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***Case No COMP/M.7682 - GOLDMAN SACHS / ALTOR /
HAMLET***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 05/08/2015

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EUROPEAN COMMISSION

Brussels, 5.8.2015
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

SIMPLIFIED MERGER
PROCEDURE

To the notifying parties:

Dear Sir/Madam,

**Subject: Case M.7682 – GOLDMAN SACHS /ALTOR/ HAMLET
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

- (1) On 10 July 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings The Goldman Sachs Group, Inc. ("Goldman Sachs", United States) and Altor Fund IV ("Altor", Sweden) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the whole of the undertaking Hamlet Protein A/S ("Hamlet", Denmark) by way of purchase of shares. Goldman Sachs and Altor are collectively referred to as the "Notifying Parties", whereas Goldman Sachs, Altor and Hamlet are jointly 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 throughout this decision.

1. THE PARTIES

- (2) **Goldman Sachs** is a global investment banking, securities and investment management firm that provides a range of financial services worldwide to a client base that includes corporations, financial institutions, governments and high-net-worth individuals.
- (3) **Altor** is a private equity fund which focuses on investments in the mid-market segment of the Nordic region.
- (4) **Hamlet** is active in the development, production and sale of soy proteins used in high value animal feed, primarily for young animals such as piglets, calves and poultry. Hamlet operates from premises in Horsens (Denmark) and Findlay (Ohio, USA).

2. THE OPERATION AND THE CONCENTRATION

- (5) Altor currently indirectly owns [...]% of the shares in Hamlet and Goldman Sachs owns the remaining [...]%. According to the Letter Agreement dated 28 May 2015, each of Goldman Sachs and Altor will indirectly own a [...]% interest in Hamlet after the proposed transaction.
- (6) [...].
- (7) [...].
- (8) In view of the above, Goldman Sachs and Altor will acquire joint control of Hamlet.
- (9) The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR [...] million² [Goldman Sachs: EUR [...] million; Altor: EUR [...] million; Hamlet: [...] million]. Each of them has a EU-wide turnover in excess of EUR [...] million [Goldman Sachs: EUR [...] million; Altor: EUR [...] million; Hamlet: [...] 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 operation therefore has an EU dimension.

²

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)

4. APPLICABILITY OF THE EEA AGREEMENT

- (11) Article 8 of the EEA Agreement³ provides that "unless otherwise specified", the provisions of the EEA Agreement shall apply only to:
- products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System ("HS Nomenclature"), excluding the products listed in Protocol 2 to the EEA Agreement⁴;
 - products specified in Protocol 3 to the EEA Agreement⁵, subject to the specific arrangements set out in that Protocol.
- (12) In the case at stake, the HS nomenclature of fish feed is 23.09.90. As regards soy protein, this product also falls within Chapter 23 of the HS Code.⁶ None of these two products are covered in Protocol 3 to the EEA Agreement. Consequently, they are not subject to Article 57 of the EEA Agreement on merger control.
- (13) The assessment of the impact of the merger for the above mentioned products in the EFTA States hence falls outside the jurisdiction of the European Commission. Consequently, this decision will only cover the EU with regard to those products.
- (14) According to the Notifying Parties, the merger, in so far as those products are concerned, is subject to notification in Norway. The current decision is without prejudice to the outcome of the merger proceedings in Norway.

5. COMPETITIVE ASSESSMENT

- (15) There are no horizontal overlaps between Hamlet and the Notifying Parties or any undertaking they control.
- (16) However, there is a potential vertical relationship between Hamlet and EWOS, which is jointly controlled by Altor and Bain Capital.⁷
- (17) In the EEA, EWOS produces and supplies complete compound fish feed for salmonid (salmon and trout) farmed fish and uses various types of protein (including soy protein) as an input. As a consequence, it is active in a market downstream of Hamlet.

³ Agreement on the European Economic Area, OJ No L 1, 3.1.1994, p. 3.

⁴ EEA Agreement, Protocol 2 on products excluded from the scope of the Agreement in accordance with article 8(3)A.

⁵ EEA Agreement, Protocol 3 concerning products referred to in Article 8(3) B of the Agreement.

⁶ When Hamlet exports its soy protein products, HS Code 23099096 applies and when Hamlet imports its own products from the US, HS Code 23040000 applies.

