



EUROPEAN COMMISSION
DG Competition

***Case M.7963 - ADM /
WILMAR / OLENEX JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/09/2016

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 8.9.2016
C(2016) 5817 final

PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties

Dear Sir/Madam,

**Subject: Case M.7963 - ADM / Wilmar / Olenex JV
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 4 August 2016, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004³ by which the undertakings Archer Daniels Midland Europe B.V., part of Archer Daniels Midlands Company ("ADM", USA), and Wilmar Europe Holdings B.V., part of Wilmar International Limited group of companies ("Wilmar", Singapore), acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Olenex B.V. ("New Olenex", Netherlands) by way of purchase of assets in a newly created company constituting a joint venture⁴.

1. THE PARTIES

- (2) Archer Daniels Midland Europe B.V. is a member of the Archer Daniels Midland group of companies ("ADM"), established in the United States. ADM is a major multinational processor of oilseeds, corn, sugar, wheat and other agricultural

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 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

⁴ Publication in the Official Journal of the European Union No C 292, 12.8.2016, p. 4.

commodities and a manufacturer of protein meal, vegetable oil, corn sweeteners, flavours, flour, biodiesel, ethanol, and other value added food and feed ingredients.

- (3) Wilmar Europe Holdings B.V. is part of the Wilmar International Limited group of companies ("Wilmar"). Wilmar is an Asian agri-business group, headquartered in Singapore. Wilmar's business activities include oil palm cultivation, oilseed crushing, edible oil refining, sugar milling and refining, specialty fats, oleochemicals, biodiesel and fertiliser manufacturing as well as flour and rice milling.
- (4) ADM and Wilmar are jointly referred to hereinafter as the "Parent Companies" or the "Parties".
- (5) Olenex C.V. ("Olenex", Netherlands) is currently a strategic 50/50 partnership between ADM and Wilmar and it is jointly controlled by ADM and Wilmar. This partnership was formed in 2012 for an initial term of no more than 5 years. Olenex sources crude vegetable oil from the Parent Companies and refines it -in refining plants owned by the Parent Companies-, under manufacturing service agreements. Furthermore, Olenex sources refined oil and fats from the Parent Companies. Subsequently, the final products are sold by Olenex as a single sales desk to third party customers in the EEA.
- (6) The establishment of Olenex in its current form was notified to and cleared by the German, Austrian and Polish competition authorities in 2012. The European turnover thresholds were reached but Olenex was not considered as a full function joint venture, since it relies on its Parent Companies for inputs, manufacturing services, seconded employees and financing.⁵

2. THE OPERATION

- (7) The Transaction consists in a change of the structure and an enlargement of the activities of Olenex by means of transfer of assets to turn it into a full function joint venture - New Olenex- jointly controlled by the Parties.

2.1. Joint control

- (8) The Transaction involves a number of changes in the legal structure of Olenex.
- (9) ADM will hold 37.5% of the shares in New Olenex and Wilmar will hold 62.5%. Each of ADM and Wilmar will exercise their voting rights in proportion with their shareholdings and action will be taken by a simple majority of votes cast. However, certain strategic decisions require unanimous approval by Wilmar and ADM. These include, among others, the appointment and removal of the general Manager and of the Auditors⁶. As such, the Parties will exercise joint control over New Olenex.

⁵ The Parent Companies also provide to Olenex marketing and promotion services. [Further details on these services]

⁶ Clause 6.4 of the 2015 Shareholders Agreement.

