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***Case No COMP/M.6872 - BARRY CALLEBAUT/ PETRA  
FOODS - COCOA INGREDIENTS DIVISION***

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: 06/06/2013

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## EUROPEAN COMMISSION

Brussels, 6.6.2013  
C(2013) 3528 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.6872 - Barry Callebaut/ Petra Foods - Cocoa Ingredients Division  
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup>**

- (1) On 26 April 2013, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Barry Callebaut AG ('BC', Switzerland) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of the Cocoa Ingredients Division of Petra Foods Limited ('Petra's Cocoa Ingredients Division', Singapore) by way of purchase of shares<sup>2</sup>. Petra's Cocoa Ingredients Division is hereinafter referred to as 'the Target'. BC and the Target are hereinafter referred to as 'the Parties' and BC is hereinafter referred to as 'the Notifying Party'.

#### **1. THE PARTIES**

- (2) BC is a Swiss-based manufacturer of cocoa and chocolate products. BC is active across the cocoa value chain, i.e. in the procurement and processing of cocoa

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<sup>1</sup> 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.

<sup>2</sup> Publication in the Official Journal of the European Union No C 127, 4.05.2013, p. 16.

beans, the production of semi-finished cocoa products (cocoa liquor, cocoa butter and cocoa powder) and the production of industrial chocolate.<sup>3</sup>

- (3) Petra is a Singaporean-based manufacturer of cocoa products and consumer chocolate confectionery products. It operates two divisions. The Cocoa Ingredients Division (the Target) is active in the procurement of cocoa beans and the production and distribution of cocoa liquor, cocoa butter and cocoa powder. The Branded Consumer Division (which is not being acquired by BC) manufactures and markets chocolate confectionery products mainly in Asia (but not in Europe).

## **2. THE OPERATION AND CONCENTRATION**

- (4) On 12 December 2012, the Parties signed a share purchase agreement by which BC intends to acquire all the assets, liabilities and operations of Petra's Cocoa Ingredients Division. The proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **3. EU DIMENSION**

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million<sup>4</sup> (BC: EUR 3 992 million; Target: EUR 801 million). Each of them has a EU-wide turnover in excess of EUR 100 million (BC: EUR [...]; Target: EUR [...]). The Parties achieve a combined aggregate turnover of more than EUR 100 million, while also achieving separately an aggregate turnover of more than EUR 25 million each, in [...]. Neither of the Parties acquires more than two-thirds of their Union-wide turnover within one and the same Member State.
- (6) The notified operation therefore has an EU dimension pursuant to Article 1(3) of the Merger Regulation.

## **4. COMPETITIVE ASSESSMENT**

- (7) The proposed transaction concerns the cocoa sector and gives rise to both horizontal overlaps and vertical relationships.
- (8) The Parties are both active (i) in the procurement of cocoa beans and (ii) in the manufacturing and distribution of semi-finished cocoa products (cocoa liquor, cocoa butter and cocoa powder). In addition, BC is active in the manufacturing and distribution of industrial chocolate, which is downstream of the semi-finished cocoa products.

