

Case No COMP/M.7625 - ADM/ AOR

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/09/2015

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EUROPEAN COMMISSION

Brussels, 7.9.2015
C(2015) 6241 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

To the notifying party:

Dear Sir, dear Madam,

Subject: Case M.7625 - ADM/AOR
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004

- (1) On 5 August 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004¹ and following a referral pursuant to Article 4(5) thereof, by which the undertaking [...] ("ADM UK", the United Kingdom) controlled by [...] ("ADM", the United States) intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertakings AOR NV (Belgium) and AOR Plastics NV (Belgium) (together referred to as "AOR") by way of purchase of shares. ADM is hereinafter referred to as "the Notifying Party" and ADM and AOR are collectively referred to as "the Parties".

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 through this decision.

* should read: Archer Daniels Midland (UK) Limited

** should read: Archer Daniels Midland Company

1. THE PARTIES

- (2) ADM is a global agricultural processor and manufacturer of, among other products, vegetable oils and fats. One of ADM's main business activities in Europe is the processing and trading of oil seeds and edible oils derived from them. ADM is active in the production and sale of bulk refined seed oil ("BRSO") and packed refined seed oil ("PRSO").
- (3) In addition, ADM has joint control of Edible Oils Limited ("EOL"). EOL is a 50/50 non full-function joint venture ultimately controlled by its parents ADM and Mitsubishi Corporation via their respective portfolio companies ADM Pura and Princes Limited ("Princes"). EOL is active in the edible oils packaging and white fats business. It owns a refined seed oil business selling PRSO under the Olivio, Flora, Crisp'n'Dry and Mazola brands. It also supplies vegetable fats under the brands Cookeen and Spry Crisp'n'Dry. Princes provides ancillary services and acts as exclusive distributor of all the products sold through EOL in the United Kingdom, Ireland, Poland, Austria, Czech Republic, Slovakia and Hungary. ADM sells edible oils to foodservice channel, while all its sales of PRSO into the retail channel are through EOL.
- (4) AOR is active in packaging of refined seed oils. AOR supplies refined seed oils to retail and food service customers with its Oilio and Coroli brands as well as, in the case of retail customers, with private labels.

2. THE TRANSACTION AND THE CONCENTRATION

- (5) On 26 March 2015, ADM and AOR signed a sale and purchase agreement pursuant to which ADM, through its wholly owned subsidiary ADM UK will acquire all the shares of the companies which comprise AOR (namely AOR NV and AOR Plastics NV) (the "Transaction").
- (6) Therefore, the proposed Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (7) The operation does not have an Union dimension within the meaning of Article 1 of the Merger Regulation as it does not meet the thresholds set out in Article 1(2) or Article 1(3).
- (8) However, on 13 May 2015 the Parties informed the Commission by means of a reasoned submission that the concentration was capable of being reviewed under the national competition laws of three Member States² and requested the Commission to examine it. None of the Member States that were competent to examine the concentration indicated its disagreement with the request for referral within the period laid down by the Merger Regulation. The notified operation is therefore deemed to have an Union dimension according to Article 4(5) of the Merger Regulation.

² Cyprus, Malta and the United Kingdom.

