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EUROPEAN COMMISSION
DG Competition

Case M.7510 - OLAM / ADM COCOA BUSINESS

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 10/06/2015

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EUROPEAN COMMISSION

Brussels, 10.6.2015
C(2015) 4088 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

Dear Sir/Madam,

**Subject: Case M.7510 - Olam/ ADM Cocoa Business
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

1. On 30 April 2015, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Olam International Limited ("Olam", Singapore) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the global cocoa business of Archer Daniels Midland Company ("ADM Cocoa Business") by way of purchase of shares and assets.³ Olam is hereinafter referred to as "the Notifying Party". Olam and the ADM Cocoa Business are collectively referred to as "the Parties" or "the Merged Entity".

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 OJ L 1, 3.1.1994, p. 3 ("the EEA Agreement").

³ Publication in OJ C 154 of 9.5.2015, p. 25.

1. THE PARTIES

2. Olam is a global commodity merchant and processing company specialized in cocoa, coffee, edible nuts, rice and cotton. As regards cocoa, Olam is involved in the origination, production, processing and distribution of cocoa beans worldwide and recently began processing cocoa beans to semi-finished cocoa products.
3. The ADM Cocoa Business is active globally in the procurement and processing of cocoa beans and the production of semi-finished cocoa products. Specifically, the ADM Cocoa Business comprises eight processing facilities (three in Europe, two in West Africa, two in North America, one in Asia and one in South America), ten warehouses, the deZaan, Unicao brand and Joanes brands, four innovation centres and a global customer franchise. The ADM Cocoa Business is part of Archer-Daniels Midland Company (“ADM”), based in the United States, which is engaged in procuring, transporting, storing, processing and merchandising agricultural commodities and products.

2. THE OPERATION

4. Pursuant to the terms of a Master Purchase Agreement signed on 15 December 2014, Olam will acquire all the equity interests and assets constituting the ADM Cocoa Business.⁴ Olam will therefore acquire sole control over the ADM Cocoa Business. The notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

5. The Parties have a combined aggregate world-wide turnover of more than EUR 5,000 million⁵ (Olam: EUR [...] million; ADM Cocoa Business: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Olam: EUR [...] million; ADM Cocoa Business: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified transaction therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Introduction to the cocoa value chain

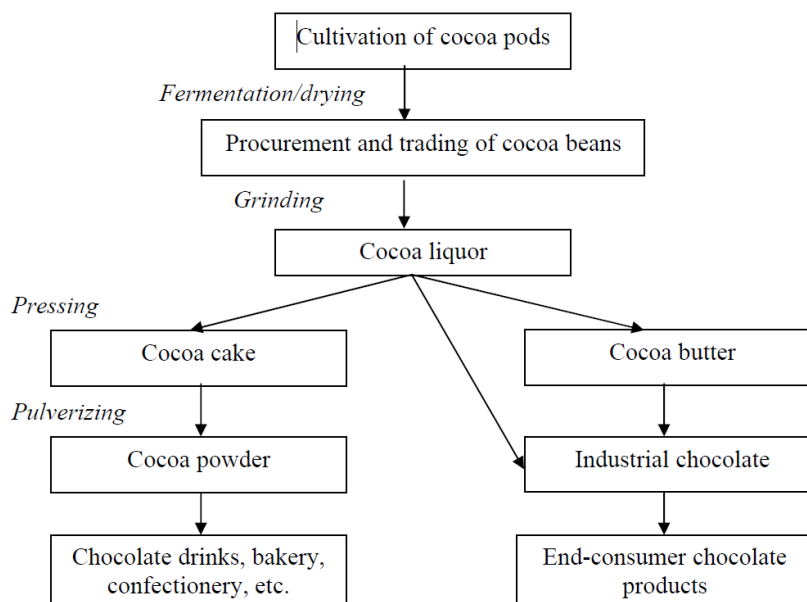
6. The cocoa value chain starts with the cultivation of cocoa trees. Each pod from a cocoa tree contains up to 50 beans. Farmers harvest the pods and remove the beans from the pod. The beans then undergo fermentation and drying in the country of origin. The resulting cocoa beans are one of the main soft commodities traded worldwide.

