

***Case No COMP/M.4824 -
KRAFT / DANONE
BISCUITS***

Only the English text is available and authentic.

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

Article 6(2) NON-OPPOSITION
Date: 09/11/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09/11/2007

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(2) DECISION

To the notifying Party

Dear Sir/Madam,

**Subject: Case No COMP/M.4824 - KRAFT / DANONE BISCUITS
Notification of 18/06/2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 19 September 2007, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No. 139/2004 ("the EC Merger Regulation") by which the undertaking Kraft Foods Global, Inc., controlled by Kraft Foods Inc. ("Kraft", USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the worldwide biscuits, snacks and cereals business of Danone ("Danone Biscuits", France) by way of purchase of shares.
2. In the course of the proceedings, the notifying party submitted undertakings designed to eliminate competition concerns identified by the Commission, in accordance with Article 6(2) of the Merger Regulation. In light of those modifications, 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 and with the functioning of the EEA Agreement.

I. THE PARTIES

3. *Kraft* is a US-based company active worldwide in the manufacture and sale of packaged foods and beverages, in particular snacks, beverages, cheese and dairy products, coffee, chocolate confectionary and biscuits.

¹ OJ L 24, 29.1.2004 p. 1.

4. *Danone Biscuits* is the global biscuits, snacks and cereals business of the French company Danone. Danone has a worldwide business in three core areas: fresh dairy products, bottled water and biscuits.

II. THE OPERATION

5. On 2 July 2007, Kraft made a binding offer to purchase the shares and assets of Danone Biscuits, which is a stand-alone business unit of Danone.² The transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.³

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (EUR 27,362 million for Kraft, EUR 2,197 million for Danone Biscuits). The Community-wide turnover of Kraft and Danone Biscuits is more than EUR 250 million (EUR [...] for Kraft, EUR [...] for Danone Biscuits). Neither Kraft nor Danone Biscuits achieve more than two-thirds of their Community-wide turnover in one Member State. The proposed transaction therefore has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

IV. COMPETITIVE ASSESSMENT

7. The parties' activities overlap in the EEA in two food sectors, namely i) biscuits and ii) chocolate confectionary.
8. As regards biscuits, Danone Biscuits is active in the whole of Europe⁴ with its umbrella brand *LU* as well as other international brands including *Petit Ecolier* and *Prince* (or *Principe* as it is known in Spain and Portugal). Its main savoury biscuits brands are *TUC* and *Belin*. Kraft focuses on Spain and Portugal since its acquisition of the Iberian biscuits business of United Biscuits in 2006⁵. It sells biscuits in Iberia under the *Fontaneda* and *Artiach* umbrella brands as well as under *Chips Ahoy!* and *Oreo* brands. Therefore, the transaction creates an overlap in the sector for biscuits in Portugal and Spain.
9. Concerning chocolate confectionary, Danone Biscuits's products in this category include only chocolate countlines sold under national brands such as *Cha-cha* in Belgium, *Tatranky*, *Horalky* and *Fidorka* in the Czech Republic and Slovakia and *Balaton* in Hungary. In turn, Kraft sells chocolate confectionary in various formats throughout the EEA under a range of international brands: *Milka*, *Côte d'Or*, *Toblerone* and *Suchard* and local brands such as *Prince Polo*, *Siesta*, *Leo*. Therefore, the transaction creates an overlap in the countlines segment of the chocolate confectionary in the above-mentioned four countries.

² On 29 October 2007 the sales and purchase agreement was signed between the parties.

³ The concentration does not concern Danone's *Blédina* baby food biscuits business and certain of its biscuits joint ventures outside the EEA (Latin America and India).

⁴ With some limited exceptions: Greece, Bulgaria, United Kingdom and Ireland

⁵ This transaction has been cleared by the Commission in its decision COMP/M.4343 Kraft Foods/United Biscuits of 25 August 2006.

