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***Case No COMP/M.7015 - BAIN CAPITAL/ ALTOR/ EWOS***

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: 01/10/2013

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## EUROPEAN COMMISSION

Brussels, 1.10.2013  
C(2013) 6462 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE

PUBLIC VERSION

### **To the notifying parties:**

Dear Sir/Madam,

**Subject: Case No COMP/M.7015 - BAIN CAPITAL/ ALTOR/ EWOS  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On 2 September 2013, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings Bain Capital Investors, LLC ("Bain Capital", USA), and Altor Fund III GP Limited ("Altor III", Jersey), acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of EWOS, the fish feed business ("EWOS", Norway) of Cermaq ASA ("Cermaq", Norway).<sup>2</sup> Bain Capital and Altor III are hereinafter referred to as the "Notifying Parties", whereas Bain Capital, Altor and EWOS together are hereinafter referred to as the "Parties".

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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 258, 07.09.2013, p. 18.

## 1. THE PARTIES

- (2) **Bain Capital** is a private equity investment firm. It invests, through its funds, in companies on a worldwide basis across most industries, including information technology, healthcare, retail and consumer products, communications, financial and industrial/manufacturing.
- (3) **Altor III** is a private equity fund which focuses on investments in the mid-market segment of the Nordic region.
- (4) **EWOS** is a business division of Cermaq, a Norwegian company quoted on the Oslo stock exchange. EWOS produces and supplies fish feed and nutrition for farmed fish, primarily for salmon and trout. It is comprised of six operating companies: EWOS Norway, EWOS Chile, EWOS Scotland, EWOS Canada, EWOS Vietnam and EWOS Innovation. Although Cermaq's current activities include fish farming, these fish farming activities do not form part of the Proposed Transaction and will be retained by Cermaq.<sup>3</sup>

## 2. THE OPERATION AND THE CONCENTRATION

- (5) According to the Sale and Purchase Agreement signed on 18 July 2013, [...] Bain Capital and Altor III will obtain a [...] % interest<sup>4</sup> in EWOS. The Board of Directors will be composed of [...] members, with [...] Bain Capital and Altor III having the right to nominate [...] directors.[...].
- (6) In view of the above, Bain Capital and Altor III will have joint control of EWOS. The transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## 3. EU DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>5</sup> (Bain Capital: EUR [...] million, Altor III: EUR [...] million, EWOS: EUR 1 137 million). The aggregate EU-wide turnover of two of the undertakings concerned is more than EUR 250 million (Bain Capital: EUR [...] million, Altor III: EUR [...] million, EWOS: EUR [...] million) but neither of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

## 4. APPLICABILITY OF THE EEA AGREEMENT

- (8) Article 8 of the EEA Agreement<sup>6</sup> provides that "unless otherwise specified", the provisions of the EEA Agreement shall apply only to:

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<sup>3</sup> Prior to completion,[...].

<sup>4</sup> [...].

<sup>5</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1

<sup>6</sup> Agreement on the European Economic Area, OJ No L 1, 3.1.1994, p. 3

- products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System ("HS Nomenclature"), excluding the products listed in Protocol 2 to the EEA Agreement<sup>7</sup>;
  - products specified in Protocol 3 to the EEA Agreement<sup>8</sup>, subject to the specific arrangements set out in that Protocol.
- (9) In the case at stake, two products subject to the transaction, namely tapioca starch (HS code 11.08.14) and fish feed (HS code 23.09.90), are not covered by Article 8 of the EEA Agreement, and consequently these products are not subject to Article 57 of the EEA Agreement on merger control.
- (10) The assessment of the impact of the merger for the above mentioned products in the EFTA States hence falls outside the jurisdiction of the European Commission. Consequently, this decision will only cover the EU with regard to tapioca starch and fish feed.
- (11) According to the Parties, the merger, in so far as those products are concerned, is subject to notification in Norway. The current decision is without prejudice to the outcome of the merger proceedings in Norway.