⁴ The proposed concentration does not involve the industrial chocolate and compound business of ADM which Cargill has decided to acquire. The Cargill/ADM transaction is currently reviewed by the Commission in the context of a phase II investigation (M.7408 Cargill/ADM).

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

7. Cocoa beans are then processed and ground to produce cocoa liquor. Cocoa liquor may be further pressed to separate cocoa butter (~45%) and cocoa cake (~55%), which is in general pulverized to produce cocoa powder. Cocoa liquor and cocoa butter together with sugar and milk powder are the raw materials for the production of industrial chocolate used in the production of end-consumer products. Cocoa powder is primarily used as a food ingredient to add chocolate taste to a product, for example in chocolate drinks and bakery products.

Figure 1: the cocoa bean value chain



4.2. Relevant product markets

8. Within the cocoa value chain, Olam and the ADM Cocoa Business procure cocoa beans in the countries of origin 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. Olam and the ADM Cocoa Business also resell some of these cocoa beans to cocoa bean processors as well as to international traders and process some of these beans internally to manufacture semi-finished cocoa products.

A. Procurement and supply of cocoa beans

Distinction between origins of cocoa beans

9. The major areas for the cultivation of cocoa beans are in West Africa, Latin America and Asia, with West Africa (and notably, Côte d'Ivoire, Ghana, Nigeria and Cameroon) accounting for 76% of the total production of cocoa beans.
10. The Notifying Party submits that the relevant product market is the procurement and supply of cocoa beans without any further segmentation according to origins given that most customers procure cocoa beans from more than one country and/or region. According to the Notifying Party, customers generally require a blend of different varieties of cocoa beans from different origins, and these blends vary based on bean characteristics and on prices.

11. The Commission considered in previous cases that, within the wider markets for the procurement and supply of cocoa beans, some customers may have a preference for cocoa beans of a particular origin. In particular, EEA customers may have a preference for West African cocoa beans due to their perceived quality and taste, as well as geographical proximity. The exact product market definitions were however left open.⁶
12. A majority of respondents to the market investigation have confirmed that EEA customers have a general preference for a specific origin, notably West African beans⁷. These respondents submitted that cocoa beans from West Africa have different characteristics compared to cocoa beans from other origins, for instance in terms of fermentation level, bean size, colour profile and taste of the semi-finished cocoa products manufactured with those beans.⁸ The preference of European customers for West African beans is also linked to geographical proximity and some end-consumers' preference for their flavour. Some respondents also pointed to the specificities of cocoa beans from Latin America and Asia, notably in terms of quality and price. On the other hand, beans from different origins are very often blended in order to achieve consistent taste in semi-finished products, which allow for a certain degree of flexibility in sourcing.⁹
13. Regarding a possible sub-segmentation of West African beans, whilst local regulations differ considerably between origin countries, market participants have however reported a degree of substitutability between beans from different West African countries.¹⁰ Switching was indicated by respondent customers to take place for instance between beans originating from Ghana, Côte d'Ivoire and Nigeria¹¹, whereas a minority of customers deemed Cameroon beans to have a specific red colour profile.
14. 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 from Asia and/or Latin America. However, whether the procurement and supply of cocoa beans from individual West African origins constitute separate markets can ultimately be left open, as the notified transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible product market definition.

⁶ M.7120 – *Ecom Agoindustrial Corporation/Armajaro Trading*, paragraph 19; M.6872 – *Barry Callebaut/Petra Foods - Cocoa Ingredients Division*, paragraphs 12-15; M.6132 – *Cargill/KVB*, paragraphs 12–14; and COMP/M.5431 – *ADM/Schokinag*, paragraphs 19–20.

⁷ See replies to question 7.1 - Questionnaire addressed to customers of semi-finished cocoa products (Q2) and to question 8 Questionnaire addressed to competitors in cocoa beans procurement and products manufacturing (Q1) as well as minutes of a call with Mars on 21 May 2015.

