

***Case No COMP/M.2544 -
MASTERFOODS /
ROYAL CANIN***

Only the English text is available and authentic.

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

Article 6(2) NON-OPPOSITION
Date: 15/02/2002

*Also available in the CELEX database
Document No 302M2544*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15/02/2002

SG(2002) D/228520

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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(2) DECISION

To the notifying party

Subject : Case No COMP/M.2544 – Masterfoods / Royal Canin

Date of notification : 03.01.2002 pursuant to article 4 of Council regulation n°4064/89

1. On 03 January 2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (the “Merger Regulation”) by which the undertaking Masterfoods Holding (“Masterfoods”), a French subsidiary of Mars Incorporated (“Mars”, USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of the undertaking Royal Canin SA (“Royal Canin”, FRA), by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

I THE TRANSACTION

3. The proposed arrangement under which Mars will acquire control over Royal Canin includes put and call options, with the current majority shareholder of Royal Canin, SAGAL, and a public offer to the other shareholders. Under the arrangements, Mars will as soon as regulatory clearance has been obtained in a first step acquire a 10% shareholding in Royal Canin from SAGAL. At the same time it will make a public offer to the minority shareholders in Royal Canin. Once the result of the public offer is known, under put and call options entered into between Mars and SAGAL, SAGAL will sell and Mars will purchase such further number of Royal Canin shares as are necessary to bring Mars' shareholding in Royal Canin up to approximately 80.05%. Mars will however already on the basis of the first step acquire sole management and control of Royal Canin. Subsequently, under the put and call options, SAGAL will sell and Mars

will purchase the balance of SAGAL's shareholding in Royal Canin. Royal Canin will finally become a wholly owned subsidiary of Mars.

II THE PARTIES

4. Mars is a privately-owned manufacturer of snack foods, ice cream, human foods, pet foods and various other products, with headquarters in Virginia (US). Marsterfoods is a wholly-owned French subsidiary, created in 2000 as a result of a restructuring of various French businesses. Mars is active in the supply of wet and dry petfood in many locations throughout the world, but with particular emphasis on the US, Europe and Australia. In the pet food industry, it has developed global brands (eg Pedigree, Cesar, Whiskas and Sheba) and national/regional brands (eg Canigou and RonRon). Mars does not manufacture own label products for retailers in the EU¹.
5. Royal Canin is a manufacturer of petfood with headquarters in France. It is a company specialising in the development and sale of dry petfood. Royal Canin shares are listed on the Paris Stock exchange. Royal Canin is active in the supply of dry prepared petfood throughout the EU. Over recent years it has also started to develop a presence in North and South America. Royal Canin has developed its branded business primarily through sales in specialist outlets, with only limited sales in grocery outlets. Royal Canin has a range of brands of which "Royal Canin" is the most prominent. It also supplies small volumes of own label products, mainly in France.

III. CONCENTRATION

6. The concentration concerns the acquisition by Mars (via Masterfoods) of sole control of Royal Canin according to Article 3 (1) (b) of the Merger Regulation. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The transaction has community dimension under article 1(2) of the Merger Regulation. The undertakings concerned have a combined aggregate world-wide turnover² of more than EUR 5 billion (in 2000 Mars [EUR 15 237,4 million], Royal Canin [EUR 452 million]). The aggregate Community-wide turnover of the undertakings concerned is more than EUR 250 million (in 2000 Mars [...], Royal Canin [...]), and the parties do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.
8. The operation does not constitute a co-operation case under the EEA Agreement. According to Article 8.3(b) of the EEA Agreement and Protocol 3 to that Agreement,

¹ Mars does supply exclusive label products only [...] in Switzerland.

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

pet food products are among those that are not covered by the EEA Agreement. Consequently, this decision does not relate to the effects of the notified transaction in Norway, Iceland and Lichtenstein.

V THE RELEVANT MARKETS

RELEVANT PRODUCT MARKETS

Industrial (or prepared) Pet food

9. The sector concerned by the transaction is that of industrial (or prepared) pet food for dogs and for cats, sold through grocery stores and specialty (non-grocery) stores. The Commission has in three past decisions³ already considered the sector in question. In *Nestlé/Ralston Purina* (the most recent decision, 27.07.2001), the Commission found that industrial (or prepared) dry cat food, wet cat food, dry dog food and industrial (or prepared) wet dog food constituted separate relevant product markets.
10. The parties accept that a distinction should be drawn between prepared petfood for dogs and for cats. Furthermore, they argue that characteristics on the supply side suggest that wet and dry formulations of petfood represent distinct product markets. They are produced from different raw materials, use different production processes, are commonly produced by different suppliers, with many more dry than wet suppliers, and are supplied in different pack sizes.
11. Likewise, demand side characteristics suggest that there are significant differences between wet and dry prepared petfood. The different raw materials used, production processes concerned, packaging forms utilised and the relative weight/value of the products involved means that wet and dry prepared petfoods have different costs, and therefore different prices. This reflects through the cost per feed which is typically higher in the case of wet prepared petfood than in the case of dry prepared petfood. These differences support the view that wet and dry prepared petfood are competing in separate markets. The market investigation has largely confirmed the above.

Branded versus Private label products

12. Industrial (or prepared) pet food is offered to the pet owners as branded products or as private (or own-) label products (e.g. labels owned by retailers sold mainly in grocery shelves next to branded products). In *Nestlé/Ralston Purina*, the Commission found that branded and private label products compete with each other at the level of sales to pet owners (i.e. retail level sales), whilst at the level of direct sales to retailers (the level of sales from suppliers to their clients, i.e. supermarkets, pet shops, etc.), branded and private label products tend to be seen as complementary from the customer's viewpoint. In *Nestlé/Ralston/Purina*, the Commission found that the supply to retailers of branded products on the one hand and private label products on the other hand belong to different markets. There are some pet food manufacturers who are focussed mainly on the supply of own label products. Also some of the main producers of branded products (e.g. Nestle/Ralston Purina) are significant producers of private label products.

³ Respectively: M. 554 Dalgety Plc / The Quaker Oats company; M. 1127 Nestlé / Dalgety; M. 2337 Nestlé / Ralston Purina.

Nevertheless, Mars and Royal Canin have only insignificant sales of private label products to retailers.

13. As far as retail level is concerned, in the course of the market investigation launched in this case, several competitors and customers underlined that, unlike what the parties stated, private label products are not perfect substitutes for branded products. The main reason given for this view is that private label products are not capable to exercise a sufficient price discipline, at least not across the whole range of quality categories of branded products. Thus, while private label is generally seen to compete head on with branded products at the lower end of the market, it tends to be less of a competitive constraint on the higher quality products. In particular, as noticed in another Commission decision⁴, private label products mainly tend to be price followers and product imitators, while they rarely generate new users and occasions for consumption. The investigation nonetheless supports that pet owners can and do switch between private label and branded products at the lower end of the quality spectrum. This applies mainly, but not exclusively to the grocery segment. The fact that, as will be further explained below, there are no clear distinctive quality categories therefore means that all producers of branded pet foods are subject to some competitive constraint from the presence of private label products at retail level. The amount of such constraint on each particular product is likely to vary as a function of its features. Generally speaking, cheap economy-type products sold exclusively in grocery retail are likely to be most strongly influenced by private label, whereas this influence is likely to be much less significant as regards highly specialised "super-premium" products that are sold exclusively in non-grocery retail outlets. Mars and Royal Canin, as well as most of their main competitors, offer branded pet food products covering most of this quality spectrum (albeit with varying focus). In view of the foregoing, private label and branded pet food products are not deemed to form separate relevant product markets at retail level.
14. This competitive situation at retail level should be taken into account when assessing the extent to which private label represents a significant countervailing factor vis-à-vis the market power of the merging parties upon the retailers.

Quality categories

15. In *Nestlé/Ralston Purina*, the Commission found that suppliers normally offer industrial (or prepared) pet food products as "economy", "mainstream" or "premium". Nevertheless, the Commission found that a further segmentation of the product market according to these categories (mainly reflecting a *continuum* of increasing quality and prices of the products) was not justified. Concerning this issue the parties contend that any segmentation of the dry dog and dry cat food markets would be artificial and imprecise. The exercise is highly subjective and the lack of detailed data on many of the available products means that it is also difficult to be comprehensive. Accordingly, the results would not be meaningful in terms of competition law analysis and cannot lead to the conclusion that these are separate relevant markets.
16. In the course of the market investigation, at least in some Member States, a substantial proportion of customers suggested that separate markets exist for different product

⁴ Commission decision M.623 - Kimberley Clark / Scott Paper

categories. On the one hand, it is certainly true, from a customer viewpoint, that the overall perception and price of products belonging to a premium range can be quite substantially different from the ones of a mainstream or lower end product. Indeed, the "positioning" of a certain branded product by its supplier will normally reflect such perceptions. On the other hand, a number of third parties (customers and suppliers) agreed with the parties in that it would not be meaningful for antitrust purposes to make any such distinction. Moreover, none of those in favour of defining separate markets according to qualities have been able to supply information that would support a departure from the overall perception that price ranges across the quality categories follow a continuum, without clear break points, and that differences across the segments are blurred by promotional activities.

17. In the light of the above, for the purpose of this case, the different quality categories are not deemed to form separate relevant product markets. Nevertheless, on the basis of the above mentioned findings, an appropriate assessment of the merging parties' market power will require that due consideration is given to their strengths in the various quality segments, relative to that of their competitors.

Channels of distribution of prepared petfood

18. The parties contend that prepared petfood industry is characterised by the broad range of retail outlets where prepared petfood is available to the consumer. These outlets can be split into two general categories: A) grocery outlets, in particular the major supermarket chains; and B) specialist outlets, which include a wide variety of stores, for example pet shops and pet superstores, veterinarians, breeders, garden centres, rural stores and DIY outlets. According to the parties, grocery and specialist outlets display a number of characteristics differentiating them from each other.
19. At the outset, it must be noted that the term "Specialty" outlets include a vast array of shops that do not somehow "specialise" in pet food. Outlets such as DIY shops, farmer shops and garden centres etc clearly do not specialise in pet food. Some other outlets in the Specialty channel are clearly closer to pet food, but even for them sales of pet food are ancillary to their other activities (a veterinary practice, selling pets etc). The specialist outlets are therefore a heterogeneous group of retail outlets that can present very different size and scope of products.
20. In *Nestlé/Ralston Purina*, the Commission did not exclude the possibility that petfood products sold through grocery or specialist stores may form separate relevant markets, although the Commission did not find it necessary to decide on this question. Nevertheless, for the purpose of that decision, an assessment of the competitive impact of the transaction was carried out in both channels of distribution. In the context of the present case, the parties generally share the previous approach of the Commission, in that they do not claim the existence of separate relevant markets, but they state that the existence of different types of outlets and distinct products for these types of outlets should be taken into account in assessing the distinct competitive impact of the merger within the relevant markets.
21. In the same way as in *Nestlé/Ralston Purina*, the market investigation has not provided a clear cut answer to this issue. There exists a number of products and brands owned by the largest corporations which mainly focus in the grocery segment or have started in the grocery segment and which are sold in both channels with similar and/or comparable prices and characteristics. On the other hand, there also exist brands and products, to a

large extent owned by smaller suppliers, which are only marketed in the specialist segment. The latter aim essentially at capturing customers with higher requests in terms of health/nutritional values of the products, and in terms of professional advice and who are thus less likely to be price-sensitive. This feature would *prima facie* reflect a certain differentiation between pet-owners within the demand-side.

