crude and fluid lecithin from Brazilian soybean crushers like Imcopa, Coinbra, Caramuru or Brejero. Despite the fact that, contrary to DFI, Cargill runs its own soybean crushing facility in Liverpool, Cargill does not produce all its non-GM lecithin internally, but sources significant quantities of non-GM fluid lecithin (about [...] %)* from Brazil. Furthermore, a significant proportion of the quantities of non-GM fluid lecithin purchased by Cargill ([...] %)* as well as by DFI ([...] %)* is "resold" to end customers without any further refining or processing. For these quantities of non-GM fluid lecithin Cargill and DFI more or less just provide the function of distributor of Brazilian non-GM fluid lecithin in Europe.
103. Some bigger food/chocolate customers are buying already today directly from Brazilian sources. Even if in the past *direct sales* of Brazilian producers (mainly non-GM soybean crushers) like Imcopa, Coinbra or Caramuru to (larger) final customers in Europe were exceptional, the leading Brazilian manufacturers have shown that they are able to establish their own distribution and logistics network in Europe and to compete directly with well established players like the merged entity and Solae.

⁶² Since lecithin is only a by-product of the oilseed crushing process (less than 1% of the soybean content), ADM's and Solae's market strategy is mainly driven by the major products of the crushing process (soy meal, soy oil). Therefore, both companies would probably only further expand in non-GM lecithin should there be sufficient demand for non-GM soy meal and oil to justify the higher input prices for non-GM soy beans.

104. Indeed, Brazilian suppliers could take an advantage from the fact that due the new legislation on labelling and traceability in the EU which requires an “audit trail” of the whole supply-chain, the ultimate source of the non-GM fluid lecithin (Brazilian soybean crushers) has become more and more transparent to final customers. Indeed, several customers in their replies to the market investigation provided the view that Cargill is perceived more as a “distributor” of Brazilian non-GM fluid lecithin than as a producer.
105. In addition, the significant price increase and the attractive margins for non-GM fluid lecithin are an incentive for Brazilian manufacturers to come closer to the final customer. In fact, Brazilian manufacturers were also able to improve the quality of their lecithin products and to gain a better reputation as regards the “reliability” of a high and constant product quality. In line with these recent developments, the in-depth investigation has revealed that one of the most important Brazilian suppliers of non-GM fluid lecithin ([...]*), Imcopa, has actually started to directly enter the European market for non-GM fluid lecithin. Imcopa is in the process of installing a sufficient warehouse capacity and to build up its own distribution network in order to significantly increase its direct sales to European end customers.
106. In addition, the recent market developments described above (transparency of supply-chain, improved quality, reliability of Brazilian manufacturers, high margins, lack of capacity constraints) also increased the ability and the incentives of European distributors like Helm AG (Germany) and Nore Ingredients (Ireland) to expand their market position and to actively compete with the parties. These distributors in particular provide the necessary logistics and distribution network in Europe for those smaller Brazilian manufacturers for which a direct market entry in Europe imposes higher economic risks. For example, the market position of the Helm AG is based on a close cooperation with one of the smaller Brazilian manufacturer of non-GM lecithin.
107. Finally, the in-depth market investigation provided strong indications that many larger food manufacturers as well as distributors actually encourage the entry of new actors. As set out above, lifting the ban on GM soy crops in Brazil in 2005 induced a growing market perception that their might be the risk of a shortage of Brazilian non-GM fluid lecithin. Customers reported that their major suppliers already had to face delivery problems. The incentive to look for alternative sources of non-GM lecithin is further strengthened by the significant price increase of Cargill’s, DFI’s and Solae’s products in recent years. Accordingly, the market investigation has shown that also soybean producers and crusher from *India* play an increasing role on the EEA market, since the Indian soybean production is by a great deal based on non-GM seeds and sufficient certifiable raw material is therefore available⁶³.
108. Indeed, the in-depth market investigation provided evidence that at least one of the leading food manufacturers has actively looked for alternative suppliers and finally “approved” an Indian producer as a potential supplier of non-GM fluid lecithin; the products will be distributed by one of the current “fringe” players. Customers are therefore able to qualify new suppliers if need be, and the barriers to switch their supplier are less significant than expected.

⁶³ While also some Chinese producers are active on the non-GM lecithin market, there activities in Europe remains limited (it should be noted that China is a net importer of soy beans).

109. Taken together with the fact that the leading players in the EEA (Cargill, DFI, Solae) currently source all (DFI) or a significant proportion of their non-GM raw material from their (actual or potential) Brazilian competitors, these factors provide strong evidence that the current competitive environment in the market for non-GM fluid lecithin will not change so as to create a substantive impediment to competition. In particular in view of the increasing presence of new competitors on the market, the Commission takes the view that competition is not likely to be impeded as a result of non-coordinated effects.

b) Coordinated effects

110. As mentioned above, the combined market shares of the merged entity and its strongest competitor (Solae) will reach or exceed [55-65%]* (see table above). In order to assess whether the combined market shares of the merged entity and its largest competitor might give rise to the concern that the proposed transaction may lead to coordinated effects, the Commission has analysed whether the market conditions in the fluid lecithin market make it easy for the firms to reach a mutually acceptable coordinative outcome, if deviations from such a behaviour could be easily detected and punished and if companies not participating in the coordination could jeopardise the effect of the coordination⁶⁴.