⁸ See replies to question 9 Questionnaire addressed to competitors in cocoa beans procurement and products manufacturing (Q1).

⁹ See non-confidential minutes of a call with Friesland Campina on 18 May 2015. Also see non-confidential minutes of a call with Burton's on 18 May 2015.

¹⁰ See replies to question 10 - Questionnaire addressed to competitors in cocoa beans procurement and products manufacturing (Q1).

¹¹ See non-confidential minutes of a call with Fazer on 18 May 2015.

Distinction between standard and non-standard cocoa beans

15. Cocoa beans can either be standard or non-standard (certified and/or traceable). 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 good agricultural, environmental and social practices throughout the whole supply chain. Traceable cocoa beans refer to beans whose supply chain can be tracked by customers back to the individual farm(s).
16. The Notifying Party submits that there is no separate market for the procurement and supply of non-standard cocoa beans because the same markets dynamics apply to standard and non-standard products and the price difference between them is not significant (less than 10% in general). Moreover, customers typically buy both kinds of products.
17. In the 2014 *Ecom Agroindustrial Corporation/Armajaro Trading*¹² case, the Commission found that setting up sourcing operations for non-standard beans entailed significantly higher investment cost and longer time frames. Non-standard beans were also sold at a price premium and appeared to be sourced through long-term supply agreements, as opposed to the widespread spot trading of standard beans. However, the exact product market definition was left open.
18. A majority of respondents to the market investigation indicated that the sourcing of certified and/or traceable cocoa products had distinct features which differentiate it from the sourcing of standard cocoa products, such as supply chain requirements and high investment in training and education that are reflected in higher costs.¹³ Similarly, there are premiums paid to farmers and cooperatives for these beans above any training and social programme costs.
19. However, the Commission considers that it can be left open whether non-standard cocoa beans constitute a separate relevant product market, as the competitive assessment would remain the same under any alternative product market definition.

Overall conclusion on cocoa beans

20. In the light of the outcome of the market investigation, the Commission considers that for the purposes of the present case, the exact market definition for the procurement and supply of cocoa beans can be left open, as the notified transaction does not give rise to serious doubts under any plausible market definition. In any event, the Commission has assessed potential markets for the procurement and supply of cocoa beans according to the distinction between: (i) different origins and (ii) standard and non-standard beans.

¹² M.7120 – *Ecom Agroindustrial Corporation/Armajaro Trading*, paragraphs 20-23.

¹³ See replies to question 12 - Questionnaire addressed to competitors in cocoa beans procurement and products manufacturing (Q1).

B. Semi-finished cocoa products

21. Cocoa liquor is produced by grinding cocoa beans. Cocoa liquor is either used as one of the basic ingredients for the production of industrial chocolate, to which it gives colour and flavour, or for being further processed into cocoa butter and cocoa powder.
22. 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. The vast majority of cocoa butter sold in the EEA (including by Olam and the ADM Cocoa Business) is sold in liquid form.
23. 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.
24. The Notifying Party submits that the relevant product markets are each of the markets for cocoa liquor, butter and powder without any further sub-segmentation.
25. In previous decisions, the Commission concluded that cocoa liquor, cocoa butter and cocoa powder indeed constitute separate product markets.¹⁴ Similarly to the market for the procurement and supply of cocoa beans, the Commission also considered in previous cases a potential differentiation between standard and non-standard cocoa products, but left the question open.¹⁵ A similar conclusion can be reached in this case, as the notified transaction would not give rise to serious doubts in these potential markets for non-standard cocoa products.

Overall conclusion on semi-finished cocoa products

26. In the light of the market investigation, the Commission considers that for the purposes of the present case, the exact market definition for the procurement and supply of cocoa beans can be left open, as the notified transaction will not give rise to serious doubts under any potential market definition. In any event, the Commission has assessed potential markets for the supply of cocoa semi-finished products according to the segmentations between: (i) liquor, butter and cake/powder and (ii) standard and non-standard products.