### **A. Relevant market definitions**

- (9) 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

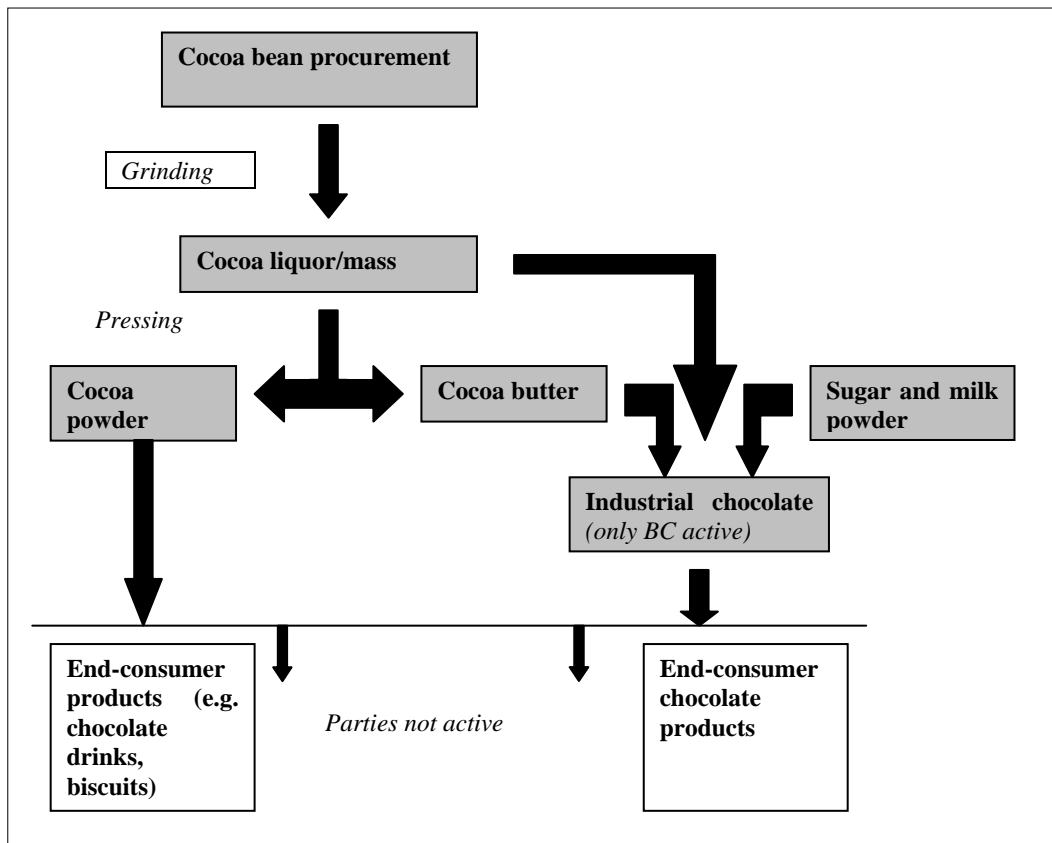
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<sup>3</sup> Chocolate is premixed or designed for manufacturing through an industrial/artisanal process.

<sup>4</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

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). The following table illustrates the different steps involved in the production of semi-finished cocoa products and industrial chocolate.

**Table 1: Chocolate value chain**



Source: Notifying Party

Relevant product markets

**a) Procurement of cocoa beans**

- (10) The major areas for the cultivation of cocoa beans are in West Africa, Latin America and Asia. West Africa accounts for approximately two thirds of the total worldwide supply of cocoa beans, with the Ivory Coast and Ghana accounting for the majority of West African supply.
- (11) Neither of the Parties operates its own cocoa bean production estates or plantations. They both rather purchase cocoa beans. 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 futures market.

- (12) The Commission has previously considered that some customers may have a preference for the cocoa beans of a particular country of origin and, more particularly, that within the EEA customers may have a preference for West African cocoa beans due to their perceived quality and taste. Nevertheless, the exact market definitions were left open.<sup>5</sup>
- (13) The Notifying Party submits that the relevant product market should not distinguish between the countries of origin of the cocoa beans since cocoa beans from different geographic locations are substitutable. Moreover, the Notifying Party submits that cocoa beans are commoditised products and the blending of different types of cocoa beans from different origin is a common practice.
- (14) The replies to the Commission's market investigation indicated that, for consumption within the EEA, West African beans are likely to constitute a separate relevant product market due to different characteristics (taste, colour) and prices of the cocoa beans. In addition, some respondents to the market investigation further noted that cocoa beans coming from different West African countries may not be fully substitutable with each other.<sup>6</sup>
- (15) For the purposes of this decision, the exact market definition can be left open since the proposed transaction does not give rise to competition concerns even on the basis of the narrowest reasonable market definition.