1. RELEVANT MARKETS

A. Biscuits

10. Biscuits are baked products including flour, fats, sugar, milk, eggs and baking powder. Flavouring ingredients might be added such as coffee, chocolate, vanilla, etc. Biscuits are produced in a number of forms and may be sweet or savoury. They are consumed primarily as a shared snack or indulgence during family moments (with tea or coffee or as part of breakfast for example in Spain) when they are shared. They are sold in packs rather than for single serving. Biscuits might be sold under a brand of a manufacturer or under the own name of a retailer, however, the parties are mainly active in the first category.
11. The notifying party views biscuits as part of an overall market for "snacking products" which would include biscuits, chocolate and sugar confectionary, chewing-gum, cakes and snacks. However it acknowledges that in previous decisions⁶, the Commission has concluded that biscuits constitute a relevant product market which is distinct from other snacking segments. Therefore the notifying party assumes that for the purpose of assessing this transaction the relevant product market is the market for biscuits. It should be noted that only two competitors took the same view as the parties and proposed a large product market definition including all "snacking products", whereas all remaining respondents suggested narrower market definitions.
12. In the *Nabisco* decision⁷, the Commission considered possible segmentations of the biscuits market but ultimately left the question open. The notifying party estimates that there is sufficient supply-side substitutability to treat all biscuits as belonging to the same market.
13. In this respect, the market investigation in Spain and Portugal confirmed that given the lack of demand side substitutability, a distinction should be made between *sweet biscuits*, which are generally consumed between meals and *savoury biscuits*, which are more often consumed in the evening as a snack with or without a topping such as cheese or meat. Savoury biscuits are frequently displayed with other savoury snacking products such as olives, nuts and potato chips. As illustrated above, often also brands are different in the sweet and savoury segment. Even if there is a degree of supply-side substitutability and certain producers market both types of biscuits, they are often substantially stronger in one of the markets. For instance Kraft in the same country has [25-35]% market share in the sweet segment whereas [0-5]% in the savoury segment. In turn, Siro in Spain is more focused to the savoury than to the sweet segment. For these reasons the Commission considers that there are separate markets for sweet and savoury biscuits in Spain and Portugal.
14. In the present decision, there is no need to further subdivide the sweet biscuit markets for the reasons outlined below. As a background, it should be noted that the market for sweet biscuits is the bulk of the biscuit business, generating more than 90% of the overall turnover in the biscuit sector. The major overlaps between the parties occur in the sweet biscuit segment. When analysing the sweet biscuit markets in Spain and Portugal, the investigation showed that there is no need to *distinguish within sweet biscuits* according to physical characteristics such as form (sandwich, plain etc) or

⁶ See for example COMP M.1920 Nabisco/United Biscuits and COMP M.3658 Orkla/Chips.

⁷ COMP M.1920 Nabisco/United Biscuits

taste (chocolate-coated, filled, plain biscuits etc.). As also supported by the 2006 TNS consumer swithing study submitted by the notifying party, end-consumers switch among different types of sweet biscuits. Respondents to the market investigation also confirmed the notifying party's view that there is no commonly used segmentation within the industry.⁸ With regard to the supply-side substitutability, competitors indicated that different sweet biscuits are produced in the same production plant albeit on different production lines depending on the products. For these reasons, the Commission considers that all different sweet biscuits belong to the same market in Spain and Portugal.

15. When it comes to the geographic scope of the market, the market investigation confirmed the established practice of the Commission⁹ as regards consumer products: competitors and customers view markets as national, even if certain retailers sometimes source abroad. Typically there are strong national consumption patterns and established local brands specific to local markets. The merging parties have their own national sales forces, both in Spain and Portugal. Furthermore, as the merging parties and competitors point out, contracts are mainly of national scope and pricing is set primarily on a national basis, although a limited number of multinational retail groups tend to negotiate internationally. Also, as further outlined below, competitors and their market positions vary in the different countries. Therefore for the purpose of the present decision markets will be analysed on a national basis.

B. Chocolate confectionary and countlines

16. Within the *chocolate confectionary* category, various product formats exist such as chocolate bites (small portion pieces, packed in a bag or box e.g. M&M's), chocolate tablets (individually wrapped products of 75 grams or more), candybars/ countlines (individually wrapped products of no more than 60 grams), pralines (e.g. Ferrero Rocher), specialities (e.g. Kinder Surprise Egg) and seasonal items (products sold only for Christmas or Easter). As noted above the parties' activities overlap only with regard to countlines. *Countlines* are sold in individual servings and are intended for individual consumption, most frequently as on-the-go, indulgence or hunger satisfaction products. They are typically bought as an impulse purchase.
17. The notifying party considers that from a demand-side perspective, the various types of chocolate confectionary are all characterised by a rich content of chocolate, are bought as an impulse purchase and are generally consumed to satisfy hunger or a desire for indulgence. Therefore countlines should not be viewed as a different market from other chocolate confectionary products.
18. In *Philip Morris/Nabisco*¹⁰, the Commission did not take a firm position on the relevant product markets in chocolate confectionary but pointed out that the segmentation proposed by the parties (a "Consumption" segment with small bites, tablets and countlines and a "Gifting/Social Sharing segment" with pralines and seasonal products) was insufficiently precise.