22. However, it does not seem that these elements could justify the identification of separate relevant markets. The market investigation has shown that a similar range of brands and quality levels is sold in the grocery and specialist channels allowing substitution between the two channels. Shoppers have significant opportunities to purchase pet food products in either channel and do so on the basis of the usual competitive factors (quality, price etc). This is confirmed by the sales and marketing strategies of most pet food manufacturers which aim at attracting customers regardless of the distribution channel. This is, for example, reflected in much of the marketing expenditure, particularly TV advertising. This applies equally to a company such as Mars with its major focus in the grocery channel, seeking to attract customers who make a significant number of purchases in the specialist channel, and to a company such as Iams (Procter & Gamble) with its historic position in the specialist channel and which sought to attract customers who might otherwise shop in the grocery channel. Some suppliers have also proven that brands are transferable between channels of distribution (with customer shifts occurring across the two channels themselves)⁵.
23. In the light of the above, for the purposes of this case, it is concluded that the products sold through the two channels of distribution form an overall market, in which alternative routes exist to reach the end consumer (the pet-owner).

Snacks and treats and accessories

24. In addition to petfood, Mars also provides snacks, treats and complete diets for cats, dogs, cat milk, a wide range of pet care products and accessories items, cat litter, other products such as cage birds, aquarium fish etc. No overlaps occur in respect of these products, which, in any event, in the previous Commission's practice, have been considered (due to characteristics, price and intended use) distinct from dog and cat food.

RELEVANT GEOGRAPHIC MARKETS

25. In *Nestlé/Ralston Purina* the Commission has concluded that, at the retail level (i.e. the level of distributors/ wholesalers), the prepared petfood markets are national in scope. This conclusion stemmed from a wide market investigation that revealed, *inter alia*, that the purchasing pattern even of internationally active retailers is still predominantly national, and that significant price differences and market structures exist between Member States.
26. In their notification, the parties contested this conclusion on the basis of a forward-looking perspective. They claimed that the focus of the prepared petfood industry is

⁵ Example of this is the case of Iams. That was essentially a Specialist brand, in the UK. After the acquisition by Procter & Gamble in 1998, it has been moved also to the Grocery segment (2001), causing customers' shifts between the two channels.

now on supplying not nationally, but internationally, whether it is the large global players adopting pan-European strategies, and for smaller suppliers who are exploiting the opportunities offered by the single market to supply their products in several countries. Furthermore they claim that large retailers (especially in grocery), many of whom have made very significant cross-border acquisitions, are now increasingly operating internationally and seeking to source their supplies on an international basis. Concerning the specialist outlets, as they continue to grow, they will also increasingly source on a wider than national basis.

27. The market investigation has largely confirmed the conclusion that markets are still national in scope (cf. *Nestlé/Ralston Purina*). For the majority of respondents, purchasing patterns of demand are still essentially national as concerns the main grocery retailers, whilst they are nearly always national or even sub-national, as concerns the specialty retailers. All the other elements taken into account from the case *Nestlé/Ralston Purina* have also been confirmed. In particular, price differentials both at distribution level and at retail level, whilst less pronounced than some years ago, still reflect domestic patterns and vary in a significant way across the Member States. The distribution of suppliers is also mainly organised, even by the largest corporations, on a national basis, especially in order to take into account the complexity of the Specialty segment customers. Therefore, in the light of the above, the geographic dimension of the relevant product markets is national-wide.

VI. COMPETITIVE ASSESSMENT

Methodology issues

28. In preparing the notification, the parties evaluated third party databases (*Euromonitor*) as a potential source of data. However, they claim that an analysis of *Euromonitor* confirmed that due to some significant errors in *Euromonitor*'s understanding, it was not a reliable source of information on petfood sales, particularly at a national level. As a result the parties elaborated an internal basis for estimating market size and market shares. The market size and market share estimates provided in the notification rely on Mars' knowledge of sales through grocery outlets (based on grocery retail audits) and on Royal Canin's knowledge of the sales through specialist outlets.
29. This methodological exercise has been carefully checked by the Commission in the course of the market investigation. This complex exercise revealed, in essence, that the parties' estimates as concerns the Grocery segment are quite reliable, whereas some doubts and inconsistencies persist as far as the Specialty segment and, therefore, the total market size are concerned. The Commission has reconstructed the market sizes through the sales data of the main competitors in each relevant market, namely Nestle Ralston Purina, Procter & Gamble (IAMS) and Hill's. Together with the merging parties, the above mentioned competitors represent between 70% and 90% of the total market sales according to the national market considered.

Introductory issues

30. Based on this methodology for the calculation of market shares, the parties claim that the merger does not raise serious competition concerns, given *inter alia* the dynamic and competitive nature of the market. In essence, they state that the business focus of the merging parties is largely complementary. Royal Canin's business is primarily in the supply of dry petfood with health/nutritional characteristics that are sold through

specialist outlets, while Mars main focus has historically been in wet products sold primarily in grocery outlets.

31. About [85-95]% of Mars sales of prepared petfood by value in Europe are made through grocery outlets; the other [5-15]% are sales through specialist outlets. Of Mars' sales made through the specialist outlets, about [80-90]% by value concern grocery products and [10-20]% concern products or brands dedicated to specialist outlets. By contrast, [80-90]% of Royal Canin's branded sales by value in Europe are made through specialist outlets and [90-100]% of those sales are sales of products dedicated to specialist outlets; [10-20]% of Royal Canin's branded sales by value in Europe are made through grocery outlets.
32. The areas of overlap between Mars and Royal Canin are in the supply of dry industrial (or prepared) dog and cat food. Royal Canin does not produce wet petfood. The market investigation and the assessment therefore focussed on these horizontal overlaps.

Affected markets

33. Based on the parties' methodology, the affected market are the supply of dry industrial (or prepared) dog food and dry industrial (or prepared) cat food at EU level and at national level for several Member States.
34. The tables below show an estimate of the market size provided by the parties for the affected markets based on their own methodology. Value estimates are given in retail sales value (RSV) for 2000.

EU Market Size – 2000 (volume and value estimates at retail level, RSV)

Dry prepared dog food			Dry prepared cat food		
	Volume (thousand T)	Value (€ million)		Volume (thousand T)	Value (€ million)
Grocery	[...]	[...]	Grocery	[...]	[...]
Specialist	[...]	[...]	Specialist	[...]	[...]
Total	[...]	[...]	Total	[...]	[...]

35. The table below summarises the combined market shares of the parties at EU and at Member States level, based on the parties' methodology, outlining the addition of market share resulting from the proposed transaction:

DRY DOG FOOD

	Grocery			Specialist			Total		
	Mars	RC	M+RC	Mars	RC	M+RC	Mars	RC	M+RC
Austria	[40-55]	[0-10]	[45-55]	[25-35]	[1-10]	[30-40]	[30-40]	[1-10]	[35-45]
Belgium	[10-25]	[5-15]	[30-40]	[5-15]	[25-35]	[35-45]	[10-20]	[20-30]	[35-45]
Denmark	[35-45]	[5-15]	[45-55]	[1-10]	[1-10]	[5-15]	[10-20]	[5-15]	[15-25]
Finland	[25-35]	[0-10]	[25-35]	[10-20]	[1-10]	[15-25]	[20-30]	[1-10]	[20-30]
France	[15-25]	[15-25]	[30-40]	[1-10]	[35-45]	[45-55]	[5-15]	[25-35]	[35-45]
Germany	[50-60]	[0-10]	[50-60]	[10-20]	[15-25]	[35-45]	[10-30]	[10-20]	[35-45]
Greece	[45-55]	[0-10]	[45-55]	[1-10]	[5-15]	[15-25]	[5-15]	[5-15]	[15-25]
Ireland	[35-45]	[0-10]	[35-45]	[25-35]	[10-20]	[40-50]	[35-45]	[1-10]	[40-50]
Italy	[15-25]	[1-10]	[15-25]	[1-10]	[15-25]	[20-30]	[5-15]	[10-20]	[15-25]
Netherlands	[15-25]	[0-10]	[15-25]	[1-10]	[15-25]	[20-30]	[5-15]	[10-20]	[20-30]
Portugal	[25-35]	[1-10]	[25-35]	[1-10]	[5-15]	[5-15]	[10-20]	[1-10]	[15-25]
Spain	[5-15]	[0-10]	[5-15]	[1-10]	[5-15]	[10-20]	[1-10]	[5-15]	[5-15]
Sweden	[25-35]	[5-15]	[30-40]	[5-15]	[10-20]	[20-30]	[10-20]	[5-15]	[25-35]
UK	[25-35]	[0-10]	[25-35]	[10-20]	[1-10]	[15-25]	[15-25]	[1-10]	[20-30]
EU	[20-30]	[5-15]	[30-40]	[5-15]	[15-25]	[25-35]	[10-20]	[10-20]	[25-35]

DRY CAT FOOD

	Grocery			Specialist			Total		
	Mars	RC	M+RC	Mars	RC	M+RC	Mars	RC	M+RC
Austria	[60-70]	[0-10]	[60-70]	[10-20]	[5-15]	[20-30]	[45-55]	[1-10]	[50-60]
Belgium	[35-45]	[0-10]	[35-45]	[1-10]	[15-25]	[20-30]	[20-30]	[5-15]	[30-40]
Denmark	[35-45]	[0-10]	[35-45]	[1-10]	[5-15]	[5-15]	[10-20]	[5-15]	[15-25]
Finland	[25-35]	[0-10]	[25-35]	[1-10]	[5-15]	[10-20]	[15-25]	[1-10]	[15-25]
France	[10-20]	[0-10]	[10-20]	[1-10]	[25-35]	[25-35]	[5-15]	[5-15]	[15-25]
Germany	[55-65]	[0-10]	[55-65]	[5-15]	[25-35]	[35-45]	[30-40]	[10-20]	[45-55]
Greece	[35-45]	[0-10]	[35-45]	[1-10]	[10-20]	[15-25]	[15-25]	[5-15]	[25-35]
Ireland	[40-50]	[0-10]	[40-50]	[1-10]	[1-10]	[5-15]	[30-40]	[1-10]	[30-40]
Italy	[15-25]	[0-10]	[15-25]	[1-10]	[25-35]	[30-40]	[10-20]	[5-15]	[25-35]
Netherlands	[25-35]	[0-10]	[25-35]	[5-15]	[15-25]	[25-35]	[15-25]	[5-15]	[25-35]
Portugal	[25-35]	[0-10]	[25-35]	[1-10]	[5-15]	[5-15]	[10-20]	[1-10]	[15-25]
Spain	[5-15]	[1-10]	[5-15]	[1-10]	[10-20]	[15-25]	[1-10]	[5-15]	[10-20]
Sweden	[25-35]	[0-10]	[25-35]	[1-10]	[10-20]	[15-25]	[10-20]	[1-10]	[20-30]
UK	[15-25]	[0-10]	[15-25]	[5-15]	[11-20]	[5-15]	[10-20]	[1-10]	[15-25]
EU	[25-35]	[0-10]	[25-35]	[1-10]	[15-25]	[20-30]	[15-25]	[5-15]	[20-30]

GENERAL ANALYSIS

Competitors in industrial (or prepared) petfood

36. The market for petfood suppliers is concentrated, with some players active on a global or EU-wide basis, whilst there are a large number of small manufacturers who are active only on a national or regional basis. The level of concentration is higher in the Grocery segment, lower in the Specialty segment. Consequently, barriers to entry appear to be

high at the level of grocery outlets, whilst they are certainly lower (but still significant) in the Specialty channel. Whilst the large suppliers produce a broad range of products, the small suppliers tend to be more specialised, and often produce only a small range (sometimes in addition to own label supply).

