EN

Case No COMP/M.6132 - CARGILL / KVB

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 29/04/2011

In electronic form on the EUR-Lex website under document number 32011M6132

Office for Publications of the European Union
L-2985 Luxembourg

EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 29/04/2011
C(2011) 3054 final

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M.6132 – CARGILL/KVB
Notification of 24/02/2011* pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 22 March 2011, the Commission received a notification of a proposed concentration by which Cargill, Incorporated ("Cargill", USA), acquires sole control of Schwartauer Werke GmbH & Co. KG Kakao Verarbeitung Berlin ("KVB", Germany) by way of purchase of assets (KVB and Cargill are further referred to as "the Parties").

II. THE PARTIES AND THE OPERATION

2. **Cargill** is an international company active in variety of businesses, including grain and commodity processing and merchandising, marketing of food ingredients, and the provision of financial services. In relation to cocoa, Cargill is active in the whole value chain of intermediate cocoa products, i.e. processing of cocoa beans and the production, sale and distribution of cocoa liquor, cocoa powder, cocoa butter and

1 OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

* Should read 22/03/2011.

industrial chocolate. Cargill operates a number of cocoa processing and industrial chocolate plants worldwide, including in Germany, France, UK, Belgium and the Netherlands.

3. **KVB** is a German based company active in production, sale and distribution of cocoa liquor, cocoa powder, cocoa butter and industrial chocolate. The majority of KVB's sales relate to industrial chocolate. KVB has two production plants in Berlin, Germany.

4. Pursuant to an asset purchase agreement dated 29 December 2010, Cargill will acquire sole control over KVB. Hence, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation

III. EU DIMENSION

5. The concentration does not have an EU dimension within the meaning of Article 1 of the Merger Regulation.

6. However, on 3 February 2011, the Parties submitted to the Commission a referral request pursuant to Article 4(5) of the Merger Regulation. The transaction was capable of being reviewed by six Member States (Austria, Germany, Greece, Italy, Slovakia and United Kingdom). Within the relevant deadline, no Member State competent to review this concentration expressed its disagreement with the referral, and hence the transaction is deemed to have EU dimension.