4. RELEVANT MARKETS

4.1. Product market definition

The Notifying Party's arguments

- (9) The Notifying Party submits that the relevant product markets for the assessment of the Transaction are: (i) the production and supply of PRSO and (ii) the production and supply of BRSO.
- (10) The Notifying Party argues there is an overall market for PRSO that should not be further segmented.
- (11) Firstly, according to the Notifying Party, no distinction should be drawn on the basis of the seed type used in the production of PRSO (for instance between sunflower oils and rapeseed oils), mainly due to close supply-side substitution between the different seed oil types at packaging level.
- (12) Secondly, the Notifying Party argues that the market should not be further segmented in relation to the end use aimed for PRSO (e.g. deep frying, baking, salad dressing etc). In the view of the Notifying Party, all PRSO oils have the same properties and are suitable for all end uses. Furthermore, according to the Notifying Party, suppliers can easily switch between production of PRSO marketed for one or another end use.
- (13) Thirdly, the Notifying Party submits that no distinction should be made between the supply of PRSO to the retail channel (supermarkets etc.) and the foodservice channel (restaurants, caterers etc.). In this respect, the Notifying Party argues that, although retail and foodservice submarkets generally have different pack sizes, there is some cross-over in relation to 5-litre PRSO bottles, which are sold to both retail and foodservice customers. Furthermore, the Notifying Party also submits that supply-side substitution is very common in the PRSO markets as suppliers are usually able to adapt their filling lines and change from supplying foodservice customers to retail customers and vice versa. In any event, the Notifying Party provided relevant market shares also on the basis of the distinction between these two channels.
- (14) Finally, the Notifying Party submits that no distinction should be drawn between branded and private label PRSO due to supply-side substitutability and direct price competition between branded and private label PRSO.

The Commission's precedents

- (15) In previous decisions, the Commission distinguished within edible oils and fats the following segments: (i) crude seed oil; (ii) BRSO; (iii) PRSO, and (iv) bakery fats³. It also considered that olive oils are distinct from seed oils⁴. Since the activities of the Parties overlap horizontally or are linked vertically only with respect to BRSO and PRSO, the other segments within edible oils will not be considered further in this decision.

³ Case No COMP/M.3044, ADM / PURA, par. 8.

⁴ Case No. COMP/M.1802 Unilever/Amor, par. 17.

- (16) With particular regard to PRSO the Commission considered in previous cases that it was not necessary to distinguish separate markets on the basis of different types of seeds⁵. On the other hand, sales of food products (including oils) to the retail sector was considered a different segment from sales to the food service sector⁶.
- (17) As regards the distinction between private label and branded PRSO the market investigation conducted in previous cases indicated that this distinction is irrelevant⁷.
- (18) With particular regard to BRSO the Commission left open in a previous decision the precise definition of the product market for BRSO⁸.

The Commission's assessment

- (19) Firstly, in line with the Commission' previous decisions, the market investigation in this case confirmed that PRSO and BRSO constitute distinct and separate product markets. PRSO is mostly purchased by end customers for their private use, whereas BRSO is generally used in the food service and manufacturing sector⁹. Accordingly, BRSO is supplied in large quantities while PRSO is packaged in small containers that satisfy the needs of end-consumers. PRSO and BRSO are therefore not interchangeable since, as reported by a competitor, "*end customers may not have the capability of taking bulk oils*"¹⁰.
- (20) Secondly, the market investigation showed that the PRSO market does not need to be further segmented on the basis of the different types of seeds (such as rape, sunflower, soybean) used in its production¹¹. Market participants reported that oils produced using different seeds are to a large extent interchangeable¹². The market investigation has also shown that customers in most cases would be able to switch effortlessly between different kinds of seed oils in the event of a significant, non-transitory increase in prices¹³. Likewise suppliers would be able to switch production to new seed oil quickly and without incurring significant costs or risks¹⁴.
- (21) Thirdly, the market investigation was inconclusive as to whether PRSO aimed for different end uses (e.g. deep frying, baking, salad dressing etc.) should be considered as belonging to separate markets. Market participants reported that in principle oils aimed for different uses are largely interchangeable and that no major

⁵ Case No. COMP/M.3039 Soprol/Cereol-Lesiur, par. 22.

⁶ Case No. COMP/M.1990 Unilever/Bestfoods, paras. 8-11.

⁷ Case No COMP/M. 3039 Soprol/Cereol-Lesiur, par. 24. Case No COMP/M.3188 ADM/VDBO, par. 19.

⁸ Case No COMP/M.3188 ADM/VDBO, par. 16.

⁹ See replies to question 8 – Q1 Questionnaire to Competitors and replies to question 9 – Q2 Questionnaire to Customers.

¹⁰ See replies to question 8 – Q1 Questionnaire to Competitors.

¹¹ See replies to question 10 – Q1 Questionnaire to Competitors and replies to question 10 – Q2 Questionnaire to Customers and replies to question 10 – Q3 Questionnaire to Customers.