37. Some distinction can be made among the existing pet food producers. The global players are: Mars, Royal Canin, Nestlé-Ralston Purina, Procter & Gamble (Iams), Hill's (Colgate-Palmolive). In addition, global companies, but whose EU presence is limited are Heinz (USA), Doane (USA). There is also a relatively large number of smaller players with regional or national focus (active within the EU), including own-label producers: Adolf Rupp (Austria), Agrolimen (SPA), Butchers Pet Care (UK), Continentale Nutrition (FRA), Leo (DEN), Doggy (SWE), Provimi (Eridania Beghin-Say, FRA), Stockmeyer (GER), Vitakraft (GER) and others. Moreover the parties claim that the Specialty segment is populated with a big number of local suppliers which add to the competitive fringe.
38. In essence, the parties claim that the global players and the fringe of smaller companies represent an array of viable actual competitors in the supply of prepared petfood in the various relevant markets. In addition, as far as the Grocery segment is concerned, they outline that concentration has taken place also at the buyer's level, therefore retailers possess significant buyer power.
39. As is shown in the above table, the proposed merger would lead to significant addition of market shares in several Member States. Given the particularly strong impact in these markets, the investigation has focussed on the following countries: **France** (dry dog: combined market share [35-45]%), **Belgium** (dry dog: combined market share [35-45]%), **Germany** (dry dog: combined market share [35-45]%, dry cat: combined market share [45-55]%), **Austria** (dry dog: combined market share [35-45]%, dry cat: combined market share [50-60]%), **Ireland** (dry dog: combined market share [40-50]%).
40. For the other Member States, the investigation has not indicated any reason to enter into a more detailed assessment.

COUNTRY ASSESSMENT

FRANCE

41. The market investigation has shown that the proposed transaction would lead to serious doubts as concerns the market for dry dog food.

France, dry DOG food

Dry Dog France	Retail sales value year 2000 in M EUR			% market share in 2000		
	Grocery	Specialist	Total	Grocery	Specialist	Total
Mars	[...]	[...]	[...]	[15-25]%	[5-10]%	[5-15]%
Royal Canin	[...]	[...]	[...]	[15-25]%	[35-45]%	[25-35]%
Mars + RC	[...]	[...]	[...]	[30-40]%	[45-55]%	[35-45]%
Nestle/Ralston Purina	[...]	[...]	[...]	[25-35]%	[10-20]%	[15-25]%
Procter & Gamble	[...]	[...]	[...]	[0-10]%	[1-10]%	[1-10]%
Hill's	[...]	[...]	[...]	[0-10]%	[5-15]%	[1-10]%
Own Label	[...]	[...]	[...]	[25-35]%	[5-15]%	[15-25]%
Canicaf (CAF Appro)	[...]	[...]	[...]	[0-10]%	[5-15]%	[1-10]%
Others	[...]	[...]	[...]	[5-15]%	[5-15]%	[5-15]%
Total	[...]	[...]	[...]	100%	100%	100%

Source: Parties

Market structure

42. According to the parties' best estimates, as shown in the table below, the market size in France is such that the Specialty segment is bigger in terms of sales value (it represents more than [50-60]% of the total dry dog market over the last three years) than the Grocery segment. Furthermore the Specialty segment is also the fastest-growing (+[10-20]% over the last three years) in an overall growing dry dog food market. The growth of the dry dog market is part of the overall increasing trend of dry pet food (both cat and dog), realised mainly at the expense of wet petfood. In fact, wet pet food (both cat and dog) has known a significant decrease in France over the last years.

Dry Dog Food	FRANCE					
	1998	1999	2000	1999/1998 (% change)	2000/1999 (% change)	2000/1998 (% change)
Grocery	[...]	[...]	[...]	[1-10]%	[1-10]%	[5-15]%
Specialist	[...]	[...]	[...]	[1-10]%	[5-15]%	[10-20]%
Total	[...]	[...]	[...]	[1-10]%	[5-15]%	[10-20]%

Source: Form C/O, values (at retail level, RSV) in million €

43. In this context, it must be underlined that the merging parties ([35-45]% in the total market) will be particularly strong in the increasingly important Specialty segment, where, post transaction, they will achieve a [45-55]% market share. Nestlé-Ralston Purina, the second player, will have roughly half of the size of the merged entity with respect to the total market, but less than one third in the Specialty segment. Post transaction, it is doubtful whether Nestlé-Ralston Purina would be in a position to act as a significant competitive constraint vis-à-vis the merged entity. Furthermore, as set out in greater detail below, the merged entity would have an even stronger position relative to that of Nestlé-Ralston Purina as concerns brand image and ability to influence retailers and opinion makers. For these reasons, Nestlé-Ralston Purina would be unlikely to represent a sufficient restraint to Mars/Royal Canin.
44. As concerns other competitors, the Commission's verifications have generally confirmed the relative positions among suppliers to be in line with the parties' predictions. The most important exception to this appears to relate to CAF Appro, (now called Invivo, Neodis Sas), a domestic competitor, which seems to have significantly smaller sales than assumed by the parties. Therefore, this company appears to represent even less of a significant competitive constraint vis-à-vis the merged entity than indicated by the above figures. Nor is it likely that Procter & Gamble ([1-10]% in the total market, [1-10]% in Specialty), or Hill's ([1-10]% in the total market, [1-10]% in Specialty), would represent significant competitive constraints for the merging parties.
45. Furthermore, the actual strength of private label ([10-20]% over the last three years in the total market and [25-35]% in the grocery segment) must not be overestimated. As noted above, private label competes more directly with products in the lower quality segment sold through the grocery channel. Private label, however, has much less impact in the areas where the parties' brands are particularly strong, namely in the higher qualities and in the Specialty segment. The private label market share in Specialty has been [5-15]% over the last three years, and cannot be considered to represent a significant restraining force on the parties. This, in particular, has been confirmed by the market investigation.

46. In this context, it's worth noting that, post-transaction, the parties will own the most important individual brands in terms of share of sales of branded products. Overall, the merged entity would account for about half of all sales of all branded products (whether measured on the overall market or in the Grocery/Speciality segments).
47. The analysis of the leading brands reveals that post-merger, on the total market, the parties would hold six of the top ten best selling individual brands - pre-merger Royal Canin holding four - including the number one brand (Royal Canin's premium brand Size Nutrition). In the Speciality segment the parties would combine seven out of the ten top selling brands - pre-merger Royal Canin holding five - including the first best selling brand Size Nutrition, and the third best selling brand, Sélection. In the Grocery segment the parties' position would be strong with six of the top ten brands, pre-merger Royal Canin holding three brands in the top ten list.
48. Nestlé-Ralston Purina's focus on the Grocery segment is reflected in the fact that it has four of the top ten selling brands in this part of the market. No other supplier has a brand in the top ten in Grocery. Nestlé-Ralston Purina, however, only has one brand that qualifies for the top ten in Speciality (the premium brand Purina Pro Plan). Among the other competitors, Hill's (with the premium brand Science Plan) and Procter & Gamble (with the premium brand Eukanuba) each have one brand in the top ten in Speciality, but only the Hill's brand belongs to the top ten for brands present in the total market.
49. The merged entity's strengths as regards top selling brands is likely to add to the market power that stems from its market shares. This effect seems to be particularly important in the Speciality channel, where none of its competitors have more than one top-ten brand.

Unrivalled influence on retailers and opinion makers

50. The strength of the combined entity is further enhanced, by the fact that Mars/Royal Canin will be in an unrivalled situation, vis-à-vis its competitors, also to shape the future market trends. In this respect, it is worth noting that Royal Canin historically is seen to have largely developed the use of health/nutritional pet foods in France. In this process it has developed long-standing relationship with most speciality outlets, and is seen as particularly influential with the opinion formers, such as breeders and vets.
51. The number of such dog breeders in France is particularly high (around 28 000 dog breeders⁶), and, according to some competitors, these breeders are deemed to represent around [5-15]% of the total dry dog food sales and [10-20]% of the Specialty dry dog food sales respectively. Royal Canin has a strong link with this sector, and - according to some competitors - has business relationships with at least half of the French breeders. Irrespective of the precise number of breeders and of the precise number of business relationships that Royal Canin has established in the past, it nevertheless appears that this is substantial. These professional and/or business links will add to the strengths of the merged entity.

⁶ According to an information provided in the website of the federation of French breeders "Société Centrale Canine", www.scc.asso.fr/activites.php. The parties instead indicate the number of dog breeders in France as being 12 000.

52. Furthermore, it has been suggested that Mars' strength could be enhanced by the fact that it combines a large portfolio of brands - which will be even larger post merger - with by far the most extensive role of “category manager” in top grocery outlets (in several European countries and also in France). In its capacity as “category manager”, Mars typically will provide a certain direction and guidance to retailers on assortments, promotions, pricing and logistic strategies.