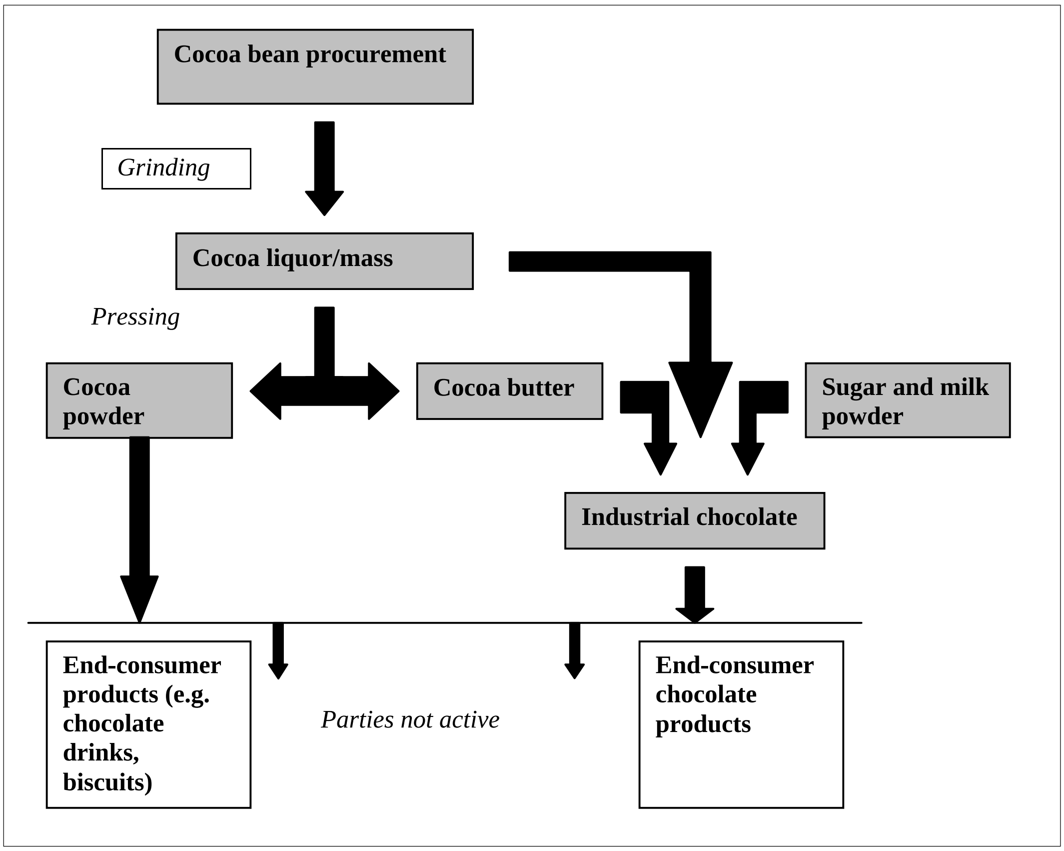
IV. COMPETITIVE ASSESSMENT

7. Both Parties are active in the procurement of cocoa beans, in the production, sale and distribution of intermediate cocoa products (namely cocoa liquor, cocoa powder and cocoa butter) and of industrial chocolate. The transaction leads to horizontal overlaps in all those markets.

Relevant Product Markets

8. The cocoa value chain starts with the cultivation of cocoa beans and continues with cocoa bean procurement and trading. Then, cocoa beans are grinded to produce cocoa liquor. Cocoa liquor is further pressed to produce cocoa butter and cocoa powder. Cocoa liquor and cocoa butter (together with sugar and milk powder) are the raw materials for the production of industrial chocolate, which goes into the production of end-consumer chocolate products. Cocoa powder is supplied mainly to the food industry (chocolate drinks, bakeries etc). Table 1 below illustrates the different steps involved in the production of semi-finished cocoa products and industrial chocolate.

Table 1: Chocolate value chain



Source: Notifying Party, Form CO, p.21.

a) Procurement of cocoa beans

9. Cocoa beans are primarily cultivated in West Africa, South America and Asia. Neither KVB nor Cargill are active on the market for the cultivation of cocoa beans and do not operate their own plantations. Accordingly, both Parties purchase cocoa beans for their cocoa business related activities.

10. The Parties consider cocoa beans from different geographic locations interchangeable to a certain degree, since there are many purchasers who do not have specific requirements as regards the quality or origin of the beans. On the other hand, the Parties admit that certain companies have specific requirements as regards beans, and consequently there are cases in which the region of origin or even the country of origin of the cocoa bean is of relevance for the customer.

11. The Commission in its previous decision[2] acknowledged that customers may have specific preferences regarding the origin of the cocoa beans. Nevertheless, it did not conclude as to whether segmentation at the level of a region or even specific countries would be appropriate.

12. The market investigation in the present case highlighted that customers may show a preference over cocoa beans of a certain type and a particular country of origin. It appears that within the EEA, many customers have preference for West African

---

[2] Case No Comp/M.5431 – *ADM/Schokinag*, decision of 27 May 2009, para 18.

cocoa beans due to their perceived quality and taste. Within the West African region a subset of customers show preference for the beans originating from certain countries.

13. Most of the competitors' replies suggest that West African beans originating in different countries are viewed as substitutable. In particular, some indicated that cocoa beans originating from Ivory Coast, Togo, Nigeria and Ghana would generally be considered as substitutable due to their similar taste and flavour.

14. However, in the present case, the exact market definition for the procurement of cocoa beans can be left open, as the proposed transaction will not give rise to competition concerns under any potential market definition.

b) Semi-finished cocoa products and industrial chocolate

15. The semi-finished cocoa products include (i) cocoa liquor/mass, (ii) cocoa butter, (iii) cocoa powder, and (iv) industrial chocolate.

16. Cocoa liquor (or "cocoa mass") is produced by grinding beans and is one of the ingredients of industrial chocolate. Cocoa liquor adds colour and flavour to chocolate. Cocoa liquor can be further processed into cocoa butter and cocoa powder.

