

***Case No COMP/M.5431 -  
ADM/SCHOKINAG***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 27/05/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27/05/2009  
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying party :**

Dear Sir/Madam,

**Subject: Case No COMP/M.5431 – ADM/ Schokinag  
Notification of 17 April 2009 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>.**

1. On 17 April 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ("ECMR") by which the undertaking Archer Daniels Midland Company ("ADM", USA) acquires within the meaning of Article 3(1)(b) of the ECMR control of the whole of the undertakings Hermann GmbH ("Hermann", Germany), Schokinag-Schokolade-Industrie Herrmann GmbH & Co. KG ("Schokinag KG", Germany) and Ammon & Hermann GmbH & Co. KG (Ammon KG", Germany), these three companies being hereinafter collectively referred as "Schokinag", by way of purchase of shares.

**I. THE PARTIES**

2. ADM group is active in procuring and selling agricultural commodities and products, such as oilseeds, corn and cocoa. The cocoa activities of ADM include the procurement and processing of cocoa beans. It sells the processed beans on the markets for the intermediate products of cocoa mass, cocoa butter, cocoa powder and industrial chocolate. However, it is not active on the downstream market for processing and sale of end-consumers chocolate products.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

3. Schokinag is also active in the production, sale and distribution of cocoa and chocolate products. The majority of the company's sales relate to industrial chocolate, but it is also active in the production of the intermediate products of cocoa mass, cocoa butter and cocoa powder.

## **II. THE OPERATION AND CONCENTRATION**

4. The proposed concentration concerns the acquisition by ADM, [...] of all shares in Schokinag. Consequently, the proposed transaction constitutes a concentration within the meaning of Art. 3(1)(b) ECMR.

## **III. COMMUNITY DIMENSION**

5. The notified concentration originally did not have a Community dimension within the meaning of Article 1 of the ECMR. On 2 February 2009, the notifying party informed the Commission in a reasoned submission pursuant to Article 4(5) of the ECMR that the concentration was capable of being reviewed under the national competition laws of Austria, Germany, Slovakia and the United Kingdom, and requested the Commission to examine it. None of the Member States competent to examine the concentration indicated its disagreement with the request for referral.
6. Therefore the concentration is deemed to have a Community dimension pursuant to Article 4(5) of the ECMR.

## **IV. COMPETITIVE ASSESSMENT**

7. Both Parties are active in the procurement of cocoa beans, in the production and sale of semi-finished cocoa products (cocoa mass, cocoa butter, cocoa powder) and industrial chocolate. Therefore, the transaction results in horizontal overlaps in these markets.