2.2. Contribution of assets to New Olenex

- (10) The Transaction also involves a number of changes in the legal activities and assets of the joint venture.
- (11) First, the operation of New Olenex is not limited in time in the shareholders agreement between the Parent Companies (hereinafter the "2015 Shareholders Agreement") and New Olenex is therefore generally set up for an indefinite duration.
- (12) Second, the business activities of New Olenex will be global in scope, with the exception of China. Currently, Olenex operates only in the EEA and Switzerland. Furthermore, New Olenex will also start selling the by-products of oil refining.
- (13) Third, whereas Olenex does not currently own any manufacturing assets, the Parent Companies will transfer to New Olenex four refining and oil processing facilities:
- ADM's palm refinery plant in Hamburg, Germany (the "OMH refinery");
 - ADM's oils and fats plant in Hamburg, Germany (the "Noblee refinery");
 - Wilmar's tropical oils refining plant in Brake, Germany (the "Brake refinery");
 - Wilmar's tropical oils refining plant in Rotterdam, the Netherlands, through a transfer of the entire issued share capital of Wilmar Edible oils B.V. to New Olenex.
- (14) Fourth, a significant number of employees currently employed by the Parent Companies in the above-mentioned manufacturing plants will also be transferred to New Olenex. In Germany, [N° of employees] employees of the Brake refinery will be transferred as well as [N° of employees] employees of the Noblee refinery. In the Netherlands, the [N° of employees] employees of Wilmar Edible Oils B. V. will be transferred to New Olenex. Additionally, [N° of employees] employees currently seconded from ADM to Olenex will be transferred to New Olenex. New Olenex will employ approximately [over 200] production and operation employees but the transfer is not limited to production employees with functions related to manufacturing. New Olenex will also employ managers, sales and marketing employees, procurement and other support staff⁷ up to a total of approximately [over 300] own employees. A general manager will be responsible for the preparation of a business plan, and the overall direction and day-to day management⁸.
- (15) Fifth, it is intended that New Olenex will fund itself on a standalone basis either from its own resources, or by way of third party financing. [BUSINESS SECRETS]
- (16) In view of the above elements, it appears that New Olenex will be transferred four refining assets that previously belonged to its Parent Companies; it will also have sufficient resources to operate independently on the market, is established for a long duration, has direct access to the market and although it will source input

⁷ It is envisaged that as of closing, New Olenex will employ: [further details on workforce].

⁸ Clause 7.5 of the 2015 Shareholders Agreement: "[BUSINESS SECRETS]".

from its Parent Companies (notably crude oil), it will [BUSINESS SECRETS] and will add value through the refining of this input and the further processing (e.g. through blending) of refined oils purchased from its Parent Companies.

- (17) Also, it follows from the above that, since the contributed assets listed in paragraph 13, in particular the four refining assets that previously belonged to one of the Parent Companies, constitute parts of undertakings [CONFIDENTIAL], the contribution of such assets to New Olenex will result in the acquisition of joint control by the other Parent Company in each respective case, thereby constituting a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.

3. UNION DIMENSION

- (18) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (ADM: EUR 62 702 million, Wilmar: EUR 32 431 million). Each of them has a Union-wide turnover in excess of EUR 250 million (ADM: [BUSINESS SECRETS] million, Wilmar: [BUSINESS SECRETS] million) but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has an Union dimension.

4. MARKET DEFINITION

- (19) Crude oil is produced by crushing and pressing oil bearing crops. It is then further processed to produce refined seed oil which can be sold in bulk (BRSO) or packaged for sale to end-users (PRSO). Refined seed oil is also further refined to produce vegetable fats. Vegetable oils and fats are used by the food processing industry as a component in food products.
- (20) 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 fats⁹. It also considered that olive oils are distinct from seed oils¹⁰.
- (21) New Olenex will be active in the production and supply of BRSO and vegetable fats and to a more limited extent of PRSO.¹¹

⁹ M.3044 - ADM / PURA, par. 8.

¹⁰ M.1802 - Unilever/Amora/Maille par. 17.

¹¹ Assuming national markets, which is in line with previous findings of the Commission, the only affected market for PRSO is the UK with a share of [20-30]% (food service customers only). Although the parties have been unable to accurately estimate the share of supply of their competitors, they consider that the following players have a share of supply of at least 5% : AAK AB, KTC Ltd, Olympic Oils Limited, Silbury Marketing Ltd, ABF Grain Product Ltd/Westmill Foods, and Avril SCA.

4.1. Product market definition

4.1.1. BRSO

- (22) In previous decisions, the Commission left open whether various types of refined seed oils sold in bulk constitute different markets¹². It was found that whereas there is a certain degree of substitutability between the different types of seed oil, it is not complete neither from the demand nor the supply side.
- (23) In particular, in relation to the demand side, it appeared that (a) some types of seed oil -due to specific purposes of use in food processing- are not entirely interchangeable for other types of seed oils; (b) price of sunflower oil is substantially higher than prices of other varieties of seed oils; and (c) customers have preferences for specific seed oils. As regards supply side substitutability, switching production between some seed oil varieties appears to be more or less feasible depending on the variety of seeds already in use and its possible alternative.
- (24) The Parties submit that the relevant product market should be that of refined vegetable oils sold in bulk, without any further segmentation¹³. They submit that from a demand-side perspective, all BRSOs are generally substitutable and are commonly blended by the food manufacturers, regardless of their origins (rape, sunflower, soybean, palm, and coconut). Furthermore, from a supply-side perspective, the Parties contend that it is easy to switch production between most of the different seed oil varieties without a need for substantial additional investment, and modern refineries typically have the capability to refine all types interchangeably.