Lack of competitive constraints in the dry dog food market

53. Beyond the static picture that appears from the market share analysis, it can be stated that the combined position of Mars/Royal Canin does not appear to face sufficient competitive constraints. The reasons for such a finding include the existence of significant brand loyalty from pet owners. Consistently with the above description of the strong brand position of the parties, the investigation has confirmed that their main brands are considered “must-stock” ones for retailers in both Grocery and Speciality segments. As in many other consumer products, the parties’ commercial policy is largely based on rebates or discounts granted to retailers on the basis of the achievement of performance targets in terms of sales volume. These sums are usually paid at the end of the year, when performance against targets is reviewed, and can have a significant influence on the retailers’ commercial margins on the products in question. The influence of such policies can be particularly strong on smaller retailers. In particular, Mars and Royal Canin have structured these rebates or bonuses vis-à-vis retailers in order to achieve not only objectives such as sales growth of single product lines, but also overall performance concerning the “actual achievement of stocking and range commitments and fulfilment of agreed promotions”. These range commitments are in place also in the Specialty segment (referred in particular to sales of health/nutritional products and the support of new product launches).
54. Therefore, considering the must-stock nature and broad product portfolio of the parties, the proposed transaction may create additional possibilities to increase the dependency of retailers. Consequently, the room for listing products from other competitors may become further reduced. Moreover, in this context, the purchasing power of retailers would be reduced, making it increasingly difficult to, for example, de-list Mars and Royal Canin brands⁷ (particularly in Specialty), as it would affect the performance targets to which the granting of such rebates or bonuses is linked. Ultimately, it appears likely that the proposed concentration would give the retailers (mainly in the Specialty segment) further incentive to list brands belonging to the merging parties, at the expense of other suppliers.
55. The market investigation has also confirmed that the entry barriers (especially when referred to entry with branded products) are significant. Such barriers relate to the time needed to establish a sufficient brand awareness and the investment costs associated with creating this brand awareness among retailers and consumers. Respondents to the Commission's investigation generally believe that significant new entries are unlikely, or in any event, not expected.

⁷ In this respect, the market investigation indicated that an eventual de-listing is most likely temporary, whenever there exist must-stock brands, as sooner or later these brands have to be re-listed by the retailers, in response to requests by end-consumers.

56. For the sake of completeness it should be stated that entry with private label products, while significantly easier than with branded products, cannot be seen as a significant competitive constraint vis-à-vis branded products. This element proves to be true both in Grocery and, *a fortiori*, in the Specialty segment, and, in particular, private label is not deemed to be able to sufficiently restrain the wide portfolio of brands which the parties will have across the channels of distribution.

Strong position in the neighbouring wet dog food market

57. Mars is already by far the leading player in the neighbouring market of wet dog food, where, all segments included, it achieves (on the basis of the parties' data) a market share of [45-55]%. Post transaction, the combined entity would be able to offer products and brands holding a leading position across the entire spectrum of dog food products (wet and dry), spanning across the market channels (grocery and specialist) and across the quality spectrum, going from the bottom range to the premium quality. Therefore, the merger would strengthen the portfolio of the merging parties. The resulting combined portfolio would add considerable price flexibility and marketing opportunities to Mars/Royal Canin, in a way that would protect the merged entity from market pressures in any individual segments.

Conclusion

58. Based on the above, the proposed transaction raises serious doubts as to its compatibility with the common market as far as its effects on the French dry dog food market are concerned.

GERMANY

59. For Germany, the Commission's market investigation essentially confirmed the sales figures presented by the notifying parties. Figures for specialist outlets seem robust due to the availability of statistics from an independent market research institute, GfK.
60. Dry cat and dry dog food products are the fastest growing pet foods in Germany, with dry cat food starting from a relatively low base of [10 to 20]% of the total cat food market.

Sales in Germany at retail value [million €]	1998	2000	Share of overall cat or dog food sales in 98/2000	Change 1998/2000
Dry dog	[...]	[...]	[40-50]%	+ [1-10]%
Wet dog	[...]	[...]	[50-60]%	- [1-10]%
Total dog	[...]	[...]	100%	+ [1-10]%
Dry cat	[...]	[...]	[10-20]%	+ [15-25]%
Wet cat	[...]	[...]	[80-90]%	+ [1-10]%
Total cat	[...]	[...]	100%	+ [1-10]%

Source: elaboration on Parties' data

61. The German grocery segment is highly concentrated and the size of stores is increasing. According to the parties' figures, the top 6 chains account for 70% of the market (Edeka, Rewe, Markant, Metro, Spar, Tengelmann). 10% of grocery outlets account for over 50% of total turnover. Own/private label products account for almost [25-35]% of

grocery sales and have been growing in recent years ([45-55]% in dry dog, [5-15]% in dry cat). Hard discounters such as Aldi or Lidl (20% of overall pet food sales) offer no branded products but only own/private label. There are high own/private label quality products and some retailers started building their own “exclusive” brands (e.g. ProCat, ProDog in Rewe; Julia, O’Lacy in Metro).

62. Sales in specialist outlets take place mainly in pet shops (2400, 60% of sales in specialty), of which 40% sales in large-size shops (pet superstores), including two prominent chains: Fressnapf (340 outlets) and Futterhaus (80 outlets). The remaining 40% of sales in specialist outlets happen in DIY-shops, garden-centres (1050), rural outlets (e.g. Raiffeisen), veterinarians (3300), breeders (10000) and others. The parties expect especially pet superstores, DIY and garden centres to continue growing in the future. According to other market research, pet-superstores have been the fastest growing, more than doubling in turnover between 1995 and 1999.
63. The split between the two categories grocery and specialist outlets shows similar sales volumes for dry cat food in the year 2000. In contrast, dry dog food was sold 72% through specialist outlets.
64. Mars, over recent years, had persistently strong sales in all categories of pet food, dry and wet, cat and dog, mainly in grocery but also in non-grocery outlets. Royal Canin sells only *dry* pet food for cats and dogs and only in non-grocery outlets. According to the notification, post transaction, the combined market share of Mars and Royal Canin would be some [35-45]% for dry dog food and [45-55]% for dry cat food.

German dry dog food market

65. The following table shows the relative positions of the merging parties in the year 2000 and of their main competitors broken down in the two distribution channels.

Dry Dog Germany	Retail sales value year 2000 in M EUR			% market share in 2000		
	Grocery	Specialist	Total	Grocery	Specialist	Total
Mars	[...]	[...]	[...]	[50-60]%	[10-20]%	[20-30]%
Royal Canin	[...]	[...]	[...]	0%	[15-25]%	[10-20]%
Mars + RC	[...]	[...]	[...]	[50-60]%	[35-45]%	[35-45]%
Nestle/Ralston Purina	[...]	[...]	[...]	[10-20]%	[5-15]%	[5-15]%
Procter & Gamble	[...]	[...]	[...]	[0-10]%	[10-20]%	[5-15]%
Hill's	[...]	[...]	[...]	[0-10]%	[1-10]%	[1-10]%
Own Label	[...]	[...]	[...]	[25-35]%	[1-10]%	[5-15]%
Interquell (Happy Dog)	[...]	[...]	[...]	[0-10]%	[1-10]%	[1-10]%
Others	[...]	[...]	[...]	[1-10]%	[20-30]%	[15-25]%
Total	[...]	[...]	[...]	100%	100%	100%

Source: Parties

66. Mars is the uncontested market leader in grocery outlets in Germany ([50-60]%). In specialist outlets Royal Canin is the market leader ([15-25]%), followed by Mars and Procter & Gamble (each [10-20]%), and Nestlé-Ralston Purina with [5-15]%. The acquisition thus makes the parties accumulate market share of the merged party ([35-45]%) more than twice as strong as the next big competitor Procter & Gamble ([10-20]%).
67. The analysis of the leading brands reveals that post-merger, on the total market, the parties would hold five of the top ten best selling individual brands (3 current Mars brands and 2 of Royal Canin), including three of the four biggest brands (Pedigree, Chappi and Size Nutrition). An analysis of the leading brands by segments reveals that

post-merger the parties would have a very strong presence in specialist outlets where Royal Canin adds Selection and Club to the strong Mars brands Pedigree and Chappi. The parties' presence is therefore stronger as regards mainstream brands compared to their position in the premium area, where Procter & Gamble hold the strongest brand: Eukanuba.

German dry cat food market

68. In the dry cat food market in Germany the parties' combined market shares are very high, but in the specialist segment there are strong competitors, as the following table shows:

Dry Cat Germany	Retail sales value year 2000 in M EUR			% market share in 2000		
	Grocery	Specialist	Total	Grocery	Specialist	Total
Mars	[...]	[...]	[...]	[55-65]%	[5-15]%	[30-40]%
Royal Canin	[...]	[...]	[...]	0%	[25-35]%	[10-20]%
Mars + RC	[...]	[...]	[...]	[55-65]%	[40-50]%	[45-55]%
Nestlé/Ralston Purina	[...]	[...]	[...]	[5-15]%	[1-10]%	[1-10]%
Procter & Gamble	[...]	[...]	[...]	[0-10]%	[20-30]%	[5-15]%
Hill's	[...]	[...]	[...]	[0-10]%	[15-25]%	[5-15]%
Own Label	[...]	[...]	[...]	[25-35]%	[0-10]%	[15-25]%
Others	[...]	[...]	[...]	[1-10]%	[5-15]%	[1-10]%
Total	[...]	[...]	[...]	100%	100%	100%

Source: Parties

69. As in the dry dog food market, in dry cat food Mars is the uncontested leader in grocery outlets. In specialist shops Royal Canin is market leader ([25-35]%) having grown at around [25-35]% per year between 1998 and 2000. However, Procter & Gamble ([20-30]%) and Hill's ([15-25]%) constitute strong competitors. Mars is in fourth place ([5-15]%). The acquisition would anyhow make the parties accumulate high sales ([40-50]%).
70. The analysis of the leading brands reveals that post-merger, on the total market, the parties would hold five of the top ten best selling individual brands (4 current Mars brands and 1 of Royal Canin), including the three biggest. Royal Canin's Feline Nutrition is the strongest brand in specialist outlets, while Royal Canin's Selection/Club is relatively small. The two Mars brands Whiskas and Kitekat are clear market leaders (also in specialist outlets). Finally, Brekkies is a strong brand in grocery outlets, but commands also some [1-10]% market share in specialist outlets, while Advance (Mars' premium brand) is small.

Overall assessment of the German markets

71. Aside from the leading market shares of Mars and Royal Canin and their command of several of the strongest brands, the Commission assesses further elements when considering the likelihood of this concentration to create or strengthen a dominant position in the German markets of dry prepared cat and dog food products. The following considerations take account of the reactions from German competitors in the investigation.
72. Due to its outstanding position and success on the German pet food markets, in particular when considering branded products only (branded products represent over 75% of sales in grocery outlets), Mars wields also substantial marketing strength. Indeed, in the year 2000, Mars spent some 74 million € on media advertisement for pet food products (Nielsen S&P, 2001), which was 10 to 15 times more than its biggest

competitors. Mars also affords significantly bigger sales forces in these pet food markets ([...]). Royal Canin, on the other hand, has seen the most successful sales developments in specialist outlets, relying on a high number of specialist sales forces that focus on advice and training to retailers. As outlined for France, the concentration through the combined strengths of Mars and Royal Canin would lead also in Germany to unrivalled influence on retailers and opinion makers.