⁸ For example, in relation to sweet biscuits in Spain Euromonitor divides this segment into 5 different biscuit categories, Nielsen in 2, whereas IRI does not segment them at all.

⁹ See case COMP/M.1990 – Unilever/Best Foods, COMP M.1920 Nabisco/United Biscuits, COMP/M.2072 Philip Morris/Nabisco

¹⁰ Decision COMP/M.2072 Philip Morris/Nabisco

19. The market investigation indicated that the strong differences in national consumption habits – as also outlined below – should lead the Commission to define product markets with regard to each country.
20. In *Belgium*, the market investigation was not conclusive, with respect to the question whether countlines form part of the overall chocolate confectionary market. However for the purpose of the present decision there is no need to define precisely the market in this country.
21. In *Czech Republic and Slovakia* customers seem to see countlines as forming a distinct market from other chocolate confectionary products. Furthermore, certain respondents also explained that in these two countries consumers are traditionally attached to *light bars*, in particular to specific chocolate-coated wafers. Light bars can be defined as countlines containing biscuits, wafers or cookies combined with a lower content in chocolate and marketed as having a lighter taste. According to the estimation of certain respondents, light bars in these countries are 30% cheaper in average than heavy bars and count for a large part of the countlines sales. A number of strong national brands such as those of Danone Biscuits belong to this category. In turn, *heavy bars* contain more chocolate are more dense often mixed with nougat, nuts or caramel and are designed to satisfy hunger or energy need. However, as further outlined below even such a narrow market definition as a market for light bars would not materially affect the competition assessment in these two countries, therefore the precise market definition can be left open.
22. Finally, in *Hungary* customers clearly indicated that chocolate countlines are separate from other chocolate confectionary products. Whereas consumers consider chocolate countlines clearly on-the-go indulgent products and buy them typically on a piece-by-piece basis, they procure tablets and other chocolate forms in bigger quantity and consume them typically shared at home or at family events. On the other hand, although light bars are indeed popular, retailers did not suggest that Hungarian consumers would view light bars as separate product from any other countlines. Only one competitor took this view with regard to Hungary. It follows that for the purpose of the present decision the Commission defines separate markets for countlines and other chocolate confectionary in Hungary, but does not further subdivide these markets.
23. Concerning the geographic scope of these markets, besides the above differences in consumption patterns, there are also further indications pointing towards *national markets* like national brands, such as those of Danone Biscuits, national competitors, such as IDC in Slovakia and in the Czech Republic. The market investigation showed that also internationally present producers occupy different market positions in these countries and view themselves these markets as being national. Pricing of these products is also set on a country-by-country basis. It follows that these markets are national in scope.

2. COMPETITIVE ASSESSMENT

A. Markets for biscuits

24. Besides the two principal markets concerned in Spain and Portugal, the activities of the parties overlap in the EEA in Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Iceland, Italy, the Netherlands, Norway, Romania, Sweden and the UK. In the vast majority of these countries the combined market share of the parties is either below 15% or the overlap is below 2% under any possible product market

definition.¹¹ The only exception is the Italian savoury biscuit market where the parties have a combined share of [15-25]% (Kraft: [0-5]%, Danone Biscuits: [10-20]%) at wholesale level far behind the market leader Barilla ([45-55]%). These market shares suggest that the merger will not impede effective competition in these markets. Therefore the present decision will analyse in detail the Spanish and Portuguese markets for biscuits.

a) Markets for sweet and savoury biscuits in Spain

25. The market positions of the parties and their competitors in Spain in the markets for branded biscuits¹² at wholesale level are the following¹³:

2006	Kraft	Danone Biscuits	Combined	Competitor 1	Competitor 2	Competitor 3	Market size (M EUR)
Spain – sweet biscuits	[30-40]%	[10-20]%	[45-55]%	[20-30]%(Cuétara)	[10-20]%(Gullon)	[0-5]%(Siro)	[200-400]
Spain – savoury biscuits	[0-5]%	[30-40]%	[35-45]%	[10-20]%(Cuétara)	[10-20]%(Siro)	[5-10]%(Cile)	[10-25]

26. As regard the *savoury biscuit market*, which accounts for [0-5]% of all biscuit sales, although the transaction strengthens Danone's leading position, the overlap is limited ([0-5]%) and no customers consider any Kraft brand as a "must-have" brand (by contrast to Danone's brand *Tuc*). For these reasons the concentration will not bring about substantial change in this market.