## **5. COMPETITIVE ASSESSMENT**

### **5.1. Introduction**

- (12) The target company, EWOS, produces and supplies fish feed and nutrition for farmed fish. In the EEA, it produces and sells complete compound fish feed and nutrition for salmonid (i.e. salmon and trout) from its Norwegian and UK (Scottish) facilities.<sup>9</sup>
- (13) There is no horizontal overlap between EWOS and any other portfolio company of the Notifying Parties, as neither Bain Capital nor any of the Altor III funds (or other funds managed by Altor Equity Group) owns any company active in the manufacture and/or distribution of fish or animal feed, either in the EEA or elsewhere in the world.
- (14) However, there is a vertical relation insofar IMCD Group BV ("IMCD", The Netherlands), a Bain Capital portfolio company, supplies speciality chemicals and food ingredients which are used in fish feed production. IMCD sells two raw materials to EWOS that are used in the manufacture of fish feed: lysine and tapioca starch.<sup>10</sup>

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<sup>7</sup> EEA Agreement, Protocol 2 on products excluded from the scope of the Agreement in accordance with article 8(3)A.

<sup>8</sup> EEA Agreement, Protocol 3 concerning products referred to in Article 8(3) B of the Agreement.

<sup>9</sup> Outside the EEA, EWOS produces and supplies fish feed and nutrition for salmonid from its operating facilities in Chile and Canada. EWOS also produces and supplies fish feed for pangasius catfish and other species. However, these types of fish feed are produced at its operating facilities in Vietnam and are not sold in the EEA.

<sup>10</sup> It is possible that EWOS could hypothetically obtain supplies of threonine, an amino acid, from IMCD. IMCD has not, however, in the past three years supplied threonine to EWOS. EWOS has in the past three years purchased its supplies of threonine from [...]. The Commission notes that supplies of threonine used by EWOS in the production of its complete feed for salmonid products constitute less than [...]% of EWOS total raw materials costs in each of Norway, the UK and the EEA. IMCD estimates that its market shares for the supply of

## 5.2. Relevant product markets

### 5.2.1. Fish feed

- (15) In the EEA, EWOS produces and supplies complete compound fish feed for salmonid (salmon and trout) farmed fish.
- (16) Fish feed is produced as pellets. Fish feed constitutes extruded feed formulated for particular species of farmed fish. The main ingredients are fish meal, fish oil, vegetable protein, whole wheat, vitamins and pigments. Different formulations of feed may be required for each species of fish and for each stage of its development.
- (17) In its previous decisions relating to animal feed, the Commission has defined separate markets for single feed, compound feed and feed mixes. Moreover, complete feed is a possible subsegment of compound feed.<sup>11</sup> The Commission has also considered that aqua feed is distinct from other animal feed, as the production processes, ingredients, distribution channels and customers for fish feed are very different from those of other types of animal feed.<sup>12</sup> Furthermore, the Commission has also considered a possible further subdivision of aqua feed based on the type of fish, and held it probable that there is a distinct market for aqua feed for farmed salmon.<sup>13</sup>
- (18) The Notifying Parties consider that arguments could be made in favour of a wider definition than one for the production of complete feed for salmonid. However, since almost all of the feed produced by EWOS in the EEA is complete feed and is sold to salmonid farmers, the Notifying Parties provided market share on the narrowest possible basis (i.e. complete feed for salmonid)<sup>14</sup>.
- (19) The precise scope of the relevant market with regard to fish feed can be ultimately left open in the current case, since no competition issues arise under any possible market definition.

### 5.2.2. Lysine

- (20) Lysine<sup>15</sup> is one of the ten essential amino acids. Amino acids are the building blocks of protein, a major component of body tissue. Lysine is an important amino acid used in animal foodstuffs for nutritional purposes. Other amino acids used in animal feed include threonine and tryptophan.

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threonine are less than [5-10]% in the UK, Norway and the EEA. IMCD sells [...] of its threonine to non-fish feed producers. In 2012 and 2011 [Details of IMCD's sales of threonine]. Threonine has a number of applications, in particular in medicine and pharmacy, but is also used in animal feed products other than fish feed. In fact, IMCD sells [...] of its threonine to non-fish feed producers.

<sup>11</sup> Case No. COMP/M.6468 - *Forfarmers/Hendrix* and Case No. COMP/M.6383 - *Cargill/KoroFrance*.