73. Moreover, the market investigations confirm also for Germany the limits for other suppliers to exert competitive pressure on the market position of a combined entity. This derives not only from the general brand loyalty displayed by pet owners but also from the way large corporations can bargain to conclude one-year or longer supply contracts that include volume rebates and sales targets. On the side of large grocery retailers “listing-fees” compensate their efforts in allocating shelf-space. High barriers to entry into the branded product markets stem from the significant investments necessary to create brand awareness and trigger buyer interest in new products. Thus customers and competitors consistently stated in the market test that no new entries are expected.
74. Finally, as for France, the Commission assessed the impact resulting from the strong position of Mars in the neighbouring *wet* pet food markets. In particular, in the market for wet cat food, which accounts for almost three quarters of pet food sales for cats, Mars reached a [45-55]% market share in the year 2000, made up of [45-55]% in grocery outlets and [35-45]% in specialist outlets.
75. High market shares of the merged entity in the affected markets of dry cat food ([45-55]%) and dry dog food ([35-45]%), extremely strong brand positioning and the further elements considered above lead the Commission to conclude that the notified concentration raises serious doubts as to its compatibility with the common market in the German markets for dry cat and dog food products.

AUSTRIA

76. The Austrian markets of prepared pet food products are about one-tenth the size of the German markets. According to the notification, the combined market share of Mars and Royal Canin will be, based on year 2000 data, [35-45]% for dry dog food and [50-60]% for dry cat food products. The verifications made by the Commission have by and large confirmed the parties' estimates, and indicate, if anything, that Mars' and Royal Canin's market shares may have been slightly overestimated, whereas those of Procter & Gamble may have been somewhat underestimated.
77. The Austrian grocery segment is even more concentrated than the German, as Rewe, Spar and Adeg account for 79% of both grocery sales and of dry prepared dog and cat food sales. Unlike in Germany, [70-80]% of all prepared pet food sales are through this channel, but with non-grocery growing. Own/private label products account for almost [25-35]% of grocery sales and have been growing in recent years. As in Germany, there are hard discounters, such as Aldi or Lidl offering only own/private label. Sales in specialty outlets are mainly in pet shops and pet superstores (including Fressnapf), DIY-shops, garden-centres, rural outlets, veterinarians, breeders and others.

Austrian dry dog food market

Dry Dog Austria	2000			2000		
	Grocery	Specialist	Total	Grocery	Specialist	Total
Mars	[...]	[...]	[...]	[45-55]%	[25-35]%	[30-40]%
Royal Canin	[...]	[...]	[...]	0%	[1-10]%	[1-10]%
Mars + RC	[...]	[...]	[...]	[45-55]%	[30-40]%	[35-45]%
Nestle	[...]	[...]	[...]	[1-10]%	[1-10]%	[1-10]%
Ralston Purina	[...]	[...]	[...]	[0-10]%	[1-10]%	[1-10]%
Procter & Gamble	[...]	[...]	[...]	[0-10]%	[25-35]%	[15-25]%
Hill's	[...]	[...]	[...]	[0-10]%	[1-10]%	[1-10]%
Own Label	[...]	[...]	[...]	[25-35]%	[1-10]%	[5-15]%
Rupp	[...]	[...]	[...]	[15-25]%	[1-10]%	[5-15]%
Others	[...]	[...]	[...]	[1-10]%	[20-30]%	[15-25]
Total	[...]	[...]	[...]	100%	100%	100%

Source: Parties

78. An analysis of the market shares of competitors in the year 2000 shows that Mars is the uncontested leader in the grocery channel. There is, however, one strong national competitor, Rupp, achieving [5-15]% market share in the year 2000. Likewise, in the specialty channel, Mars is very strong, but another global competitor, Procter & Gamble, is clearly the market leader. As Royal Canin does not sell in the grocery channel and has only very limited sales in specialty outlets, the increase of market share due to the concentration will be merely [1-10]%.

Austrian dry cat food products market

Dry Cat Austria	2000			2000		
	Grocery	Specialist	Total	Grocery	Specialist	Total
Mars	[...]	[...]	[...]	[60-70]%	[10-20]%	[45-55]%
Royal Canin	[...]	[...]	[...]	0%	[5-15]%	[1-10]%
Mars + RC	[...]	[...]	[...]	[60-70]%	[20-30]%	[50-60]%
Nestlé	[...]	[...]	[...]	[10-20]%	[30-40]%	[15-25]%
Ralston Purina	[...]	[...]	[...]	[0-10]%	[0-10]%	[0-10]%
Procter & Gamble	[...]	[...]	[...]	[0-10]%	[1-10]%	[1-10]%
Hill's	[...]	[...]	[...]	[0-10]%	[1-10]%	[1-10]%
Own Label	[...]	[...]	[...]	[15-25]%	[0-10]%	[10-20]%
Rupp	[...]	[...]	[...]	[1-10]%	[1-10]%	[1-10]%
Others	[...]	[...]	[...]	[1-10]%	[30-40]%	[5-15]%
Total	[...]	[...]	[...]	100%	100%	100%

Source: Parties

79. The situation in dry cat food is similar to that of dry dog food, except that Mars' position is even stronger in grocery, [60-70]% in the year 2000. Instead of a strong national competitor there is a global competitor Nestlé-Ralston Purina, with [10-20]% market share. In specialty outlets Nestlé-Ralston Purina is even the clear market leader with [30-40]% share in the year 2000 and growing, while Mars is the second player with [10-20]%, but also growing. Royal Canin has [5-15]% of sales in this channel. The merger would thus add a mere [1-10]% total market share to Mars.

Overall assessment of the Austrian markets

80. Despite the important or even high combined market shares of the parties, there are several further elements to consider. First, the impact of the merger on the market shares for the combined entity (plus [1-10]% in the market of dry dog food and plus [1-10]% in the market of dry cat food) would be limited. Secondly, it appears that the merged entity

would be facing relatively strong competitors (cf. figures above). As a third point, one might possibly argue that Austrian grocery retailers hold better relative bargaining positions, given the particularly concentrated nature of the retail markets.

81. In the light of the above assessment the Commission does not have serious doubts that the proposed concentration would create or strengthen a dominant position in the Austrian markets for dry cat and dog food products.

BELGIUM

Dry Dog Belgium	2000			2000		
	Grocery	Specialist	Total	Grocery	Specialist	Total
Mars	[...]	[...]	[...]	[20-30]%	[5-15]%	[10-20]%
Royal Canin	[...]	[...]	[...]	[5-15]%	[25-35]%	[20-30]%
Mars + RC	[...]	[...]	[...]	[30-40]%	[35-45]%	[35-45]%
Nestle	[...]	[...]	[...]	[5-15]%	[1-10]%	[1-10]%
Ralston Purina	[...]	[...]	[...]	[0-10]%	[1-10]%	[1-10]%
Procter & Gamble	[...]	[...]	[...]	[0-10]%	[15-25]%	[10-20]%
Hill's	[...]	[...]	[...]	[0-10]%	[5-15]%	[5-15]%
Own Label	[...]	[...]	[...]	[35-45]%	[1-10]%	[10-20]%
Denkavit	[...]	[...]	[...]	[0-10]%	[1-10]%	[1-10]%
Others	[...]	[...]	[...]	[15-25]%	[15-25]%	[15-25]%
Total	[...]	[...]	[...]	100%	100%	100%

Source: Parties

82. In the dry dog food market, according to the parties' estimates, Mars / Royal Canin will acquire a total market share of [35-45]%, having a slightly higher position in the Specialty segment ([35-45]%). Prior to this concentration Royal Canin was the market leader, whilst Mars shared second place with Procter & Gamble. In particular, Procter & Gamble enjoys a significant position in the Specialty segment with [15-25]% market share. The position of Nestlé-Ralston Purina appears weak ([5-15]% in the total market over the last three years). Hill's is around [5-15]%, as concerns the total market, but has a more significant position in the Specialty segment (around [5-15]%).
83. The Commission's verification has indicated that the relative position of several competitors, including Procter & Gamble is stronger than had been estimated by the parties. Having said this, the combined entity would still be the leading player in the total market as well and in both distribution channels. However, on the basis of the overall strength of Procter & Gamble and, to a lesser extent, other competitors, the concentration will not lead to serious doubts as concerns the Belgian dry dog food market.

IRELAND

Dry Dog Ireland	2000			2000		
	Grocery	Specialist	Total	Grocery	Specialist	Total
Mars	[...]	[...]	[...]	[35-45]%	[25-35]%	[35-45]%
Royal Canin	[...]	[...]	[...]	0%	[10-20]%	[1-10]%
Mars + RC	[...]	[...]	[...]	[35-45]%	[40-50]%	[40-50]%
Nestle	[...]	[...]	[...]	[5-15]%	[5-15]%	[5-15]%
Ralston Purina	[...]	[...]	[...]	[1-10]%	[1-10]%	[1-10]%
Procter & Gamble	[...]	[...]	[...]	[0-10]%	[5-15]%	[1-10]%
Hill's	[...]	[...]	[...]	[0-10]%	[5-15]%	[1-10]%
Own Label	[...]	[...]	[...]	[10-20]%	[1-10]%	[5-15]%
Others	[...]	[...]	[...]	[25-35]%	[15-25]%	[25-35]%
Total	[...]	[...]	[...]	100%	100%	100%

Source: Parties

84. In dry dog food, Mars, which is the leading player with a market share of about [35-45]%, will incorporate Royal Canin, which is the player number three in the market with a market share of around [1-10]%. Therefore, Mars/Royal Canin would achieve a market share of [40-50]%.
85. However, the increase in the total market share is small. Furthermore, Nestlé-Ralston Purina is a significant supplier of dry dog food in Ireland with a market share of [5-15]%. Finally, the market investigation and the reconstruction of the market carried out by the Commission indicates that the parties have significantly underestimated the sales of some of their major competitors. Thus on the basis of the investigation, the parties would still remain the largest player in the overall market, but its lead over the second player will be relatively small. Moreover, the merged entity would only become the third largest supplier to the specialist channel. In view of these facts, the proposed transaction does not raise serious doubts as far as the Irish dry dog food market is concerned.

VII. COMMITMENTS SUBMITTED BY THE PARTIES

86. On 25 January 2002, the Parties offered, pursuant to Article 6(2) of the Merger Regulation, certain commitments to remove the competition concerns identified by the Commission. The proposed commitments were refined and improved on 13 February 2002. The full text of the final commitments is annexed and forms an integral part of this Decision.

A. SUMMARY OF THE COMMITMENTS

DIVESTED BUSINESSES

87. Mars and Royal Canin commit to divest a business with total sales of branded pet food products estimated at €198 million and having an estimated tonnage of 103,000 tonnes (total EU sales) comprising:
- (a) Mars' dry prepared health/nutritional dog and cat food business in all EU Member States under the *Advance* brand currently sold exclusively in specialist outlets;

- (b) Royal Canin's dry prepared health/nutritional dog and cat food business in all EU Member States under the *Premium* brand currently sold exclusively in specialist outlets;
- (c) Mars dry prepared cat food business in all EU Member States (and wet prepared cat food business, if required by the Purchaser) under the *Brekkies* brand, sold in both grocery and specialist outlets and currently having its main focus in Germany;
- (d) Royal Canin's family of grocery brands representing its entire grocery business in the EU, including *Royal Chien, Repas Complet, Repas Equilibre* (currently, with a focus as a French grocery brand);
- (e) Royal Canin's dry prepared dog food businesses in all EU Member States under the *Playdog* brand;
- (f) Royal Canin's entire *own label* grocery business in all EU Member States (if required by the Purchaser);
- (g) *Mars' production facility at La Chappelle*, France, with a capacity of 135,000 tonnes, scope for expansion and the technical capability to produce a full range of dry prepared pet-food products; and
- (h) *Royal Canin's dry production facility at Moulins*, France, with a capacity of 45,000 tonnes and scope for expansion (if required by the Purchaser provided that the Purchaser also acquires the Royal Canin own label grocery business).