Vegetable oils and tropical oils

- (25) Respondents to the market investigation in this case considered that vegetable refined oils, such as rapeseed, sunflower or soy bean oils, are to be distinguished from tropical refined oils, such as palm and coconut oil,¹⁴ due to differences in composition, intended use and price. Whereas vegetable refined oils are liquid at room temperature (soft oils), tropical oils are solid (hard oils). Differences were reported in terms of fatty acid composition, melting and crystallization behaviour, interaction with emulsifiers, oxidation, texture and taste. These differences affect the suitability of the oils for different uses. Reference to specific customer requirements and important price differences were also put forward by respondents to the market investigation.
- (26) Moreover, from a supply side perspective, competitors indicated that switching production from refined vegetable oils to tropical oils could only be achieved through significant investments and required a long period of time. In the words of a competitor: *"Vegetable oils are produced using chemical refining, whereas tropical oils are produced using physical refining. New investment would be*

¹² M.3044 – ADM/Pura, par. 10 and M.3188 ADM/VDBO, par.12-16.

¹³ Form CO, par.166-169.

¹⁴ See reply to question 4 – Q2 Questionnaire to Customers and replies to question 6 –Q1 Questionnaire to Competitors.

required at significant expense (depending on size of plant), and a minimum implementation period of more than 12 months."¹⁵

Different types of vegetable oils

- (27) The Commission also investigated whether further segmentation should be considered between different types of vegetable oils and, separately, between different types of tropical oils. It resulted from the investigation that there is only a limited degree of substitutability between different types of refined oils. This concerns both vegetable oils and tropical oils.
- (28) In relation to vegetable oils, the majority of the respondents were of the view that there are differences in terms of composition, nutritional and taste profiles, and price between the different vegetable oils that limit their interchangeability.
- (29) Customers indicated being often bound by very specific requirements in their final products making substitution of vegetable oils difficult or impossible. Several respondents indicated that sunflower and rapeseed oils are generally easier to substitute to each other than soybean oil, although sunflower oil has been historically more expensive and is considered by some respondents as a premium oil compared to the other two¹⁶.
- (30) Furthermore, all of the customers responding to the market investigation indicated that they would not be able to easily switch their orders to a different oil type following a 5-10% price increase¹⁷.
- (31) On the other hand, a certain number of producers of vegetable oils having responded to the market investigation indicated that it would be relatively easy to switch production from one type of refined vegetable oil to the other as explained by one competitor: *"Each type of vegetable seed oil (due to its characteristics, physical properties etc.) requires somewhat different processing equipment and treatment. For example refined sunflower oil refining for bottling requires de-waxing (winterization), high oleic sunflower oil requires heated storage in colder climates, rapeseed oil contains phospholipids to be controlled. However, several refineries are already installed and set up to be able to process several different types of vegetable oils (typically at least soybean, rapeseed, sunflower, corn). Switching between batches depends on the type of equipment."*¹⁸

¹⁵ See replies to question 10 – Q1 Questionnaire to Competitors.

¹⁶ See reply to question 5 – Q2 Questionnaire to Customers and replies to question 7 – Q1 Questionnaire to Competitors.

¹⁷ See replies to question 7 – Q2 Questionnaire to Customers.

¹⁸ See reply to question 12 – Q1 Questionnaire to Competitors.

Different types of tropical oils

- (32) Similar views to the ones summarized in paragraphs (28) to (31) were expressed in relation to tropical oils¹⁹. Nonetheless, palm kernel oil and coconut oil (lauric oils) are considered by several market respondents to be substitutable to a large extent due to similarities in their compositions and prices. They are however, not considered interchangeable with palm oil which has a different fatty acid profile and is traded at much lower prices.
- (33) In the light of the above, the competitive assessment will be carried out on the basis of the narrowest product markets for BRSO distinguished by seed types. The precise product market definition can however be left open for the purposes of this decision as the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of the exact product definition for BRSOs.