<sup>12</sup> Case No. COMP/M.2956 - *CVC/PAI Europe/Provimi*.

<sup>13</sup> Case No. COMP/M.3722 - *Nutreco/Stoltnielsen/Marine Harvest JV*.

<sup>14</sup> The Parties also provided market shares broken down for complete feed for salmon and trout separately.

<sup>15</sup> A comprehensive product definition was provided by the Commission's investigation into lysine used in animal feed (Case COMP/36.545/F3 - *Amino Acids*). The Commission has not previously considered the precise scope of the market for synthetic lysine in a merger context.

- (21) Lysine can be naturally occurring in materials of vegetal or animal origin or also be manufactured ("synthetic lysine"). IMCD sells synthetic lysine.
- (22) Synthetic lysine may be used by animal and aqua feed manufacturers as an additive to feedstuffs that do not, or do not sufficiently, contain natural lysine.
- (23) The Notifying Parties consider that synthetic lysine falls within a wider market for amino acids. However, the Notifying Parties provided market share on the narrowest possible basis.
- (24) The precise scope of the relevant market with regard to lysine can be ultimately left open in the current case, since no competition issues arise under any possible market definition.

### 5.2.3. *Tapioca starch*

- (25) Starches are carbohydrates, known as polysaccharides, i.e., multiple molecules of sugar, produced from grain or root crops. For commercial use, starch is derived from a variety of cereals like rice, wheat, sorghum, corn and tubers like potato, tapioca and sweet potato.
- (26) Tapioca starch is extracted from the root of the cassava plant, cultivated in tropical areas worldwide, including Southeast Asia and South America.
- (27) The Commission has not previously considered the precise scope of the market for tapioca starch. It has, however, examined the wider market of "starch", considering that there are separate markets for each potato, corn and wheat starch in which each market was further segmented into two markets - modified and non-modified.<sup>16</sup> IMCD only sells and EWOS only buys non-modified tapioca starch.
- (28) The Notifying Parties consider that tapioca starch should be regarded as falling within the wider market for all starches, regardless of the source of carbohydrate, as there is high substitutability between tapioca, corn, potato and wheat starches, especially in the fish and animal feed market. However, the Notifying Parties provided market share on the narrowest possible basis.
- (29) The precise scope of the relevant market with regard to tapioca starch can be ultimately left open in the current case, since no competition issues arise under any possible market definition.

## 5.3. **Relevant geographic markets**

### 5.3.1. *Fish feed*

- (30) The Commission has previously considered the market for aqua feed to be national, mainly because of the high transport costs, but also consider that the market for aqua feed for salmon is in a progress of being regionalised with a distinct market for the North Sea basin.<sup>17</sup>

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<sup>16</sup> Case No COMP/M.2502 - *Cargill/Cerestar*.

<sup>17</sup> Case No COMP/M.3722 - *Nutreco/Stoltnielsen/Marine Harvest JV*.

- (31) The Notifying Parties consider, however, that the precise scope of the geographic market for fish feed for salmonid can in this case be left open and provided market shares at EEA level, for the North Sea basin and at national basis.
- (32) The precise scope of the relevant geographic market with regards to fish feed can be ultimately left open in the current case, since no competition issues arise under any possible geographic market definition.

### 5.3.2. *Lysine*

- (33) The Commission, in its decision on the animal feed cartel,<sup>18</sup> has considered the market to be at least EEA-wide.
- (34) The Notifying Parties provided market shares both at EEA level and at national basis. The precise scope of the relevant geographic market with regard to lysine can be ultimately left open in the current case, since no competition issues arise under any possible geographic market definition.

### 5.3.3. *Tapioca starch*

- (35) The Commission has considered that the geographic market for starches in general market might be EEA-wide as there are no significant regulatory or other barriers to trade.<sup>19</sup>
- (36) The Notifying Parties note, however, that the source of tapioca starch, the cassava plant, is usually only found in wet, tropical or sub-tropical countries. The tapioca starch distributed by IMCD is manufactured in and purchased from [...]. This therefore suggests a geographic market that is wider in than the EEA, and possibly, one that is world-wide in scope. However, the Notifying Parties provided market shares both at EEA-level and at national basis.
- (37) The precise scope of the relevant geographic market with regard to tapioca starch can be ultimately left open in the current case, since no competition issues arise under any possible geographic market definition.