4.3. Relevant geographic markets

A. Procurement and supply of cocoa beans

27. The Notifying Party submits that the relevant geographic markets for the procurement and supply of cocoa beans are worldwide since cocoa beans are shipped worldwide, market prices are driven by global futures markets, and transport costs are low.

¹⁴ M.7120 – *Ecom Agoindustrial Corporation/Armajaro Trading*, paragraphs 30-36; M.6872 – *Barry Callebaut/Petra Foods - Cocoa Ingredients Division*, paragraphs 16-22; M.6132 – *Cargill/KVB*, paragraphs 15-24; and COMP/M.5431 – *ADM/Schokinag*, paragraphs 21-31.

¹⁵ M.7120 – *Ecom Agoindustrial Corporation/Armajaro Trading*, paragraphs 37-40.

28. In previous decisions, the Commission examined whether the procurement of cocoa beans (where the Parties are present as buyers) would appear to be a worldwide market in view of low transport costs and lack of differences between EEA and the rest of the world in use of futures markets to hedge but it left open the exact geographic market definition.¹⁶ In the present case, a wide majority of respondents have confirmed the global dimension of the procurement market.¹⁷
29. As regards the supply of cocoa beans (where the Parties are present as sellers), the Commission considered in a previous case that the market is likely to be EEA-wide in scope because European and US cocoa beans future contracts specify different product characteristics and delivery points and EEA and US price tend to diverge significantly. However, the Commission ultimately left open the question whether the market was EEA-wide or global in scope.¹⁸
30. In the present case, respondents to the market investigation have in general confirmed that European customers tend to have distinct preferences from US or Asian customers regarding the specifications of the cocoa beans they source, notably as regards fermentation levels. Each consumption region has its own set of supply and demand factors that have ultimately an impact on the price formation of the cocoa beans.¹⁹
31. In any event, the Commission considers that the precise geographic market definition of the supply of cocoa beans can be left open as the competitive assessment would remain the same regardless of whether the geographic market is EEA-wide or worldwide in scope.

B. Semi-finished cocoa products

32. The Notifying Party submits that the relevant markets for cocoa products is EEA-wide, if not worldwide, in scope because chocolate manufacturers tend to have a global sourcing strategy, the semi-finished cocoa products are traded globally and transport costs are low.
33. While earlier decisions left open the question whether the geographic market for semi-finished cocoa products were EEA-wide or world-wide in scope, in its most recent decision the Commission concluded that such geographic market was to be considered as EEA-wide in view of, first, significant differences in customer preferences in the EEA compared to other geographic areas, and second, the existence of distinct regulatory regimes, import duties, quotas or technical

¹⁶ M.7120 – *Ecom Agoindustrial Corporation/Armajaro Trading*, paragraphs 53-55; M.6872 – *Barry Callebaut/Petra Foods - Cocoa Ingredients Division*, paragraphs 26-29; M.6132 – *Cargill / KVB*, paragraph 27; and M.5431 – *ADM/Schokinag*, paragraph 33.

¹⁷ See replies to question 9 - Questionnaire addressed to competitors in cocoa beans procurement and products manufacturing (Q1).

¹⁸ M.7120 – *Ecom Agoindustrial Corporation/Armajaro Trading*, paragraphs 56-57.

¹⁹ See replies to question 15 - Questionnaire addressed to competitors in cocoa beans procurement and products manufacturing (Q1).

standards, notably with respect to requirements for certain third-party certification schemes.²⁰

34. As regards cocoa butter in particular, which is generally delivered in liquid form in the EEA, the Commission has examined whether there are any factors that limit transportation distance of cocoa butter in the EEA. In this regard, respondents to the market investigation have identified transportation costs and reliability of supply as potentially limiting factors.²¹ However, for the purposes of this decision, the precise geographic market definition for cocoa butter can be left open as it has no impact on the competitive assessment of the transaction.

5. COMPETITIVE ASSESMENT

5.1. Horizontal overlaps

35. The activities of the Parties overlap in (i) the procurement and supply of cocoa beans and ii) the supply of semi-finished cocoa products. However, their business models are significantly different.