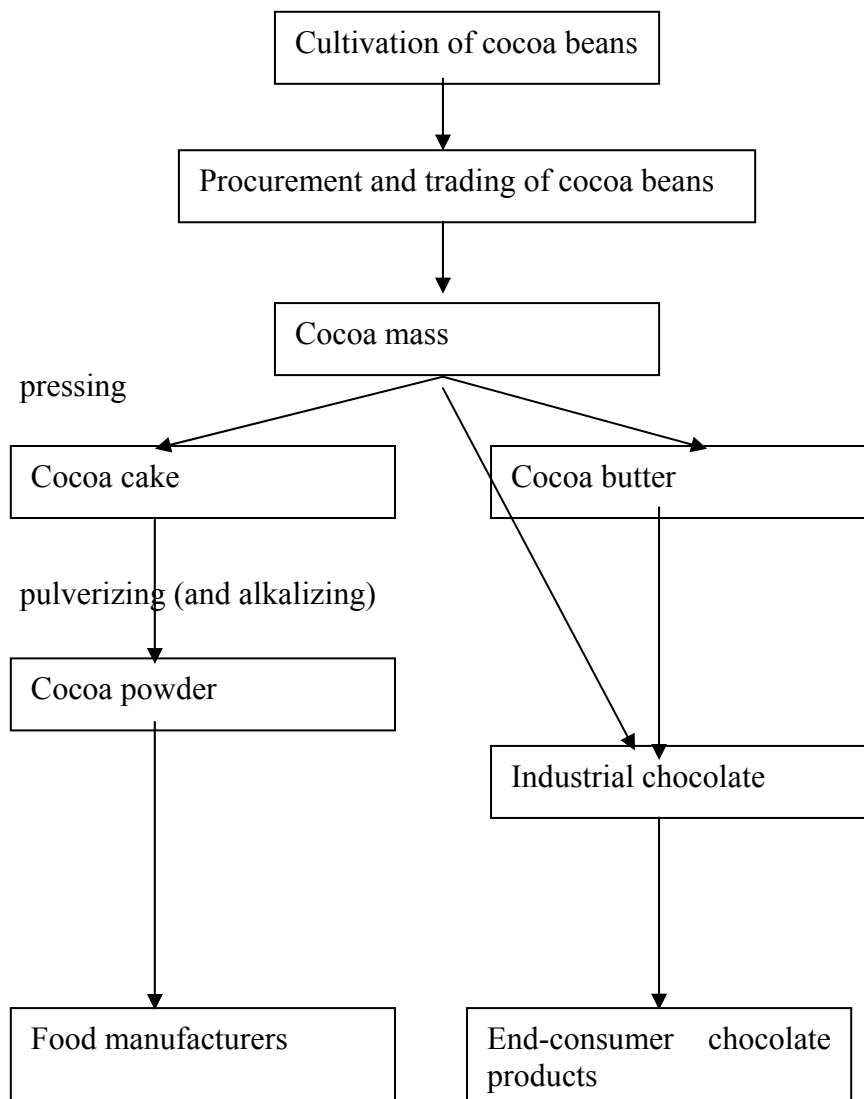
### **1. RELEVANT MARKETS**

#### **A. Relevant product markets**

##### **(i) Processing of semi-finished cocoa products and industrial chocolate**

8. The cocoa value chain starts with the cultivation of cocoa beans, continues with the cocoa bean procurement and trading before the beans are processed into intermediate cocoa products. It starts from grinding cocoa beans to produce cocoa mass. Cocoa mass is further pressed to produce cocoa butter and cocoa powder. Cocoa mass and cocoa butter (together with sugar and milk) are raw materials for industrial chocolate, which goes into the production of end-consumer chocolate products (and ice-cream). Cocoa powder goes mainly to the food industry (chocolate drinks, bakeries etc). Figure 1 illustrates the different steps involved in the production of semi-finished cocoa products and industrial chocolate.

Figure 1: the cocoa value chain



9. Cocoa mass is produced by grinding beans and it is the basic raw material for making chocolate. It is also the product from which cocoa butter and cocoa powder are made. Its main attribute is its ability to give flavour. Cocoa mass is used and transported in either liquid or solid form. In which physical form the product is transported and delivered depends on the customer's preferences. Typically, larger customers prefer to obtain the majority of their requirements of cocoa mass in liquid form, given that it is then ready to use and does not need to be re-melted again, leading to savings in energy, storage and packaging disposal costs. Smaller customers may not be able to order at least 25 tons – the normal volume size of a tank used for transportation of liquid cocoa mass - at once.
10. Cocoa butter is obtained by pressing cocoa mass, which consist of over 50% fat. It is primarily used by manufacturers of end-consumer chocolate products, either in this form or following its further blending with cocoa mass (and/or cocoa powder) and non-cocoa ingredients such as sugar and milk powder to obtain industrial chocolate. According to the Parties, cocoa butter is considered as rather a commodity product which is less crucial for the quality of the industrial chocolate compared to cocoa mass. This has been

confirmed by the respondents to the market investigation. The great majority of cocoa butter is sold in liquid form.

11. Cocoa powder is produced from grinding and pulverizing cocoa cake, i.e. the substance which remains after the cocoa butter has partially been removed from the cocoa mass. It has the ability to give flavour and colour to a wide variety of food products and as such is used in various kinds of end-consumer goods such as dairy drinks, ice cream, cakes, biscuits, toppings, cereals or pastries. If blended with cocoa butter or other fat, cocoa powder is also used as a substitute for industrial chocolate in the chocolate manufacturing industry. Traditionally, cocoa powder has been considered rather as a by-product from the production of cocoa butter. Prices per kg are lower than those of cocoa butter, although grinding 1000 kg of cocoa mass results in approximately 50 % butter and 50 % powder.
12. Industrial chocolate is a semi-finished cocoa product mainly comprising cocoa mass, cocoa butter and non-cocoa ingredients such as sugar and milk powder. According to the Parties, the majority of industrial chocolate products are manufactured according to the individual requirements of the customers. This has been confirmed during the market investigation. Customers are typically producers of end-consumer chocolate but can also be producers of other food products, such as ice cream, biscuits, bakery, confectionery and dairy products. Industrial chocolate is sold in liquid form or in different solid shapes and forms depending on the customer's requirements.
13. In addition to the main intermediate cocoa products described above, some respondents in the market investigation were of the opinion that a separate market for cocoa cake exists. Cocoa cake is not a product which is directly used as an input by food manufacturers, but some companies purchase cocoa cake in order to press their own cocoa powder. Since Schokinag uses its entire production of cocoa cake internally for its cocoa powder production and does not sell this product on the market, there is no overlap between the Parties' activities. The market for cocoa cake will therefore not be affected by the proposed transaction and will not be further analyzed below.