27. By contrast, when looking at the *market for sweet biscuits*, the merger will bring about substantial increment and would further strengthen Kraft's current leading position. Indeed, during the market investigation customers, among which large retail chains, claimed that the market would be significantly impacted by the proposed transaction, as the combined entity would be an unavoidable trading partner with almost half of the market.

28. The parties explained in their notification that none of their products should be considered as must-have brands in light of the fragmentation of the market. This has not been confirmed by the market investigation. As respondents explained, certain traditional biscuit brands and foreign brands with high recognition must be kept on shelves in order to attract consumers and remain profitable. In particular, respondents indicated that several brands of Kraft (such as *Fontaneda*, *Oreo*, *Artiach*, *Marbú*) and of Danone Biscuits (e.g. *LU*, *Principe*) are must-have brands. When it comes to

¹¹ Affected markets for biscuits are in Belgium, Denmark, Finland, France, Spain and Portugal, for sweet biscuits in Belgium, Denmark, Finland, France, Spain and Portugal and for savoury biscuits in Austria, Germany, the Netherlands and Italy.

¹² The merging parties have minor activities in the market of supplying private label biscuits in Spain. Their combined market share in this market would be below [0-5]%

¹³ Market shares in the present decision are best estimates of the parties. Independent data of AC Nielsen relate to retail sales therefore also include private label products.

competitors' brands, Cuétara is considered as having must-have products by half of the respondents. (Cuétara is the only brand of the Cuétara company and accounts for the entire market share of Cuétara.) In view of the fact that retailers stock on average around 16 brands of sweet biscuits, the transaction as initially notified would combine half of the must-have brands of biscuits in the Spanish market. Therefore the merged entity would become an unavoidable trading partner for these retailers.

29. The parties submitted furthermore that there remain a lot of competitors in the Spanish market after the transaction. However, respondents indicated that the transaction will eliminate a strong competitive constraint on the market leader Kraft. The majority of customers consider Danone Biscuits and Kraft as close competitors, besides Cuétara which is also viewed by half of the respondents as a close competitor. Some of the customers explained that Kraft and Danone Biscuits have the widest product range: from plain biscuits consumed often for breakfast, to chocolate-coated biscuits, filled biscuits, sandwich biscuits, health biscuits etc. Their competitors in turn, do not necessarily have the same broad range and do not compete in all the segments as Kraft and Danone Biscuits do. Also when looking at retail prices¹⁴, Kraft and Danone Biscuits both tend to price in higher segments compared to their competitors.
30. Besides customers, also certain smaller competitors raised concerns. They fear of being de-listed from large retailers' shelves. Indeed, given that the merged entity would have a large share of the most important must-have brands, its negotiating power vis-à-vis retailers would certainly increase post-merger. This has been confirmed by a large majority of customers who fear that the transaction would significantly undermine their negotiation positions, as they are now playing Kraft and Danone Biscuits against each other. In that respect it should also be noted that retailers have limited space on their shelves and stock a limited number of brands. As the products of smaller competitors rarely belong to the must-have brand category, they can be more easily de-listed or replaced by private label products. By way of example, one of the fast-growing retailers in Spain applies a business model whereby it keeps one single brand by product category while selling its own private label products.
31. Additionally, during the investigation, the Commission gathered information that Kraft acts already for one of the major retailers, in Spain having more than 25% of the retail food sales, as so-called "category manager". Being a category manager allows leading suppliers to provide recommendations on how to display products and brands on the shelves. It provides an influence on the shelf-position of competitors and ultimately on end-consumers' purchasing decisions.
32. To contest the existence of any significant market power, the notifying party also claims that most retailers have private label products. Although procurement processes for private label products differs from branded products, there is a clear interaction between private label and branded products at the upstream level. Data submitted show that private label sales increase systematically to the detriment of branded products. However, more than 75% of the market still consists of branded products. Although retailers confirmed during the market investigation that they sell biscuits under their own respective name, many of them indicated that they set prices by reference to branded products (i.e. act as price followers rather than as competitive

¹⁴ Form CO p. 162 and submission of the notifying party of 10 October 2007.

constraint). Therefore any potential price increase on the wholesale market for branded biscuits is likely to lead to price increase for private label biscuits. Indeed, the majority of respondents fear price increases following the transaction.