111. In assessing the relevant factors that contribute to these necessary conditions for coordinated effects, the Commission considers that the merger will not result in coordinated effects on the European market for non-GM fluid lecithin for the following reasons:

112. Fluid lecithin provides only insofar some features of a “commodity”, as bulk sales to distributors are concerned. When it comes to selling lecithin to individual end customers⁶⁵, their choice is to a large extent influenced by other factors than the price of the product, namely the ability to guarantee a high quality, to ensure timely delivery or to provide advice on the choice of the appropriate product. Also other market characteristics strongly mitigate the risk of a sustainable coordination of market behaviour. First, following the merger, the market position of the leading players will be quite asymmetric with the merged entity being the clear market leader. Due to the fact that, contrary to Cargill and Degussa, Solae owns a significantly larger soybean crushing capacity and relies to a lesser extent on purchases of non-GM fluid lecithin from third parties than Cargill and Degussa, also the cost structure of the main players is very different. Secondly, the results of the market investigation strongly indicate that the market for non-GM fluid cannot be considered to be transparent. The price for non-GM lecithin is individually negotiated between the supplier and its customers on a bilateral basis without published price lists being available. As a result, prices for deoiled lecithin vary significantly between individual customers, even those of a comparable size.

113. Finally, as set out above, the market is currently characterized by a strong and even increasing “fringe” of smaller players and a significant degree of market dynamics.

⁶⁴ See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (“Horizontal Guidelines”), paragraph 39-60, OJ L 32 2004, 5.2.2004, p.5.

⁶⁵ The parties sell the majority of their products directly to end customers.

This general market environment in particular mitigates the risk of successful and sustainable attempts to coordinate market behaviour.

Conclusion

114. For all the foregoing reasons, the Commission considers that competition concerns are unlikely to arise on the market for non-GM lecithin.

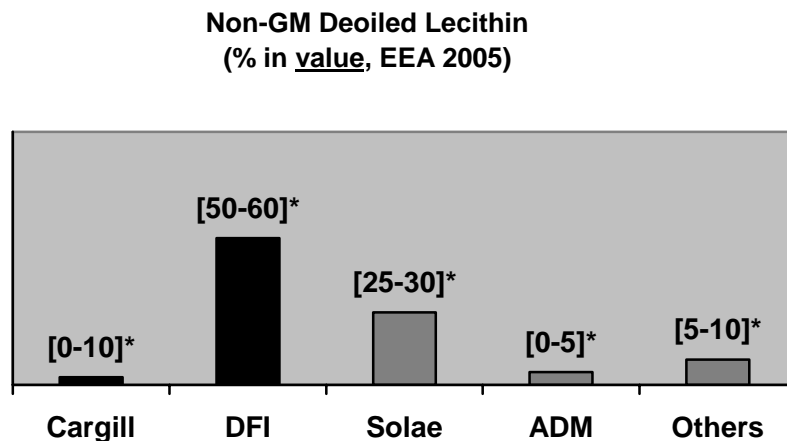
2. Non-GM deoiled lecithin

115. According to the notification, the parties hold a high combined market shares in the market for non-GM *deoiled* lecithin, estimated by the parties to more than [55-65%]* (based on turnover figures for 2004), with only one remaining competitor, Solae, active on the market. The Commission had also found indications that entry barriers to the deoiled market seemed to be significant for new competitors, in particular with a view to the necessary deoiling facilities and to access to end-customers. This led the Commission to carefully investigate the competitive structure on the market for non-GM deoiled lecithin, which accounted for less than EUR 25 million in 2005.

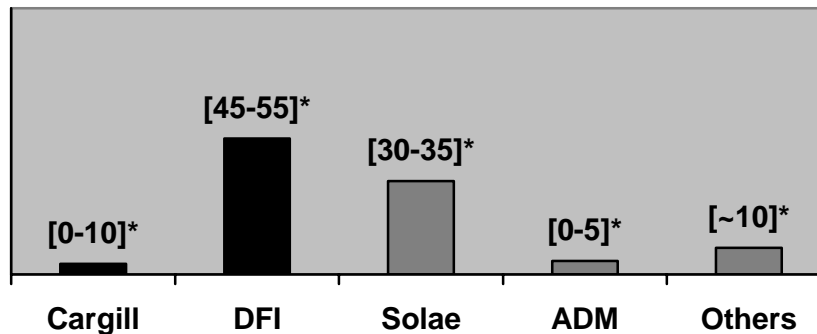
116. The in-depth market investigation has, however, revealed a multitude of elements that led the Commission to the conclusion that the market for non-GM deoiled lecithin will remain competitive after the merger.