¹² See replies to question 10 – Q1 Questionnaire to Competitors and replies to question 10 – Q2 Questionnaire to Customers. Minutes of a conference call with a competitor dated 26 August 2015.

¹³ See replies to question 11 – Q1 Questionnaire to Competitors and replies to question 11 – Q2 Questionnaire to Customers.

¹⁴ See replies to question 13 – Q1 Questionnaire to Competitors.

obstacles would prevent customers from switching between different types of oil following an increase in prices¹⁵. On the other hand the market investigation also showed that customers' taste plays a relevant role in determining the degree of substitutability and that some oil applications might be better performed by specific kind of oils¹⁶. In any event the Commission considers that the question whether oils intended for different end uses constitute separate markets can be left open in this case since the Transaction would not give raise to serious doubts as to its compatibility with the internal market under any plausible market definition.

- (22) Fourthly, in line with the Commission' previous decisions, the market investigation confirmed that the PRSO market should be segmented by customer type¹⁷. Accordingly, sales of PRSO to the retail channel should be regarded as separate from sales to the foodservice channel. This is explained by the different intended use of the product, sale channel targeted, and customers' characteristics. The intended use (i.e. respectively sales to final consumers or food preparation) directly influences how the product is packaged, thus reducing the degree of substitutability between the two channels¹⁸. Competitors also reported differences in the competition conditions (prices, rebates, discounts and duration of supply contracts) between those markets¹⁹. Indeed, a competitor reported: "*There are great differences as retailers demand significant payment terms and restrictive clauses (...) [d]istribution channels tend to be easier for food manufacturers and food service*"²⁰.
- (23) Fifthly, in line with the Commission' previous findings, the market investigation indicated that there are no substantial differences between branded and private label PRSO. Market participants reported that quality and intended use do not vary significantly and that customers switch between branded and private labelled PRSO²¹. Production wise, there are only minor differences between the two products and the only significant switching cost is the investment in brand awareness once a private label producer wants to move towards the production of branded seed oil. The Commission considers that the question of whether branded and private label PRSO constitute different relevant product markets can be left open since the Transaction would not give raise to serious doubts as to its compatibility with the internal market under any plausible market definition.
- (24) In conclusion, in the light of the information available to it and in view of the outcome on the market investigation, the Commission considers for the purposes of the present case and taking into account the Commission's previous case practice, that: i) PRSO and BRSO constitute distinct product markets, ii) PRSO sales should

¹⁵ See replies to questions 6 and 7 – Q1 Questionnaire to Competitors.

¹⁶ See replies to questions 6 and 7 – Q1 Questionnaire to Competitors and replies to question 13 and 14 – Q3 Questionnaire to Customers.

¹⁷ See replies to question 14 – Q1 Questionnaire to Competitors and replies to question 15 – Q2 Questionnaire to Customers.

¹⁸ See replies to question 14 – Q1 Questionnaire to Competitors and replies to question 15 – Q2 Questionnaire to Customers.

¹⁹ See replies to question 14 – Q1 Questionnaire to Competitors and replies to question 15 – Q2 Questionnaire to Customers and Minutes of a conference call with a competitor dated 26 August 2015.

²⁰ See reply to question 14 – Q1 Questionnaire to Competitors.

²¹ See replies to questions 15, 16, 17 and 18 – Q1 Questionnaire to Competitors and replies to questions 16, 17, 18, and 19 – Q2 Questionnaire to Customers.

be segmented into separate product markets for retail and foodservice sales; and iii) other possible segmentations can be left open as they do not ultimately influence the competitive assessment of the proposed Transaction.

4.2. Geographic market definition

The Notifying Party's arguments

- (25) With regards to the PRSO market, the Notifying Party argues that its geographic scope should be considered as regional, namely North West Europe, North East Europe and the Nordics²². To support this claim the Notifying Party submits that there are no major import duties or trade barriers across the EEA, transport costs are relatively low in comparison with the value of the products (*information on the proportion of transport costs as compared to the total value of the product*), suppliers do not require local business presence and there are no important differences in prices between the Member States. As regards the geographic dimension of the BRSO market the Notifying Party claims that it is EEA-wide.