#### **(ii) Procurement of cocoa beans**

14. The major areas for the cultivation of cocoa beans are in West Africa, Central and South America, the West Indies as well as Asia and Oceania. West Africa accounts for approximately 76% of the total production of cocoa beans. The Parties do not operate their own cocoa bean production estates/plantations, but both ADM and Schokinag purchase cocoa beans for their cocoa business activities.
15. There are three main types of cocoa beans: Forastero, Criollo and Trinitario. Forastero beans represent 90% of world's supply of cocoa beans and they originate primarily from West Africa. Criollo and Trinitario cocoa beans are considered as so-called speciality beans due to their particularly strong and differentiating flavour and they are almost exclusively cultivated in South America and Asia.
16. Depending on the legal regulations in the country of origin, cocoa beans may be purchased through international or local traders, local co-operatives of farmers or state organisations. Cocoa beans are also traded on the futures market, and some companies source cocoa beans directly from their own subsidiaries in the origin countries.

*Possible segmentation of cocoa beans according to region/country of origin*

17. The Parties submit that cocoa beans from different geographic locations are substitutable and therefore belong to the same product market. The Parties explain that it is necessary to blend different types and origins in order to process cocoa beans. Blending enables the manufacturers to achieve specific flavour profiles and to ensure consistency as regards flavour and colour in particular. Ensuring consistency is of particular importance since cocoa beans are a natural product, and as such their quality and characteristics depend on weather conditions during growing, soil status, fermentation, drying etc.
18. The market investigation in the present case has however shown that customers may have specific preferences regarding the origin of the cocoa beans. This also explains why there is a premium in the market for cocoa beans for certain countries of origin. It appears that within the EEA, customers have clear preferences for West African cocoa beans, as these beans correspond well to European tastes.
19. The market investigation indicated that there may be preferences for cocoa beans originating even from a specific country within the West African region, especially Ghana, Cote d'Ivoire, Nigeria and Cameroon. This is particularly the case in those instances where end-consumer products are marketed according to their origin, for instance "Ghana chocolate". However, only limited volumes seem to be sold under such terms. The results of the market investigation were not clear with respect to whether segmentations down to the level of specific countries, instead of regions, would be appropriate.
20. In the present case, the precise definition of the market for procurement of cocoa beans can be left open, since the proposed transaction will not give rise to serious doubts as to its compatibility with the common market under any of the potential relevant market definitions.

**(iii) Semi-finished cocoa products and industrial chocolate**

21. The Commission has not previously decided on the relevant product market regarding semi-finished cocoa and chocolate products. However, according to previous decision practice of the Belgian and French competition authorities<sup>2</sup>, the market for semi-finished cocoa and chocolate products may be further segmented into the following sub-segments:
  - Manufacture and distribution of cocoa mass
  - Manufacture and distribution of cocoa butter
  - Manufacture and distribution of cocoa powder
  - Manufacture and distribution of industrial chocolate.

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<sup>2</sup> Barry Callebaut AG/Stollwerk AG, décision n° 2002-C/C-55 of July 9, 2002; Cargill France SAS/OCG Cacao SA, decision n° 2003-C/C-97 of December 4, 2003; Callebaut AG/Barry, Avis n 97-A-01 of January 7, 1997; Cargill France SAS/OCG Cocoa SA, NOR: ECOC0400182Y of October 7, 2003.