⁷ M.7015 – *Bain Capital/Altor/EWOS*.

5.1. Product market definition

5.1.1. Soy bean meal and soy protein products

- (18) Oilseed meal (to which soy bean meal belongs) is used widely in animal feed and fish feed as a source of protein. It is obtained as a by-product from crushing of oilseeds (mainly soy, rape and sunflower). In *Cargill/Agribrands*, the Commission found there to be a chain of substitution between the different types of oilseed meal and therefore they could be seen as belonging to one market but ultimately left the market definition open.⁸ Similarly, the Commission left open the precise product market definition for oilseed meals in other cases.⁹
- (19) Under a more restrictive approach, the market for *soy bean* meal could be considered as a separate market in particular. According to a previous market investigation, soy bean meal is the meal that has the highest protein content of all non-grain feed ingredients and is therefore the most valuable one. However, prices of other ingredients are highly correlated—in accordance with their protein content—with the price of soy bean meal.¹⁰ Thus, in a past decision, the possibility of singling out the soy bean market as an independent product market was considered but ultimately not closed.¹¹
- (20) Under an even more restrictive approach, markets could be defined for each protein product derived from soy bean: this includes soy flour protein, textured protein, soy protein concentrates ("SPC") and soy protein isolate ("SPI"). Hamlet only produces SPC but no SPI.
- (21) In animal feed, SPC is used specifically as a particularly rich protein source for instance in pet food, calf and fish feeds. In past decisions, a separate market for SPC was considered but ultimately left open.¹²
- (22) In the Notifying Parties' view, Hamlet's products form part of an overall market for protein products that includes (i) at least other vegetable protein products such as oilseed meals; and (ii) protein derived from animal sources.
- (23) According to the Notifying Parties, a more narrowly defined market for Hamlet's products could be the market for soy protein products, which would include SPC and soy meal. The Notifying Parties consider that SPC does not constitute separate product markets.
- (24) The precise scope of the relevant market with regard to soy bean meal and soy protein products can be ultimately left open in the current case, since no competition issues arise under any possible market definition.

⁸ M.2271 – *Cargill/Agribrands*, par. 9.

⁹ M.6383 – *Cargill/Korofrance* par. 37.

¹⁰ M.4042 – *Toepfer/ Invivo/Solès*, par. 17.

¹¹ M.941 – *ADM/Actos & Hutcheson – Soya Mainz*, par. 15.

¹² M.941 – *ADM/Actos & Hutcheson – Soya Mainz*, par. 17; M.1126 – *Cargill/Vandemoortele*, par. 12.

5.1.2. *Fish feed*

- (25) Fish feed is produced as pellets. Fish feed constitutes extruded feed formulated for particular species of farmed fish. The main ingredients are [...],[...],[...],[...],[...] and [...]. Different formulations of feed may be required for each species of fish and for each stage of its development.
- (26) In its previous decisions relating to animal feed, the Commission has defined separate markets for single feed, compound feed and feed mixes. Moreover, complete feed is a possible subsegment of compound feed.¹³ The Commission has also considered that aqua feed is distinct from other animal feed, as the production processes, ingredients, distribution channels and customers for fish feed are very different from those of other types of animal feed.¹⁴ Furthermore, the Commission has also considered a possible further subdivision of aqua feed based on the type of fish, and held it probable that there is a distinct market for aqua feed for farmed salmon.¹⁵
- (27) The Notifying Parties consider that the precise scope of the relevant market with regard to fish feed can be ultimately left open in the current case because no competition issues arise under any possible market definition. However, [...], they have provided data on the narrowest possible basis (that is, complete feed for salmonids) and also on an even narrower basis segmented between complete feed for salmon and trout respectively.
- (28) The precise scope of the relevant market with regard to fish feed can be ultimately left open in the current case, since no competition issues arise under any possible market definition.

5.2. **Geographic market definition**

5.2.1. *Soy bean meal and soy protein products*

- (29) In previous decisions, the Commission has found the market for oilseed meal to be at least EEA-wide. On one hand, transport costs for oilseed meal do play an important role, as such limiting the distance over which it can be transported at economically viable costs. However, oilseed products are traded on the international commodity markets of Chicago and Rotterdam and there are no barriers to trade¹⁶.
- (30) The Commission has also considered to the market for protein products to be at least EEA-wide.¹⁷ It also considered that the geographic market for oil meal and SPC were at least EEA-wide.¹⁸ In another decision, the Commission considered on the basis of a

¹³ M.6468 – *Forfarmers/Hendrix*; M.6383 – *Cargill/KoroFrance*.

