EN

Case No COMP/M.7120 - ECOM AGROINDUSTRIAL CORPORATION / ARMAJARO TRADING

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 23/05/2014

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 M.7120 - Ecom Agroindustrial Corporation / Armajaro Trading Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

1. On 11 April 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Ecom Agroindustrial Corporation Limited ("Ecom", Switzerland) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of Armajaro Trading Limited ("ATL", United Kingdom) by way of purchase of shares and assets.[2] Ecom is hereinafter referred to as "the Notifying Party". Ecom and ATL are collectively referred to as "the Parties".

I. THE PARTIES

2. **Ecom** is a global commodity merchant and processing company specialized in coffee, cotton and cocoa in major producing and consuming countries, with a small sugar operation.

3. **ATL** is a global soft commodity merchant, with origination and exporting operations in the major cocoa, coffee and sugar growing countries.

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.

2 Publication in the Official Journal of the European Union No C 119, 23.4.2014, p. 5.

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II. THE OPERATION

4. On 12 November 2013, Ecom entered into an agreement with Armajaro Trading Group Limited ("ATGL") pursuant to which Ecom acquires the entire issued share capital of ATL from ATGL.[3] The proposed transaction (the "Transaction") therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

5. The agreement between Ecom and ATGL was executed on 12 November 2013. On 13 November 2013, Ecom submitted a derogation request pursuant to Article 7(3) of the Merger Regulation, essentially arguing and submitting convincing evidence that ATL was in acute financial distress.

6. On 19 December 2013, the Commission adopted a decision pursuant to Article 7(3) of the Merger regulation, granting Ecom a conditional derogation from the obligations of Article 7(1) of the Merger Regulation until the Commission takes a final decision under the relevant provisions of the Merger Regulation.

III. EU DIMENSION

7. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million [Ecom: […] and ATL: […]]. Each of them has an EU-wide turnover in excess of EUR 250 million [Ecom: […] and ATL: […]], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

8. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

IV. RELEVANT MARKETS

9. The Parties' activities primarily overlap in (i) the sourcing and supply of cocoa beans, (ii) the supply of cocoa semi-finished products (cocoa liquor, butter and cake/powder), as well as in (iii) the sourcing and supply of coffee beans.[4]

A. <u>Relevant product markets</u>

1. Cocoa

10. The cocoa value chain (see figure 1 below) starts with the cultivation of cocoa pods, which are harvested and undergo fermentation and drying in the origin country. The resulting cocoa beans are one of the main soft commodities traded worldwide.

11. Cocoa beans are then processed and ground to produce cocoa liquor. Cocoa liquor is further pressed to separate cocoa butter and cocoa powder (approx. 45% butter and 55% cake/powder). Cocoa liquor and cocoa butter (together with sugar and milk powder) are the raw materials for the production of industrial chocolate, which goes

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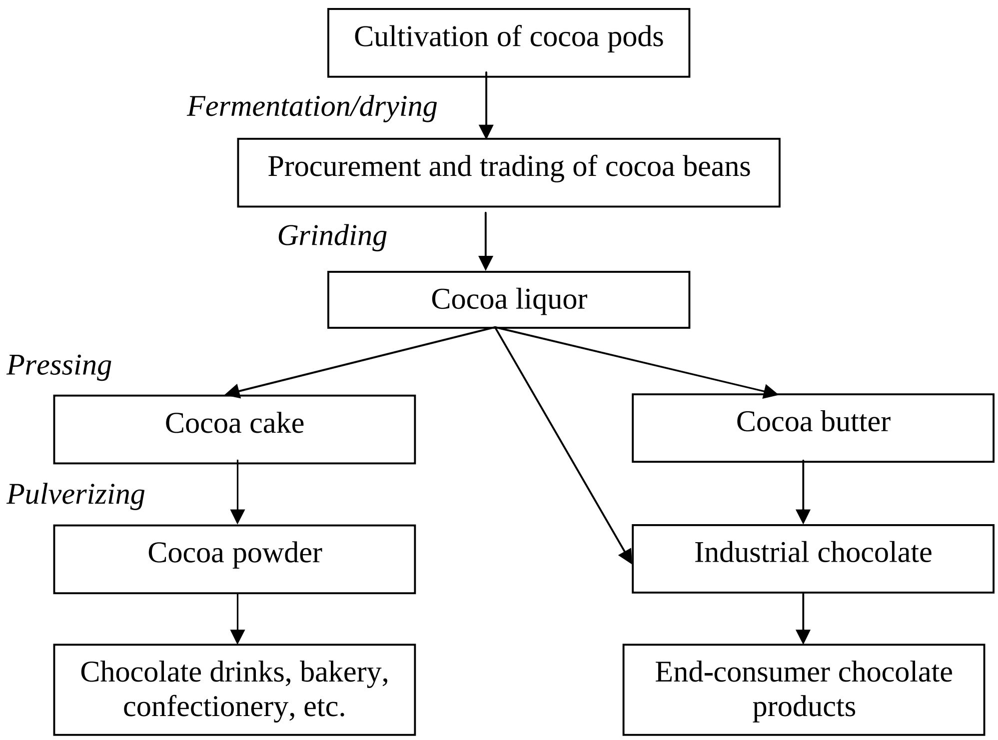
3 ATGL is controlled by Armajaro Holding Limited ("AHL"), a group specialised in the management of commodity-based and alternative asset hedge funds.

4 For the sake of completeness, the Parties' activities also overlap in the procurement and trading of (i) sugar and (ii) cotton. However, the Parties account for less than [0-5]% of sugar markets and less than [5-10]% of cotton markets under any plausible market definition. Accordingly, sugar and cotton overlaps will not be further discussed in this decision.

into the production of end-consumer chocolate products. Cocoa powder is primarily used as a food ingredient by chocolate drink makers, bakers, etc.