22. The Parties submit that all the semi-finished cocoa products belong to one relevant market for semi-finished cocoa and chocolate products. The Parties argue that all of the semi-finished cocoa and chocolate products are to some extent interchangeable with each other by adjusting the mixing proportions. For example, a chocolate manufacturer that usually purchases cocoa mass for the production of end-consumer chocolate could in principle alternatively purchase cocoa powder and cocoa butter for the purposes of its production. In this respect there would allegedly be demand-side substitutability, because customers could decide to purchase more or less processed raw material for chocolate. Such substitution of demand would not normally be possible in the short term. It would seem to require that customers have potentially unused processing equipment covering the whole value chain, which is not normally the case. The Parties themselves acknowledge that this type of substitution is not a common practice, and such demand-side substitution has not been confirmed by the market investigation.
23. In terms of supply-side substitution, the Parties submit that in 90% of the cases a manufacturer will not only produce cocoa mass but also its by-products cocoa powder and cocoa butter. Therefore, a producer would allegedly be able to switch between the production of different semi-finished cocoa products. However, producers cannot readily switch between processing products at the different levels of the value chain.
24. Some respondents to the market investigation considered cocoa mass, cocoa butter and to some extent cocoa powder complements as these products are mixed for the production of industrial chocolate. The market investigation showed that producers of industrial chocolate who purchased relatively large amounts of cocoa mass and less cocoa butter and cocoa powder (because they prepared the cocoa mass themselves) could switch to purchasing more cocoa butter and cocoa powder and less cocoa mass. However, the market investigation also clearly showed that the opposite form of switching would not be possible, as this would require heavy investments in the necessary equipment needed to separate the cocoa mass into cocoa butter and cocoa powder.
25. Furthermore, cocoa powder was by the majority of the respondents not even considered a complementary product, as only marginal volumes of cocoa powder are used in industrial chocolate. It would therefore not be possible to add more cocoa powder instead of cocoa mass or cocoa butter without significantly changing the taste of the end-product. The main end-uses for cocoa powder are in completely different markets than cocoa mass and cocoa butter, for instance chocolate drinks where it is the main ingredient.
26. With respect to industrial chocolate, although it is clear that customers of cocoa mass and cocoa butter could produce industrial chocolate by mixing the main ingredients, the market investigation has confirmed that the opposite is not true without a significant investment in machinery and equipment.
27. Indeed, the market participants have clearly indicated that they would not switch their purchases following a 5-10% increase in price in any of the semi-finished cocoa products and industrial chocolate. This is also due to the fact that it is particularly difficult to substitute one product category with another for a specific end consumer product/recipe.
28. With respect to supply-side substitutability, although producers of cocoa mass typically appear to produce also powder and butter, the conditions for switching in the short term

are limited. For example, switching between powder and butter is hardly possible because cocoa mass grinding will produce a fixed proportion of butter and powder. Moreover, there are producers who are only active at a certain level of the value chain (notably producers of industrial chocolate) and for whom therefore it is not possible to switch across the categories in the short run. According to a clear majority of the competitors responding to the market investigation, switching production between the different segments does not appear to be common practice.

29. Finally, customers also tend to have different main suppliers for each of the three semi-finished cocoa products as suppliers tend to specialize in one or two semi-finished cocoa products.
30. In summary, for each of the products cocoa mass, cocoa butter and cocoa powder, customers have different requirements, different suppliers and none of them have confirmed the parties' submission that they can switch between these products by adjusting the mixing proportions. The Commission therefore considers each of these semi-finished cocoa products as distinct markets.

#### **(iv) Conclusion on the relevant product markets**

31. Based on the clear results of the market investigation, the relevant product markets are defined as the markets for procurement of cocoa beans and the markets for manufacture and distribution of cocoa mass, cocoa powder, cocoa butter and industrial chocolate, respectively.

### **B. Relevant geographic markets**

#### **(i) Procurement of cocoa beans**

32. With respect to the procurement of cocoa beans, the Parties submit that the geographic market is worldwide for a number of reasons. First, cocoa beans are commodity products which are traded at the futures market pursuant to standardized contract terms and globally valid price quotations. In addition, beans can be easily shipped over long distances from their country of origin to anywhere in the world. Further, transportation costs amounts to approximately [0-5%] of the bulk beans' sales price regardless of their place of origin or their place of destination. Lastly, customers are to a large extent either international traders or globally active manufacturers of semi-finished products with production sites in different countries and areas of the world who pursue a global sourcing policy.
33. Respondents to the market investigation have confirmed the views of the Parties. Therefore the markets for the procurement of cocoa beans appear to be worldwide in scope. However, in the present case, the precise definition of the geographic scope of the market for procurement of cocoa beans can be left open, since the proposed transaction will not give rise to serious doubts as to its compatibility with the common market under any of the potential relevant market definitions.

#### **(ii) Processing of semi-finished cocoa products and industrial chocolate**

34. The Parties submit that the geographic scope of the market for semi-finished cocoa products (cocoa mass, cocoa butter and cocoa powder) is worldwide, or at least EEA-



wide. According to the Parties, the customer base, to a large extent, consists of multinational chocolate and food manufacturers (e.g. Nestlé, Mars etc.), which tend to have a global sourcing policy. The parties submit that cocoa mass, cocoa butter, and to a large extent cocoa powder are commodity products that can be easily shipped long distances and traded globally. Also, according to the Parties, transport costs for cocoa mass, cocoa butter and cocoa powder are negligible in terms of the products' sale prices and they can therefore be shipped worldwide.