MODALITIES OF THE DIVESTITURE

a. Brands to be sold

- 88. The divestment of the *Advance, Premium, Brekkies* and *Playdog* brands will include an absolute assignment of all rights of the Parties in these brands and relevant trademarks in all EU Member States, all product formulae, goodwill, and intellectual property rights.

b. Brands to be licensed

- 89. The divestments will not include the assignment of *Royal Chien, Royal Chat, Royal Dog* and *Royal Cat* brands, which will instead be royalty free licensed for a period of three years from the closing of the deal. The purchaser is therefore supposed to re-brand the products concerned during the period of the license. Furthermore, the Parties undertake not to re-introduce the licensed brands within a period of ten years after the closing of the deal. Nevertheless, the Parties commit to give an absolute assignment of all rights of Royal Canin in the *Repas Complet* and *Repas Equilibre* brands, relevant trademarks and intellectual property rights in all EU Member States.

c. Divestment procedure: Up-front Buyer

- 90. Mars and Royal Canin propose an up-front buyer solution and thus commit to suspend the implementation and the closing of the proposed concentration, as described in

paragraph 3 above, until they have signed or procured the signature of a binding sale and purchase agreement with a Purchaser approved by the Commission.

B. ASSESSMENT OF THE COMMITMENTS

91. The proposed commitments, which have a focus on EU-wide divestitures, can create a competitive platform in term of production, sales and expansion capacity.
92. From a quantitative viewpoint, the proposed remedy package will remove or significantly reduce most of the overlaps in the total market for dry dog in France and for dry dog and cat in Germany (France dry dog: -[5-15]%, Germany dry dog: -[1-10]%, Germany dry cat: -[10-20]%).
93. From a qualitative viewpoint, it can be noted that the proposed commitments cover both channel of distributions (grocery and specialist) and include brands that are present in all of the various quality segments (economy, mainstream and premium). Details of the main findings as concerns each to-be-divested brands are set out below.
94. *Advance* is a premium dry dog/cat brand in the specialist segment, whose reputation and awareness are fairly good.
95. The *Royal Chien* family of brands is a stand-alone business. These brands are sold in grocery outlets and have combined substantial sales.
96. *Premium* (a dry dog/cat brand exclusively sold in specialist outlets) is a stand-alone brand, with a focus on the health/nutritional side of the product spectrum. According to the Commission's investigation, it has a good recognition and a upward quality positioning in the specialist segment, both in France and in Germany.
97. *Playdog* is a stand-alone economy brand in the specialist segment, which does not depend too much on the Royal Canin's corporate name.
98. *Brekkies* is a stand-alone dry/wet cat economy brand with a current focus on the grocery channel, mainly in Germany. In terms of volumes, sales and brand awareness, this is the strongest of the brands to be divested. It is currently the third largest individual brand in Germany. During the market test, a large number of respondents have confirmed that *Brekkies* is a stand-alone brand with significant sales.
99. The proposed remedy package, by allowing the buyer of the businesses to be divested to have brands that cover all the three quality segments (premium, mainstream, economy and own label), ensure a number of synergies among the various brands. Consistently with the business model followed by many pet food suppliers, the higher level brands such as *Advance* and *Premium* can be supported by the lower-end brands such as the mainstream (*Royal Chien*) and the economy (*Brekkies* and *Playdog*) brands present in the remedy package. In fact, the economy brands do not require heavy investment in R&D or marketing, and the revenue streams created by such brands can therefore be used to support the promotion and growth of the premium brands. In this context, *Royal Chien*, *Brekkies* and *Playdog* will help *Advance* and *Premium* to achieve critical mass to compete in the specialist segment both in the dry dog and the dry cat markets.
100. In the course of the market test carried out by the Commission, it has been argued by competitors that the impact of the divestitures would be highly dependent on the

financial strength and business commitment to the pet food industry of the potential suitable buyer. Customers confirmed this view. They have indicated in particular that whether the divested brands will altogether represent a stand-alone viable business depends on the marketing strategy, the established market connections and the commitment to the pet food business shown by the potential buyer.

101. In addition, as the business to be divested is composed of assets – brands, production facilities and related assets – from both Mars and Royal Canin which are located in several Member States, the viability and the efficiency of such business will face additional risks. The identity of the purchaser will also be a key factor in order to address these concerns.
102. As the transferability and viability of the divestiture package depends to a large extent on the identity of the purchaser, the parties have undertaken to not implement and close the proposed concentration until they have signed or procured the signature of a binding sale and purchase agreement with a Purchaser approved by the Commission (so-called “up-front buyer”). Furthermore, they have committed to sell the divested business to a purchaser with sufficient financial resources and R&D capabilities and with a proven expertise in the branded pet food market. In the Commission’s view a buyer with the said characteristics will be able to transform the Divested Business into a coherent and viable business activity, removing the identified competition concerns in the dry dog markets in France and Germany and in the dry cat market in Germany.

C. CONCLUSION ON THE COMMITMENTS

103. In the light of the above, the Commission concludes that the commitments submitted by the parties are sufficient to remove the competition concerns identified by the Commission during its investigation of the proposed transaction on condition that the parties comply with the following commitments (subject to paragraph 35 of the Annex):
 - (a) The commitment to not implement and close the proposed concentration until the parties have signed a binding sale and purchase agreement with a Purchaser approved by the Commission, as set out in paragraph 1 of the Annex.
 - (b) The commitment relating to the divestiture of Mars’ dry prepared dog and cat food business in all EU Member States under the *Advance* brand, as set out in paragraph 3(a) of the Annex;
 - (c) The commitment relating to the divestiture of Mars’ dry and wet prepared cat food business in all EU Member States under the *Brekkies* brand, as set out in paragraph 3(c) of the Annex;
 - (d) The commitment relating to the divestiture of Royal Canin's dry prepared dog and cat food business in all EU Member States under the *Premium* and the *Playdog* brands, as set out in paragraph 3(b) and 3(e) of the Annex;
 - (e) The commitment relating to the divestiture of Royal Canin's family of grocery brands representing its entire grocery business in the EU, including the commitment to grant to the purchaser exclusive licensing of product formulae and intellectual property rights for the *Royal Chien*, *Royal Chat*, *Royal Dog* and *Royal Cat* brands, as set out in

paragraph 3(d) of the Annex, and including the commitment not to reintroduce the brands during the period set out in paragraph 3(d) of the Annex;

(f) the commitment relating to the divestiture of Royal Canin's entire own label grocery business in all EU Member States, as set out in paragraph 3(f) of the Annex.

(g) The commitment relating to the divestiture of Mars' production facility at La Chappelle, France, as set out in paragraph 3(g) of the Annex;

(h) the commitment relating to the divestiture of Royal Canin's dry production facility at Moulins, France, as set out in paragraph 3(h) of the Annex;

(i) the commitment relating to the goodwill, the personnel and the going concern of the various divested businesses as set out in paragraphs 4, 5, 6, and 7 of the Annex;

(j) the commitment relating to the Preservation of viability, marketability, and competitiveness, to the hold-separate and the ring-fencing obligations, as set out in paragraphs 9, 10, 11, 12, 13 and 14 of the Annex;

(k) the commitment relating to the non-solicitation clause, as set out in paragraph 15, and 16 of the Annex;

(l) the commitment relating to entering into a final sale and purchase agreement within the suspension period as set out in paragraph 18 of the Annex;

(m) the commitment relating to the suitable Purchaser as set out in paragraph 20, 21 and 22 of the Annex;

(n) the commitment to comply with any measure imposed by the Trustee to make the parties comply with their commitment as indicated in paragraph 30(e) the Annex.

104. The above mentioned commitments constitute conditions, as only by fulfilling them (subject to any change pursuant to the review clause of the Annex), can the structural change on the relevant market be achieved.

105. The remaining commitments constitute obligations (subject to any change pursuant to the review clause of the Annex), as they concern the implementing steps which are necessary to achieve the structural change that is sought. In particular, this relates to the provisions concerning the "Monitoring Trustee" with the exception of any measure imposed by the trustee to make the parties comply with their commitment as indicated in paragraph 30(e) of the Annex;

VIII CONCLUSION

106. The Commission concludes that the commitments submitted by the parties during the course of the proceedings are sufficient to address the competition concerns raised by this concentration. Accordingly, subject to full compliance with these undertakings, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market. This decision is adopted in application of Articles 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission,

signed by
Mario MONTI
Member of the Commission

13 February 2002

By hand and by fax: 00 32 2 296 4301

European Commission – Merger Task Force

DG Competition

Rue Joseph II 70 Jozef-II straat

Case M.2544 – Masterfoods/Royal Canin

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) No. 4064/89 as amended (the “Merger Regulation”), Masterfoods Holding (“Mars”) and Royal Canin SA (“Royal Canin”) (hereafter “the Parties”) hereby provide the following Commitments (hereafter “the Commitments”) in order to enable the European Commission (hereafter “the Commission”) to declare the acquisition by Mars of sole control of Royal Canin compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (hereafter “the Decision”).

These Commitments shall take effect upon the date of adoption of the Decision (hereafter “the Effective Date”).

Any term used in this text shall be interpreted in the light of the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98⁸.

Section A. Definitions

In these Commitments, the following expressions shall have the following meaning:

The Closing Date: the date of the transfer of the legal title of the Divested Business to the Purchaser.

The Commission Standard Trustee Mandate: the Commission’s recommended model for trustee mandates submitted by notifying parties to the Commission in case of Commitments accepted under Council Regulation (EEC) No 4064/89.

⁸ *Official Journal C 68, 02.03.2001, pages 3-11.*

The Divested Business: the business or businesses as defined in Section C that the Parties commit to divest within the time period provided for in Section E.

The Divestment Period: the period within which the Parties can propose a Purchaser for the Divested Business.

The Hold Separate Manager: the persons employed by the Divested Business, who will be in charge of running the day-to-day business under the authority of the Monitoring Trustee.

The Monitoring Trustee: one or several natural or legal person, independent from the Parties, which are approved by the Commission and appointed by Mars, which has the duty to monitor and to ensure that Mars complies with the conditions and obligations under these Commitments.

The Personnel: the personnel necessary for the proper and continuous operation of the Divested Business by a Purchaser.