36. On the one hand, Olam is predominantly active as an international trading house in the procurement and supply of cocoa beans worldwide. It mainly resells cocoa beans it procures and has only recently invested in its own grinding and pressing capacity, in Côte d'Ivoire and Nigeria. In the EEA, Olam has no pressing and grinding factories: it owns processing facilities in the UK (to melt cocoa butter) and Spain (to pulverize cocoa powder).

37. On the other hand, the ADM Cocoa Business' core activity is the processing of cocoa beans into semi-finished cocoa products. In the EEA, the ADM Cocoa Business owns two grinding and pressing facilities in the Netherlands and one in Germany. Semi-finished cocoa products manufactured in its plants in Ghana, Côte d'Ivoire and Singapore are also imported in the EEA. The ADM Cocoa Business processes the vast majority of cocoa beans it purchases and only sells cocoa beans opportunistically.

5.1.1. Procurement and supply of cocoa beans

38. Market shares of the Parties as regards procurement and supply of cocoa beans are shown in the table below.

²⁰ M.6872 – Barry Callebaut /Petra Foods - Cocoa Ingredients Division, paragraphs 32-33, M.6132 – Cargill / KVB, paragraphs 30-32 and M.5431 – ADM / Schokinag, paragraphs 35-38.

²¹ See replies to question 15 - Questionnaire addressed to customers of semi-finished cocoa products (Q2).

Table 1: Shares in volume for the procurement and supply of cocoa beans 2014

Origin	Commercial activity	Olam	ADM Cocoa Business	Combined
Total	Total procurement (WW)	[10-20]%	[10-20]%	[20-30]%
	Procurement for export	[10-20]%	[10-20]%	[20-30]%
	Sales WW ²²	[10-20]%	[0-5]%	[10-20]%
	Sales EEA	[10-20]%	[0-5]%	[10-20]%
West Africa	Total procurement	[below 30]%	[below 30]%	[below 30]%
	Procurement for export	[below 30]%	[below 30]%	[below 30]%
	Sales WW ²³	[below 30]%	[below 30]%	[below 30]%
	Sales EEA	[below 30]%	[below 30]%	[below 30]%

39. The Merged Entity would become the second largest competitor in the procurement of cocoa beans at the global level (second only to Barry Callebaut). The combined entity would, however, continue to face strong competition from Barry Callebaut and Cargill with additional competitive constraints imposed by a number of smaller competitors such as international soft commodities trade houses (Ecom, Touton, and Sucden).
40. As regards further potential sub-segments of those cocoa beans markets:
- a. Non-standard cocoa beans: the Notifying party estimates that combined market shares are generally similar to or lower than their market shares in all or standard beans, as the ADM Cocoa Business has quite a limited presence in this field.
 - b. Cocoa beans from Asia and Latin America: None of the estimated market shares for the procurement and supply of cocoa beans from Asia and Latin America exceeds 20%.
 - c. Cocoa beans from different West African countries: Although the estimated combined market shares for the procurement of cocoa beans from Cameroon (around [below 40]%) and Nigeria (around [below 60]%) are higher than shares for beans from Côte d'Ivoire ([below 30]%) or Ghana ([below 20]%), the combined sales shares, however, remain moderate even for Cameroon ([below 20]%) and Nigeria ([below 30]%). This is due to the fact that the ADM Cocoa Business [...].
41. The majority of market participants did not raise concerns relative to the impact of the transaction on the market for bean procurement in the EEA.²⁴ Customers

²² These are figures referring to standard cocoa beans only (as opposed to all cocoa beans). As the ADM Cocoa business has sold only [...] tonnes of non-standard cocoa beans (out of a total market of non-standard cocoa beans of [...] tonnes), combined market shares would be lower as regards all cocoa beans in general.

²³ Figures referring to standard cocoa beans only.