¹⁴ M.2956 – *CVC/PAI Europe/Provimi*.

¹⁵ M.3722 – *Nutreco/Stoltnielsen/Marine Harvest JV*.

¹⁶ M.2271 – *Cargill/Agribrands*, par. 11.

¹⁷ M.1126 – *Cargill/Vandemoortele*, par. 13.

¹⁸ M.941 – *ADM/Actos & Hutcheson – Soya Mainz*, par. 17-18.

market of investigation that the market could be narrower than the EEA-level and potentially national but ultimately left the definition open.¹⁹

- (31) The Notifying Parties submit that the geographic market for soy protein products is at least EEA-wide because there are no physical, economic or regulatory barriers on Hamlet's products being sold throughout the EEA. They consider that the market could even be wider than the EEA given the high level of imports into the EEA of protein products including oilseed meals such as soy meal and SPC. The Notifying Parties submit that EWOS purchases almost all of its needs for soy protein products (SPC and soy meal) directly from [...] suppliers.
- (32) The precise scope of the relevant market with regard to soy protein products can be ultimately left open in the current case, since no competition issues arise under any possible market definition.

5.2.2. *Fish feed*

- (33) The Commission has previously considered the market for fish feed to be national, mainly because of the high transport costs, but also considered that the market for aqua feed for salmon is in the process of being regionalised with a distinct market for the North Sea basin.²⁰
- (34) The Notifying Parties consider, however, that the precise scope of the geographic market for fish feed for salmonid can in this case be left open as it could be either EEA-wide or national. They submit that although fish feed is mainly sold on a national basis and although there are local factors that influence the content of feed in particular countries, there are significant trade flows between Member States. Consequently, they have provided market shares at EEA level, for the North Sea basin and on a national basis for the United-Kingdom and Ireland.
- (35) The precise scope of the relevant geographic market with regards to fish feed can be ultimately left open in the current case, since no competition issues arise under any possible geographic market definition.

5.3. **Competitive assessment**

- (36) Hamlet manufactures and supplies soy protein products. EWOS uses soy proteins as an ingredient for the production of fish feed. The proposed transaction thus creates a vertical relationship, between Hamlet, as a supplier of soy proteins (upstream), and EWOS, a fish feed producer (downstream).
- (37) [...].
- (38) According to the Notifying Parties, Hamlet's market share for soy protein products is less than [0-5]% in the EEA²¹. As regards the possible narrower market of SPC, its EEA-wide market share is of [5-10]%.²²

¹⁹ M.4042 – *Toepfer/ Invivo/Solès*, par. 34.

²⁰ M.3722 – *Nutreco/Stoltnielsen/Marine Harvest JV*.

²¹ Hamlet's worldwide market share for soy protein products is also less than [0-5]%.²²

- (39) EWOS' market share exceeds 30% in the supply of complete feed for salmonid in the narrower national markets in the UK ([40-50]%)²³ and the Republic of Ireland [60-70]%, and the possible wider market of the North Sea Basin [30-40]%. The national market in Norway [30-40] %²⁴ would also be affected, but as fish feed is not covered by the EEA Agreement, this downstream market is not covered by the Commission's assessment.
- (40) The proposed transaction thus gives rise to the following vertically affected markets:
- the EEA-wide market soy bean meal and soy protein products, including SPC, as an input in animal feed and fish feed (upstream),
 - the national market for the supply of fish feed (complete feed for salmonids) in the Republic of Ireland and the UK, as well as the wider market of the North Sea Basin (downstream).
- (41) However, as explained below, the proposed transaction is unlikely to give rise to input and customer foreclosure.
- (42) The market investigation confirmed the lack of input or customer foreclosure concerns: markets participants did not raise any substantiated concerns as to the vertical relationship between EWOS and Hamlet.
- (43) In particular, suppliers of soy protein products and SPC confirmed that currently they are selling soy protein products and SPC to other customers than EWOS, within and outside the aqua feed industry.²⁵ Suppliers also stated that their output could be sold to other customers located outside the EEA in case of any attempt to implement customer foreclosure.