33. Finally, the Commission has not gathered indications that there was any recent or expected new entrant on the Spanish market. The most recent entrant is Unilever who entered in 2001 and since then has reached a market share of [0-5]%.
 34. Consequently, the merger as originally proposed would not only create a market leader in terms of market shares but would bring together the closest competitors on the market for sweet biscuits with the far largest portfolio of must-brands. As brand names drive competition, the merger is likely to create a dominant player in the market for branded biscuits. Given the interaction between the prices of branded and private label products at retail level, the concentration is likely to lead to price increases for consumers. It follows that the transaction as originally proposed raises serious doubts as to its compatibility with the common market as regards the Spanish sweet biscuit market.

b) Markets for sweet and savoury biscuits in Portugal

35. During the market investigation certain respondents raised also concerns with regard to the Portuguese markets. However, due to the market structure and the market features the concentration will not impede effective competition in these markets.
 36. The table below shows the market position of the parties and their most important competitors at the wholesale level for branded biscuits:

2006	Kraft	Danone Biscuits	Combined	Competitor 1	Competitor 2	Competitor 3	Market size (M. EUR)
Portugal – sweet biscuits	[35-45]%	[0-5]%	[40-50]%	[15-25]%(Cuétara)	[5-10]%(Gullon)	[0-5]%(Vieira Castro)	[50-100]
Portugal – savoury biscuits	[35-45]%	[0-5]%	[40-50]%	[10-20]%(Vieira Castro)	[5-10]%(Cuétara)	[0-5]%(Gullon)	[5-10]

37. First of all, when looking at market shares, Kraft is the incontestable leader with [35-45]% market share, whereas Danone Biscuits is a small player in the Portuguese biscuit markets whether sweet or savoury with its [0-5]% market share.
 38. Secondly, whereas customers view certain Kraft brands, namely *Oreo*, *Triunfo* as must-have brands, Danone Biscuits' brands are not cited in this category, except for *LU* which is Danone Biscuits' international biscuit brand. Indeed, when asked about the positioning of Kraft and Danone Biscuits on the market, respondents viewed other companies, namely Cuétara, and Vieira Castro as the closest competitors to Kraft.
 39. In the light of the above, the concentration does not raise serious doubts as to the compatibility with the common market in the Portuguese markets for sweet and savoury biscuits.

40. Additionally, the submitted commitments with regard to the Spanish market for sweet biscuits will also further reduce (with [5-10]%) the limited increment among the parties, as brands included in the remedy package are also partly sold in Portugal and they will be divested without territorial restriction.

B. Chocolate and chocolate countlines

41. As mentioned above, Kraft is present in the chocolate confectionary market with its main international brands *Milka, Côte d'Or, Toblerone, Suchard* and *3Bit* but also with some local brands. Danone's products in this category include only chocolate bars sold under national brands in four markets: Belgium, Czech Republic, Slovakia and Hungary. The present decision will analyse these four national markets where the merging parties have overlapping activities.

a) The Hungarian market for chocolate countlines

42. As explained above, in Hungary the market for chocolate countlines is distinct from other chocolate confectionary markets. The merging parties' activities only overlap with regard to this market. Kraft is present in Hungary with its main international brands and also with a wide portfolio of local brands: *Sport, Kapucíner, Szamba, Autós, Lotto, Bohóc, Eperjő, Piros and Piros Mogyorós*. Danone Biscuit's brand is the traditional *Balaton* which is a chocolate-covered wafer bar belonging to the light chocolate bar category.¹⁵

43. The market positions of the parties and their competitors in the Hungarian market for chocolate countlines in 2006 at wholesale level in value is the following:

2006	Kraft	Danone Biscuit	Combined	Competitor 1	Competitor 2	Competitor 3
Hungary – chocolate countlines	[35-45]%	[10-20]%	[45-55]%	[25-35]%(Masterfoods)	[5-10]%(Nestlé)	[5-10]%(Ferrero)

44. As the market structure shows, in Hungary post-merger two major competitors would remain on the market, the merged entity occupying [45-55]% followed by Masterfoods.

