Opinion of the Advisory Committee on mergers given at its meeting of 2 July 2015 regarding a draft decision relating to Case M.7408 — Cargill/ADM Chocolate Business

Rapporteur: Slovakia

(2017/C 232/11)

Concentration

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)b of the Merger Regulation.

2. The Advisory Committee agrees with the Commission that the notified operation has a Union dimension pursuant to Article 1(3) of the Merger Regulation.

Relevant Markets

3. The Advisory Committee agrees with the Commission's definitions of the relevant product and geographic markets as stated in the draft decision.

4. In particular, The Advisory Committee agrees with the Commission's conclusions that:

   4.1. As the Notified transaction would significantly impede effective competition under any product market definition, it can be left open whether industrial chocolate should be segmented between liquid and solid chocolate.

   4.2. As it is unlikely that the Notified Transaction will significantly impede effective competition even under the narrowest feasible product market definition, the exact product market definition concerning compound chocolate or fat-based coatings can be left open.

   4.3. The relevant geographic market for industrial chocolate corresponds to circular-shaped catchment areas of 500 km distance drawn around the Parties' plants or around the Parties' customers or is national.

   4.4. As it is unlikely that the Notified Transaction will significantly impede effective competition even under the narrowest feasible geographic market definition, the exact geographic market definition concerning compound chocolate or fat-based coatings can be left open.

Competitive Assessment — Horizontal non-coordinated effects

5. The Advisory Committee agrees with the Commission that the proposed concentration, as originally proposed by the Notifying Parties, is likely to significantly impede effective competition in the market for industrial chocolate sold to customers in Germany or to customers located in the overlap area of the relevant catchment areas of ADM's plant in Mannheim/Germany and Cargill's plants in Germany.

6. The Advisory Committee agrees with the Commission's assessment that the notified transaction would not lead to a significant impediment to effective competition:

   6.1. With respect to the horizontal overlap between the Parties' activities on the markets for industrial chocolate sold to customers located in the overlap areas of the relevant catchment areas of the Parties' plants in Belgium, France and the United Kingdom.

   6.2. With respect to the horizontal overlap between the Parties' activities on the market for chocolate compound or fat-based coatings.

Competitive Assessment — Vertical effects

7. The Advisory Committee agrees with the Commission's assessment that the notified transaction would not lead to a significant impediment to effective competition with respect to the vertical links between the Parties' activities in the production and sale of semi-finished cocoa products (upstream) and production and sale of industrial chocolate (downstream).

Remedy

8. The Advisory Committee agrees with the Commission that the commitments are sufficient to remove the concerns raised by the proposed concentration as to its compatibility with the internal market or a substantial part thereof.

Compatibility with the internal market

9. The Advisory Committee agrees with the Commission that, subject to full compliance with the commitments offered by the parties, the proposed concentration is unlikely to significantly impede effective competition in the internal market or in a substantial part thereof.

10. The Advisory Committee agrees with the Commission's view that the proposed concentration should be declared compatible with the internal market and the EEA Agreement in accordance with Articles 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.