17. Cocoa butter is obtained by pressing cocoa liquor and is also one of the ingredients of industrial chocolate.

18. Cocoa powder is a by-product of the pressing process. It is produced from grinding and pulverising cocoa cake, the substance remaining after the cocoa butter has been removed from the cocoa liquor. It can be used in a variety of end-consumer products to add chocolate flavour *(i.e.* chocolate drinks, cakes, biscuits, etc.).

19. Industrial chocolate is made out of cocoa liquor, cocoa butter and other non-chocolate products such as sugar and milk powder.

20. The Commission, in a previous decision found that the markets for the manufacture and distribution of cocoa liquor, cocoa butter, cocoa powder and industrial chocolate are separate product markets.[3]

21. The Parties submit that there is a certain degree of supply and demand-side substitutability between these semi-finished cocoa product categories that should be taken into account when assessing the competitive conditions prevailing in the market. According to the Parties, both the suppliers and the customers could switch their production or their demand along the value chain of the particular semi-finished products. However, the Parties recognise that switching is not equally easy throughout the entire chocolate value chain for all market participants and provide market information separately for each of the market segments.

22. In the present case the market investigation revealed that a vast majority of respondents consider that there are separate markets for cocoa liquor, cocoa butter, cocoa powder and industrial chocolate. In particular, most customers indicated that they would not switch their purchases following 5-10% price increase in any of the semi-finished cocoa products and industrial chocolate. The investigation did not

3 *ADM/Schokinag*, see footnote 1, para 30.

reveal any significant customer switching from purchasing one product category to the other product category in the last 3 years.

23. In relation to supply-side substitutability, most competitors responding to the market investigation indicated that it is not common to switch production easily since such switching would involve significant investments in terms of production tolls and machinery.

24. Overall, the market investigation has not confirmed the parties' submission that the customers can switch between product categories and that competitors are able to switch their production. The Commission therefore considers that cocoa liquor, cocoa butter, cocoa powder and industrial chocolate constitute each distinct product markets.

Relevant Geographic Markets

a) Procurement of cocoa beans

25. The Commission has previously considered[4] that the procurement of cocoa beans appears to be a worldwide market. Nevertheless, it left the final definition of the geographical scope of the market open.

26. The Parties consider the market for procurement of cocoa beans to be worldwide. They argue that cocoa bean purchasers are typically large international companies that source their worldwide bean requirements in the country of origin pursuant to a global sourcing policy. Moreover, the Parties submit that beans are priced irrespectively of the destination where beans will be shipped to. Furthermore, cocoa beans are said to be easily shipped over long distances and transport costs in relation to the value of the commodity are low. In addition, they submit that cocoa beans are commoditised products which are traded globally at the futures exchange markets pursuant to globally valid price quotations.

27. In the present case the question of the geographic scope of the market for procurement of cocoa beans can also be left open since the transaction would not raise any competition concerns under any potential market definition, including a market definition which considers the region or even the country of origin of the beans.

b) Semi-finished cocoa products and industrial chocolate

28. With respect to the manufacture and distribution of cocoa liquor, cocoa butter and cocoa powder, the Commission has in its *ADM/Schokinag* decision[5] considered the markets to be EEA-wide in scope. The decision relied on the finding that only a minority of the customers sourced their products worldwide, and that there were price differences between the EEA and the rest of the world. On the other hand, prices across EEA countries were found to be rather similar, while several customers also considered that proximity to their production sites provide them certain advantage with respect to transport and handling costs especially for products delivered in liquid form.

---

4 *ADM/Schokinag*, see footnote 1, para 33.

5 *ADM/Schokinag*, see footnote 1, para 35-37.

29. The Parties argue that there are indication pointing to a wider than EEA-wide market for cocoa liquor, cocoa butter and cocoa powder. They submit that transport costs are low and there are significant imports of such products from the bean originating countries into the EEA. They also claim that there are small price differences between products originating from different countries. Further, according to the Parties the customer base consists to a large extent of multinational companies which source their requirements globally.