a) The merger leads to high market shares, however with a limited increment

117. The results of the Commission's market reconstruction are summarised in the graphs below:



**Non-GM Deoiled Lecithin
(% in volume, EEA 2005)**



118. The market investigation has confirmed that in 2005 DFI was still the largest supplier of non-GM deoiled lecithin, with a market share of [50-60%]* ([45-55%]* based on sales volume). While reaching, according to the parties, a market share of [5-15%]* in 2004, Cargill's market position was significantly weaker in 2005. Together with Cargill's lower market share of [0-10%]*, the merged entity in 2005 would hold [55-65%]* of the non-GM lecithin market in the EEA ([50-60%]* based on sales volume). DFI's largest competitor, Solae, held only [25-30%]* ([30-35%]* based on sales volume) of the market in 2005, well behind the market leader.

119. However, while the parties in their notification indicated that only Cargill, DFI and Solae were selling non-GM deoiled lecithin on the European market, the in-depth investigation revealed that a number of other players are also active on this market: The Commission found that not only ADM, also competing with Cargill and Degussa on the non-GM fluid lecithin market, is producing non-GM deoiled lecithin in the US and selling it into Europe (market share: [0-5%]*). Also other companies have started to offer non-GM deoiled lecithin on the European market, such as *Northland Organics*, a US based company specialised on "GM free" products and producing deoiled lecithin through a tolling agreement with Solae (market share of [0-5%]*), the *The Matlani Group*, an Indian based company with its own production facilities for deoiled lecithin (market share of [0-5%]*), or *Ruchi*, an Indian soybean producer and crusher with its own deoiling facilities.

b) The combination of Cargill and DFI will not significantly change the competitive structure of the market

120. The market investigation has shown that DFI and Solae are the leading players on the non-GM lecithin market, while the competitive pressure exercised by Cargill on DFI and Solae remained limited.

DFI and Solae are the leading suppliers in Europe

121. *DFI* is perceived by most customers as the leading supplier of deoiled non-GM lecithin, in particular with regard to product quality and product know-how⁶⁶, offering a broad

⁶⁶ See questions 32 and 33 of the first Commission's questionnaire sent to customers.

range of standard and more specialised/premium products. DFI has a production facility for deoiled lecithin in Europe and a well established distribution system.

122. Unlike its main competitors, DFI has to buy in the raw material for its deoiled lecithin (non-GM fluid lecithin). The dependence on non-GM raw material has become more important since prices for non-GM soybeans and lecithin have sharply increased. The market investigation showed that DFI was not able to pass on the dramatic price increases for the non-GM raw material. While raw material prices increased by more than [...] in 2004, DFI's prices remained roughly stable since then. This indicates that the present power of DFI to behave independently from its customers or other competitors remains, despite DFI's high market shares, limited.
123. The only remaining competitor with a sales value exceeding 25% of the market value in the EEA is *Solae*. Similar to DFI (and unlike Cargill), *Solae* has its own production facilities for deoiled lecithin which it uses only partly for the production of non-GM lecithin (*Solae* is the world market leader for GM deoiled lecithin, see below). Unlike DFI, *Solae* is a vertically integrated company and has its own crushing facilities, allowing it to produce its own non-GM fluid lecithin and to further refine it into deoiled lecithin. Although *Solae*'s market shares in the non-GM deoiled lecithin market have dropped from [70-80%]⁶⁷ to [25-30%]* ([30-35%]* in sales volume), *Solae* could stabilise its "non-GM" sales in the EEA in 2004 and 2005 and has not lost sales value anymore. Despite this position, the Commission considers that, absent new entries, *Solae*'s incentive might not be to compete aggressively with the new entity.⁶⁸ The Commission thus examined whether other factors should be taken into account in assessing whether this merger leads to a significant impediment of competition.

Cargill's weakness on the deoiled market

124. *Cargill* has entered the market for non-GM deoiled lecithin only recently in September 2003, and has no own production facilities for deoiled lecithin. Since the market investigation showed that *Cargill* was nevertheless able to gain a significant share of the market ([5-15%]*) in 2004 (based on value), the Commission has carefully investigated whether *Cargill*'s removal as a competitor from the non-GM deoiled market might significantly weaken competition on this market.
125. The investigation did not confirm the view that, absent the merger, *Cargill* would have been able, on its own, to act as a significant and sustainable competitor on the market for non-GM deoiled lecithin, nor that its disappearance as an independent competitor would significantly change the current competitive structure of the market.
126. The market investigation revealed that the "low price" strategy that *Cargill* chose for the entry into the non-GM deoiled lecithin market and that was one of the main reasons for *Cargill*'s success on the market, proved not to be sustainable, given the dramatic

⁶⁷ Estimates provided by the parties.