²⁴ See replies to question 15 - Questionnaire addressed to competitors in cocoa beans procurement and products manufacturing (Q1).

submitted that only Olam is significantly active in the supply of cocoa beans, and hence the transaction does not have significant effects. Although the general trend towards consolidation in the cocoa business was mentioned by market participants, the vast majority of respondents submitted that there are a sufficient number of alternative suppliers sourcing beans from the West African region.²⁵ Moreover, market participants do not consider Olam and the ADM Cocoa Business as close competitors as they run different business models. As explained by one competitor "ADM is a producer of cocoa products, OLAM is mainly a cocoa bean supplier with a little cocoa product business".²⁶

42. In the 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 market for procurement and supply of cocoa beans.

5.1.2. *Supply of semi-finished cocoa products*

43. Market shares of the Parties as regards supply of semi-finished cocoa products at EEA level are shown in the table below.²⁷

Table 1: Shares in volume for sales of cocoa products in the EEA 2014

	Cocoa liquor	Cocoa butter	Cocoa powder
Olam	[0-5]%	[5-10]%	[0-5]%
The ADM Cocoa Business	[10-20]%	[10-20]%	[10-20]%
Combined	[10-20]%	[20-30]%	[10-20]%
Cargill	N/A	[20-30]%	[20-30]%
ECOM	N/A	20-30%	[0-5]%
Barry Callebaut	N/A	[10-20]%	[10-20]%
Indcresa	N/A	--	[5-10]%
Natra	N/A	[0-5]%	[0-5]%
Euromar	N/A	[5-10]%	[0-5]%
Nederland	N/A	[0-5]%	[0-5]%
BT Cocoa	N/A	[0-5]%	N/A
Guan Chong	N/A	[0-5]%	[5-10]%
Others	N/A	--	[10-20]%

44. As regards the three semi-finished cocoa products, the only affected market is cocoa butter. There is almost no overlap as regards cocoa liquor. With respect to the market of cocoa powder, the combined share of the Parties is [10-20]% in volume and [15-25]% in value. Several significant alternative players, some of

²⁵ See replies to question 40 – Questionnaire addressed to competitors in cocoa beans procurement and products manufacturing (Q1).

²⁶ See reply by one competitor to Question 20-. Questionnaire addressed to competitors in cocoa beans procurement and products manufacturing (Q1).

²⁷ Combined market shares at worldwide level are slightly lower: [5-10]% in liquor, [10-20]% in butter, [10-20]% in powder.

bigger or equal size, will remain available on the market, e.g. Cargill ([20-30]%), Barry Callebaut ([10-20]%) and Indcresa ([5-10]%).

45. As regards the market for cocoa butter, the combined entity would continue to face strong competition from Barry Callebaut, Cargill, Ecom and Euromar. The Parties have a combined market share in standard cocoa butter of [20-30]% in the EEA (Olam: [5-10]%; ADM: [15-25]%) and of [20-30]% worldwide (Olam: [5-10]%; the ADM Cocoa Business: [15-25]%). The Parties have a combined market share in non-standard cocoa butter of [15-25]% in the EEA (Olam: [0-5]%; the ADM Cocoa Business: [10-20]%) and of [10-20]-[20-30]% worldwide (Olam: [0-5]%; the ADM Cocoa Business: [10-20]%).
46. Moreover, a large majority of customers of cocoa butter does not expect the Transaction to have an effect on their business.²⁸ A large majority of customers of cocoa-butter submitted that it was easy for them to switch suppliers of cocoa butter.²⁹ They indicated that they are able to switch suppliers of cocoa butter in a relatively short time frame (at most 6 months) and at no significant cost as the product is more standardised than cocoa powder.
47. With respect to non-standard cocoa products, Olam has [...] sales of non-standard cocoa liquor in the EEA over the last three years and [...] sales of non-standard cocoa powder in the EEA over the last three years ([...] in 2014; [...] in 2013 and 2012).
48. A majority of respondents to the market investigation explained that the merger will have no or very limited impact on the market for cocoa products, both certified/traceable cocoa products and standard cocoa products.³⁰ These respondents put forward that there will remain enough alternatives in these markets in the EEA. Different business models of both companies have also been identified by market participants as one of the reasons why the transaction is expected to have limited effect on semi-finished cocoa products in the EEA, as well as the fact that Olam has no grinding or pressing facility in the EEA. The complementarity of both business models has been highlighted by some market participants as well as the ability of the Merged Entity to compete against Barry Callebaut and Cargill. As explained by one customer "*Olam will bring their expertise of origin sourcing to ADM so they have a wider capability of cocoa grinding to supply cocoa derivatives (liquor, butter powder)*"³¹.
49. Some customers expressed limited concerns which were rather of a general nature and related to current consolidation in the chocolate market and not to the notified

²⁸ See replies to question 29.2 – Questionnaire addressed to customers of cocoa semi-finished products (Q2).