4.1.2. Vegetable fats

- (34) In a previous case, the Commission distinguished between two basic types of fats, white fats and yellow fats, with primarily different uses. White fats are predominantly used for cooking, baking, pastry making and shallow frying, whilst yellow fats are mostly used as spreads²⁰. The Parties submit all vegetable fats may be considered as part of one market. They acknowledge however, that there are differences in use between yellow fats and white fats. In any case, the overlap between the Parties' activities only relate to the supply of white fats.
- (35) The results of the market investigation showed that yellow fats have to be distinguished from white fats. Customers and competitors in the supply of these products indicated that there are relevant differences in the intended use, composition and price of the two type of fats²¹. A customer noted: "*Although yellow fats can be used for the same uses as white fats, the same is not true in reverse - white fats cannot be used as spreads. Also, compositionally white fats are typically 100% fat, whereas yellow fats (also known as spreadable fats) have compositional requirements which are defined in legislation such that they must have a fat content of between 10% and 90%.*"²² In relation to their composition, it was explained that yellow fats are emulsions of fat and water whereas white fats have a pure content in fats. Reference was also made to price differences, yellow fats being more expensive than white fats²³.
- (36) Similarly, a distinction according to the distribution channel was also confirmed by the market investigation. Both customers and competitors indicated that there are significant differences in terms of, among others, contract conditions, delivery, product packaging between vegetable fats sold to food service companies or food

¹⁹ See reply to question 6 – Q2 Questionnaire to Customers and replies to questions 8 and 12 –Q1 Questionnaire to Competitors.

²⁰ M.3044 - ADM / PURA, par. 13.

²¹ See replies to question 13 – Q1 Questionnaire to Competitors and replies to question 8 – Q2 Questionnaire to Customers.

²² See reply to question 8.1– Q2 Questionnaire to Customers.

²³ See reply to question 8.1– Q2 Questionnaire to Customers.

manufacturers on one side and to retailers on the other²⁴. The Parties and New Olenex are only active in the former market.

- (37) In the light of the above, the competitive assessment will be carried out on the market for white fats sold to food service companies and food manufacturers.

4.2. Geographic market definition

4.2.1. BRSO

- (38) In two previous cases, the Commission left open the exact geographic scope of this market and analysed both EEA-wide and national markets²⁵. In other cases, the Commission found that these markets were EEA-wide in scope²⁶.
- (39) The Parties submit that the market for BRSO is at least EEA-wide in view of similar prices for seed oils throughout the EEA which mirror the prices for crude vegetable oil on commodity markets as well as due to the importance of cross-border trade and low transportation costs²⁷.
- (40) The large majority of customers of BRSO having responded to the market investigation indicated that they source all of their needs of these products from suppliers' plants located at less than 500km from their own locations²⁸. Responses from competitors were in line with these indications²⁹. This may be different for refined tropical oils, which are sometimes sourced directly from the Asian regions where the crops are grown and harvested and therefore shipped by vessel for distances above 10,000km³⁰.
- (41) However, some of these customers also reported that they source BRSO from distances up to 1,200 km from the location of their plants, at EEA-level or even globally. The majority of customers also indicated that there are no differences in the regulatory framework among EEA countries, for example due to certification or labelling requirements affecting the supply of BRSOs.
- (42) Moreover, all the suppliers of BRSOs having responded to the market investigation reported exporting their production to Member States other than the one where production takes place. The percentages of export vary depending on the location of the plants. For production plants located in Southern or insular Member States like Spain, Italy, Romania or the United Kingdom, the percentages are lower,

²⁴ See replies to question 15 – Q1 Questionnaire to Competitors and replies to question 9 – Q2 Questionnaire to Customers.

²⁵ M.3188 ADM/VDBO, par.30. M.7625 ADM/AOR, par.31

²⁶ M.2980 Cargil/AOP. M.3044, ADM / PURA

²⁷ Form CO, par.176.

²⁸ See replies to question 11 – Questionnaire 2 to Customers.

²⁹ See replies to question 18 – Questionnaire 1 to Competitors.

³⁰ See replies to question 11 – Questionnaire 2 to Customers.

ranging from 1% to 20%. Plants located in Central Europe show much higher export rates, ranging from 20% to 80%³¹.

- (43) The above considerations appear to indicate that the geographic scope for the markets of BRSO is regional, covering nearby countries, or even EEA-wide. For the purpose of the present case BRSO markets will be analysed at EEA level as well as on the basis of a regional market encompassing neighbouring countries around the Parties' plants (Belgium, the Netherlands and Germany).