#### **b) Semi-finished cocoa products**

- (16) Semi-finished cocoa products include: (i) cocoa liquor (also known as 'cocoa mass'), (ii) cocoa butter and (iii) cocoa powder.
- (17) Cocoa liquor is produced by grinding cocoa beans. Cocoa liquor is either used as one of the basic ingredients of industrial chocolate (along with cocoa butter, sugar and – as the case may be – milk), to which it gives colour and flavour, or processed further into cocoa butter and cocoa powder.
- (18) Cocoa butter is extracted by pressing cocoa liquor, either through a very fine sieve or by the use of a solvent. It is also one ingredient of industrial chocolate, which is primarily used by manufacturers of end-consumer chocolate products.<sup>7</sup>
- (19) Cocoa powder is a by-product of the pressing process used to produce cocoa butter. It is produced from grinding and pulverising cocoa cake, the substance remaining after cocoa butter has been removed from cocoa liquor. It can be used in a variety

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<sup>5</sup> Case COMP/M.5431 – *ADM / Schokinag*, paragraphs 19–20, and Case COMP/M.6132 – *Cargill / KVB*, paragraphs 12–4.

<sup>6</sup> Replies to the Commission's Questionnaire to Customers, questions 7–13, and replies to the Commission's Questionnaire to Competitors, questions 8–13. The importance of the geographic origin of the cocoa beans nonetheless varies between different companies.

<sup>7</sup> A limited amount of cocoa butter is also used in the pharmaceutical and cosmetic industries. The Notifying Party estimates that [...] metric tonnes, approximately [less than 1]% of the total EEA merchant market, is sold for such purposes. Of the Parties, only BC sells cocoa butter for these purposes and there is thus no overlap. The amount sold by BC is also limited, only [...] metric tonnes a year, [...]. Hence, the use of cocoa butter for these purposes is not considered further in this decision.

of end-consumer products (e.g. chocolate drinks, cakes and biscuits) to add cocoa flavour.<sup>8</sup>

- (20) The Notifying Party notes that there is a level of both supply- and demand-side substitutability with regard to the semi-finished cocoa products and thus they should constitute a single product market encompassing all semi-finished cocoa products.
- (21) The replies to the Commission's market investigation<sup>9</sup> confirmed the Commission's approach in previous decisions that each of the semi-finished cocoa products constitutes a separate relevant product market.<sup>10</sup>
- (22) For the purposes of this decision, the Commission considers that cocoa liquor, cocoa butter and cocoa powder each constitutes a separate relevant product market.

### **c) Industrial chocolate**

- (23) Industrial chocolate is made out of cocoa liquor, cocoa butter and other non-chocolate products such as sugar, milk powder and lecithin.
- (24) The replies to the Commission's market investigation<sup>11</sup> confirmed the Commission's approach in previous decisions that industrial chocolate constitutes a separate relevant product market.<sup>12</sup>
- (25) For the purposes of this decision, the Commission considers that industrial chocolate constitutes a separate relevant product market.

### Relevant geographic markets

#### **a) Procurement of cocoa beans**

- (26) The Commission has previously considered that the procurement of cocoa beans appears to be a worldwide market. Nevertheless, it has left open the exact geographic market definition.<sup>13</sup>

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<sup>8</sup> A limited amount of cocoa powder is also used in the manufacturing of tobacco products. The Notifying Party estimates that [...] metric tonnes, approximately [less than 1]% of the total EEA merchant market, is sold for such purpose. However, as neither of the Parties sells cocoa powder for the production of tobacco products, this use is not considered further in this decision.

<sup>9</sup> Replies to the Commission's Questionnaire to Customers, questions 14–5, and the Commission's Questionnaire to Competitors, questions 14–5.

<sup>10</sup> Case COMP/M.5431 – *ADM / Schokinag*, paragraphs 30–1, and Case COMP/M.6132 – *Cargill / KVB*, paragraph 24.

<sup>11</sup> Replies to the Commission's Questionnaire to Customers, questions 14–5, and the Commission's Questionnaire to Competitors, questions 14–5.

<sup>12</sup> Case COMP/M.5431 – *ADM / Schokinag*, paragraph 31, and Case COMP/M.6132 – *Cargill / KVB*, paragraph 24.

<sup>13</sup> Case COMP/M.5431 – *ADM / Schokinag*, paragraph 33, and Case COMP/M.6132 – *Cargill / KVB*, paragraph 27.