The Commission's precedents

- (26) As regards the PRSO market, the Commission in previous decisions left open the precise definition of its geographic scope. However, the market investigation in previous cases revealed elements indicating that supply of PRSO to the retail channel can be regarded as national in scope with possible cross-border effects. For instance, competitive assessment carried out in *Cargil/Vandemoortele*,²³ related not only to Belgium, but also neighbouring areas where bottling plants within a reasonable distance (at least 300km) were located.
- (27) With regard to BRSO the Commission in previous decisions analysed the BRSO markets both at the EEA-wide and national level²⁴. However, the precise geographic market definition was left open²⁵.

The Commission's assessment

- (28) In the context of the market investigation conducted in this case, the majority of customers reported that they purchase PRSO from any supplier in the EEA and that they do not particularly value suppliers' proximity²⁶. Nonetheless, a customer reported that national warehouses ensure reliability in the supply and could therefore constitute a competitive advantage²⁷. Still, customers reported that from a business perspective it is reasonable to source from neighbouring countries and that

²² North West Europe comprises the United Kingdom, Ireland, Northern France, North West Germany and Benelux; North East Europe comprises Eastern Germany, Poland, Hungary, Czech Republic and Slovakia, while the Nordics comprise Norway, Denmark, Finland, Sweden.

²³ Case COMP/M.1227 Cargil/Vandemoortele. The market delineation used in the assessment covered therefore Belgium and several transborder regions of France, Germany, the Netherlands, Luxembourg as well as the United Kingdom.

²⁴ Case No COMP/M.3188 ADM/VDBO, par. 30.

²⁵ Case COMP/M.2980. Cargill/AOP, of 19 December 2002.

²⁶ See replies to questions 23 and 27 – Q2 Questionnaire to Customers.

²⁷ See replies to question 31 – Q2 Questionnaire to Customers.

they would rather source PRSO outside their national territory than absorb a significant non transitory increase in prices²⁸.

- (29) From a supply-side perspective, suppliers target both national and cross-border customers²⁹. However, the market investigation showed that transport cost are still relevant (i.e. around 10% of the product cost) and as, a result, proximity can considerably reduce the costs at which the supplier operates. Moreover, certain countries have special requirements regarding the seed employed in the production, the labelling and the packaging, hence requiring the supplier to adapt its processes in order to be an effective competitor³⁰. Furthermore, as regards sales to the retail channel, the existence of national brands points into the direction of national markets.
- (30) In the present case whether the relevant geographic market for PRSO is national or wider in scope can be left open since the Transaction would not give rise to serious doubts as to its compatibility with the internal market under the narrowest possible geographic market, which is national.
- (31) As regards BRSO, the majority of competitors sells BRSO to clients throughout the EEA regionally (that is in the country where it is produced and neighbouring Member States)³¹. Competitors who responded to the Commission's investigation did not mention any significant barriers in cross-border trade of BRSO³². Therefore the indications available point to consider that the market is EEA-wide. Nevertheless, the effects of the Transaction have also been assessed at national level. Given the lack of competition concerns under any plausible scenario, the geographic market definition can be left open for the purposes of the present case.

5. COMPETITIVE ASSESSMENT

- (32) The Transaction gives rise to horizontal overlaps (i) in the supply of PRSO to the retail channels in North West Europe, North East Europe and the Nordic countries and (ii) in the supply of PRSO to retail and the foodservice channel in certain national markets. In addition, the Transaction gives rise to vertical relationships given that ADM is a supplier of BRSO and currently supplies AOR.

5.1. Horizontal overlaps – Supply of PRSO

- (33) In the regional markets for PRSO, the Transaction leads to affected markets only in the retail channel in North West Europe (combined share of [20-30]%, with an overlap of [0-5]%) and in the Nordics (combined share of [20-30]%, with an overlap of [5-10]%) and only when considering market shares by volume.³³

²⁸ See replies to questions 24 and 26 – Q2 Questionnaire to Customers.