5.3.1. *No risk of input foreclosure*

- (44) The Notifying Parties submit that Hamlet has never developed any special products for the fish feed segment specially adapted to the nutrition needs of fish. Hamlet's products are developed primarily for young animals such as piglets, calves and poultry.
- (45) In the recent past, it has only had [...] in the fish feed sector. [...] soy protein products are an expensive source of proteins for fish feed ([...] more expensive than other possible sources for the same protein intake).
- (46) The Commission considers that the proposed transaction is unlikely to give rise to input foreclosure concerns because of Hamlet's low market shares for both soy protein

²² [0-5]% worldwide. Even if the markets for soy protein products and SCP were hypothetically considered to be national in the United-Kingdom and the Republic of Ireland, Hamlet's market share would be below [0-5]% according to the Notifying Parties. In the regional market of the North Sea basin Hamlet's SPC market share would be below [5-10]%.

²³ Complete feed for salmon ([40-50]%), complete feed for trout ([20-30]%).

²⁴ Complete feed for salmon ([30-40]%), complete feed for trout ([50-60]%).

²⁵ For instance, a supplier of EWOS stated that 2/3 of its EEA SPC volumes go to other customers.

products ([0-5]%) and the narrower market of SPC ([5-10]%) in the upstream market.

- (47) Moreover, the majority of customers operate a multi-sourcing strategy. As regards EWOS, it purchases almost all of its SPC from two [...] suppliers.
- (48) Finally, there are a large number of competing upstream suppliers from whom downstream customers may purchase soy protein products. The EEA is a major importer of soy protein products from worldwide soy protein product producers. The largest companies active in the soy protein product market in the EEA and worldwide, according to the Notifying Parties, are ADM, Bunge, Cargill and Louis Dreyfus. There are also a large number of smaller domestic and international competitors active in the EEA including Imcopa, Caramuru, Sementes Selecta, Soya Protein, Nutraferma, GB Tech and DaBomb who individually have a market share of less than [...]%.²⁶ The largest SPC suppliers in the EEA are Imcopa (approximately [...]%) and Selecta ([...]%).

5.3.2. *No risk of customer foreclosure*

- (49) The Notifying Parties claim that even if EWOS switched its entire demand for soy protein to Hamlet, there would remain significant demand for soy protein from other users. The Notifying Parties also claim that Hamlet's products are developed primarily for young animals such as piglets, calves and poultry ([...]% of Hamlet's turnover can be attributed to piglets). [...].
- (50) The Commission observes that EWOS has two strong competitors in the fish feed market, Skretting²⁷ and BioMar²⁸ and as such there will remain two large downstream customers in the fish-feed segment to whom Hamlet's rivals will be able continue to supply soy protein products and SPC. Moreover, besides EWOS, Skretting and BioMar, in the EEA other aqua feed competitors account for [20-30]% of the market complete salmonid feed market.
- (51) In addition, EWOS's demand for soy protein products²⁹ amounts to less than [...]% of the total sales in the EEA of soy protein products and, using a narrower market definition for Hamlet's products, between [...]% of the total sales in the EEA of SPC. Hence, [...]% of the SPC market in the EEA does not account for EWOS' demand.
- (52) Moreover, soy protein products and SPC are sold at an EEA-wide market. There are also numerous alternative downstream customers given that soy protein products are used as inputs in many other product markets. The different types of purchasers of soy protein products are generally animal feed formulators, compound feed manufacturers, pre-mix manufacturers and integrators. As regards

²⁶ Market participants such as Selecta and Caramuru confirmed that they are selling soy protein products and SPC in the EEA.

²⁷ [30-40]% in the North Sea Basin, [20-30]% in the UK. Skretting has a [20-30]% market share at EEA-level.

²⁸ [20-30]% in the North Sea Basin, [30-40]% in the UK. BioMar has a [10-20]% market share at EEA-level.

²⁹ Approximately [...] MT per year in Europe.

SPC, its purchasers are generally the same as for soya protein products. SPC is used, in particular, besides aqua feed, for pet food; milk replacements for calves; and feed for young animals (especially starter feed for pigs and poultry).

- (53) Therefore, EWOS would have no ability post-merger to engage in customer foreclosure.

6. CONCLUSION

- (54) 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)
Cecilia MALMSTRÖM
Member of the Commission