- (27) The Notifying Party considers that the geographic market is worldwide since cocoa beans are priced irrespective of their ship-to destination and cocoa beans can easily be shipped over long distances from their country of origin. Moreover, the Notifying Party submits that transportation costs are only a small fraction (approximately 0-5%) of their bulk sales price regardless of origin or destination. Both of the Parties have also arranged their procurement activities mostly on a global level.<sup>14</sup>
- (28) The majority of respondents to the Commission's market investigation indicated that they have arranged their procurement of cocoa beans on a worldwide level.<sup>15</sup>
- (29) For the purposes of this decision, however, the exact geographic market definition may be left open as the proposed transaction does not raise any competition concerns even with narrower market definitions.

#### **b) Semi-finished cocoa products**

- (30) In previous cases, the Commission has considered that the relevant geographic market for cocoa liquor, cocoa butter and cocoa powder is EEA wide. Moreover, the Commission has also considered that these markets may be even wider.<sup>16</sup>
- (31) In line with the Commission's findings in a previous case, the Notifying Party further submits that the relevant geographic market for semi-finished cocoa products is at least EEA-wide,<sup>17</sup> but could potentially be worldwide. The Notifying party submits that both the main suppliers and main customers (such as [...]) operate on a global basis. Moreover, most semi-finished cocoa products can and are transported long distances with low transport costs (approximately [0-5]% of the final sales prices), and imports into the EEA constitute approximately one-third of all consumption of semi-finished cocoa products within the economic area.<sup>18</sup>
- (32) The responses to the market investigation point more to an EEA-wide market. While some respondents identified worldwide sale and purchase of semi-finished cocoa products, many respondents noted that transport costs limit the geographic scope of the markets.<sup>19</sup> Moreover, the majority of customers indicated that there are price differences between the EEA and the rest of the world.<sup>20</sup> In addition, while barriers to intra-EEA trade were not indicated, the majority of customers and

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<sup>14</sup> See Form CO, paragraphs 114–7.

<sup>15</sup> Replies to the Commission's Questionnaire to Competitors, question 18.

<sup>16</sup> Case COMP/M.5431 – *ADM / Schokinag*, paragraph 38, and Case COMP/M.6132 – *Cargill / KVB*, paragraph 27.

<sup>17</sup> Case COMP/M.5431 – *ADM / Schokinag*, paragraph 37.

<sup>18</sup> [...] % for cocoa liquor, [...] % for cocoa butter and [...] % for cocoa powder. See Form CO, paragraph 123.

<sup>19</sup> Replies to the Commission's Questionnaire to Customers, questions 17–9 and 22–4, and replies to the Commission's Questionnaire to Competitors, questions 22–6. As to transport costs, the majority of customers indicated that transport costs make up to 5% of the delivered price of all semi-finished cocoa products, some noting that transport costs make between 5 and 10% of the delivered price. See replies to the Commission's Questionnaire to Customers, question 19.

<sup>20</sup> Replies to the Commission's Questionnaire to Customers, question 25.

competitors noted that there are barriers to trade between the EEA and the rest of the world, many respondents noting customs duties between the EEA and some outside countries.<sup>21</sup>

- (33) For the purposes of this decision, however, the exact geographic scope of the market for semi-finished cocoa products can be left open since the proposed transaction gives rise to no competition concerns even on the basis of the narrowest reasonable market definition.

### **c) Industrial chocolate**

- (34) In previous cases, the Commission has considered whether the geographic market for industrial chocolate is EEA-wide or narrower, (regional or national), however, the exact geographic market definition was left open.<sup>22</sup>
- (35) The Notifying Party submits that the relevant geographic market for industrial chocolate is at least EEA-wide. The Notifying party submits that there are significant cross-border trade flows within the EEA, prices are generally set on an EEA-wide basis and many customers are multi-national companies. Moreover, the Notifying Party submits that suppliers are able to economically transport industrial chocolate even in liquid form to a distance of up to at least 2 000 km.
- (36) The market investigation was inconclusive about the geographic scope of the market for industrial chocolate. A clear majority of customers replied that there are trade flows for industrial chocolate across borders within the EEA. However, while a majority of customers also replied that they have arranged their purchases of industrial chocolate at least an EEA-wide basis, some replied to have arranged it in a narrower scope.<sup>23</sup> Competitors also noted that transport costs may limit the geographic distance to which industrial chocolate may be transported.<sup>24</sup>
- (37) For the purposes of this decision, however, the exact geographic market definition can be left open since the proposed transaction does not raise competition concerns even with the narrowest reasonable market definition.