⁶⁸ As set out above, lecithin is only a by-product of the oilseed crushing process (less than 1% of the soybean content). *ADM*'s and *Solae*'s market strategy is mainly driven by the major products of the crushing process (soy meal, soy oil). Therefore, both companies would only further expand in non-GM lecithin should there be sufficient demand for non-GM soy meal and oil to justify the higher input prices for non-GM soybeans. Consequently, in case of a price increase for non-GM lecithin, they may have the incentive to follow the price increase instead of expanding sales at lower prices.

increase of the costs for the raw material (non-GM fluid lecithin). As a result of this increase, Cargill abandoned its pricing strategy already in [...] and now prices at the level of its competitors. Even this price increase (+[...] in 2005) did not allow Cargill to fully pass on the significantly higher increase of the raw material costs.

127. Cargill's ability to actively compete with DFI is further restricted by the fact that Cargill, unlike other competitors such as DFI, Solae, ADM or Matlani, does not have its own production facilities for deoiled lecithin. Cargill has its deoiled lecithin produced in a factory in Arkansas, USA, through a toll manufacturing agreement with a company [...] that [...]. The factory has a relatively limited capacity of [...] t/year, (DFI: [...] t/year), which could not be utilised due to [...]. Competitors confirmed that [...].
128. Also, information gathered from third parties and from Cargill proves that Cargill is facing [...]. This difference in the level of quality of Cargill's deoiled lecithin was confirmed by respondents to the market investigation. [...] (69) [...] (70). As a result of these elements, Cargill's sales of non-GM deoiled lecithin have significantly dropped in 2005.
129. A new production facility for a deoiling plant, which is considered as an alternative to the toll manufacturing agreement with [...], could, according to Cargill, not be operational before [...].
130. In conclusion, it cannot be excluded that, absent the merger, Cargill would be able to restart its production and to play a role on the non-GM deoiled lecithin market again. However, there are strong elements suggesting that Cargill's capacity to actively compete with the other competitors, and to regain a more "sizeable" market share would be substantially reduced in the near future.

c) New competitors have already entered or will soon enter the market, thereby effectively constraining the merged entity's position

131. The Commission was initially concerned by the limited number of suppliers offering deoiled lecithin on the European market, with, according to the parties, only 3 players on the market. However, the in-depth investigation revealed evidence that a number of new suppliers, not the least as a result of the price increase for non-GM raw material, have recently entered or will, with a sufficient degree of likelihood, enter the EEA market for deoiled lecithin within a short period of time and with a sufficient magnitude of activity (71).
132. Most of these suppliers have decided to invest in their own production facilities and have built up deoiling lines, mostly in connection with existing fluid lecithin production facilities which provide the necessary input for the deoiling process. Others are in the process of constructing deoiled production facilities and adjusting the production

⁶⁹ On average, production was stopped between 3 and 6 hours per day in 2005 for both, GM and non-GM lecithin.

⁷⁰ Internal e-mails confirm that Cargill faced severe quality problems and sales people complained about Cargill's decision to dramatically increase prices in 2005 given the poor quality of the lecithin.

⁷¹ See Horizontal Guidelines, paragraphs 68-75.

process and will enter the market already this or next year (e.g. SG Lecitinas, Berg & Schmidt/Sternchemie).

133. The fact that a relatively large number of companies was able to enter the market shows that the entry barriers to the deoiled lecithin market may be significant but are less significant than expected: While it is true that deoiled lecithin is no “commodity” and its production involves significant technology and know-how, competitors have confirmed that this technology is available on the market (e.g. through engineering firms) and that they were able to produce non-GM deoiled lecithin of a comparable quality level to the market leaders.
134. Also the fact that many food customers require a European presence of their supplier is not a significant obstacle for these competitors, since most of them cooperate with established European distributors who can provide the necessary know-how on customers and their individual need.
135. The new suppliers are even more credible competitors since, being based in Brazil or India, they have direct access to non-GM soybeans or lecithin. Similar to the situation in the field of fluid lecithin, South American and Indian soybean producers (such as Ruchi and Matlani) or soybean crushers (such as SG Lecitinas) are increasingly discovering that access to non-GM soybeans constitutes a competitive advantage and that sales on the EEA market are an attractive business opportunity, in particular in view of the relatively high prices and the importance of raw material costs in the end price.
136. On the basis of a static analysis, one could argue that the *actual* sales of competitors to DFI, Solae and Cargill are still relatively limited in volume and value. It should, however, be noted that most of the Indian and Brazilian competitors are just in the process of entering the European market, adjusting their production and building up relations with distributors and end customers. All competitors explained to the Commission that they expect to increase their market share on the European non-GM deoiled lecithin market within the next two years. Also customers expect producers from South America and India to play a more important role in the EEA in the next years, not the least because of their location close to the non-GM raw material and their cost advantages. Finally, some new entrants achieved already the same volume of sales as Cargill.
137. Also the fact that the newly installed deoiling capacities are significant shows that Indian and South American suppliers are highly committed to enter the European market: Indian and South American competitors have already today an installed deoiling capacity of [...] t/year, and this capacity will be further increased by [...] t to [...] t/year in 2007. The available production capacity for non-GM deoiled lecithin therefore will exceed the volume of the entire EEA market (about [...] t).
138. The Indian company *Matlani*⁷², an integrated producer and crusher of non-GM soybeans, has an installed production base of [...] t/year and has just started to sell first volumes to European customers (around [0-10%] of the market in 2005, similar to Cargill’s market share in value). Matlani is already adding a new production line which will increase their capacity to [...] t/year. Matlani sells through an established

⁷² http://www.matlani.com/Lecithin_soyalecithinpowder-P97.asp.