12. Ecom and ATL are active at several levels of the cocoa value chain. They procure cocoa beans in the countries of origin, but also from international traders, and actively trade cocoa beans. In addition, Ecom and ATL also process beans, either in the country of origin or in the EEA, to manufacture semi-finished cocoa products. They also act as traders for semi-finished cocoa products, but do not produce or trade industrial chocolate.

Figure 1: The cocoa value chain



a) Procurement and supply of cocoa beans

13. The Parties do not operate their own cocoa bean plantations, but rather purchase cocoa beans from farmers, local cooperatives, local traders or state organisations depending on the legal regulations in the country of origin. Cocoa beans are also traded internationally, including on the London and New York futures markets. The Parties resell cocoa beans to cocoa bean processors as well as to international traders.

14. The major areas for the cultivation of cocoa beans are in West Africa, Latin America and Asia, with West Africa accounting for approximately two thirds of the total production of cocoa beans. There are three types of cocoa beans: Forastero, Trinitario and Criollo. Forastero beans constitute an estimated 90% of world production and are grown in all regions. The other two types are mainly grown in America.

15. The Commission has in previous decisions[5] considered that some customers may have a preference for 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[6] due to their perceived quality and taste. Nevertheless, the exact market definitions were left open.

16. The Notifying Party submits that customers switch between cocoa beans of different origins, according to differences in price and quality over time. Ecom thus considers that no segmentation of cocoa bean procurement and supply markets is warranted.

Distinction between origins of cocoa beans

17. In terms of origins, a majority of respondents to the market investigation indicated that cocoa beans from West Africa have different characteristics compared to other origins, for instance in terms of fermentation, bean size, colour profile and taste of the semi-finished cocoa products manufactured with those beans.[7] In addition, cocoa beans of different origins trade at set discounts or premiums to the benchmark exchange prices.[8]

18. Whilst local regulations differ considerably between origin countries, market participants have however reported a degree of substitutability between beans from different West African countries, with for instance substantial switching occurring during the Ivory Coast political crisis in 2011.[9] Switching was indicated by respondent customers to take place for instance between Ghana, Ivory Coast and Nigeria, whereas some customers deemed Cameroon beans to have a specific colour profile.[10] Some respondents also pointed to the specificities of cocoa beans from Latin America and Asia, notably in terms of fat content and fermentation.

19. In the light of these elements, the Commission considers that it is likely that the procurement and supply of cocoa beans from West Africa would constitute separate product markets from the procurement and supply of cocoa beans of other origins. Whether the procurement and supply of cocoa beans from individual West African origins constitute separate markets can ultimately be left open, as the Transaction will not give rise to serious doubts as to its compatibility with the internal market under any of the potential product market definitions. Furthermore, due to the limited size

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5 COMP/M.6872 – *Barry Callebaut /Petra Foods - Cocoa Ingredients Division*, para. 12-15, COMP/M.6132 – *Cargill / KVB*, para.12–14 and COMP/M.5431 – *ADM / Schokinag,* para. 19–20.

6 The major areas for the cultivation of cocoa beans are West Africa, Latin America and Asia. West Africa accounts for approximately two thirds of the worldwide supply of cocoa beans, with the Ivory Coast and Ghana accounting for the majority of West African supply.

7 See replies to question 9 of the Commission's request for information addressed to customers (Q2), and to question 10 of the Commission's request for information addressed to competitors (Q1) on 11 April 2014.

8 Cocoa beans from the Ivory Coast serve as a benchmark for futures contracts traded on NYSE Liffe in London, while Indonesian cocoa beans serve as a benchmark to the New York-based ICE contracts.

9 See minutes of call with Barry Callebaut, with Euromar (Transmar), and replies to question 12 of the Commission's request for information addressed to customers (Q2) on 11 April 2014.

10 See replies to questions 11, 12 and 15 of the Commission's request for information addressed to customers (Q2) on 11 April 2014.

of the Parties' activities in Cameroon, Latin America and Asia,[11] any potential markets for cocoa beans of these origins would not be affected.

Distinction between standard and non-standard cocoa beans

20. During the market investigation, market participants have also highlighted the distinction between standard cocoa beans and certified and/or traceable cocoa beans ("non-standard" beans),[12] as major chocolate manufacturers such as Ferrero, Lindt, Mars or Mondelez have taken firm commitments to overhaul their supply chains and reach targets in terms of non-standard bean sourcing in the coming years.[13]

21. The distinction between standard and non-standard beans is also reflected in the Parties' internal documents, where standard and non-standard beans are often reported separately and appear as part of separate business processes.[14]

22. Setting up sourcing operations for non-standard beans in a given origin country appears to entail a significantly higher investment cost (in EUR millions) and time frame compared to standard cocoa beans.[15] Non-standard beans also command a price premium over standard beans and appear to be customarily sourced through long-term supply agreements, as opposed to the widespread spot trading of standard beans. [16]

23. The Commission considers that it can be left open whether non-standard cocoa beans constitute a separate relevant product market, as the Transaction would not give rise to serious doubts in this potential segment.

Conclusion

24. In the present case, the Commission considers that the exact market definition for the procurement and supply of cocoa beans can be left open, as the Transaction will not give rise to competition concerns under any potential market definition. The Commission has assessed potential markets for the procurement and supply of cocoa beans according to the distinctions between: (i) different origins and (ii) standard and non-standard beans.

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11 ATL has for instance closed its operations in Ecuador, and reduced them in […].

12 Certified cocoa beans refer to beans that have been certified by third-party organizations such as the RainForest Alliance, Fair Trade organization and Utz Certified for their good agricultural, environmental and social practices.

Traceable cocoa beans refer to beans whose supply chain can be tracked by customers back to the individual farm(s).

13 See minutes of calls with Mars, with Noble, Lindt's and Ferrero's corporate websites, and replies to question 18 of the Commission's request for information addressed to customers (Q2) on 11 April 2014.

14 See [reference to internal documents of the Parties].

15 See replies to question 23 of the Commission's request for information addressed to competitors (Q1) on 11 April 2014.