## **B. Competitive assessment**

- (38) The proposed transaction gives rise to horizontally affected markets (i) in the procurement of cocoa beans and (ii) in the manufacturing and distribution of semi-finished cocoa products (cocoa liquor, cocoa butter and cocoa powder). Furthermore, there are vertical relationships between the Parties in (i) the procurement of cocoa beans and cocoa liquor and (ii) semi-finished cocoa products and industrial chocolate.

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<sup>21</sup> Replies to the Commission's Questionnaire to Customers, question 26, and replies to the Commission's Questionnaire to Competitors, question 28.

<sup>22</sup> Case COMP/M.5431 – *ADM / Schokinag*, paragraph 41, and Case/M.6132 – *Cargill / KVB*, paragraphs 38–9.

<sup>23</sup> Replies to the Commission's Questionnaire to Customers, questions 20–1.

<sup>24</sup> Replies to the Commission's Questionnaire to Competitors, question 25.



(i) *Horizontally affected markets*

a) **Procurement of cocoa beans**

(39) The Parties' market shares in all of the possible market definitions are the following:

<b>Cocoa bean procurement 2012</b>			
<b>Origin</b>	<b>BC</b>	<b>Petra</b>	<b>Combined</b>
Global	[10-20]%	[5-10]%	[20-30]%
West Africa	[20-30]%	[5-10]%	[20-30]%
Cameroon	[10-20]%	[10-20]%	[20-30]%
Ivory Coast	[20-30]%	[0-5]%	[20-30]%
Ghana	[10-20]%	[5-10]%	[20-30]%
Nigeria	[10-20]%	[5-10]%	[10-20]%

Source: *Notifying Party*.

- (40) The Parties' combined market shares remain rather moderate under all possible market definitions. The increment brought by the proposed transaction is also relatively limited in relation to each of the possible market definitions, reflecting the fact that Petra focuses its procurement activities in Asia and is not particularly strong in the procurement of West African cocoa beans. In addition, a number of alternative players, such as ADM<sup>25</sup> and Cargill<sup>26</sup> and a large number of small players will continue to compete with the merged entity in the procurement of cocoa beans.
- (41) While some respondents to the Commission's market investigation did note that the Parties' would gain a notable combined market share, a majority of respondents did not consider that the proposed transaction would give rise to competition concerns related to the procurement of cocoa beans.<sup>27</sup>
- (42) In light of the above, the Commission concludes that the merged entity would not become an unavoidable trading partner and that the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to the procurement of cocoa beans.

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<sup>25</sup> ADM's market share: [10-20]% worldwide, [10-20]% West Africa, [20-30]% Cameroon, [10-20]% Ivory Coast, [10-20]% Ghana and [10-20]% Nigeria.

<sup>26</sup> Cargill's market share: [10-20]% worldwide, [10-20]% West Africa, [30-40]% Cameroon, [10-20]% Ivory Coast, [10-20]% Ghana and [10-20]% Nigeria.

<sup>27</sup> Replies to the Commission's Questionnaire to Competitors, questions 30 and 43-4.

**b) Semi-finished cocoa products**

- (43) The Parties' market shares in the merchant market for the supply of semi-finished cocoa products are the following.

Share of supply 2012		Cocoa Liquor (%)	Cocoa Butter (%)	Cocoa Powder (%)
<b>World-wide</b>	BC	[10-20]	[5-10]	[10-20]
	Petra	[0-5]	[10-20]	[10-20]
	<b>Combined</b>	<b>[10-20]</b>	<b>[20-30]</b>	<b>[20-30]</b>
<b>EEA-wide</b>	BC	[10-20]	[5-10]	[10-20]
	Petra <sup>28</sup>	<1	[10-20]	[5-10]
	<b>Combined</b>	<b>[10-20]</b>	<b>[10-20]</b>	<b>[10-20]</b>

Source: Notifying Party.