²⁹ See replies to question 22 – Q1 Questionnaire to Competitors.

³⁰ See replies to questions 27 and 29 – Q1 Questionnaire to Competitors and replies to question 29 – Q2 Questionnaire to Customers.

³¹ See replies to question 30 – Q1 Questionnaire to Competitors.

³² See replies to question 32 – Q1 Questionnaire to Competitors.

³³ Source: Form CO.

- (34) If the scope of geographic market is considered as national, the Transaction leads to several affected markets in the supply of PRSO to both the retail and foodservice segments.
- (35) As presented in Table 1 below, in the retail segment, affected markets rise in Denmark, Ireland, Sweden, the United Kingdom and Poland.

Table 1 - 2014 market share in PRSO markets by volume³⁴

	Denmark	Ireland	Sweden	United Kingdom	Poland
Retail ADM	[10-20]%	[50-60]%	[10-20]%	[70-80]%	[30-40]%
Retail AOR	[5-10]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%
Retail Combined	[20-30]% ³⁵	[60-70]% ^{36,37}	[30-40]% ³⁸	[70-80]% ^{39,40}	[30-40]% ⁴¹

Source: Form CO

- (36) In the foodservice segment, the Transaction leads to an affected market in the United Kingdom, where the combined share of the Parties amounts to [20-30]% in volume, with an overlap of [0-5%]⁴².

The Notifying Party's arguments

- (37) According to the Notifying Party, despite the Parties' not insignificant combined market shares in the markets for PRSO in the retail and foodservice channels the Transaction will not significantly impede effective competition.
- (38) Firstly, the Notifying Party states that the increments in market shares resulting from the Transaction on the basis of the various product and geographic market definitions are negligible.
- (39) Secondly, the Notifying Party argues that PRSO markets throughout the EEA are characterised by strong competition given the presence of large and sophisticated

³⁴ According to the Notifying Party the combined shares would not have been much different in the putative segments of edible oils divided by end use.

³⁵ Combined share in retail in Denmark by value amounts to [5-10]%

³⁶ Combined share in retail in Ireland by value amounts to [40-50]%.

³⁷ In the potential segment of private label sales to retail channel the combined share in Ireland amounts to approximately [80-90]% by value and [80-90]% by volume and value; while in the segment of branded sales to [60-70]% by value and [60-70]% by volume.

³⁸ Combined share in retail in Sweden by value amounts to [0-5]%.

³⁹ Combined share in retail in the United Kingdom by value amounts to [70-80]%.

⁴⁰ In the potential segment of private label sales to retail channel the combined share in the United Kingdom amounts to approximately [70-80]% both by volume and value; while in the segment of branded sales there is no overlap between the Parties.

⁴¹ Combined share in retail in Poland by value amounts to [10-20]%.

⁴² The combined share of the Parties in the foodservice channel in the United Kingdom by value amounts to [20-30]%, with an overlap of [0-5]%.

competitors that are vertically integrated such as Cargill, Beunge, Lesieur and AKK. The Notifying Party reports that Lesieur has recently expanded PRSO capabilities in North West Europe and the United Kingdom, consequently becoming a stronger competitor. Other alternative suppliers of PRSO non-vertically integrated include – in view of the Notifying Party - KTC, Kerfoot, Olympic and Silbury. The availability of alternative suppliers of PRSO is supported with evidence of recent tenders that the Notifying Party lost to other suppliers⁴³.

- (40) Thirdly, the Notifying Party submits that suppliers of PRSO in the EEA currently have a considerable degree of overcapacity that is estimated at around 30%. These levels of overcapacity would allow competitors, according to the Notifying Party, to increase outputs of PRSO in the event that prices would increase or in case the Parties' output would decrease following the Transaction.
- (41) Finally, the Notifying Party submits that PRSO customers are large, sophisticated companies with considerable buyer power, which are able to negotiate prices down and multisource from several suppliers. The Notifying Party argues that these characteristics apply equally to retail customers (e.g. Tesco, Carrefour, Aldi) and foodservice customers (e.g. McDonalds, KFC). The Notifying Party states that customers typically organise tenders where PRSO suppliers are invited to make a proposal and the selection of the PRSO supplier is based almost exclusively on price given that PRSO is a homogenous product.