30. The market investigation has indicated that only a few customers source their requirements globally. Further, it has been indicated that there are price differences between EEA products and products from the rest of the world. Moreover, most customers consider proximity of the production sites of the semi-finished cocoa products and especially of those in liquid form as an important factor while choosing suppliers due to the transport costs, delivery time, reliability of supply and due to the limited storage capacity. On the other hand some customers consider deliveries of cocoa powder in solid form not subject to the same transport and storage constraints as liquid products and therefore proximity is considered a less important factor.

31. Customers are generally not aware of any barriers to cross-border trade within the EEA.

32. However, in the present case the question whether the geographic market for manufacture and distribution of cocoa liquor, cocoa butter and cocoa powder is broader than EEA can be left open, as the transaction does not raise any competition concerns under any potential market definition.

33. With respect to industrial chocolate, the Commission in its previous decision[6] did not reach a definite conclusion as to whether the geographic market is to be defined as EEA-wide or smaller - regional or national.

34. The Parties argue that the market for industrial chocolate is wider than national. They argue that large amounts of industrial chocolate are traded across borders and that pricing does not differ significantly throughout the EEA. Further, the Parties argue that many customers are multi-national companies (e.g. Nestlé, Kraft, Mars) with EEA-wide activities that source their requirements on an EEA-wide level. Finally, the Parties claim that industrial chocolate can be transported over relatively long distances within the EEA either in liquid or in solid form. In this regard, the Parties refer to a radius of 1500 km from the production plant for liquid industrial chocolate or beyond for solid.

35. The market investigation was not conclusive on the geographic scope for industrial chocolate. The replies indicated that customers mostly source their industrial chocolate requirement from national suppliers as well as from other EEA countries. Only a few smaller customers source industrial chocolate on a purely national basis. Indeed, there seems to be an important level of trade flows between certain Member States. For example. more than one third of the industrial chocolate sold in Germany is imported, predominantly from two neighbouring countries, Belgium and the Netherlands. The respondents mostly consider that the prices do not differ between EEA countries.

---

6 *ADM/Schokinag*, see footnote 1, Para 40-41.

36. However, most customers in the market investigation also highlighted that proximity to the industrial chocolate production site is an important factor when choosing a supplier essentially due to transport costs and to the importance of reliability of delivery times. Transport costs are higher than for intermediate cocoa products as industrial chocolate also contains sugar and milk which are relatively low-value ingredients. Just-in-time delivery was said to be quite common requirement of customers as industrial chocolate is mostly delivered in liquid form which is subject to a lifetime of only several weeks and has to be constantly kept in heated tanks to avoid solidification. Also, it was indicated that many customers would not typically have large storage facilities and would rely on regular on-time deliveries. These customers show a preference for sourcing their supply requirement from factories located nearby on a more regular basis. Furthermore, the market investigation revealed that the transport of liquid industrial chocolate requires special handling in isolated tanks[7].

37. When asked about the distances from which it would be technically and economically viable to transport liquid industrial chocolate, the market participants provided divergent opinions. Competitors suggested larger radiuses of 1500 km or even beyond, while customers sometimes suggested smaller radiuses. The Parties themselves consider 1500 km to be the appropriate radius[8].

38. All of these elements taken together indicate that the relevant geographic market for industrial chocolate is likely to be narrower than EEA.

39. However, in the present case, the question as to whether the geographic market for the manufacture and distribution of industrial chocolate is EEA or narrower (regional or even national) can be left open, as the transaction does not raise any competition concerns under any potential market definition.

Competitive Assessment

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

41. The Parties consider the market size and market shares expressed in volumes sold as the pertinent starting basis for the competitive assessment as the prices for semi-finished cocoa products (except cocoa powder) and industrial chocolate fluctuate significantly over time depending on the price of the raw material. Therefore all market shares discussed below are volume market shares.

---

7 A competitor explained that when industrial chocolate is transported in liquid form (which is the most common form) it has to be kept at temperatures above 37-38 degrees Celsius in order not to deteriorate. As trucks usually are not heated, a long journey (over 2 days) may cause the products to cool down which would have an impact on the quality.