35. The market investigation did not confirm the view of the parties that the geographic scope of the markets for semi-finished cocoa products is worldwide. Indeed, there is evidence from the market investigation that the competitive conditions are not homogenous between the EEA and the rest of the world. First, only a very small minority of the customers source their products worldwide. One of the reasons is that for cocoa mass and butter it is more convenient (cost effective) for customers to purchase the products in liquid form which is typically more costly to transport over long distances. Furthermore, the prices of these products differ between the EEA and the rest of the world. This is particularly the case for cocoa powder since market participants consider that customers within the EEA have specific requirements concerning the quality of cocoa powder which in turn leads to higher prices in the EEA.
36. The market investigation has on the one hand indicated that the geographic scope of the markets for cocoa mass, cocoa butter and cocoa powder are not likely to be narrower than the EEA since the sourcing patterns for the great majority of customers of semi-finished cocoa products are EEA-wide. Furthermore, market participants claim that the price level of these products does not differ significantly between countries of the EEA.
37. Several customers consider that proximity to their production sites provides certain advantages with respect to transport and handling costs especially for products delivered in liquid form (cocoa butter and to a lesser extent cocoa mass). Cocoa powder deliveries in solid form are not subject to the same transport and storage constraints as liquid products and therefore proximity is less important. However, there is no evidence that customers of liquid semi-finished cocoa products cannot economically source from a site located anywhere within the EEA.
38. Based on the above, the Commission considers the relevant geographic market for cocoa mass, butter and powder to be EEA-wide in scope.
39. With respect to industrial chocolate, the Parties submit that the geographic scope of the market is worldwide or at least EEA-wide for the same reasons as for semi-finished cocoa products.
40. The market investigation has clearly shown that customers do not source industrial chocolate on a worldwide basis. Furthermore, price differences between the EEA and the rest of the world are significant. These price differences arise not only because of the specific quality requirements in the EEA, but also due to the fact that the majority of the industrial chocolate sold are transported in liquid form. This sets specific requirements for the transportation vehicles used as it is necessary to stir the chocolate regularly in order to prevent it from solidifying. The market investigation has indicated that the transport radius within which it is economically viable to sell industrial chocolate in liquid form is approximately 1500km.
41. The market investigation was not conclusive on whether the geographic market for industrial chocolate should be national or EEA-wide in scope. This question can be left

open for the purpose of the assessment of the present case since the very limited overlap in the industrial chocolate activities of the parties would not result in affected markets even if national (or regional within 1500km radius) markets are considered.

## **2. COMPETITIVE ASSESSMENT**

42. Since the Parties are active at all steps of the cocoa processing value chain, their activities overlap in the following relevant product markets : procurement of cocoa beans, manufacture and distribution of cocoa mass, manufacture and distribution of cocoa butter, manufacture and distribution of cocoa powder and manufacture and distribution of industrial chocolate.

### **Procurement of cocoa beans**

43. As mentioned above, beans from different regions/countries could be separate product markets since there might be some specific requests from manufacturers as regards the origins of the beans and the characteristics affecting their pricing are largely dependent of their origin. The investigation also showed that for a given bean origin, conditions of competition are homogenous worldwide: beans are shipped around the world and are traded globally at future exchange markets. The parties have therefore provided worldwide market shares for beans of different origins.

44. [...] of ADM's cocoa beans requirements are bought through international and local traders. A [...] volume is also purchased from local co-operatives in Côte d'Ivoire and Cameroon as well as from the government-controlled marketing board CMC in Ghana. For the period 2004-2008, ADM sourced on average [...] of its cocoa beans from West Africa, [...] from South East Asia and Oceania and [...] from South America.

45. Schokinag purchases cocoa beans [...] from international and local traders and, [...] from the state organization in Ghana. For the period 2004-2008, Schokinag sourced [...] its cocoa beans requirements from the following West African countries: Côte d'Ivoire, Ghana, Nigeria and Cameroon<sup>3</sup>.

46. Therefore the sourcing activities of the parties overlap only with respect to worldwide sourcing of West African beans. Market shares of the Parties and their main competitors with respect to sourcing of West African beans are shown in the table below.<sup>4</sup>

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<sup>3</sup> [...]

<sup>4</sup> Source : Notifying party's best estimates for crop year 2007-2008, base on ICCO (International Cocoa Organisation) data.