The Commission's assessment

- (42) At the regional level the combined shares of the Parties in the PRSO markets are not high ([20-30]% in North West Europe and [20-30]% in the Nordics). In North West Europe the Parties will face competition from Lesieur ([30-40]%) and Cargill ([10-20]%), while in the Nordics from EBM ([5-10]%) and AAK ([5-10]%).
- (43) As regards retail national markets in Denmark, Sweden and Poland the PRSO retail markets appear affected only when considering market shares by volume. Moreover, in the case of Poland the increment resulting from the Transaction is minimal and amounts to less than [0-5]%. (see Table 1 above). Concerning the United Kingdom and Ireland, the market investigation showed that despite the Parties' high market shares, the Transaction does not lead to competition concerns.
- (44) The market investigation also indicated that competition concerns can be excluded as regards the sales into the foodservice channel in the United Kingdom, where the Parties combined market share and the overlap brought about by the transaction are moderate ([20-30]% and [0-5]% respectively).
- (45) Firstly, the market investigation showed that AOR does not appear to impose an important competitive constraint on ADM. This is specially relevant in the United Kingdom, where AOR's market share is below [0-5]%.
- (46) In this relation it is noted that customers in Ireland and the United Kingdom both in the retail and foodservice segment did not name any specific advantage that AOR

⁴³ Response to European Commission's request for information of 20 August 2015.

would have in these countries⁴⁴. The majority of retail customers considers that AOR brands could be described as weak and with low potential, "*not well known in the UK market*" and their "*market position in irish market [is] not very strong*"⁴⁵.

- (47) Secondly, the arguments of the Notifying Party as to the existence of alternative suppliers also appear credible. In their responses to the Commission's questionnaires, retail customers in the United Kingdom mentioned in particular Cargill and AAK as alternative suppliers for PRSO⁴⁶; while foodservice customers referred to KTC as an alternative supplier⁴⁷. Besides, a competitor of the Parties in retail in the United Kingdom is KTC with a share of [10-20]%. In Ireland, the Parties also face competition from KTC ([10-20]% market share) and other suppliers including Bunge and Lesieur.
- (48) Moreover, in the course of the Commission's investigation, a large majority of competitors who responded to the Commission's questionnaire admitted that PRSO producers are confronted with competitive pressure from players not only located in the same Member State where they operate but also from at least cross-border regions and even the entire EEA⁴⁸. Furthermore, the majority of competitors confirmed that suppliers based in continental Europe can effectively compete in Ireland and the United Kingdom. Also the competitors of the Parties did not mention any true barriers that would make entry or expansion particularly difficult⁴⁹. It can therefore be concluded that PRSO suppliers from outside Ireland and the United Kingdom would likely have sufficient spare capacity to meet the costumers' demand should the Parties increase prices after the Transaction.
- (49) Thirdly, the market investigation has confirmed the Notifying Party's claims as regards overall overcapacity in the PRSO industry in the EEA. All of the competitors and the majority of customers who responded to the Commission's questionnaires admitted that the capacity in the industry is sufficient to cope with any foreseeable growth demand for PRSO⁵⁰. Moreover, competitors added that they themselves have spare capacity for producing PRSO⁵¹ and this would be true both for the United Kingdom and continental Europe⁵². Competitors estimate overall spare capacity for PRSO in the EEA at 20-40%⁵³. All of them declared that they would be able to expand output and capacity in case the Parties decreased output and/or increased prices after the Transaction⁵⁴.

44 See replies to question 42.2 – Questionnaire Q2 PRSO Retail Customers and to question 42.2 – Questionnaire Q3 PRSO Food service and minutes of conference call with a competitor on 26 August 2015.