## 5.4. **Competitive assessment**

- (38) EWOS uses tapioca starch and lysine as a protein in the production of its fish feed. The Proposed Transaction thus creates a vertical relationship between IMCD, as a supplier of lysine and tapioca starch (upstream), and EWOS, a fish feed producer (downstream).
- (39) EWOS' market share exceeds 25% in the supply of complete feed for salmonid in the UK ([30-40]%)<sup>20</sup>, the Republic of Ireland ([30-40]%) and the possible wider market of the North Sea Basin ([30-40]%). The national market in Norway ([40-50]%)<sup>21</sup> would also be affected, but as fish feed is not covered by the EEA Agreement, this downstream market is not covered in the competitive assessment.

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<sup>18</sup> Case COMP/36.545/F3 - *Amino Acids*.

<sup>19</sup> Case No COMP/M.2029-*Tate & Lyle/Amlylum*.

<sup>20</sup> Complete feed for salmon ([30-40]%), complete feed for trout ([10-20]%).

<sup>21</sup> Complete feed for salmon ([40-50]%), complete feed for trout ([40-50]%).

- (40) The Proposed Transaction thus gives rise to the following vertically affected markets:
- a. the EEA-wide market for the supply of lysine (upstream);
  - b. the EEA-wide market for the supply of tapioca starch (upstream);
  - c. the national market for the supply of salmonid fish feed in the Republic of Ireland and the UK, as well as the wider market of the North Sea Basin (downstream).
- (41) According to the Notifying Parties, IMCD's market share of lysine and tapioca starch is less than [5-10]% in the EEA and the UK.[...].<sup>22</sup>
- (42) The Proposed Transaction is unlikely to give rise to *input foreclosure* concerns because of the low (<[5-10]%) market shares for both lysine and tapioca starch and the available alternative suppliers<sup>23</sup>, implying the lack of ability to foreclose. Moreover, IMCD is merely a distributor, and, according to the Notifying Parties, both lysine and tapioca starch are highly generic and commoditized products. Finally, lysine and tapioca starch represent low input costs in fish feed production.<sup>24</sup>
- (43) As regards customer foreclosure, the Notifying Parties note that EWOS does not have a significant degree of market power in the downstream market. Its highest market share does not exceed [40-50]% downstream for complete feed for salmonid<sup>25</sup>, and there will remain two large downstream customers in the fish-feed segment<sup>26</sup> to whom IMCD's rivals will continue to supply lysine and tapioca starch.
- (44) Moreover, there are alternative downstream customers given that lysine and tapioca starch are used as inputs in many other product markets, i.e. (such as customers active in food, nutrition, animal nutrition, food manufacturers, food distributors and traders, and pharmaceutical companies).<sup>27</sup> There would therefore be no ability post-merger to engage in customer foreclosure.
- (45) During its review of the case, the Commission contacted a number of key upstream competitors who all confirmed that the Proposed Transaction would not give rise to customer foreclosure concerns for the following key reasons: (i) the Parties' competitors have alternative customers for lysine and tapioca starch in case EWOS stopped purchasing from them; and (ii) there are other industries that use lysine and tapioca starch as inputs.

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<sup>22</sup> IMCD's market share in Norway is also below [5-10].

<sup>23</sup> There are a large number of competing upstream suppliers from whom downstream customers may purchase lysine and tapioca starch. These include multinational manufacturers such as ADM, Ajinomoto, and other chemical distributors like IMCD, such as Azelis, Stockmeier and Tennants Distribution.

<sup>24</sup> For instance, the value of both EWOS' tapioca and lysine purchase from IMCD is less than [...] % compared to total raw material costs.

<sup>25</sup> Trout ([10-20]%) and salmon ([30-40]%).

<sup>26</sup> BioMar ([40-50] %) and Skretting ([20-30]%).

<sup>27</sup> IMCD sells [...] % of its lysine and [...] % of its tapioca starch in the EEA to non-fish feed producers.



**6. CONCLUSION**

- (46) 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*