	ADM	SCHOKINA G	COMBINED	1 <sup>ST</sup> COMPETITOR	2 <sup>ND</sup> COMPETITOR	3 <sup>RD</sup> COMPETITOR
West African beans	[10-20%]	[0-5%]	[10-20%]	[10-20%] (Cargill)	[10-20%] (Barry Callebaut)	[5-10%] (Delfi)
Beans from Cameroon	[10-20%]	[5-10%]	[20-30%]	[40-50%] (Cargill)	[10-20%] (Barry Callebaut)	[5-10%] (Delfi)
Beans from Côte d'Ivoire	[10-20%]	[0-5%]	[10-20%]	[20-30%] (Barry Callebaut)	[10-20%] (Cargill)	[0-5%] (Cemoi)
Beans from Ghana	[10-20%]	[0-5%]	[20-30%]	[10-20%] (Cargill)	[10-20%] (Barry Callebaut)	[0-5%] (Delfi)
Beans from Nigeria	[10-20%]	[10-20%]	[30-40%]	[20-30%] (Delfi)	[10-20%] (Barry Callebaut)	[10-20%] (Cargill)

47. The above table shows that although the merged entity will be [...] for the procurement of West African beans as well as with respect to procurement of beans from Ghana and Nigeria, it will face competition from several players (Cargill, Barry Callebaut, Delfi and Cemoi). These players have sourcing patterns that are quite similar to the Parties' and have a comparable market presence in the different West African countries.
48. The market investigation showed that the transaction would not significantly change the competitive structure in the market for the procurement of West African beans. None of the respondents to the market investigation has indicated that the new entity would become an unavoidable trading partner with respect to procurement of West African beans, regardless of whether or not this market is segmented according to the country of origin.
49. In the light of the above, the transaction does not raise serious doubts with respect to worldwide procurement of West African beans.

#### **Semi-finished cocoa products: market data**

50. With respect to the market shares of the parties and their competitors in the semi-finished cocoa products markets, the available statistical data has some shortcomings. Market sizes and market shares provided by ADM rely therefore on a number of assumptions and estimates with respect to bean grindings within the EEA, the quantity of the respective products (mass, butter, powder and industrial chocolate) imported to, and exported from the EEA by each undertaking in the market and the proportion of the output used in-house, in order to determine the market shares on the merchant market.
51. The Commission carefully verified the notifying party's estimates during the market investigation. It found that they were broadly consistent with sales figures provided by competitors. Therefore this decision relies on ADM's estimates in volume with respect to market sizes and market shares.

## **Semi-finished cocoa products: assessment**

52. The Commission assessed the impact of the transaction for each product market identified in this decision, namely cocoa mass, cocoa butter and cocoa powder. More generally, some customers expressed concerns during the market investigation with respect to an ongoing trend of consolidation in the semi-finished cocoa products sector and indicated that the elimination of Schokinag as an independent supplier could lead to anti-competitive effects for all semi-finished cocoa markets. These concerns will be dealt with further below in relation to each specific market.

### *Cocoa mass*

53. According to the notifying party, the total merchant market size in 2007 for cocoa mass in the EEA amounted to [...] tons in volume and [...] in value. The new entity holds a market share in volume of [10-20%], albeit with a minuscule overlap [0-5%]. Indeed, Schokinag mainly produces cocoa mass for its own use and only a negligible proportion of its production was sold to third parties in 2007. Main competitors in the cocoa mass market are Cargill [30-40%], Cemoi [10-20%], Barry Callebaut [10-20%] and a number of smaller players (Fuchs and Hoffmann, KVB, Dutch Cocoa and Delfi Europe) with market shares between [0-5%].

54. As indicate above general concerns about the effects of the transaction on semi-finished cocoa markets were also expressed by some market respondents in relation to cocoa mass. However, these customers confirmed during the market investigation that they do not purchase cocoa mass from Schokinag<sup>5</sup> and in this respect the transaction does not remove an alternative to ADM, whose share is not in any event particularly significant. More generally, the market investigation showed that ADM and Schokinag are not considered as close competitors.

55. In view of the above and of the very small increment caused by the proposed transaction, the Commission concludes that the merger does not raise serious doubts in the market for cocoa mass in the EEA.

### *Cocoa butter*

56. According to the notifying party, the total merchant market size in 2007 for cocoa butter in the EEA amounted to [...] tons in volume and [...] in value. ADM and Schokinag both produce cocoa butter and to a large extent, apart from the volumes used for their respective manufacture of industrial chocolate, sell it to third parties, in particular end-customer chocolate producers.

57. The new entity will be the market leader in the EEA market for cocoa butter with a share of [20-30%] (ADM [20-30%], Schokinag [0-5%]). Cargill is a strong follower with a share of [20-30%], followed by Delfi Europe [5-10%], Barry Callebaut [5-10%] and several players (Euromar, KVB, Cemoi) with market shares between [0-5%].

58. The general concerns of customers with respect to a general trend of consolidation in the semi-finished cocoa products sector would in principle also apply to cocoa butter.

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<sup>5</sup> Answer to questionnaire sent to customers on 24 April 2009, question 7.