45. During the market investigation certain respondents raised concerns with regard to the effect of the transaction in Hungary. As they outlined, brand is the main driver of competition. Kraft has already currently substantial negotiating power due to its brand portfolio, which will further increase following the transaction. In the market for countlines, the two companies hold all the most important national brands but one.¹⁶ In contrast, Masterfoods has a more international product portfolio, focusing to the heavy bar segment with its main brands, *Snickers, Mars, Twix* and *Bounty*. Even if countlines are of impulse nature, therefore individual customers might switch among a number of brands, the wide product range retained by the merged entity turns it to an unavoidable trading partner for retailers.

¹⁵ None of the merging parties market private label chocolate confectionary products in Hungary.

¹⁶ Boci is a brand of Nestlé.

46. As customers explained, the parties' national brands look back to a strong history and are widely acknowledged by consumers who are often emotionally attached to them. Their image is maintained and renewed by regular publicity campaigns. Although the notifying party indicates that *Balaton* is losing market shares and is of limited appeal to younger consumers, the market investigation did not back up this view. Respondents unanimously consider it as a well-known, established leader brand. As one of the competitors expressed it: „...it is a „top of mind” brand”. Additionally, products under these brands tend to be situated in a comparable price segment. As backed up by the data submitted by the parties, their two strongest national brands, systematically indicated as must-have brands by respondents, *Sport* and *Balaton* are marketed for very similar price.
47. Also competitors expressed concerns, mainly linked to the fact that the new entity will have a very wide product range covering the entire countlines market with inevitable brands. As some competitors outlined, the new entity will have strong negotiating power which will affect directly smaller producers who will have lesser chance to remain on the shelves or to have access to the shelves. In particular the effect could be on smaller retailers with less shelf space and less negotiating power. Indeed, while two of the major retailers were not concerned by the effect of the transaction, smaller ones usually viewed it as problematic.
48. It follows that the merger would remove an important competitive constraint on the market, the *Balaton* brand. Post merger the new entity would have a strong product portfolio including national and international brands which is not comparable to the remaining competitors. It follows that the transaction as originally proposed is likely to significantly impede effective competition and therefore raises serious doubts as to the compatibility in the common market.

b) Markets for chocolate confectionary and chocolate countlines in Belgium, the Czech Republic and Slovakia

49. As outlined above, the precise definition of the markets for chocolate confectionary and chocolate countlines in Belgium, the Czech Republic and Slovakia can be left open, as the market analysis did not reveal that the transaction would raise serious doubts under any potential market definition. Although three competitors out of six also expressed concerns with regard to these markets, customers' reactions and the market structure do not support their views.
50. As mentioned above, as regards the *Belgian market* the market investigation was not conclusive as to the relevant product market definition. However, independently from the market definition the transaction does not lead to competition concerns in Belgium.¹⁷
51. In the Belgian market for branded chocolate confectionary Kraft is already market leader with [35-45]% whereas Danone Biscuits is only a minor player having [0-5]% of the market with its local brand *Cha-cha*. Their competitors are Masterfoods ([20-30]%), Ferrero ([5-10]%) and Nestlé ([0-5]%). On a potential market for countlines, their combined market share would be lower [25-35]% (Kraft: [15-25]%, Danone Biscuit [5-10]%) following the market leader Masterfoods ([35-45]%). Also there are

¹⁷ The parties' activities only overlap with respect to branded chocolate products, namely countlines. Danone Biscuits does not supply any private label chocolate confectionary products to retailers in the country, whereas Kraft sells a private label countlines under the name [...] to [...].

no indications from the market investigation that Cha-cha would hold a particular position among brands in Belgium. Therefore the transaction will not raise serious doubts as to the compatibility with the common market.