The Purchaser: the independent viable existing competitor approved by the Commission as acquirer of the Divested Business in accordance with the criteria set out in Section F.

Section B. Up-front Buyer

1. Mars and Royal Canin commit to suspend the implementation of the proposed concentration until they have signed or procured the signature of a binding sale and purchase agreement with a Purchaser approved by the Commission in accordance with paragraph 20. The Parties further commit not to close the proposed concentration if such sale is not approved by the Commission.

Section C. The Divested Business

Identification of the Divested Business

2. Mars and Royal Canin commit to divest to the Purchaser a business in total with branded sales at this date estimated at €198 million and having an estimated tonnage of 103,000 tonnes in all EU Member States comprising:

- (a) Mars dry prepared health/nutritional dog and cat food business in all EU Member States under the *Advance* brand currently sold exclusively in specialist outlets;
- (b) Royal Canin's dry prepared health/nutritional dog and cat food business in all EU Member States under the *Premium* brand currently sold exclusively in specialist outlets;
- (c) Mars dry prepared cat food business in all EU Member States (and wet prepared cat food business, if required by the Purchaser) under the *Brekkies* brand, currently the number two brand in Germany and sold in both grocery and specialist outlets;

- (d) Royal Canin's family of grocery brands representing its entire grocery business in the EU, including *Royal Chien* the leading French grocery brand;
- (e) Royal Canin's dry prepared dog food businesses in all EU Member States under the *Playdog* brand, which together with *Advance* and *Premium*, will allow the Purchaser to offer a range of brands to specialist outlets;
- (f) Royal Canin's entire own label grocery business in all EU Member States (if required by the Purchaser);
- (g) Mars' production facility at La Chapelle, France, with a capacity of 135,000 tonnes, scope for expansion and the technical capability to produce a full range of dry prepared petfood products; and
- (h) Royal Canin's dry production facility at Moulins, France, with a capacity of 45,000 tonnes and scope for expansion (if required by the Purchaser provided that the Purchaser also acquires the Royal Canin own label grocery business).

This divestment should restore effective competition on a lasting basis in the markets for dry prepared dog food in France and Germany, and dry prepared cat food in Germany and thus resolve the competition problems identified by the Commission thereby rendering the proposed concentration compatible with the common market and the EEA Agreement as well as further contributing to the maintenance of effective competition in other Member States.

Definition of the Divested Business

3. The Divested Business consists of the following:
 - (a) the entire Mars EU dry prepared petfood business under the *Advance* brand, including absolute assignment of all rights of Mars in the *Advance* brand and relevant trademarks in all EU Member States, all product formulae, goodwill, and intellectual property rights;
 - (b) the entire Royal Canin business under the *Premium* brand, including absolute assignment of all rights of Royal Canin in the *Premium* brand and relevant trademarks in all EU Member States, all product formulae, goodwill and intellectual property rights;
 - (c) the entire Mars EU dry prepared petfood business under the *Brekkies* brand, including absolute assignment of all rights of Mars in the *Brekkies* brands and relevant trademarks in all EU Member

States, all product formulae, goodwill, and intellectual property rights. Mars will also transfer to the Purchaser the entire Mars wet prepared catfood business under the *Brekkies* brand, including absolute assignment of all rights of Mars in the *Brekkies* brand and relevant trademarks in all EU Member States, all product formulae, goodwill, and intellectual property rights, subject, only in the event that the Purchaser does not wish to acquire the wet prepared cat food business under the *Brekkies* brand, to a royalty-free licence back to Mars [DELETED - BUSINESS SECRETS] from the Closing Date to enable Mars to rebrand its *Brekkies* wet prepared petfood business;

- (d) the entire Royal Canin grocery business under the Royal Chien family of brands, including absolute assignment of all rights of Royal Canin in the Repas Complet and Repas Equilibre brands, relevant trademarks and intellectual property rights in all EU Member States, and a royalty free licence for the Royal Chien, Royal Chat, Royal Dog and Royal Cat brands and relevant trademarks of Royal Canin in all EU Member States for a period of three years from the Closing Date, together with all product formulae and goodwill relating to each of these brands. Mars further agrees not to reintroduce the Royal Chien, Royal Chat, Royal Dog and Royal Cat brands in any EU Member State for a period of ten years from the Closing Date;
- (e) the entire Royal Canin business under the Playdog brand, including absolute assignment of all rights of Royal Canin in the Playdog brand and relevant trademarks in all EU Member States, all product formulae, goodwill and intellectual property rights;
- (f) the entire Royal Canin own label grocery business, including all product formulae, goodwill, existing contracts, customer contacts and intellectual property rights (if required by the Purchaser);
- (g) Mars dry prepared petfood production plant at La Chapelle, France including all manufacturing equipment, tooling and fixed assets, vehicles, fixtures, inventory, office furniture, materials, and supplies; all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divested Business; all contracts, teaming arrangements, agreements, leases, commitments and understandings of the Divested Business, including supply agreements; all customer lists and credit records;
- (h) Royal Canin's dry prepared petfood plant at Moulins, France (if required by the Purchaser provided that the Purchaser also acquires

the Royal Canin own label grocery business), including all manufacturing equipment, tooling and fixed assets, vehicles, fixtures, inventory, office furniture, materials, and supplies; all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divested Business; all contracts, teaming arrangements, agreements, leases, commitments and understandings of the Divested Business, including supply agreements; all customer lists and credit records; and all relevant R&D data relating to the Divested Business; and,

- (i) inventory (raw materials and finished products) relating to the branded and own label businesses described above (to the extent that the businesses are to be acquired by the Purchaser).

Present structure of Mars and Royal Canin's dry prepared petfood businesses in France and Germany, which includes the Divested Business

4. The present legal and functional structure of Mars and Royal Canin's dry prepared petfood businesses in France and Germany, which includes the Divested Business, as operated to date (including the organisational chart and the indication of the key personnel) is described in the schedule attached to these Commitments. The Divested Business is currently owned by wholly-owned subsidiaries of Mars or its parent company, Mars, Incorporated or by wholly-owned subsidiaries of Royal Canin. The Divested Business shall include production, sales, marketing, commercial, financial, R&D, human resources, legal, IT and general management resources and functions from the Parties and will be described in a format agreed between the Commission and the Parties. The Divested Business will be gathered into one or more separate legal entities as soon as practicable.

Transfer of personnel

5. The Divested Business shall be divested as a going concern. The Parties commit to transfer to the Purchaser all the Personnel, which shall include production, sales, marketing, commercial, finance, R&D, IT and general management staff. This transfer will be achieved in the following manner:

- (a) The Hold Separate Manager will, in co-operation with the Monitoring Trustee, identify a framework for a complete organisation that includes the number of required resources by skill set;
- (b) Ensuring the compliance with all applicable labour and employment laws, in particular (where relevant) with the Council Directives on

collective redundancies⁹, on safeguarding employees rights in the event of transfers of undertakings¹⁰ and on informing and consulting employees¹¹ as well as with national provisions implementing these Directives;

- (c) The Hold Separate Manager will, in co-operation with the Monitoring Trustee, establish objective criteria to complete the matrix of functions and specific skills required for the business;
- (d) The Parties shall, subject to customary confidentiality assurances, permit prospective purchasers of the Divested Business to have reasonable access to the Hold Separate Manager to discuss the transfer of the Personnel on the basis of the result of the work described under (a), (b) and (c) above. The Hold Separate Manager shall, subject to review by the Monitoring Trustee, decide upon the requests of prospective purchasers to have access to the personnel of the Divested Business;
- (e) The Parties and/or the Hold Separate Manager shall provide to the Purchaser information relating to the Personnel to enable the Purchaser to make offers of employment taking into account all applicable labour and employment laws;
- (f) The Parties shall waive all contractual rights concerning the Personnel of the Divested Business necessary to effect the immediate transfer of the Personnel in order to facilitate such transfer.

6. If the Purchaser wishes that all or any of the Personnel shall not be transferred, the Parties shall ensure that the Purchaser indicates to the Commission why it considers that it is not necessary to have access to the Personnel.

Goodwill

7. The goodwill referred to in these Commitments shall comprise all the independent customers in the EU Member States with whom:

⁹ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

¹⁰ Council Directive 77/187/EC of 14 February 1977 1998 on the approximation of the laws of the Member States relating to the safeguarding of employees rights in the event of transfers of undertakings, businesses or parts of a business as amended by Council Directive 98/50/EC.

¹¹ Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, as amended by Directive 97/74/EC.

- (a) the Divested Business did business during the year 2001, and
- (b) the Divested Business did business during the year 2002 up to the Closing Date.

Non-divested businesses

8. The Divested Business shall not include:
- (i) an absolute assignment of the *Royal Chien*, *Royal Chat*, *Royal Dog* or *Royal Cat* brands;
 - (ii) Mars wet prepared catfood business under the *Brekkies* brand, if not required by the Purchaser;
 - (iii) Royal Canin's own label grocery business and the Moulins plant if not required by the Purchaser, in which case Mars shall be free to sell the own label business and plant separately to another purchaser at its discretion;
 - (iv) any other assets of the Mars or Royal Canin prepared petfood businesses not specifically included in the Divested Business and not reasonably needed or currently used by the business to be divested.

Section D. Related commitments

Preservation of Viability, Marketability and Competitiveness

9. Mars and Royal Canin undertake to preserve from the Effective Date the full economic viability, marketability and competitiveness of their respective parts of the Divested Business until the Closing Date, in accordance with best commercial practice, as shall be monitored by the Monitoring Trustee in accordance with paragraphs 29 and 30. In this regard, Mars and Royal Canin undertake to reduce to the minimum any possible risk of loss of competitive potential of the Divested Business resulting from the uncertainties inherent to the transfer of a business. Pending divestiture, the Parties shall enable the Hold Separate Manager to manage the Divested Business in the best interest of the business. In particular, Mars and Royal Canin undertake not to carry out any act upon its/their own authority which may have a significant negative impact on the economic value, the management or the competitiveness of the Divested Business until the Closing Date. Mars and Royal Canin also undertake not to carry out upon their own authority any act which may be likely to alter the nature of or the scope of activity of the Divested Business, or the industrial or commercial strategy or the investment policy of the Divested Business. Sufficient resources shall be made available for the business to develop until the Closing Date, based on the approved strategic and business plans.

Hold-separate obligations of Parties

10. Mars and Royal Canin commit as far as practicable to keep from the Effective Date the Divested Business separate from their other retained businesses and they will ensure that employees assigned to the Divested Business – including the Hold Separate Manager – have no involvement in any other retained business and vice versa and they will also ensure that the employees of the Divested Business do not report to any individual outside of the Divested Business.

11. Prior to the Closing Date, Mars and Royal Canin shall assist the Monitoring Trustee in ensuring that the Divested Business is managed as a distinct and saleable entity separate from the retained businesses of the Parties. The Monitoring Trustee shall in particular ensure that the Divested Business shall have its own management, which shall be under the supervision and the responsibility of the Hold Separate Manager. The Divested Business shall be managed on an independent basis in the best interest of the business and ensuring its continued viability, marketability and independence from the retained businesses of the Parties.