16 See replies to questions 21.2 to 21.4 of the Commission's request for information addressed to customers (Q2), and to questions 23 to 26.4 of the Commission's request for information addressed to competitors (Q1) on 11 April 2014.

b) Semi-finished cocoa products

25. Semi-finished cocoa products include: (i) cocoa liquor, (ii) cocoa butter and (iii) cocoa powder.

26. Cocoa liquor is produced by grinding cocoa beans. Liquor is either used as one of the basic ingredients of industrial chocolate, to which it gives colour and flavour, or processed further into cocoa butter and cocoa powder.

27. Cocoa butter is extracted by pressing cocoa liquor, either through a very fine sieve or by the use of a solvent. It is one of the primary ingredients of industrial chocolate, which is primarily used by manufacturers of end-consumer chocolate products.[17]

28. 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 is used in a variety of end-consumer products (e.g. chocolate drinks, cakes and biscuits) to add cocoa flavour.[18]

Distinction between different semi-finished cocoa products

29. Ecom submits that the three semi-finished products are interrelated from both a supply and a demand side perspective, and should therefore be considered in the same relevant product market.

30. In previous decisions the Commission concluded[19] that cocoa liquor, cocoa butter and cocoa powder[20] constitute separate product markets.

31. The market investigation has confirmed that there are separate markets for cocoa liquor, cocoa butter and cocoa cake/powder. The vast majority of customers having responded to the market investigation stated that they would not switch their purchases following a 5-10% increase in price in any of the semi-finished cocoa products, due to the fact that it is particularly difficult to substitute one product category with another for a specific end consumer product/recipe.[21] This has also been confirmed by most competitors.[22]

32. Moreover, cocoa cake/powder is used in a broader range of downstream applications than cocoa liquor or butter and customers thus have more specific requirements in terms of product quality, colour, taste or functionality.[23] The Commission also notes that

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17 A limited amount of cocoa butter is also used in the pharmaceutical and cosmetic industries.

18 A limited amount of cocoa powder is also used in the manufacturing of tobacco products.

19 COMP/M.6872 – *Barry Callebaut / Petra Foods - Cocoa Ingredients Division*, para. 16-22, COMP/M.6132 – *Cargill / KVB*, para. 15-24 and COMP/M.5431 – *ADM / Schokinag*, para. 21-31.

20 In COMP/M.5431 – *ADM / Schokinag*, a potential distinction between cocoa cake and cocoa powder was considered (see paragraph 13). This distinction can however be left open in light of ATL's minimal activities in cake/powder. Potential cake/powder markets would not be affected by the Transaction regardless of the precise market definition.

21 See replies to questions 9 to 11 of the Commission's request for information addressed to customers (Q4) on 11 April 2014.

22 See replies to questions 14 to 16 of the Commission's request for information addressed to competitors (Q3) on 11 April 2014.

23 See replies to question 39 of the Commission's request for information addressed to customers (Q4) on 11 April 2014 and minutes of call with Puratos.

cocoa cake/powder exhibits a greater degree of product differentiation and that customers consider this product as requiring more innovation efforts from suppliers.

33. From the supply side, the market investigation has confirmed the findings of previous Commission decisions regarding limited substitutability between the supply of cocoa liquor, butter and cake/powder.

34. First, the majority of competitors consider that grinding (for the production of liquor) and pressing (for the production of butter and cake) are typically not carried out on the same line and require different machinery and processes.[24] Second, the pressing of cocoa liquor yields cocoa butter and powder in roughly equal amounts. However, the Commission notes that cocoa liquor and cocoa butter on the one hand, and cocoa cake/powder on the other undergo different post-production treatments, which in turn involve significant investment if carried out in-house.[25]

35. For instance, when assessing a potential investment in a […].[26]

36. These different characteristics are also reflected in the pricing conventions for different semi-finished products: cake/powder is usually priced outright (in EUR/ton) while cocoa liquor and butter are commonly priced as a ratio to the prevailing cocoa beans futures price.[27] Moreover, while cocoa butter and cocoa cake/powder are co-products of the pressing process, their relative prices have exhibited wide fluctuations in the last five years.[28]

<u>Distinction between standard and non-standard semi-finished cocoa products</u>

37. The Commission has also investigated a potential distinction between certified and/or traceable semi-finished cocoa products ("non-standard" semi-finished cocoa products) on the one hand, and standard semi-finished cocoa products on the other. As for cocoa beans, demand for non-standard semi-finished cocoa products is primarily driven by the chocolate industry's commitments to overhaul its supply chain and reach targets in terms of non-standard product sourcing in the coming years.

38. From the demand side, a majority of customers have indicated that there are significant differences in terms of available suppliers, prices per ton and in the sharing of risks between suppliers and customers.[29] Competitors have confirmed that there are differences in consumption patterns, downstream uses and prices between standard and

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[24] See replies to question 11 of the Commission's request for information addressed to competitors (Q3) on 11 April 2014.

[25] See replies to question 12 of the Commission's request for information addressed to competitors (Q3) on 11 April 2014.

[26] […].

[27] See replies to question 46 of the Commission's request for information addressed to customers (Q4) on 11 April 2014.

[28] See minutes of call with Mars. "*In recent years, the cocoa butter to bean price ratio has for instance surged from less than 1 to more than 2.5.*" The corresponding ratio for cocoa cake/powder has dropped during the same period.

[29] See replies to question 16 of the Commission's request for information addressed to customers (Q4) on 11 April 2014.

non-standard products, with non-standard products commanding a premium over standard products usually ranging between 10 to 15%, but sometimes much higher.[30]

39. From the supply side, while standard and non-standard semi-finished cocoa products are produced on the same lines, switching from one to the other requires a full clean-up of the line to ensure traceability of the products.[31] In this respect, some customers have noted that smaller producers may be better suited for the production of non-standard semi-finished cocoa products due to their higher flexibility and limited reliance on scale economies.[32]

40. In any event, the Commission considers that it can be left open whether non-standard semi-finished cocoa liquor, butter and cake/powder constitute separate relevant product markets, as the Transaction would not give rise to serious doubts in these potential segments.