European trading company, DKSH, France. According to Matlani, the company could expand its deoiling capacity should the European demand for non-GM deoiled lecithin from India increase.

139. The biggest Indian soybean company, *Ruchi*⁷³, has also started to produce non-GM deoiled lecithin and intends to sell its products through established lecithin traders to European end customers. Since Ruchi is already an approved supplier of fluid lecithin to an important European food producer, the perspective to extend its business on deoiled lecithin seems realistic. Ruchi has started with a relatively small production capacity ([...]* t/year), but indicated that they were able to expand the capacity without difficulties within 6-8 months once European demand increases. Ruchi does not face quality problems that might negatively affect their customer relationships.
140. *Berg & Schmidt India*⁷⁴ is a subsidiary of the well-established food ingredients company Berg & Schmidt, Germany, the former owner of Solae's lecithin business. Berg & Schmidt India has by far the largest production capacity, with an installed deoiling capacity of [...]* t/year (equal to [...%]* of the European non-GM deoiled market). Although Berg & Schmidt is currently processing GM lecithin, they have explained that they could easily have access to certified non-GM soybeans and would consider switching to deoiled if the market conditions in Europe would become attractive enough. Due to their long experience with lecithin and their production know-how, they do not think that entering the non-GM market would be very difficult.
141. *SG Lecitinas* from Argentina, a soy lecithin specialist active both in GM and non-GM lecithin, is in the process of entering the non-GM deoiled lecithin market. SG Lecitinas is building a new deoiled production site in Campo Mourão, Brazil, with a capacity of about [...]* t which will be operational in 2007; the company is already actively advertising its new products⁷⁵.
142. Another competitor, the US company *Northland Organics*⁷⁶, has no own production facilities, but has its deoiled lecithin produced through a tolling agreement with Solae. *Northland Organics* has a small [0-5%]* but stable market share in Europe and is committed to develop its European business, using European distributors.
143. Also many *customers* have confirmed that they are interested in alternative sources of deoiled non-GM lecithin. This has also been confirmed by distributors who were approached by customers that were looking for alternative suppliers. Although any change of the actual supplier involves, at least in the food industry, some cost for testing the new product, customers are able to change the supplier within reasonable time and without incurring prohibitive cost. Since some important multinational food and chocolate manufacturers have already switched to Brazilian and Indian suppliers, it is likely that these customers will also buy more and more non-GM deoiled lecithin from these suppliers. Since the big multinational food manufacturers are the most

⁷³ <http://www.ruchiglobal.com/>.

⁷⁴ See: <http://www.berg-schmidt.de/index2.html#india>.

⁷⁵ See: <http://www.sglecitinas.com.ar/eng/home.htm>.

⁷⁶ <http://www.northlandorganic.com/seed/english/lecithins2.htm>.

demanding customers in terms of quality and reliability, access to them is likely to open the door for Brazilian and Indian competitors also to smaller and medium-sized customers.

144. As for coordinated effects as a result of the merger, the Commission considers that they are unlikely in view of the above-mentioned actual and imminent entries of companies, which would prevent such coordination from being sustainable.

Conclusion

For the reasons set out above, the merger is not likely to impede significantly effective competition in the market for non-GM deoiled lecithin.

3. GM lecithin markets

Fluid lecithin

145. The 2005 market positions on the market for GM fluid lecithin show that the market has three strong leaders: on a possible EEA-wide market, DFI holds [15-25%]* of the market ([20-25%]* worldwide), Solae's market share is [20-30%]* ([30-40%]* worldwide), while ADM's sales represent [40-50%]* of the market ([20-30%]* worldwide). Besides these three companies, the only other company active in Europe is Cargill with [5-15%]* of the market ([5-15%]* worldwide). Other smaller players are active in other parts of the world: their sales account for [5-15%]* of the worldwide market.
146. Hence, by contrast to the market for non-GM fluid lecithin, there is not an active fringe of players at least in Europe: while Brazilian producers could take advantage of their privileged access to non-GM raw material to enter very quickly the market for non-GM fluid lecithin, the players on the GM markets are the traditional US companies involved in the crushing of soybeans like ADM, Solae, and Cargill. DFI's position is in this respect atypical and is probably a legacy of the fact that Lucas Meyer (now owned by DFI) was the first company to market lecithin. As a result, the market is rather concentrated with an initial HHI of [2500-3000]* and a change in HHI of [300-500]* (at the EEA level).
147. On the other hand, the new entity would have [25-35%]* of the European market ([25-35%]* worldwide) and would not be the leader of the market: ADM will still be stronger in Europe, while the worldwide leader would remain Solae. This suggests that the new entity would have little leeway to increase prices unilaterally or otherwise impede competition.
148. Furthermore, Cargill is currently not exerting a strong competitive constraint on DFI. As internal documents from Cargill substantiate, the entry of Cargill on the lecithin markets was driven by a focus on non-GM markets, identified as much more lucrative than the GM markets. As a result, the sales-force of Cargill, at least in Europe, clearly concentrates on food customers, i.e. customers of non-GM lecithin, and is therefore less aggressive on the GM market, including fluid lecithin.
149. Thus, price increases or other anti-competitive behaviour as the result of non-coordinated effects seem unlikely as the result of the merger.