59. However, the market investigation showed that a majority of customers of cocoa butter do not buy cocoa butter from Schokinag, which is rather considered as a marginal player in this market. Although multi-sourcing is common in this industry, none of these customers purchase cocoa butter from both ADM and Schokinag. Therefore the transaction does not remove an alternative supplier of cocoa butter for these customers. The small market share of Schokinag in the market for cocoa butter is representative of the limited competitive pressure that this company exercised in this market.
60. Furthermore, respondents to the market investigation indicated that the great majority of their purchases of cocoa butter are relatively easy to match since they usually do not have very specific requirements.<sup>6</sup> Cocoa butter is considered a commodity product with many competitors such as Cargill, Barry Callebaut, KVB or Cemoi being in a position to exert competitive constraint on one another. Therefore, market players consider that the transaction has a very limited impact on the set of alternative suppliers for cocoa butter.
61. On the basis of the above, the transaction does not raise serious doubts with respect to sales of cocoa butter in the EEA.

#### *Cocoa powder*

62. Both parties produce a wide range of cocoa powder and primarily sell it to the food industry. ADM sells cocoa powder in approximately [...] flavours (non alkalized, lightly alkalized, medium alkalized and strongly alkalized<sup>7</sup>) and shades (from red-brown to yellow-brown to light and dark brown to almost black) under the brand name "De Zaan". This brand is well known in the market for its high quality standard. Schokinag's portfolio of cocoa powder is significantly smaller with approximately [...] different flavours and shades and no specific brand name.
63. As indicated above, cocoa powder is used in a variety of applications in the food industry. The main areas of application are the following: chocolate dairy products (chocolate milk, milk-shakes, custard and mousse), ice-cream and frozen desserts, bakery products (cakes, pastries, cookies, biscuits and breakfast cereals), confectionary and coatings (fudge, fillings, spreads and toppings) and instant premixes (breakfast powder and vending mixes).
64. According to the notifying party, the total merchant market size in 2007 for cocoa powder in the EEA amounted to [...] tons in volume and [...] in value. The combined market share of the Parties in volume based on the data provided by them is [20-30%] in the EEA (ADM: [20-30%], Schokinag: [5-10%]). Large competitors in this segment include Cargill (market share of [10-20%]) and Barry Callebaut [10-20%]. There are

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<sup>6</sup> Unlike purchasers of other semi-finished cocoa products, purchasers of cocoa butter have no specific preferences as regards the origin of beans from which cocoa butter is produced through the different steps described above.

<sup>7</sup> Alkalisiation is a process which partially neutralizes the acid present in cocoa and reduces the astringency through treatment with an alkaline solution such as potassium carbonate. It is used primarily to modify the flavour and colour of cocoa mass prior to further processing or, if conducted at a later stage, of cocoa powder directly. Alkalization is an important specification in the production of cocoa powder since it enhances the ultimate flavour profile of the product. See "De Zaan Cocoa Manual of ADM" [...], pages 122-123.

also a number of smaller companies (KVB, Euromar, Delfi Europe and Chocovic) with market shares of [0-10%].

65. Besides the general trend of consolidation in the semi-finished cocoa products sector highlighted by some respondents with respect to cocoa powder as well, several customers expressed specific concerns during the market investigation as regards the market for cocoa powder. These customers described Schokinag as a supplier who is more price-aggressive and tends to have a policy of lower prices than ADM, which is considered as a supplier with high quality and expensive products. Some customers were concerned that ADM would be in a position to raise prices post-merger through the elimination of an alternative player which, according to these customers, has so far competed fiercely on prices in the market for cocoa powder.
66. Some customers of both ADM and Schokinag also expressed concerns regarding a reduction of the number of alternative suppliers. Multi-sourcing is considered by these customers as a key element to ensure security of supply and put downward pressure on prices. Moreover, switching supplier would be difficult. At first, customers have to approve suppliers verifying that they meet some health and safety standards. Furthermore, a significant proportion of cocoa powder requirements are tailor made since customers have very specific requirements and their supplier approval process, involving various tests and trials on taste, colour and physical properties, requires considerable time (sometimes in excess of one year) and resource to complete. As a result, switching would be uncommon once the customer has approved a supplier.
67. With respect to these concerns expressed by some respondents, it should first be noted that the set of customers of cocoa powder that have been actually supplied by both ADM and Schokinag is limited. Out of 27 customers of cocoa powder having responded to the market investigation, only 7 procured this product from both Schokinag and ADM. Only 3 of these 7 customers used both parties for a significant proportion (25% or more) of their needs of cocoa powder. Moreover, Cargill, Barry Callebaut and Dutch Cocoa have also been consistently mentioned as current suppliers, and in the great majority of the cases the customers have several approved suppliers. It follows that the elimination of Schokinag as a current supplier would only concern a minority of customers which can furthermore rely on other alternative sellers.
68. When asked about the closeness of competition between ADM and Schokinag, none of the current customers of one or the other party indicated that Schokinag would be the closest competitor of ADM. Similarly to the situation prevailing in the cocoa butter market, Cargill was mentioned as the closest competitor to ADM. KVB would be the closest competitor of Schokinag. ADM is described by customers as a provider of higher added value products, who has the expertise to design and manufacture almost any type of cocoa powder according to the customer's specific wishes and needs and who is therefore in a position to charge prices at the high end of the market. By contrast, customers confirmed that Schokinag's portfolio comprises a narrower range of cocoa powder products that have less added value than those of ADM.