<u>Conclusion</u>

41. For the purposes of the present decision, the Commission has therefore assessed potential markets for the supply of cocoa semi-finished products according to the distinctions between: (i) liquor, butter and cake/powder and (ii) standard and non-standard products.

2. *Coffee beans*

42. In *Intercontinental Exchange / NYSE Euronext*[33], the Commission found that Arabica and Robusta derivative contracts belong to two separate markets because they have two different types of coffee as physical underlying, *i.e.* Robusta and Arabica.

43. The Notifying Party submits that the relevant product market is the sourcing, trading, processing and supply of raw coffee beans, without any further segmentation (regardless of different qualities and origins), claiming that customers mix different coffee varieties to achieve the desired end product. In particular, Ecom submits that Arabica and Robusta compete within the same space: the main difference is in the taste, but as Robusta is higher yielding and easier to produce, it competes on price with the Arabicas at the low end of the Arabica quality spectrum.

<u>Distinction between types of coffee beans</u>

44. The International Coffee Organization (ICO) divides coffee production into four quality groups: (i) Robustas; (ii) Brazilian and other Natural Arabicas (unwashed - mainly Brazil and Ethiopia); (iii) Other mild Arabicas (washed - mainly Central and South America); and (iv) Colombian mild Arabicas (washed - mainly Colombia, Kenya, Tanzania).

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30 See replies to questions 21 and 22 of the Commission's request for information addressed to competitors (Q3) on 11 April 2014, as well as minutes of calls with Mars, Puratos and Tradin Organic.

31 See replies to question 19 of the Commission's request for information addressed to competitors (Q3) on 11 April 2014.

32 See minutes of calls with Mars and Puratos.

33 See Case COMP/M.6873 *Intercontinental Exchange/NYSE Euronext*.

45. The market investigation pointed at separate product markets for Arabica and Robusta coffee beans. Almost all customers and competitors stated that there are significant differences between Robusta and Arabica beans in terms of physical characteristics (taste, yield) and prices per bag.[34] Within Arabica beans, respondents to the market investigation also explained that washed Arabica beans constitute a separate product market from un-washed Arabica beans. Un-washed Arabica beans are characterized by low acidity, medium cup cleanliness and lower prices while washed Arabica beans present high acidity, high cup cleanliness and higher prices.[35]

46. For the purposes of the present decision, the Commission considers that the procurement and supply of (i) Robusta, (ii) washed Arabica and (iii) un-washed Arabica coffee beans appear not to belong to the same product markets.

Distinction between origins of coffee beans

47. In terms of origins, some respondents indicated that washed Arabica coffee beans from East Africa (mainly Kenya and Tanzania) have different characteristics compared to other origins, for instance in terms of perceived quality. In particular, respondents indicated that beans from Kenya are superior in taste, have higher quality and higher prices compared to beans from other East Africa origins (e.g. Tanzania and Uganda).[36] Whilst local regulations differ between origin countries, market participants also reported a degree of substitutability between washed Arabica beans from East African countries and washed Arabica beans from other origins (e.g. Colombia or Peru).[37] Some respondents also indicated that washed Arabica coffee beans from Vietnam have different characteristics compared to other origins, for instance in terms of prices.

48. The Commission considers that it cannot be excluded that washed Arabica coffee beans from East Africa would constitute a separate product market (and within that market Kenya origin could be a further segmentation) but ultimately it can be left open whether washed Arabica beans from East Africa and washed Arabica beans from Vietnam would constitute separate relevant product markets, as the Transaction would not give rise to serious doubts in these potential markets.

Distinction between standard and non-standard coffee beans

49. Market participants also highlighted the distinction between standard coffee beans and certified and/or traceable cocoa beans ("non-standard" beans). According to the majority of the respondents, non-standard beans command a premium to standard

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[34] See replies to questions 9 and 10 of the Commission's request for information addressed to customers (Q6) and competitors (Q5) on 11 April 2014.

[35] See replies to questions 12 and 16 of the Commission's request for information addressed to customers (Q6) and competitors (Q5) on 11 April 2014.

[36] See replies to question 17 of the Commission's request for information addressed to customers (Q6) and competitors (Q5) on 11 April 2014, and e.g. minutes of call with Louis Dreyfus.

[37] See replies to question 18 of the Commission's request for information addressed to customers (Q6) and competitors (Q5) on 11 April 2014, and e.g. minutes of call with Taloca (Mondelez International).

beans and are mainly customarily sourced through long-term supply agreements, as opposed to the widespread spot trading for standard coffee beans.[38]

50. The Commission considers that it can be left open whether non-standard coffee beans would constitute a separate relevant product market, as the Transaction would not give rise to serious doubts in this potential segment.

Conclusion

51. For the purposes of the present decision, the Commission has assessed potential markets for the procurement and supply of coffee beans according to the distinctions between: (i) Robusta, un-washed Arabica and washed Arabica, (ii) different origins and (iii) standard and non-standard beans.

B. Relevant geographic markets

1. Cocoa

a) Procurement and supply of cocoa beans

52. In previous decisions, the Commission has stated that the procurement of cocoa beans appears to be a worldwide market, while leaving the exact geographical scope of the market open.[39]

53. The Notifying Party submits that the relevant geographic market is global because of (i) trading on futures markets accessible worldwide, (ii) low transport costs and pricing irrespective of the destination, and (iii) globally active customers.

54. In procurement markets, international traders and integrated manufacturers compete in the country of origin for exportable quantities. Respondents overall converged in mentioning the elements mentioned by the Notifying Party (e.g. low transport costs, no difference between EEA and the rest of the world in use of futures to hedge). [40]

55. In view of the above, the Commission concludes that the relevant geographic markets in the procurement of cocoa beans are global in scope.