150. As for the risk that the merger will elicit *coordinated behaviour*, the Commission considers that such a risk is negligible, mainly for the same reasons as for non-GM fluid lecithin. Indeed, data submitted by the parties show that there exists a large variation in the selling prices for a given product [...]*. This is due to the fact that each selling price is the result of a bargaining process between sales-forces and customers. This makes monitoring of competitor's behaviours very difficult, and as a result, coordination very unlikely. This conclusion is reinforced by the fact that competitors on the market have significantly different cost structures.
151. For those reasons, with regard to the market for GM fluid lecithin, the Commission considers that the operation is not likely to elicit anti-competitive effects through non-coordinated or coordinated effects.

Deoiled lecithin

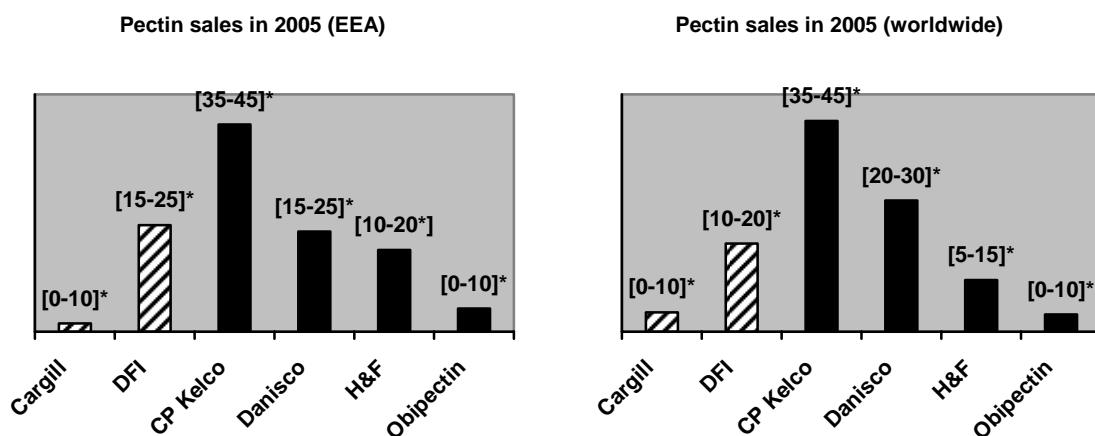
152. The 2005 market shares positions show that the activity of Cargill on this market is rather limited (EEA: [0-10%]*, worldwide: [0-10%]*). DFI's sales represent [35-45%]* of the possible EEA market ([15-25%]* worldwide), while Solae and ADM share the rest of the market: in Europe, Solae holds [50-60%]* of the market ([25-35%]* worldwide) and ADM's market share is [0-10%]* ([30-40%]* worldwide).
153. Consequently, the overlap on GM deoiled lecithin is very limited. Furthermore, as mentioned above for GM fluid lecithin, Cargill does not focus its lecithin marketing strategy on GM markets and consequently does not exercise a significant competitive constraint on DFI. For all these reasons, the Commission considers that the operation will not lead to non-coordinated effects.
154. As for the risk of coordinated behaviours as a result of the merger, the Commission considers it to be limited for the same reasons mentioned above: monitoring of competitors' behaviour is difficult so that the sustainability of coordination is very unlikely.
155. For those reasons, with regard to the market for GM deoiled lecithin, the Commission considers that the operation is not likely to elicit anti-competitive effects through non-coordinated or coordinated effects.

4. Pectin

156. The parties' combined market share for pectin does not exceed [25-35%]*, neither on a worldwide ([15-25%]*)⁷⁷ nor on an EEA-wide basis ([15-25%]*), with only a very limited increment of [0-10%]* (EEA-wide) or [0-10%]* (worldwide)⁷⁸.