8 In the ADM/Schokinag decision, it was signalled that the transport radius within which it is economically viable to sell industrial chocolate in liquid form is approximately 1500 km.

a) Procurement of cocoa beans

42. With respect to the market for procurement of cocoa beans, the market share increments in all markets are insignificant and/or the combined shares generally modest.[9] Accordingly, the merged entity will not become an unavoidable trading partner.

43. Therefore, the proposed transaction does not lead to any competition concerns in the market for cocoa beans procurement.

b) Semi-finished cocoa products and industrial chocolate

44. As regards respectively the markets for the manufacture and distribution of cocoa liquor, cocoa butter and cocoa powder, Table 2 shows the Parties market shares at the Worldwide and EEA-wide level.

Table 2: Parties' market shares (by volume) 2010 (non captive)

Market share		Cocoa liquor	Cocoa butter	Cocoa powder
Worldwide	Cargill	[10-20]%	[10-20]%	[10-20]%
	KVB	[0-5]%	[0-5]%	[0-5]%
	Combined	**[20-30]%**	**[10-20]%**	**[10-20]%**
EEA-wide	Cargill	[30-40]%	[20-30]%	[20-30]%
	KVB	[5-10]%	[0-5]%	[0-5]%
	Combined	**[30-40]%**	**[20-30]%**	**[30-40]%**

45. At a worldwide level, the Parties' combined market shares in the markets for cocoa liquor, cocoa butter and cocoa powder are respectively [20-30]% or lower, with an increment not exceeding [0-5]% for any of the mentioned markets.

46. Given the relatively limited combined market shares and the limited increments which result from the proposed transaction it can be concluded that the transaction would not raise any competition concerns in the markets for cocoa liquor, cocoa butter and cocoa powder at the worldwide level.

- Cocoa liquor

47. In the market for cocoa liquor, Cargill has an EEA market share of [30-40]%, whereas KVB holds [5-10]% of the market. The combined share would be [30-40] post-merger. Other remaining large competitors post transaction include ADM ([10-20]% market share), Theobroma ([5-10]% market share) and Krueger Gruppe ([5-10]% market share). In addition there will remain a number of companies with smaller market shares between [0-5]% (such as Delfi, Barry Callebaut, Dutch Cocoa, Nederland, Euromar and Natra).

---

9 The Parties achieve a combined world-wide market share above 15% in respect to the beans originating in West Africa ([10-20]%, with [0-5]% increment coming form KVB) and South America's beans (combined market share of [10-20]%, with increment of [0-5]% added by KVB). As regards individual countries of origin, [Confidential].

48. The market investigation confirmed that customers will post-merger have sufficient alternative sources of supply. The market investigation has shown that customers mostly multi-source cocoa liquor from various suppliers at the same time. The investigation indicates that there is enough production capacity in Europe to satisfy the demand. Some respondents also confirmed that they source cocoa liquor in solid form directly from the cocoa beans originating countries and import it into Europe.

49. In addition, there was no indication that the Parties would be viewed as a particularly close competitors, on the contrary. KVB was viewed as a rather smaller and regional player and focusing mostly on producing standard-quality products. Cargill is more focused on producing cocoa liquor from more higher-quality beans.

50. Moreover, as cocoa liquor is a purely intermediary product, up to two thirds is produced captively and only around 35% traded on the merchant market. Thus a large number of vertically integrated companies have the choice between producing their chocolate ingredients internally or sourcing cocoa liquor from specialised cocoa processing companies such as the parties. The market shares of the Parties are thus overstating their market power to some extent.

51. On the basis of the above, the proposed transaction does not raise competition concerns with respect to sales of cocoa liquor in the EEA.

- Cocoa butter

52. Cargill had a market share in the market for production and distribution of cocoa butter of [20-30]% at the EEA-wide level in 2010. The transaction leads to an insignificant [0-5]% increment on an EEA-wide market definition. There would remain a sufficient number of other alternative suppliers of cocoa butter, such as ADM ([20-30]% market share), Theobroma ([10-20]%) Petra Foods/Delfi ([10-20]%) and several others.

53. On the basis of the above, the proposed transaction does not give rise to competition concerns in the EEA market for cocoa butter.

