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*Case No IV/M.882 -
ADM / GRACE*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 20/02/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.02.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Registered with advice of delivery

To the notifying parties

Dear Sirs,

Subject : Case No IV/M. 882 Archer-Daniels-Midland / Grace Cocoa

Notification of 20.01.1997 pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On **20.01.1997**, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the Archer-Daniels-Midland Company ("ADM") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Grace Cocoa Associates ("GRACE COCOA") by way of purchase of assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. ADM is a U.S. company, engaged in the business of procuring, transporting, storing, processing and merchandising agricultural commodities and products. It's a significant processor of oilseeds, corn and wheat and processes oats, barley and peanuts as well. The products resulting from these processes are primarily used for food or feed ingredients.

4. GRACE COCOA is a U.S. (Delaware) partnership comprising all the cocoa activities of several legal entities within W.R. Grace&Co.-Conn., a wholly owned subsidiary of the W.R. Grace Group. It is active in producing, marketing and selling industrial cocoa and industrial chocolate and compound products used as ingredients in the bakery, dairy, confectionery, food service and beverage industries.
5. ADM would acquire all of GRACE COCOA's activities by way of purchase of assets from different legal entities within the W.R. Grace Group.

II. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of ADM (ECU 10.3 billion for the financial year ending June 30, 1996) and GRACE COCOA (ECU 0.6 billion for the financial year ending December 31, 1995) is of ECU 10.9 billion, i.e. exceeds ECU 5.0 billion. Each of the two companies' Community-wide turnover exceeds ECU 250 million, being about ECU [...] million for ADM and ECU [...] million for GRACE COCOA for the above mentioned periods, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. COMPETITIVE ASSESSMENT

A. Relevant product markets

7. The notifying parties state that there are relevant product markets for industrial cocoa and industrial chocolate products. However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Relevant geographic markets

8. The notifying parties state that the relevant geographic market is worldwide for industrial cocoa and EEA-wide for industrial chocolate products. It is not necessary to further delineate the relevant geographic markets because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

¹ Deleted; business secret.

² Deleted; business secret.

C. Effects of the concentration

9. There is no overlap between the parties, as, according to the notification, ADM has not been active in any of the above mentioned markets. The only possible overlap could exist in GRACE COCOA's production of cocoa butter and ADM's processing and marketing of a specific vegetable fat which can be used as a cocoa butter equivalent (CBE) in the manufacturing of industrial chocolate and compound products. The use of CBE's provides specific behavioural characteristics of these products. However, ADM's production of CBE seems to be relatively unimportant considering both its absolute quantity (of about [...]³ tons) and market share (approximately [...]⁴ of the worldwide CBE-market). Therefore and given the fact that the worldwide demand for CBE is very small in relation to the one for cocoa butter (approximately 5%), such an overlap would be insignificant. Even considering cocoa butter and CBE as being one and the same market, the involved companies' combined share for this market would be less than [...]⁵ of the worldwide demand.
10. In view of the market position of the parties to the concentration, it appears that the notified operation will have a de minimis impact on competition in the EEA. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. CONCLUSION

11. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

3 Business secret; less than 3,000 tonnes

4 Business secret; between 0% and 10%

5 Business secret; between 5% and 15%