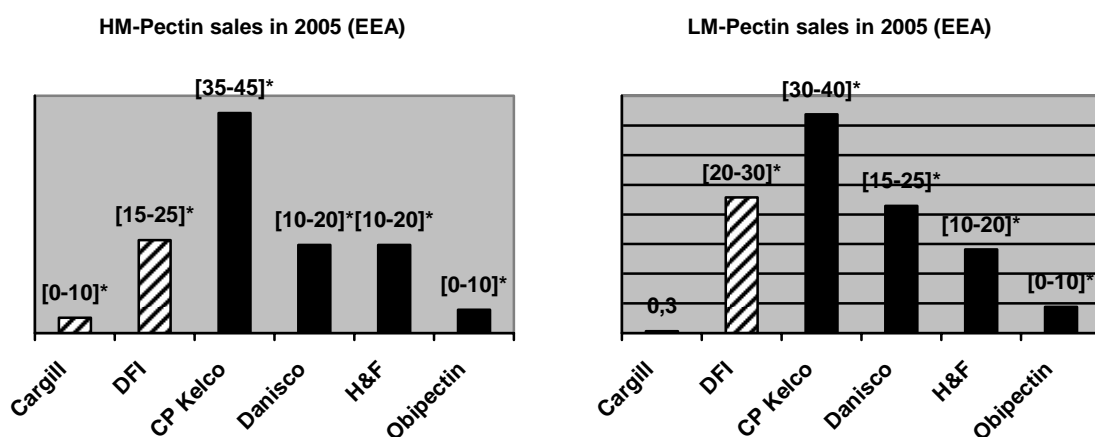
⁷⁷ 2005 by value.

⁷⁸ 2005 by value.



157. The position of CP Kelco as a market leader ([35-45%]* EEA-market share; [35-45%]* worldwide) will be not affected by the merger. Post-merger the merged entity will, on a worldwide basis, reach a similar market position as the current No2, Danisco, which currently holds a worldwide market share of [20-30%]* ([15-25%]* EEA-wide). Further taking into account the fact that other companies like Herbstreith & Fox (“H&F”) and Obipectin are active in the market and reach significant market shares within the EEA, the merged entity will have no scope to behave independently from its competitors or otherwise to impede competition in this market by unilateral behaviour.

158. This assessment even holds when taking into account the distinction between *HM* and *LM* pectin (see flow chart below⁷⁹), not the least because Cargill’s position on these market would be even weaker.



159. The strong market leader, CP Kelco, is present in each single market (LM and HM) on a worldwide and an EEA-wide basis. Furthermore the two other major players (Danisco and H&F) are present at the same level like the parties in each segment. Especially the remaining competitors provide still a strong competitive constraint. In addition CP Kelco as well as Danisco have committed to build new plants in Brazil which will be

⁷⁹ Cargill does not manufacture LM pectin. In 2005 Cargill purchased [...] tonnes ([...]* %) from Obipectin for resale.

operational in 2007 and enhance the competitors production capacity for pectin by [20-30%]* (CP Kelco) and [30-40%]* (Danisco). Finally some smaller producers like Pectowin from Poland exercise competitive impact. Therefore, unilateral effects as a result of the merger on the possible HM and LM pectin markets can be excluded.

160. On hypothetical markets apple and citric pectin, Cargill and Degussa's activities would only overlap on the citric pectin market, with market shares similar to their shares in the overall pectin market (i.e. holding a combined market share in the EEA below [20-30%]*, with an increment of below [0-10%]*). The main Pectin players are also present on these markets on a worldwide and an EEA-wide basis, with a similar market position as in the overall Pectin market. Therefore, no anti-competitive effects are to be expected as a result of the merger on possible markets for apple and citric pectin.
161. The Commission has also assessed whether the merger could give rise to *coordinated* effects. However, not the least in view of the significantly different positions of the main competitors on the market and to the fact that pricing is not transparent, the pectin market is not likely to give rise to collusion as a result of the operation.
162. For these reasons, with regard to the market for pectin, the Commission considers that the operation is not likely to elicit a significant impediment of effective competition.

5. Vertical effects (crude seed oil)

163. Although, on the basis of a hypothetical definition of an upstream market for crude soy oil in the EEA, the proposed transaction technically gives rise to a vertically affected market (Cargill holding [20-30%]*), it does not raise any vertical concerns.
164. As set out above, DFI does not at all source crude soy oil to produce fluid lecithin but buys ready-made fluid lecithin from third parties for further refinement and processing. In the product markets for non-GM lecithins, where the parties hold the highest market shares, even Cargill is forced to source its non-GM raw materials from third parties (i.e. Brazilian manufacturers).
165. Additionally, it has to be taken into account that all the relevant producers of lecithin currently have access to their own crushing facilities, and consequently sufficient quantities of crude soy oil. ADM and Solae are vertically integrated companies which are active on all levels of both GM and non-GM soybean processing. The same is true for the Indian manufacturers of fluid and deoiled lecithin which use local crops of non-GM soy beans to produce lecithin as a by-product of the manufacture of soy meal and soy oil. As set out above, currently the major source of non-GM fluid lecithin are Brazilian soy bean crushers (like Coinbra, Imcopa, Caramaru).
166. For the forgoing reasons, the transaction does not significantly reinforce Cargill's position upstream to the markets for lecithin in the EEA or on a worldwide level on any crude seed oil market (soy, non-soy, GM, non-GM). In particular, the transaction does not increase the ability of Cargill to impede the access of its competitors on the different markets for fluid and deoiled lecithin to the relevant input markets (foreclosure).