56. Regarding the supply of cocoa beans, some characteristics of the market could point to an EEA-wide market: (i) European and US cocoa beans futures contracts specify different product characteristics and delivery points, and thus constitute separate regional benchmarks, (ii) price curves between the EEA and the US exhibit significant divergences[41]. Moreover, the market investigation confirmed that European customers tend to have distinct preferences regarding the quality and taste

[38] See replies to questions 22 and 23 of the Commission's request for information addressed to customers (Q6), and to questions 22 to 24 of the Commission's request for information addressed to competitors (Q5) on 11 April 2014.

[39] COMP/M.6872 – *Barry Callebaut /Petra Foods - Cocoa Ingredients Division*, paragraphs 26-9, COMP/M.5431 – *ADM / Schokinag*, paragraph 33, and COMP/M.6132 – *Cargill / KVB*, paragraph 27.

[40] See replies to questions 31 to 36 of the Commission's request for information addressed to competitors (Q1) on 11 April 2014.

[41] See COMP/ M.6873 *Intercontinental Exchange/NYSE Euronext*, paragraph 34.

of cocoa beans.[42] The investigation nevertheless indicated that participants tended overall to see the market as global.[43]

57. On balance, the precise definition of the relevant geographic market regarding the supply of cocoa beans can be left open, as the Transaction would not give rise to serious doubts under any potential market definition.

b) Semi-finished cocoa products

58. Past Commission decisions found the markets for semi-finished cocoa products to be likely EEA-wide, but potentially wider.[44]

59. The Notifying Party submits that the geographic market definition for cocoa processing overall, as well as for the three semi-finished products, is global because (i) chocolate manufacturers tend to have a global sourcing strategy; (ii) the semi-finished products are traded globally; and (iii) transport costs are low.

60. However, the market investigation has highlighted significant differences in the competitive landscape in the EEA and other regions.

61. First, the Commission notes that the supplier landscape is not homogeneous at a global level: significant regional players such as Blommer (in the US), JB Cocoa and Guanchong (in Asia) do not achieve a meaningful market presence in Europe in any semi-finished cocoa product. With respect to non-standard cocoa butter, the Commission notes that the Parties are only active in the EEA, which represents less than half of their total butter sales.

62. Second, even customers with a global presence have indicated that while certain suppliers are active globally, it is not always feasible to source at a global level, for instance due to the need to validate production facilities individually or due to different prices in different regions, in particular for cocoa butter.[45] On the other hand, most respondents to the market investigation did not consider that significant price differences existed within the EEA. [46]

63. Third, the Commission notes that there are significant differences in customer preferences in the EEA compared to other geographic areas, with most of the European cocoa butter demand being for deodorized butter in liquid form, as opposed to a

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[42] See replies to question 26 of the Commission's request for information addressed to customers (Q2), and to question 30 of the Commission's request for information addressed to competitors (Q1) on 11 April 2014.

[43] See replies to questions 27 to 34 of the Commission's request for information addressed to customers (Q2), and to questions 31 to 38 of the Commission's request for information addressed to competitors (Q1) on 11 April 2014.

[44] COMP/M.6872 – *Barry Callebaut /Petra Foods - Cocoa Ingredients Division*, para. 30-33, COMP/M.6132 – *Cargill / KVB*, para. 28-39 and COMP/M.5431 – *ADM / Schokinag,* para. 34-41.

[45] See replies to questions 22 and 23 of the Commission's request for information addressed to customers (Q4) on 11 April 2014, and minutes of calls with Barry Callebaut, Lindt and Puratos, which stated that "*While Puratos tries to source cocoa products at a global level, this is not always feasible as there are substantial differences between geographic areas.*"

[46] See replies to questions 24 of the Commission's request for information addressed to customers (Q4) on 11 April 2014.

widespread use of natural butter (i.e. non-deodorized) and "block" butter (i.e. cocoa butter in solid form) in other regions.[47]

64. Fourth, in terms of pricing, the Commission notes that the reference used by market participants for semi-finished cocoa product prices in Europe is usually the NYSE Liffe cocoa beans futures contract,[48] which specifies only delivery locations in Europe and is closer to the standard requirements of the European chocolate industry.[49] This is particularly relevant for cocoa liquor and cocoa butter which are normally priced by reference to cocoa beans futures prices.[50]

65. Fifth, most customers have indicated that regulatory regimes, import duties, quotas or technical standards exhibit significant differences between the EEA and other regions.[51] In relation to non-standard semi-finished cocoa products, the Commission also notes that the requirements for certain third-party certification schemes differ between geographic areas.[52] Similarly, the EU has enacted specific and uniform requirements for organic certification through Council Regulation No 834/2007.[53]

66. For the purposes of the present case, the Commission therefore considers that the geographic scope of the markets for the supply of standard and non-standard cocoa liquor, cocoa butter and cocoa cake/powder is EEA-wide.

2. Coffee beans

67. There are no previous Commission decision related to the scope of the geographic markets for the procurement and supply of green coffee beans.

68. The Notifying Party submits that given the ease of transporting coffee beans, and the global flows of trade, the relevant geographic market for the sourcing, trading, processing and supply of coffee beans is global in scope.

69. Respondents to the market investigation indicated that procurement markets, where international traders compete in the country of origin for exportable quantities, are global in scope.

70. In view of the above, the Commission concludes that the relevant geographic markets in the procurement of coffee beans are global in scope.

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[47] See replies to questions 22 and 23 of the Commission's request for information addressed to customers (Q4) on 11 April 2014, and replies to question 28 of the Commission's request for information addressed to competitors (Q3) on 11 April 2014.

[48] See replies to question 27 of the Commission's request for information addressed to competitors (Q3) on 11 April 2014, and minutes of call with Mars.

[49] Under the NYSE Liffe cocoa futures contract, physical delivery must be made in exchange nominated warehouses in or close to Amsterdam, Antwerp, Bremen, Felixstowe,Hamburg, Humberside, Le Havre, Liverpool, London, Rotterdam or Teesside.

[50] See paragraph 34 above.

[51] See replies to question 27 of the Commission's request for information addressed to customers (Q4) on 11 April 2014.