- (44) Cocoa liquor: Cocoa liquor is an affected market only if the geographic market definition is considered wider than the EEA. The combined market share is [10-20]% (BC: [10-20]% and the Target [0-5]%) at worldwide level. Other competitors in the market for cocoa liquor at worldwide level are Cargill ([20-30]%) ADM ([20-30]%) and ECOM / Dutch Cocoa ([5-10]%).
- (45) Cocoa butter: The Parties' combined market share at EEA-level remains moderate ([10-20]%) and the increment brought by the transaction is limited ([5-10]%). Other competitors in the market for cocoa butter include Cargill ([20-30]%), ADM ([20-30]%) and Theobroma ([20-30]%). At worldwide level, the Parties' combined market share is [20-30]% (BC: [5-10]% and the Target [10-20]%). Other large competitors in the market for cocoa butter are ADM ([10-20]%), Cargill ([10-20]%) and Theobroma ([10-20]%).
- (46) Cocoa powder: The Parties' combined market share remains moderate ([10-20]%) and the increment brought by the transaction is limited ([5-10]%) at the EEA-wide level. Other competitors in the market include Cargill ([30-40]%), ADM ([20-30]%) and Indcresa ([5-10]%). At worldwide level, the Parties' combined market share is [20-30]% (BC: [10-20]% and the Target [10-20]%). Other competitors in the market for cocoa powder are Cargill ([20-30]%) and ADM ([10-20]%).
- (47) Semi-finished cocoa products are purely intermediary products and the majority of their consumption is captive, with only limited volumes being traded on the merchant market.<sup>29</sup> Thus, a large number of vertically integrated companies have

<sup>28</sup> The figures given include sales by Petra to BC. Without these sales, Petra's 2012 EEA market shares would be <1% for cocoa liquor, [10-20]% for cocoa butter and [5-10]% for cocoa powder. BC does not currently supply semi-finished cocoa products to Petra. See the Notifying Party's response to the Commission's Request for Information on 13 May 2013, paragraphs 1.1–1.3 and annex 1.

<sup>29</sup> In Case COMP/M.6132 – *Cargill / KVB*, it was noted that only 35% of semi-finished products are traded in the merchant market (paragraph 50).

the choice either producing their chocolate ingredients internally or sourcing cocoa liquor from specialised cocoa processing companies such as the Parties.

- (48) Moreover, the Notifying Party submits that the Parties are not close competitors in cocoa powder since their products are rather complementary. BC primarily produces high-end cocoa powder tailored to the customer's specific requests of taste and colour whereas the Target does not tailor its products similarly. The Notifying Party also submits that customers will continue to have alternative suppliers of cocoa powder and that the main competitors, including Cargill and ADM, have products targeting both those of BC and those of the Target.
- (49) While some of the respondents to the Commission's market investigation raised concerns relating to the availability and trading conditions of semi-finished cocoa products after the proposed transaction, the majority of even those respondents that raised concerns confirmed that they would continue to have sufficient alternative suppliers.<sup>30</sup> The market investigation also confirmed that competitors to the merged entity have sufficient idle capacity of semi-finished cocoa products to satisfy merchant market demands. In addition, the majority of customers replying to the market investigation did not consider the Parties to the proposed transaction to be the closest competitors to each other, but named other market players.<sup>31</sup>
- (50) In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts with respect to semi-finished cocoa products.