VI. OVERALL CONCLUSION

167. For the reasons set out above it must be concluded that the proposed concentration will not significantly impede effective competition in the Common Market or a part of it.

The concentration is therefore to be declared compatible with the common market in accordance with Article 8(1) of the Merger Regulation and Article 57 of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Cargill Incorporated acquires sole control of the whole of the undertakings Degussa Food Ingredients GmbH, Degussa Food Ingredients US, LLC. and Maxens GmbH within the meaning of Article 3(1)(b) of the Merger Regulation is hereby declared compatible with the common market and the functioning of the EEA Agreement.

Article 2

This decision is addressed to:

Cargill, Incorporated
Mail Stop 46
15407 Mc Ginty Road West
Wayzata, MN 55391
USA

Done at Brussels, 29/03/2006

For the Commission
signed
Neelie KROES
Member of the Commission



EUROPEAN COMMISSION

Competition DG

Policy and Strategic Support

Enforcement Priorities and Decision Scrutiny

OPINION

**of the ADVISORY COMMITTEE on CONCENTRATIONS
given at its 138th meeting on 13 March 2006
concerning a draft decision relating to
Case COMP/M.3975 – Cargill/Degussa Food Ingredients
Rapporteur : AT**

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Art 3 of the Merger Regulation.
2. The Advisory Committee agrees with the Commission that the notified operation has a Community dimension as defined in Art 1 Merger Regulation.
3. The Advisory Committee agrees with the Commission's definition of the relevant product markets contained in the Draft Decision.
4. The Advisory Committee agrees with the Commission's definition of the relevant geographic markets contained in the Draft Decision.
5. The Advisory Committee shares the Commission's view that the proposed concentration will not significantly impede effective competition in the common market or in a substantial part of it.
6. The Advisory Committee agrees with the Commission that the operation should be declared compatible with the common market and the functioning of the EEA-Agreement.
7. The Advisory Committee asks the Commission to take into account all the other points raised during the discussion.

<u>BELGIË/BELGIQUE</u>	<u>ČESKÁ REPUBLIKA</u>	<u>DANMARK</u>	<u>DEUTSCHLAND</u>	<u>EESTI</u>
J. MUTAMBA	---	L. KASTFELT	A. BUSSMANN	---
<u>ELLADA</u>	<u>ESPAÑA</u>	<u>FRANCE</u>	<u>IRELAND</u>	<u>ITALIA</u>
---	P. VELASCO MONSERRAT	R. REYNOLD DE SERESIN	---	A. VENANZETTI
<u>KYPROS/KIBRIS</u>	<u>LATVIJA</u>	<u>LIETUVA</u>	<u>LUXEMBOURG</u>	<u>MAGYARORSZÁG</u>
---	---	---	---	P. SUKOSD
<u>MALTA</u>	<u>NEDERLAND</u>	<u>ÖSTERREICH</u>	<u>POLSKA</u>	<u>PORTUGAL</u>
---	H. VAN HUTTEN	B. SCHOISSWOHL	---	---
<u>SLOVENIJA</u>	<u>SLOVENSKO</u>	<u>SUOMI-FINLAND</u>	<u>SVERIGE</u>	<u>UNITED KINGDOM</u>
---	---	H. KAIPONEN	C. BERGER	F. PEÑA



EUROPEAN COMMISSION

The Hearing Officer

FINAL REPORT OF THE HEARING OFFICER
IN CASE COMP/3975 – CARGILL/DEGUSSA FOOD INDUSTRY

**(pursuant to Articles 15 and 16 of Commission Decision (2001/462/EC, ECSC)
of 23 May 2001 on the terms of reference of Hearing Officers
in certain competition proceedings – OJ L162, 19.06.2001, p.21)**

On 21 October 2005, the parties notified the transaction to Commission pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the “Merger Regulation”), by which the undertaking Cargill would acquire the food ingredients business of the German company Degussa AG.

On 23 November 2005 the parties submitted a remedies proposal, thus extending the deadline for the end of the first phase investigation to 14 December 2005.

Upon examination of the evidence submitted by the parties to the proposed concentration and after conducting a market investigation, the Commission concluded that the concentration raised serious doubts as to its compatibility with the common market and decided to initiate proceedings under Article 6(1)(c) of the Merger Regulation on 14 December 2005.

Key documents were provided for review by the parties in accordance with the best practices on the conduct of EC merger control proceedings on 19 December 2005 and 17 January 2006.

Following an in-depth investigation, the Commission services concluded that the potential competition concerns identified in the Article 6(1)(c) decision for the relevant markets were removed. Accordingly, no statement of objections was sent to the parties.

The case does not call for any particular comments as regards the right to be heard.

Brussels, 15 March 2006

signed
Karen WILLIAMS