4.2.2. *Vegetable fats*

- (44) In one previous decision, the Commission conducted its analysis on the basis of an EEA-wide relevant market³². In a subsequent Commission decision the analysis was run at national level, although the geographic market definition was left open as the Commission found indications that the market could be wider³³.
- (45) The Parties submit that the relevant geographic market for the supply of vegetable fats is at least EEA-wide. In support of this view, they argue that fats are commonly sold and traded across borders as transport costs amount to approximately 2-5% of the product price in the EEA and producers of vegetable fats rely on sales to multi-national customers with centralised departments sourcing vegetable fats throughout the EEA³⁴.
- (46) All of the competitors responding to the market investigation indicated that they supply 80% of their sales of vegetable fats within a maximum radius of 1000km³⁵. To the exception of one supplier, competitors estimate that the maximum distance from which vegetable fats can be economically sourced on a regular basis varies from 500km to 1500km³⁶. In the same line, the large majority of customers indicated that the average transport distant from their suppliers site is below 600km although source from a distance of 800 km and beyond³⁷.
- (47) The above considerations appear to indicate that the geographic scope for the markets of vegetable fats is regional, covering nearby countries, or even EEAwide. For the purpose of the present case BRSO markets will be analysed at EEA level as well as on the basis of a regional market encompassing neighbouring countries around the Parties' plants (Belgium, the Netherlands and Germany).

³¹ See replies to question 19 – Questionnaire 1 to Competitors.

³² M.1126 Cargill/Vandemoortele

³³ M.3044, ADM / PURA, par. 17

³⁴ Form CO, par. 190.

³⁵ See replies to question 25 – Q1 Questionnaire to Competitors.

³⁶ See replies to question 26 – Q1 Questionnaire to Competitors

³⁷ See replies to question 16 – Q2 Questionnaire to Customers

5. COMPETITIVE ASSESSMENT

- (48) Since its creation in 2012, Olenex has been active in the edible oils and fats markets as a commercial desk selling some of the products of its Parent Companies. These concern BRSOs, PRSOs and white fats manufactured by the Parent Companies in their own refining plants.
- (49) Prior to the Transaction, ADM channeled all of the merchant sales of its production of BRSO and vegetable white fats³⁸ through Olenex. For its PRSO production, ADM conducts its sales both through Olenex (only to the foodservice channel) and outside of it through ADM Antwerp (which sells both to the retail and foodservice channels). Following the Transaction, all of ADM 's sales of BRSO and vegetable white fats will be consolidated in Olenex. ADM's sales of PRSO will continue to be split between New Olenex and other corporations of the ADM group.
- (50) Similarly, Wilmar currently conducts all of its sales of BRSO and vegetable white fats produced in its European plants through Olenex. It imports however certain amounts of BRSO and vegetable white fats produced in its Asian refineries. Following the Transaction, Wilmar's European production of BRSO will be consolidated in New Olenex as its two facilities in Rotterdam and Brake will be transferred to it. Wilmar expects nonetheless to continue to some extent its export sales outside of new Olenex.
- (51) Consequently, New Olenex holds already market shares in the BRSO and vegetable white fats markets in the EEA. Following the Transaction, this situation will be consolidated and any remaining competition between Olenex and Wilmar will be eliminated. The Commission has therefore assessed the horizontal consolidated overlaps in relation to BRSO and vegetable white fats.

5.1. BRSO

- (52) At EEA level, when considering different types of BRSO separately, the overlaps relate mainly to tropical types of BRSO: i.e. palm oil, coconut oil and palm kernel oil. This is because Wilmar is specialised in these products and only sells very limited quantities of vegetable BRSO, namely soybean and sunflower³⁹ BRSOs, in the EEA⁴⁰.
- (53) Affected markets arise in relation to soybean, palm and coconut BRSO at the EEA level. The data reflect the complementarity between ADM and Wilmar: while ADM focuses on vegetable oils, Wilmar focuses on tropical oils.

³⁸ ADM currently markets outside of Olenex 2,000Mt of white fats in Germany.

³⁹ Wilmar's sales of sunflower BRSO amounted to [BUSINESS SECRETS] MT in 2014 out of an estimated market size at the EEA level of more than 3 million MT; the sales were made exclusively in Spain ([BUSINESS SECRETS] MT) and Denmark ([BUSINESS SECRETS] MT).

⁴⁰ These sales are conducted outside of Olenex and amount to approximately [BUSINESS SECRETS] Mt annually.