²⁹ See replies to question 23.2 – Questionnaire addressed to customers of cocoa semi-finished products (Q2).

³⁰ See replies to question 29 – Questionnaire addressed to customers of cocoa semi-finished products (Q2).

³¹ See reply to question 28.1 – Questionnaire addressed to customers of cocoa semi-finished products (Q2).

transaction.³² One competitor of the Parties active in procurement of supply and cocoa beans claimed that Olam and the ADM Cocoa Business compete for butter in the UK market and that the concentration could lead to some adverse effects in this area. However, only Olam has a processing facility in the UK (melting butter facility). The ADM Cocoa Business supplies cocoa butter from the Netherlands where other competitors (Cargill, Ecom/Theobroma) are settled.

50. In light of the above, the Commission concludes that, as regards horizontal overlaps, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the markets for sales of cocoa liquor, cocoa butter and cocoa powder both standard and non-standard.

5.2. Vertical links

5.2.1. Introduction

51. The transaction leads to stronger vertical links between the activities of Olam and the ADM Cocoa Business in procurement and supply of cocoa beans and the Parties' activities in the markets for the supply of semi-finished cocoa products.

52. As explained in section 5-1, Olam is primarily a trading house with no bean grinding and pressing facilities in Europe. Through the transaction, Olam will acquire a network of cocoa processing facilities in EEA, which will provide an outlet for beans sourced by Olam and may reduce availabilities of these beans for non-integrated processors in the bean merchant market.

5.2.2. Assessment of these stronger vertical links

53. Based on the information submitted by the Parties, there are a limited number of vertically affected markets. If the upstream markets for the procurement of cocoa beans are sub-segmented by origin, the Parties' combined market shares exceed [more than 30]% only in the procurement of beans from Cameroon and Nigeria.

54. During the market investigation, the Commission has sought to verify whether the Parties' joint position in the procurement of cocoa beans from these origins could lead to potential foreclosure by making access to those cocoa beans more costly or more difficult for downstream customers. Market respondents do not expect such an outcome. A large majority of customers who buy cocoa beans considers that there is no risk that Olam's stronger vertical integration will make access cocoa beans more difficult/costly.³³ They consider that Olam's stronger vertical integration will not change the dynamics of the cocoa beans market and the flow of the cocoa beans to users, especially given that the Parties' sales shares for cocoa

³² See replies to question 30 -- Questionnaire addressed to customers of cocoa semi-finished products (Q2).

³³ See reply to question 31 – Questionnaire addressed to customers of cocoa semi-finished products (Q2).

beans from all origin countries are limited ([below 30]% for cocoa beans from Cameroon, [below 30]%, for cocoa beans from Nigeria).³⁴

55. Furthermore, due to the need to blend beans from different origins in order to achieve a consistent taste, notably for cocoa powder, the market shares of the Parties as regards bean procurement in Cameroon and Nigeria do not create a significant bargaining advantage.
56. In light of the above, the Commission concludes that, as regards stronger vertical links between that Parties' activities, the notified transaction does not raise serious doubts as to its compatibility with the internal market.

6. CONCLUSION

57. 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 and Article 57 of the EEA Agreement.

For the Commission
(Signed)
Margrethe VESTAGER
Member of the Commission

³⁴ See replies to question 30 of the Commission's request for information addressed to customers of semi-finished cocoa products (Q2) and replies to Question 41 of the Commission's request for information addressed to competitors in cocoa beans procurement and products manufacturing (Q1).