[52] See minutes of call with Tradin Organic: "*customers are sensitive to certifications, which vary according to the geographic area (US, Asia, EEA, etc.). For instance, the FairTrade certification has different requirements in the US and in Europe.*"

[53] Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91, OJ L 189, 20/07/2007, p. 1–23.

71. Regarding the supply of coffee beans, the market investigation on the one hand pointed at markets EEA-wide in scope, based mainly on the following consideration: while globally active customers appear to view their procurement of coffee beans at a global level, they nevertheless point to differences for instance as to quality standards, as well as in terms of prices between the EEA and other regions.[54] The market investigation did not highlight any significant difference in competitive conditions within the EEA.

72. The Commission concludes that markets for the supply of coffee beans are likely at least EEA-wide in scope. However, the precise definition of the relevant geographic market regarding the supply of coffee beans can be left open, as the Transaction would not give rise to serious doubts in any geographic market.

V. COMPETITIVE ASSESSMENT

A. <u>Cocoa</u>

1. Procurement and supply of cocoa beans

73. The Transaction would create one of the largest cocoa beans traders globally, with strong positions in West African origins, in particular for non-standard beans (see table 2 below).

74. In a potential segmentation based on origins and certification and/or traceability, the Transaction would lead to affected markets (i) in the worldwide procurement of West Africa non-standard beans, (ii) in the worldwide supply of West African of non-standard beans, (iii) in EEA supply for West African beans, as well as for West African non-standard beans specifically.

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54 See replies to questions 26 to 35 of the Commission's request for information addressed to customers (Q6) on 11 April 2014.

Figure 2: Market shares of the Parties (2013, volume)[55]

		All beans[56]			Non-standard beans		
		Ecom	ATL	Combined	Ecom	ATL	Combined
West Africa	Procurement	[5-10]%	[5-10]%	**[10-20]%**	[10-20]%	[20-30]%	**[30-40]%**
	Merchant market	*		**[10-20]%**	*		**[30-40]%**
	EEA merchant market	[5-10]%	[10-20]%	**[20-30]%**	[5-10]%	[20-30]%	**[20-30]%**
Ivory Coast	Procurement	[5-10]%	[0-5]%	**[10-20]%**	[10-20]%	[5-10]%	**[20-30]%**
	Merchant market	*		**[10-20]%**	*		**[20-30]%**
	EEA merchant market	[10-20]%	[5-10]%	**[10-20]%**	[10-20]%	[5-10]%	**[20-30]%**
Ghana	Procurement	[0-5]%	[10-20]%	**[10-20]%**	[0-5]%	[30-40]%	**[30-40]%**
	Merchant market	*		**[20-30]%**	*		**[30-40]%**
	EEA merchant market	[0-5]%	[20-30]%	**[20-30]%**	[0-5]%	[30-40]%	**[30-40]%**
Nigeria	Procurement	[5-10]%	[10-20]%	**[20-30]%**	[5-10]%	[10-20]%	**[20-30]%**
	Merchant market	*		**[5-10]%**	*		**[20-30]%**
	EEA merchant market	[5-10]%	[10-20]%	**[20-30]%**	[5-10]%	[20-30]%	**[20-30]%**

Source: Notifying Party estimates
**Data provided only for combined entity*

75. Across the different segments, the main competitors of the Parties for the procurement and supply of cocoa beans are the international soft commodity trade houses: Olam, Touton, Sucden, Noble and Transmar. In addition, the integrated manufacturers Archer Daniel Midlands ("ADM"), Barry Callebaut ("BC") and Cargill compete with the Parties at the procurement level where they enjoy substantial positions.[57]

76. Feedback from market participants indicated that the Parties were to some extent differentiated through a focus on non-standard bean sourcing projects. However, the market investigation indicated that, while ATL was seen as a first mover, other

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[55] Other origins or regions (i.e. Asia or Latin America) do not lead to potential affected markets taking into account […]

[56] The Parties have stronger positions in non-standard beans than in standard beans in all possible segmentations. In terms of methodology, shares of the procurement market have been computed on the basis of the Parties' exports from each origin country, while shares of the merchant markets have been computed on the basis of sales, excluding sales to traders.

[57] COMP/M.6872 – *Barry Callebaut /Petra Foods - Cocoa Ingredients Division*, para. 39-40,.

companies were catching up with this growing trend.[58] The Commission therefore considers that the potential EEA markets for non-standard cocoa beans of West African origin are dynamic, with the Parties' main competitors substantially increasing their sales in the last 3 years.[59]

77. As reflected in the table above, the Parties' market positions for non-standard beans are to some extent complementary from a geographic standpoint, with ATL enjoying a strong position in Ghana, where Ecom's activities in non-standard beans are minimal. On the other hand, ATL has achieved a more limited presence in the Ivory Coast, which accounts for more than half of West African production for both standard and non-standard cocoa beans.[60] This geographic complementarity has also been reported by some market participants.[61]

78. Overall, in the market investigation a majority of customers considered they could easily switch suppliers, including for non-standard cocoa beans, and that sufficient alternative suppliers to the Parties existed in all categories of beans.[62]

79. Furthermore, most customers stated that the Transaction would entail neither a reduction of competition nor an increase in prices in relation to the procurement and supply of cocoa beans, including for West Africa non-standard cocoa beans.[63]

80. The Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the procurement and supply of cocoa beans.

2. Semi-finished cocoa products

81. The Commission has assessed the competitive impact of the Transaction on the markets for the supply of standard and non-standard cocoa butter.[64]

82. The three main integrated players, ADM, BC and Cargill, are the largest players in the processing of cocoa beans overall. In comparison, the Parties, active in cocoa processing as merchants and manufacturers,[65] have limited volumes. The main non-integrated competitors of the parties in the EEA are Transmar and Olam, but a number of smaller or niche players exist, such as Tradin Organic.

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58 See minutes of call with Nestlé, Olam, Euromar, Barry Callebaut.

59 The Parties estimate that demand for non-standard cocoa beans of West African origins has more than doubled between 2011 and 2013, at both EEA and worldwide level, and that their combined market share in the EEA for non-standard cocoa beans of West African origins has dropped from [50-60]% to [20-30]%.