69. These differences in product positioning would explain to a large extent the differences in pricing policies for cocoa powder between ADM and Schokinag. The parties<sup>8</sup> submitted that the basis of the pricing for cocoa powder is the price for raw materials (cocoa beans) at the factory, plus manufacturing and transportation costs<sup>9</sup>. Then, depending on the specific requirements of the customers as regards colour and flavour which impacts the processing methods applied (light or strong alkalisation, fat level), a premium will be added to the basic price. Although both parties ask a premium in the range of [...] per ton for their cocoa powders, ADM achieved a majority of its turnover [...] with [...] whereas Schokinag achieves only [...] of its turnover with these [...] powders<sup>10</sup>. Furthermore Schokinag does not have internal research and development facilities that are crucial in order to meet timely and effectively very tailor specific customer requirements
70. Consequently, given the current price positioning for the product types that Schokinag is currently offering, it is unlikely that post-merger ADM would be in a position to increase prices of Schokinag's cocoa powder to the level of ADM's cocoa powder prices. Moreover, given the existence of strong alternative suppliers with respect to higher added value products (such as Cargill) as well as for more commoditized cocoa powder types (such as KVB), such a strategy would lead customers to consider sourcing from other suppliers. Especially for commodity type cocoa powder there are several suppliers in the market that can substitute Schokinag's sales. Many customers also consider Delfi Europe, which is a new entrant in the market of cocoa powder in Europe specialising in commodity type powder, as a viable alternative to Schokinag.
71. With respect to the possibilities of switching for Schokinag's customers, customers in the market investigation confirmed that switching difficulties notably concern tailor-made products<sup>11</sup> and that the set of suppliers able to provide commoditized products is wide. [...] All other powder product types of Schokinag are supplied to a number of customers who confirmed in the market investigation that the powder types supplied by Schokinag are rarely single-sourced<sup>12</sup>.
72. Given that Schokinag's powder products portfolio is rather geared towards universal applications, customers of Schokinag are in a position to switch suppliers more easily than for more specific, tailor-made requirements. The market investigation showed that in designing its product range, Schokinag has concentrated on the most widely marketable powder types. Other cocoa powder producers are therefore in a position to match cocoa powder products offered by Schokinag.

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<sup>8</sup> Answer from the notifying party to the Commission's requests for information dated 7 May and 12 May 2009.

<sup>9</sup> As cocoa butter and cocoa powder are produced simultaneously from the pressing of cocoa mass, raw materials, manufacturing and transportation costs are split by manufacturers between both products to calculate a basic price for cocoa powder and cocoa butter. This split is subject to frequent changes as a consequence of the fluctuating demand for these two products over time.

<sup>10</sup> Response from the notifying party to the Commission request for information dated 14 May 2009.

<sup>11</sup> Answer to questionnaire sent to customers on 24 April 2009, question 39.

<sup>12</sup> Answer to questionnaire sent to customers on 24 April 2009, question 28.

73. In the light of the above, the Commission concludes that the transaction does not raise serious doubts with respect to sales of cocoa powder in the EEA.

*Industrial chocolate*

74. At EEA level, the market for industrial chocolate would not be affected since the combined market share of the parties in volume was in 2007 [5-10%] (ADM: [0-5%], Schokinag: [5-10%]). In the EEA, Barry Callebaut is the undisputed market leader with a share of [40-50%], followed by Cargill [10-20%], Cemoi [5-10%] and Belcolade [5-10%].

75. At national level, the only Member State where the activities of the parties overlap is the UK where the market share of the new entity is [10-20%] (ADM : [5-10%], Schokinag : [0-5%]). Therefore the UK market for industrial chocolate is not affected by the transaction.

76. In the light of the above, the merger does not raise serious doubts with respect to the market for industrial chocolate regardless of its geographic scope.

**V. CONCLUSION**

77. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission  
(signed)  
Neelie KROES  
Member of the Commission