*(ii) Vertically affected markets*

**a) Cocoa beans and cocoa liquor**

- (51) There is a vertical relationship between cocoa beans and cocoa liquor because the former are used as an input in the manufacturing of the latter. This vertical relationship gives rise to potential vertically affected markets because the Parties' combined market shares under some of the potential market definitions are above 25% as described in paragraph (39) above.
- (52) As explained in the preceding section B(i) assessing the horizontal overlaps resulting from the proposed transaction, the proposed transaction does not give rise to serious doubts in the relevant downstream and upstream markets themselves. Furthermore, as regards cocoa beans, neither of the Parties operates their own production estates or plantations. Both Parties are procuring rather than supplying cocoa beans.<sup>32</sup> Accordingly, there is no possible issue with regard to the merged entity restricting supply of cocoa beans to its downstream competitors. Further, the merged entity's combined market share remains below 30% under all reasonable market definitions for the procurement of cocoa beans, there are a number of competitors also procuring cocoa beans and there is no indication that the merged

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<sup>30</sup> Replies to the Commission's Questionnaire to Customers, questions 28 and 36–8 and replies to the Commission's Questionnaire to Competitors, question 42.

<sup>31</sup> Replies to the Commission's Questionnaire to Customers, question 30.

<sup>32</sup> BC supplies negligible amounts of cocoa beans to its customers, such as [...], as part of overall supply agreements.

entity would become an unavoidable trading partner for cocoa bean suppliers post-merger.

- (53) In light of the above, the Commission concludes that the proposed transaction does not give rise to serious doubts with respect to the vertical relationship between cocoa beans and cocoa liquor.

#### **b) Semi-finished cocoa products and industrial chocolate**

- (54) There is a vertical relationship between semi-finished cocoa products manufactured by the Parties and the manufacture of industrial chocolate by BC since the semi-finished cocoa products are used as an input in the production of industrial chocolate. This vertical relationship gives rise to vertically affected markets because of BC's market share in industrial chocolate.
- (55) While BC is the market leader in industrial chocolate within the EEA, with a market share of [45-55]% in the merchant market, the Target is not active in the market. The market is thus not horizontally affected. Furthermore, as explained in section B (ii)\* regarding the assessment of the horizontal overlap in relation to semi-finished cocoa products, the proposed transaction does not give rise to serious doubts in the relevant upstream market.
- (56) As to input foreclosure, the Target only supplies less than 1%, [10-20]% and [5-10]% respectively in the merchant market for cocoa liquor, cocoa butter and cocoa powder in the EEA. Furthermore, the Parties' combined share of total supplies to third parties of cocoa liquor, cocoa butter and cocoa powder is only [10-20]%, [10-20]% and [10-20]% respectively. As to customer foreclosure, BC already produces the vast majority of its requirements for semi-finished cocoa products internally and, when it sources them externally, it uses a range of different suppliers.<sup>33</sup> Furthermore, the Target already pre-transaction supplies some of the cocoa butter and cocoa powder sourced externally by BC.<sup>34</sup>
- (57) The market investigation also indicated that the proposed transaction will not give rise to serious doubts in relation to the Parties' vertical links. The majority of customers multi-source their supplies of semi-finished cocoa products. Moreover, sufficient alternatives to the merged entity will continue to exist in the supply of semi-finished cocoa products<sup>35</sup> and the remaining competitors have adequate enough capacity to meet merchant market demands of semi-finished cocoa products.

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\* Should read: B (i).

<sup>33</sup> In 2011/2012, BC sourced externally in the EEA [...] tonnes of cocoa liquor from [...] suppliers (approximately <1% of the EEA merchant market), [...] metric tonnes of cocoa butter from [...] suppliers (approximately [10-20] % of the EEA merchant market) and [...] metric tonnes of cocoa powder from [...] suppliers (approximately [0-5]% of the EEA merchant market). See Form CO, paragraph 179.

<sup>34</sup> In 2011/2012, the Target supplied approximately [10-20]% of BC's external cocoa butter and [30-40]% of BC's external cocoa powder requirements in the EEA. See Form CO, paragraph 180.

<sup>35</sup> Replies to the Commission's Questionnaire to Customers, questions 28–9.

- (58) In light of the above, the Commission concludes that the proposed transaction does not give rise to serious doubts with respect to the vertical relationship between semi-finished cocoa products and industrial chocolate.

## **5. CONCLUSION**

- (59) 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)*  
*Karel DE GUCHT*  
*Member of the Commission*