60 Furthermore, according to the Parties, ATL […].

61 See minutes of conference calls with Sucden and replies to questions 46.2, 48 and 57.2 of Commission's request for information addressed to customers (Q2) on 11 April 2014.

62 See replies to questions 51 and 52 of the Commission's request for information addressed to customers (Q2) on 11 April 2014.

63 See replies to questions 57 and 58 of the Commission's request for information addressed to customers (Q2) on 11 April 2014.

64 EEA cocoa cake/powder and liquor markets are not affected by the proposed transaction regardless of the precise market definition, and will accordingly not be discussed further in this decision.

65 Ecom has facilities in the Netherlands, Mexico, and a stake in a facility in Malaysia. ATL has facilities in Nigeria and the Netherlands as well as an […].

83. Given the important role of integrated manufacturers, a substantial share of consumption of semi-finished cocoa products is captive.[66] The Commission has therefore reconstructed the EEA markets for the supply of standard and non-standard cocoa butter in the course of its investigation.

84. A number of customers have stated that the three integrated manufacturers are perceived as less preferred alternatives to non-integrated suppliers of semi-finished cocoa products.[67] In particular, BC is seen as focusing its sales efforts and production capacity on its downstream industrial chocolate business. In addition, some manufacturers of industrial chocolate have expressed reluctance to source semi-finished cocoa products from ADM, BC and Cargill with which they compete on downstream markets for industrial chocolate. Against this background, some customers have expressed concerns about the overall consolidation of the EEA market and about the fact that the transaction was leading to one less non-integrated player, in particular for standard and non-standard cocoa butter where the Parties' activities in the EEA primarily overlap.

85. However, the Commission considers that the Transaction does not raise serious doubts as regards the supply of standard and non-standard cocoa butter for the reasons outlined below.

86. First, the Commission notes that the combined market shares of the Parties would remain moderate, and that the Parties would continue to face competition from a number of integrated and non-integrated players after the Transaction.

87. In the overall EEA cocoa butter market,[68] even if one were to exclude BC as a supplier, the combined market shares of the Parties would remain below [20-30]%, with ADM and Cargill achieving a stronger market presence than the merged entity. In addition, non-integrated players such as Olam, Euromar and Natra have a significant part of the overall EEA butter market.

88. In the narrowest possible market for the supply of non-standard cocoa butter in the EEA, even if one were to exclude BC as a supplier, the Parties' combined market share would remain at most [20-30]% with an increment of [10-20]%. In this potential market, the market leader would remain Cargill with [30-40]% after the Transaction, and the parties would face competition from ADM ([10-20]% of the market), Olam ([10-20]%) and Euromar ([5-10]%).

89. Second, the Commission considers that EEA cocoa butter customers have no significant obstacles to switching suppliers. For standard cocoa butter, customers have indicated that they have the ability to switch suppliers in a relatively short time frame (at most 6-9 months), and at no significant cost. While the sourcing of non-standard cocoa products sometimes involves longer-term relationships, most customers also consider that they

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66 See replies to question 8 of the Commission's request for information addressed to competitors (Q3) on 11 April 2014.

67 See replies to questions 17 and 36 of the Commission's request for information addressed to customers (Q4) on 11 April 2014.

68 The Commission has reconstructed the EEA cocoa butter markets on the basis of 2013 volume deliveries to customers, apart from traders.

are able to switch non-standard cocoa butter suppliers within a short time frame and without significant costs.[69]

90. Third, the Commission considers that the Parties pursue different business models as regards cocoa butter, with Ecom producing most of the butter it delivers in the EEA in its grinding and pressing plant in the Netherlands, while ATL does not own or operate grinding or pressing lines in the EEA and instead relies on production and off-take agreements in West Africa, as well as on block butter imports from other regions. Most customers responding to the market investigation did not see the Parties as each other's closest competitor for cocoa butter or for non-standard cocoa products in general.[70]

91. Fourth, the Commission notes that the potential EEA market for non-standard cocoa butter is dynamic, with the parties and their main competitors having increased their sales several folds in the last two years.[71]

92. Fifth, the Commission notes that several companies have recently entered or significantly strengthened their presence in EEA non-standard butter markets. For instance, Tradin Organic has recently commissioned a production plant in the EEA for non-standard semi-finished cocoa products, with pressing and butter deodorization capacity.[72]

93. Customers have also confirmed that international traders and manufacturers such as Euromar and Olam have expanded their presence in EEA semi-finished cocoa product markets in the last three years, and that these companies also constitute an alternative to the Parties for the supply of non-standard cocoa butter in the EEA.[73] The Commission notes that such competitors are able serve EEA demand either through EEA-based production or by importing block butter into the EEA for processing and delivery.

94. Sixth, the Commission considers that there are limited barriers to entry and expansion for competitors willing, as ATL, to import cocoa butter into the EEA for processing and delivery, insofar as third-party butter melting and deodorizing facilities are available.[74] In addition, some customers have the ability to perform butter deodorization in-house.[75]

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69 See replies to question 48 of the Commission's request for information addressed to customers (Q4) on 11 April 2014.

70 See replies to question 44 of the Commission's request for information addressed to customers (Q4) on 11 April 2014.

71 For instance, ATL's sales of non-standard cocoa butter in the EEA have increased from […] tons in 2011 to […] tons in 2013. As regards competitors, see replies to question 40 of the Commission's request for information addressed to competitors (Q3) on 11 April 2014.

72 See minutes of conference call with Tradin Organic.

73 See replies to questions 49 and 54 of the Commission's request for information addressed to customers (Q4) on 11 April 2014, as well as minutes of conference call with Fazer.

74 See minutes of calls with Touton. Another competitor has also confirmed that there is sufficient melting capacity in the EEA and that third party deodorization facilities are available in France and in the Netherlands.