45 See replies to question 46 – Questionnaire Q2 PRSO Retail Customers.

46 See reply to question 33 – Questionnaire Q2 PRSO Retail Customers.

47 See reply to question 33 – Questionnaire Q3 PRSO Food service Customers.

48 See replies to question 25 – Questionnaire Q1 Competitors.

49 See replies to question 45 – Questionnaire Q1 Competitors.

50 See replies to question 41 – Questionnaire Q1 Competitors, to question 38 – Questionnaire Q2 Retail Customers and to question 38 – Questionnaire Q3 Food service Customers.

51 See replies to question 42 – Questionnaire Q1 Competitors. Minutes of a conference call with a competitor dated 26 August 2015.

52 See reply to question 42 - Questionnaire Q1 Competitors.

53 See replies to question 44 – Questionnaire Q1 Competitors.

54 See replies to question 43 – Questionnaire Q1 Competitors.

- (50) One retail customer in the United Kingdom which stated that the supply base in PRSO is limited and therefore switching suppliers is challenging⁵⁵, admitted nonetheless that it purchases PRSO from other players within the EEA⁵⁶. This implies that the pool of available providers of PRSO for this customer is not constrained to those based in the United Kingdom. This finding is supported by the evidence provided by the Notifying Party showing that customers of ADM in the United Kingdom have recently chosen a different supplier for their PRSO requirements⁵⁷. Parties' competitor noted that edible oils are in fact a commodity market,⁵⁸ which confirms the argument of the Notifying Party that due to the homogenous nature of PRSO players compete mainly on price and switching suppliers is thus not difficult. In addition, the relatively short duration of contracts for the supply of PRSO both in the retail and the foodservice channel, which amounts to less than a year⁵⁹, facilitates switching of PRSO suppliers. This is supported by the fact that even the customers in the retail channel, consider price as one of the most important parameter of PRSO supplier selection⁶⁰.
- (51) Finally, no substantiated concerns were raised as to the impact of the Transaction on any of the affected national markets. Competitors of the Notifying Party indicated in their responses to the Commission's questionnaire that the Transaction will not *"really change the current situation"*⁶¹. More particularly, competitors active in the United Kingdom stated that no particular impact on competition in the PRSO market was expected following the Transaction as ADM is already a well-established player in the United Kingdom⁶². Although another competitor noted that there might be less competition in the United Kingdom and Benelux following the transaction, this supposition was not substantiated or explained further⁶³. A competitor of the Parties in the United Kingdom expects that competition in the PRSO market will become even fiercer following the Transaction. In particular this competitor noted that prices will not increase after the merger, rather PRSO suppliers would see their margins decrease⁶⁴. Another competitor active in the United Kingdom and Ireland also does not expect the Transaction to have any substantial impact in these Member States⁶⁵.
- (52) In the light of the above and in view of the information available to it and the outcome of the market investigation, the Commission concludes that the examined horizontal overlaps do not give rise to serious doubts as to the Transaction's compatibility with the internal market.

55 See reply to question 47 – Questionnaire Q2 PRSO Retail Customers.

56 See reply to question 23 – Questionnaire Q2 PRSO Retail Customers.

57 Response to European Commission's request for information of 20 August 2015.

58 Minutes of a conference call with a competitor on 26 August 2015.

59 See replies to question 37 – Questionnaire Q3 PRSO Food service Customers and to question 37 Questionnaire Q2 PRSO Retail Customers.

60 See replies to question 41 – Questionnaire Q2 PRSO Retail Customers.

61 See reply to question 52.1 – Questionnaire Q1 Competitors.

62 See reply to question 53.1 – Questionnaire Q1 Competitors.

63 See reply to question 53.1 – Questionnaire Q1 Competitors.

64 Minutes of a conference call with a competitor on 21 August 2015.

65 Minutes of a conference call with a competitor on 26 August 2015.

5.2. Vertical overlaps – Supply of BRSO

- (53) ADM is active in the market for the supply of BRSO in the EEA whereas AOR has no refining capacities. AOR is a customer of BRSO and currently sources it from several suppliers including ADM.
- (54) The Notifying Party submits that the Transaction does not give rise to any vertically affected market given that its market share (by volume) on the BRSO market in the EEA amounts to approximately [10-20]% and in any event does not reach 30%.
- (55) At a national level, the Notifying Party's share in BRSO market exceeds 30% in Denmark ([30-40]% market share), the Netherlands ([30-40]% market share) and in Poland ([30-40]% market share).