12. In order to ensure that the Divested Business is managed as a distinct and saleable entity separate from the retained businesses of the Parties, the Monitoring Trustee shall have the power to replace the non-executive directors of the Board of Directors of the Divested Business and thus to appoint new members in these boards. Mars and Royal Canin will resign as member of such boards or will cause the members of such boards to resign upon request of the Monitoring Trustee.

13. To ensure that the Divested Business is managed as a separate entity, its participation in central purchasing arrangements, international marketing efforts, the central IT network and other central operational functions will be severed to the extent possible, without compromising the full economic viability, marketability and competitiveness of the Divested Business and save insofar as is necessary to ensure continued fulfilment of legal, accounting and IT functions and requirements.

Ring-fencing

14. Mars and Royal Canin shall implement all necessary measures to ensure that they shall not after the Effective Date obtain from the management of the Divested Business any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divested Business, with the exception of information reasonably necessary for the divestiture of the business or to ensure compliance with legal or accounting requirements.

Non-solicitation clause

15. The Parties shall take all reasonable steps, including appropriate incentive schemes, to cause all Personnel to remain with the Divested Business. The incentives shall be agreed with the Commission upon recommendation of the Monitoring Trustee and after having heard the Hold Separate Manager. The incentives shall be determined on the basis of industry practice.

16. Mars and Royal Canin undertake not to hire the Personnel transferred with the Divested Business for a period of two years after the Closing Date.

Use of Royal Canin name and brands

17. In order further to assure the future of the Divested Business, Mars undertakes for a period of [DELETED - BUSINESS SECRETS] from the Closing Date and for all EU Member States:

- (a) not to use the Royal Canin name in, or introduce Royal Canin brands to, grocery outlets;
- (b) not to link the Mars brands and the Royal Canin brands in any trading terms and promotional activities with specialist wholesale or retail customers or in consumer promotions; and
- (c) not actively to engage in parallel imports of any of the brands forming part of the Divested Business into any EU Member State.

Section E. The Divestment Procedure

The Divestment Period

18. Mars and Royal Canin commit to seek a Purchaser for the Divested Business with a view to entering into a final binding sale and purchase agreement for the sale of the Divested Business prior to [DELETED - BUSINESS SECRETS] with a Purchaser in accordance with paragraphs 20, 21 and 22 below, provided that the Closing Date is within two calendar months after the conclusion of the sale and purchase agreement.

Reporting

19. Mars and Royal Canin shall report in full in writing in English to the Commission and the Monitoring Trustee on developments in the negotiations with potential purchasers of the Divested Business within 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

Section F. The Purchaser

20. The Purchaser shall be a viable existing competitor, independent of and unconnected to Mars and Royal Canin, possessing the financial resources, proven expertise and having the incentive to maintain and develop the Divested Business as an active competitive force in competition with Mars and other competitors. The Purchaser shall have sufficient R&D capabilities and a proven expertise in the branded pet food market, enabling it to operate the Divested Business together with its own business as a coherent and viable business activity. In addition, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant competition and other regulatory authorities for the acquisition of the Divested Business. Mars must be able to demonstrate to the Commission that the purchaser meets the requirements of the Commitments and that the Divested Business is sold in a manner consistent with these

Commitments. In order to maintain the structural effect of these Commitments, the Parties will not subsequently directly or indirectly acquire influence over the whole or part of the Divested Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the divested business is no longer necessary to render the proposed concentration compatible with the common market.

21. When Mars has or is about to reach an agreement with the Purchaser referred to in the paragraph above, it will submit a fully documented and reasoned proposal enabling the Commission to verify that the criteria above with regard to the identity of the Purchaser are fulfilled and that the Divested Business is sold in a manner consistent with these Commitments. Mars shall send simultaneously to the Monitoring Trustee a copy of the sale and purchase agreement in order to enable it to perform its duties in accordance with paragraph 30 (iii).

22. The verification that the Divested Business is sold in a manner consistent with the commitment shall include an approval by the Commission of the Purchaser and of the final binding sale and purchase agreement.

Section G. Monitoring Trustee

Appointment Procedure

23. Mars shall appoint one or more Monitoring Trustees, such as an investment bank or consultant or auditor, subject to approval by the Commission. The Monitoring Trustee shall be independent of Mars, possess the necessary qualifications to carry out its mandate and shall not be, or become, exposed to a conflict of interest. The Monitoring Trustee shall be remunerated in such a way as not to impede its independence and effectiveness in fulfilling its mandate.

Proposal by the Parties

24. Mars shall propose a Monitoring Trustee or a list of proposed Monitoring Trustees and the terms of the mandate for approval to the Commission with adequate information for the Commission to verify that the Monitoring Trustee fulfils these requirements. The mandate submitted for approval shall be drawn up taking due account of the Commission Standard Monitoring Trustee Mandate and shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments. The Parties shall also procure that the proposed Monitoring Trustee shall submit to the Commission a detailed work plan in which it is described how the Monitoring Trustee intends to monitor all aspects of these Commitments. This proposal shall be made within one week after the Effective Date.

Approval or rejection by the Commission

25. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee or Trustees, and to approve the proposed mandate subject to modifications, that the Commission deems reasonably necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, Mars shall appoint or

cause the individual or institution concerned to be appointed as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Mars shall be free to choose the Monitoring Trustee to be appointed from among the names approved.

New proposal by the Parties

26. If all the proposed Monitoring Trustees are rejected, Mars will submit the names of at least two further such individuals or institutions within one week of being informed of the rejection, together with the full terms of the proposed mandate as agreed with the proposed Monitoring Trustees as well as all information necessary for the Commission to verify that the proposed Monitoring Trustees possess the necessary qualifications to carry out the task and shall not be, or become, exposed to a conflict of interest. If only one name is approved, Mars shall appoint or cause the individual or institution concerned to be appointed as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one further name is approved, Mars shall be free to choose the Monitoring Trustee to be appointed from among the names approved.

Monitoring Trustee nominated by the Commission

27. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a suitable Monitoring Trustee which Mars will appoint or cause to be appointed.

Appointment by the Parties

28. As soon as the Commission has given approval to one or more proposed Monitoring Trustees, Mars shall appoint or cause the Monitoring Trustee concerned to be appointed within one week thereafter, in accordance with the mandate approved by the Commission.

Content of the Mandate

Duties and obligations of the Monitoring Trustee

29. The Monitoring Trustee shall assume its specified duties in order to ensure compliance in good faith with the Commitments on behalf of the Commission and taking into account the legitimate interest of Mars and Royal Canin.

30. The Monitoring Trustee shall, following its appointment:

- (i) oversee the on-going management of the Divested Business with a view to ensuring its continued viability and marketability and monitor the compliance by the Parties with the conditions and obligations under these Commitments. Therefore the Monitoring Trustee shall:

- (a) in consultation with the Parties, determine the best management structure to ensure that the obligation of non-disclosure of competitively sensitive information is observed by the Parties;
 - (b) monitor that the Parties maintain the viability and marketability of the assets and/or businesses to be divested in accordance with this undertaking, and the management and operation of the assets or businesses in the normal course of business, in accordance with past practice, until divestiture;
 - (c) monitor where applicable, that no competitively sensitive information concerning the assets or the businesses to be divested is disclosed to the Parties (except in so far as necessary to allow the Parties to prepare the divestiture);
 - (d) monitor the compliance by Mars with paragraph 17;
 - (e) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure compliance with the conditions and obligations under these Commitments, in particular the maintenance of the viability or marketability of the Divested Business and the non-disclosure of competitively sensitive information by the Parties, and the Monitoring Trustee shall be entitled to impose such measures (with the approval of the Commission) in the event that any Party does not comply with the Monitoring Trustee's proposals within the timeframe set by the Monitoring Trustee;
- (ii) provide to the Commission, with a simultaneous non-confidential copy to the Parties, a written report within 10 days after the end of every month concerning the monitoring of the operation and management of the Divested Business in order to assess whether the business is held in a manner consistent with these Commitments. The Monitoring Trustee shall provide to the Commission, with a simultaneous non-confidential copy to Mars, a written annual report concerning the compliance by Mars with paragraph 17. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission if the Monitoring Trustee concludes on reasonable grounds that any Party is failing to comply with any of the conditions or obligations under these Commitments. Such Party shall receive a simultaneous non-confidential copy of any such additional reports;
 - (iii) assess the suitability of the proposed purchaser and the viability of the Divested Business after the sale to the purchaser and give its opinion to the

Commission on whether the proposed divestment complies with the conditions and obligations under these Commitments;

- (iv) cease to act as Monitoring Trustee only after the Commission has discharged it from its duties, following a request from the Monitoring Trustee made after all the Commitments with which it has been entrusted have all been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Duties and obligations of the Parties

31. The Parties shall provide the Monitoring Trustee with all such assistance and information, including copies of all relevant documents, as the Monitoring Trustee may reasonably require to monitor compliance with the conditions and obligations under these Commitments. The Parties shall make available to the Monitoring Trustee one or several desks on their premises. The Parties shall be available for regular meetings with the Monitoring Trustee, according to a timetable agreed between them, in order to provide the Monitoring Trustee, either orally or in document form, with all information necessary for the completion of his task. At the request of the Monitoring Trustee, the Parties shall provide the Monitoring Trustee with access to sites which are being divested. The Parties shall provide all managerial and administrative support which may reasonably be requested by the Monitoring Trustee on behalf of the management of the Divested Business. This shall include all administrative support functions relating to the Divested Business which are currently carried out at headquarters level.

Replacement of the Monitoring Trustee

32. The Commission may, after hearing the Monitoring Trustee, order Mars to remove the Monitoring Trustee in the event that the Monitoring Trustee has not acted in accordance with the provisions of these Commitments or for any other good cause.

33. The Monitoring Trustee may also be removed by Mars with the prior approval of the Commission and after the Commission has heard the Monitoring Trustee in the event that the Monitoring Trustee has not acted in accordance with the provisions of these Commitments or for any other good cause.

34. The Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. Regarding the appointment of a new Monitoring Trustee the same procedure applies as described in this section.

Section G. The review clause

35. The Commission may, upon request from Mars showing good cause and after hearing the Monitoring Trustee, and where relevant allow for:

- (i) an extension of the Divestment Period, or
- (ii) the sale of the Divested Business to a purchaser proposed to the Commission without one or more assets, facilities, contracts or other rights or obligations that are part of the Divested Business, or
- (iii) waive or modify, in exceptional circumstances, one or more of the conditions and obligations in these Commitments.

Mars shall address any request for an extension of time periods no later than one month prior to the expiring of such time period, showing good cause. Only in exceptional circumstances shall Mars be entitled to request an extension within the last month of any period.

.....
duly authorised for and on behalf of Masterfoods Holding

.....
duly authorised for and on behalf of Royal Canin SA