75 See replies to question 51 of the Commission's request for information addressed to customers (Q4) on 11 April 2014.

95. Overall, most customers consider that they have sufficient alternatives to the Parties for all types of semi-finished cocoa products, including non-standard products.[76]

96. In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the supply of standard and non-standard cocoa butter.

B. Coffee beans

Procurement and supply of coffee beans

97. The Parties source coffee beans predominantly through subsidiaries, partners and contacts in a number of origin countries. Ecom is active in all the stages of the coffee supply chain, and manages its own milling, warehousing, exporting and trading facilities. It has some very limited roasting and grinding facilities. ATL is active in all the stages of the coffee production process, except for roasting and grinding.[77]

98. The Transaction would bring together two of the leading green coffee bean traders worldwide, with a significant presence in particular in washed Arabica East African origins (see table 3 below).

99. The Transaction would not lead to any affected market in Robusta coffee beans, un-washed Arabica and washed Arabica coffee beans.

100. In potential segmentations based on origins, the Transaction would lead to affected markets (i) in the worldwide procurement for washed Arabica East Africa origins (both considering all beans and non-standard beans), (ii) in the worldwide supply for washed Arabica East Africa origins only in non-standard beans, (iii) in the EEA supply for washed Arabica East Africa origins only in non-standard beans. In potential narrower washed Arabica Kenya origin markets, the Transaction would lead to affected markets (iv) in the worldwide procurement for washed Arabica Kenya origin (both considering all beans and non-standard beans), (v) in the worldwide supply for washed Arabica Kenya origin (both considering all beans and non-standard beans) and (vi) in the EEA supply for washed Arabica Kenya origin (both considering all beans and non-standard beans). The Transaction would also lead to (vii) a potentially affected market in the worldwide supply for washed Arabica Vietnam origin (ATL is not active in non-standard washed Arabica beans in Vietnam).

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[76] See replies to question 49 of the Commission's request for information addressed to customers (Q4) on 11 April 2014.

[77] The Dorman group, 49% owned by ATL, is an integrated coffee exporter in East Africa. In Kenya, Dorman also operates a small roasting facility.

Figure 3: Washed Arabica market shares of the Parties by origin (2013, volume)[78]

		All beans[79]			Non-standard beans		
		Ecom	ATL	Combined	Ecom	ATL	Combined
East Africa[80]	Procurement	[10-20]%	[20-30]%	**[30-40]%**	[10-20]%	[10-20]%	**[30-40]%**
	Merchant market	*		**[10-20]%**	*		**[20-30]%**
	EEA merchant market	*		**[10-20]%**	*		**[20-30]%**
Kenya	Procurement	[5-10]%	[20-30]%	**[30-40]%**	[5-10]%	[10-20]%	**[20-30]%**
	Merchant market	*		**[20-30]%**	*		**[20-30]%**
	EEA merchant market	*		**[20-30]%**	*		**[20-30]%**
Vietnam	Procurement	[5-10]%	[0-5]%	**[5-10]%**	ATL not active in non-standard beans		
	Merchant market	*		**[20-30]%**			
	EEA merchant market	*****		**[10-20]%**			

Source: Notifying Party's estimates
**Data provided by the Notifying Party only for the combined entity*

101. Based on Ecom's internal documents, it appears that Ecom's washed Arabica sales of Kenya and Tanzania origin would be higher than submitted by the Parties. For instance, in 2012, according to those internal documents, Ecom sold […] bags compared to […] as submitted, leading to a combined entity with more than [40-50]% market share for Tanzania origin, which would mean a combined entity share slightly higher than [30-40]% for East Africa origins.

102. Worldwide, across the different types of beans, the main competitors of the Parties in green coffee bean procurement and supply markets are the following international soft commodity trade houses: Neumann, Volcafe, Louis Dreyfus, Olam, Coex and Noble.

103. Respondents to the market investigation indicated that coffee bean procurement and supply markets are overall quite fragmented. The large majority of coffee beans customers indicated that they would have sufficient alternatives to the Parties post-Transaction, both for standard and for non-standard coffee beans, also in East Africa origins.[81] However, some competitors indicated that the Parties may gain a strong position for East Africa origins, as well as in non-standard coffee beans sourcing, where

78 Other origins do not lead to potential affected markets.

79 In terms of methodology, shares of the procurement market have been computed on the basis of the Parties' exports from each origin country, while shares of the merchant markets have been computed on the basis of sales, excluding sales to traders.

80 East Africa for the purpose of the assessment of this case includes volumes only from Kenya, Tanzania and Uganda (Arabica from Ethiopia is mainly unwashed and the Parties' activities on other East African countries are *de minimis*).

81 See replies to questions 49.1 to 49.4 of the Commission's request for information addressed to customers (Q6) on 11 April 2014.

building up a supply network is time-consuming.[82] Regarding Kenya in particular, the Parties benefit from access to exportable quantities over and beyond quantities available through the coffee auction system via their two marketing agents, but a number of other agents are active. [83]

104. Customers are largely multi-sourcing, and mostly stated that they had sufficient alternative suppliers to the Parties and could switch easily. One option was notably direct sourcing at the country of origin from farmers and local exporters.[84]

105. In the market investigation, the majority of customers stated that the Transaction would result neither in a reduction of competition nor in an increase of prices in relation to procurement and supply of green coffee beans.[85] In addition, some customers of the Parties are expanding their procurement efforts in the origin countries in order to be as close as possible to producers, buying mostly from independent local exporters and from local cooperatives rather than from international traders such as the Parties.[86]

106. In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the procurement and supply of green coffee beans.

VI. CONCLUSION

107. 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

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82 See replies to questions 22 of the Commission's request for information addressed to competitors (Q5) on 11 April 2014.

83 See minutes of videoconference call with EDF Man.

84 See replies to questions 48 to 50 of the Commission's request for information addressed to customers (Q6) on 11 April 2014 and minutes of calls with Mondelez.

85 See replies to questions 54 and 55 of the Commission's request for information addressed to customers (Q6) on 11 April 2014.

86 See e.g. minutes of call with Taloca (Mondelez International).