The Notifying Party's arguments

- (56) Firstly, the Notifying Party argues that there exist a number of other sizeable suppliers of BRSO active in the EEA, capable of supplying all market participants. These include Cargill ([10-20]% market share), IOI Loders Croklaan ([5-10]% market share) and Saipol ([5-10]% market share).
- (57) Secondly, the Notifying Party argues that there is 45-55% overcapacity in BRSO industry and therefore switching between suppliers is easy and in fact quite common.
- (58) According to the Notifying Party, these circumstances together with the generally low margins attributed to sales of BRSO, will entail that the Notifying Party will not have the ability nor the incentive to engage in input foreclosure as it could simply not afford not to supply third party BRSO customers.
- (59) Finally, the Notifying Party submits that the Transaction does not give rise to customer foreclosure risks as other BRSO suppliers will have an ample amount of other customers apart from AOR. In this regard, the Notifying Party submits that AOR's total purchases of BRSO represent less than [...] of total BRSO EEA market. Moreover, the Notifying Party states that the customer base for BRSO is considerably wider than PRSO producers, given that BRSO is also input for the production of other products such as fats.

The Commission's assessment

- (60) The results of the market investigation confirmed that the Parties would not have the ability to foreclose access to BRSO neither at the national nor the EEA-level. Indeed, there are other suppliers of BRSO comparable to ADM in terms of capacity and geographic reach⁶⁶ and the participants in the market investigation confirmed that there is overcapacity in the supply of BRSO⁶⁷. The competitors of ADM active in BRSO do not see any barriers to cross-border sales of BRSO and in fact sell it at least regionally.⁶⁸

⁶⁶ See replies to question 50 – Questionnaire Q1 Competitors.

⁶⁷ See replies to question 48 – Questionnaire Q1 Competitors.

⁶⁸ See replies to questions 31, 32 – Questionnaire Q1 Competitors.

- (61) Moreover, the results of the market investigation confirmed that the Parties would not have the ability to foreclose access to BRSO customers.
- (62) A competitor of ADM in the supply of BRSO stated that "*AOR is a small relatively insignificant customer of BRSO*"⁶⁹. Indeed, according to the Notifying Party AOR's BRSO purchases represent less than [...] of the total BRSO EEA market. Another competitor of the Notifying Party submitted that the Transaction will not bring about any substantive change into the BRSO market given that AOR acquires, prior to the Transaction, a substantial part of its BRSO purchases from ADM⁷⁰. This is in line with the information provided by the Notifying Party according to which AOR currently purchases [...] of its BRSO requirements from ADM⁷¹.
- (63) One respondent to the market investigation submitted that AOR "*is one of the major consumers of BRSO without inhouse refining capabilities*" and that "*there will be one less potential buyer in the market*"⁷². Contrary to the competitor's concern, several non-vertically integrated players such as KTC and Vandemoortele, acquire similar quantities of BRSO.
- (64) In the light of the above and in view of the information available to it and the outcome of the market investigation, the Commission concludes that the Transaction does not raise concerns as to possible input foreclosure. In addition, after completion of the Transaction, ADM's competitor will have sufficient alternative customers. Therefore, the Transaction does not raise concerns as to possible customer foreclosure.

6. CONCLUSION

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

*For the Commission
(Signed)*

*Margrethe VESTAGER
Member of the Commission*

⁶⁹ See reply to question 51.1 – Questionnaire Q1 Competitors.

⁷⁰ Minutes of a conference call with a competitor on 26 August 2015.

⁷¹ Response to European Commission's request for information of 20 August 2015.

⁷² See replies to questions 51, 55 – Questionnaire Q1 Competitors.