Table 1 – Market shares per BRSO type in the EEA (affected markets only)

	ADM outside of New Olenex	Olenex		Wilmar outside of New Olenex	Combined total
		New Olenex sales sourced from ADM	New Olenex sales sourced from Wilmar		
Soybean BRSO	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[20-30]%
Palm BRSO	[0-5]%	[0-5]%	[10-20]%	[10-20]%	[20-30]%
Coconut BRSO	[0-5]%	[0-5]%	[10-20]%	[0-5]%	[20-30]%

Source: Form CO

- (54) The Parties were not able to provide market share data per Member State for each of the different types of BRSOs, neither for a regional market encompassing Belgium, Germany and the Netherlands. Absolute volume and value data for the sales of Olenex and its Parent Companies was nonetheless provided according to that market segmentation⁴¹.
- (55) It results from these data that the overlaps regarding soybean BRSO are limited. Wilmar's sales of soybean oil are limited to [EEA country concerned], where ADM, either through Olenex or on its own, does not sell any soybean oil.
- (56) With respect to coconut BRSO, the volumes originating from ADM facilities and sold in Belgium ([BUSINESS SECRETS] MT), Germany ([BUSINESS SECRETS] MT) and the Netherlands ([BUSINESS SECRETS] MT) are limited compared to the volumes originating from Wilmar facilities and sold in Belgium ([BUSINESS SECRETS] MT), Germany ([BUSINESS SECRETS] MT) and the Netherlands ([BUSINESS SECRETS] MT). This underlines the complementarity of the Parties' activities and indicates that any increment in market share would not be significant. The Commission therefore concludes that the overlap as regards coconut BRSO is modest.
- (57) Similarly, as regards palm BRSO, the sold volumes originating from ADM facilities in Belgium ([BUSINESS SECRETS] MT), Germany ([BUSINESS SECRETS] MT) and the Netherlands ([BUSINESS SECRETS] MT) are fairly limited compared to the volumes originating from Wilmar facilities in Belgium ([BUSINESS SECRETS]), Germany ([BUSINESS SECRETS] MT) and the Netherlands ([BUSINESS SECRETS] MT). The Commission therefore concludes that the Parties' activities are quite complementary and the overlap as regards palm BRSO is modest.
- (58) In all these markets, several competitors will remain present including large companies such as Cargill, Lesieur/Sofiproteol and Bunge.

⁴¹ See annex 44 of the Form CO.

- (59) The Commission has also verified whether the creation of Olenex in 2012 as a trade desk on behalf of its parents has had any impact on competition on the various markets for BRSOs and whether its planned transformation into a long-lasting joint-venture, as well as the elimination of any remaining competition between Olenex and Wilmar,⁴² will have any significant effect going forward. The vast majority of current Olenex customers have indicated that Olenex has been operating in the market since 2012 and this has not had a negative effect on competition so far. Likewise, the consolidation of New Olenex as a full-function JV and the elimination of competition between New Olenex and Wilmar have not raised concerns among customers. As explained by one customer "*We do not expect that the joint venture intended will have an impact on the supply side. It is not a takeover of a competitor. We do consider the joint venture a structural change within partners which are working together already*".⁴³
- (60) In sum, in the light of the outcome of the market investigation and taking into account the information available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards its impact on the various markets for BRSOs.

5.2. White vegetable fats

- (61) In relation to white vegetable fats, the combined share at EEA level is [10-20]%.⁴⁴ Cargill ([10-20]%), AAK ([10-20]%), IOI Loders Crokiaan([10-20]%) and Sime Darby ([10-20]%) are also present in this market.
- (62) As regards a regional market including Belgium, Germany and the Netherlands, the joint market share of the Parties would be [10-20]% with the only nationally affected market being the Netherlands with a combined market share of [30-40]% (increment of [0-5]% due to ADM).
- (63) The Commission has also verified whether the creation of Olenex in 2012 as a trade desk on behalf of its parents has had any impact on competition on the various markets for white vegetable fats and whether its planned transformation into a long-lasting joint-venture, as well as the elimination of remaining competition between Olenex and Wilmar⁴⁵ will have any significant effect going forward. The vast majority of current Olenex customers have indicated that Olenex has been operating in the market since 2012 and this has not had a negative effect on competition so far. Likewise, the consolidation of New Olenex as a full-function JV and the elimination of competition between New Olenex and Wilmar have not raised concerns among customers.

⁴² Wilmar expects to import some volumes of BRSO outside of Olenex [BUSINESS SECRETS].

⁴³ See replies to question 39-1 – Q2 Questionnaire to Customers

⁴⁴ Olenex alone has a market share of [10-20]% ([10-20]% originates from fats sourced from ADM, [0-5]% originates from fats sourced from Wilmar)

⁴⁵ Wilmmar expects to import a limited volume of vegetable fats into the EEA.

- (64) In sum, in the light of the outcome of the market investigation and taking into account the information available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards its impact on the various markets for white vegetable fats.

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 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