- Cocoa powder

54. As regard the market for cocoa powder, the Parties' combined EEA-wide market share amounts to [30-40]% with KBV leading to a relatively modest increment of [0-5]%. The second largest competitor ADM holds a market share of [20-30]% and Barry Callebaut a market share of [10-20]%. Several other competitors such as Delfi, Cémoi, Indcresa, Natra and Dutch Cocoa are present on the market.

55. The investigation confirmed that sufficient alternatives will be available on the market. Moreover, the majority of the customers in the market investigation mentioned other competitors such as ADM, Barry Callebout, Dutch Cocoa, Euromar, Natra, Dietz in addition to KVB as the closest competitors to Cargill in the market for cocoa powder.[10] This was further confirmed by the replies of competitors which

[10] Answer to Article 11 letter of the Commission to customers of 25 March 2011, Question 21.

indicated ADM, Barry Callebaut and Delfi as the closest competitors to Cargill[11]. Indeed, KVB is a relatively minor player in this market.

56. On the basis of the above, the proposed transaction does not give rise to competition concerns in the market for cocoa powder in the EEA.

c) Industrial chocolate

57. Regarding industrial chocolate, the merged entity would hold a combined market share of [10-20]% EEA-wide with a market share increment of [5-10]%. On an EEA-wide market the merged entity would face strong competition from the clear market leader Barry Callebaut with a market share of [50-60]%. Other significant EEA-wide competitors include ADM with market share of [5-10]%, Cémoi with market share of [5-10]% and Belcolade with a market share of [5-10]%.

58. On a hypothetical regional market defined within a radius of 1500 km from the KVB Berlin production plants, the merged entity's market shares are similar, reaching [20-30]% ([5-10]% market share increment), with Barry Callebaut holding market shares above [50-60]%, and ADM, Cémoi and Belcolade holding market shares between [5-10]%.

59. On a hypothetical national market definition, the Parties would hold a market share of [30-40]% in Germany, and a combined market share above [20-30]% in France, Belgium and in the Netherlands.

60. However, in the latter three latter countries, the market share increment brought about by the transaction is negligible as KVB holds respectively market shares of [0-5]% in Belgium, [0-5]% in France and [0-5]% in the Netherlands.

61. As regards a possible national German market, the merged entity would become the market leader holding a market share of [30-40]%. Other competitors include ADM with [20-30]% market share, Barry Callebaut with [10-20]% market share, Belcolade with [5-10]% market share and Krueger with [5-10]%. Other smaller competitors include Cémoi, Lubeca, Icam, Natra and Kessco.

62. The Parties argue that the transaction will not give rise to serious doubts on the German market as all significant producers of end-consumer chocolate products also produce the industrial chocolate themselves. The Parties consider that the customers can easily switch suppliers depending on the qualification procedure of new suppliers which can be very quick. Further, they argue that even with respect to a potential national market definition, significant cross-border supplies would need to be taken into account in assessing the competitive impact of the transaction.

63. The market investigation revealed that KVB was perceived as a flexible and relatively competitive supplier in terms of its quality price ratio offering. In the market investigation competitors mentioned Barry Callebaut, ADM, Cémoi and Belcolade – and not KVB - as the closest competitors to Cargill in the market for industrial chocolate[12]. Likewise, customers viewed Cargill to be a closer competitor

[11] Answer to Article 11 letter of the Commission to competitors of 25 March 2011, Question 28.

[12] Answer to Article 11 letter of the Commission to competitors of 25 March 2011, Question 28.

to the international players Barry Callebaut and ADM, often referring to superior quality.

64. Furthermore, the results of the market investigation signalled that as regards industrial chocolate customers generally multisource and have a tendency to change suppliers. The investigation confirmed that there are sufficient alternative suppliers available to the customers.

65. Moreover, some competitors which are currently less present in industrial chocolate in Germany provided indications that they can expand their presence in this Member State.[13]

66. In view of the above, it is concluded that the proposed transaction does not give rise to competition concerns in the market for industrial chocolate under any hypothetical geographic market definition.

V. CONCLUSION

67. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(signed)
Joaquín ALMUNIA
Vice-President

[13] Answer to Article 11 letter of the Commission to competitors of 25 March 2011, Question 33.