52. As regards the market for chocolate confectionary (including all chocolate products) *in the Czech Republic*, the merged entity would have a market share of [30-40]% (Kraft: [15-25]% for Danone Biscuits: [10-20]%) behind Nestlé as a main competitor ([30-40]%) and besides IDC ([5-10]%) Ferrero ([0-5]%) and Masterfoods ([0-5]%). When looking at the market for chocolate countlines, the combined market share of the parties would be [35-45]%, whereas the next competitor Nestlé has a share of [30-40]% followed by IDC ([15-25]%) and Masterfoods ([5-10]%). As it was already mentioned, Czech and Slovak markets are traditionally characterised by high consumption of "light bars". As explained by one of the competitors: "*In fact, more than 80% of the light bar sales in these countries are wafer bars*". If a market for light bars were considered as two respondents suggested, Kraft would have [5-10]% market share. The combined market share of the merged entity would be [30-40]% (Danone Biscuits: [25-35]%, Kraft: [5-10]%) followed by Nestlé ([20-30]%), a significant regional player IDC ([15-25]%) and Ferrero ([5-10]%)
53. Although three competitors voiced concerns with regard to the impact of the transaction, analysis of the market shows that the transaction would not impede effective competition. The market investigation revealed that besides Nestlé, IDC with its traditional product selection acts as a strong competitive constraint on the market. As one of the competitors explained: "*...IDC is competing with a low-price policy and leveraging its powerful position in Slovakia to the Czech Republic...*". Indeed, whereas IDC was growing in the last years, Danone Biscuits was losing market shares on the countlines market. This shows also that Danone Biscuits was not able to rely on its strong market position in the biscuit market¹⁸ to grow in the market for countlines. During the market investigation, no customer feared to face a powerful player when negotiating or raised concerns with regard to the transaction.
54. Additionally, in view of the consumption patterns in the Czech Republic, the merging parties are not close competitors: whereas Danone Biscuits holds principally traditional local brands, such as *Opavia Horalky* and *Opavia Tatranky* similarly to IDC mainly in the light bar segment, Kraft is present with its international set of brands mainly focusing to products of richer chocolate content. It follows from the above that the transaction does not raise serious doubts as to the compatibility with the common market in the Czech Republic.
55. *In Slovakia*, the combined market shares of the parties in the market for chocolate confectionary (including all chocolate products) would be [30-40]% (Kraft: [25-35]% and Danone Biscuits: [5-10]%), whereas in the market for chocolate countlines the parties' market share would be slightly lower [25-35]% (Kraft: [15-25]% and Danone Biscuits: [10-20]%). Similarly to the Czech Republic their strongest competitor is Nestlé with [30-40]% in the chocolate confectionary and [30-40]% in chocolate countlines market. In its home country IDC has [15-25]% in chocolate confectionary and [25-35]% in the countlines market. Finally, Masterfoods is also present with [0-5]% in the overall confectionary and [0-5]% in the countlines market. On the basis of the narrowest possible market for light chocolate countlines, the parties would have even lower combined market shares ([20-30]%), whereas the local competitor IDC

¹⁸ Danone Biscuits has [65-75]% market share in the Czech Republic for biscuits.

would be a market leader ([35-45]%) followed by Nestlé ([20-30]%). Moreover, brands of IDC e.g. *Mila* or *Mata* are considered to be must-have brands by the Slovakian consumers. It follows from the foregoing that the transaction does not raise serious doubts as to its compatibility with the common market in Slovakia.

IV. COMMITMENTS SUBMITTED BY THE NOTIFYING PARTY

56. In order to render the concentration compatible with the common market, the notifying party has offered commitments pursuant to Article 6(2) of the EC Merger Regulation on 17 October 2007. After examination and market testing¹⁹ of this commitment package, a final commitment package was submitted on 6 November 2007. The improved commitments are suitable to remedy the identified competition concerns. Commitments are attached to this decision and form an integral part thereof.

A. Markets for sweet biscuit in Spain

a) Description of the commitments

57. To remove the identified competition concerns, the notifying party has committed to divest Kraft's umbrella brand *Artiach* and a number of sub-brands²⁰; Kraft's leading stand-alone brands *Chiquilin* and *Filipinos* brand and their sub-brands²¹, Kraft's plain biscuit brand *Marbú Dorada* and its sub-brands²²; and the Danone Biscuits brand *Dinosaurus*. The brands are divested without territorial limitation. The divestment business includes all rights, (such as recipes, know-how, trademarks, copyrights etc.) titles, interest, finished goods inventory, work in process, sales and promotional material, licenses, permits and authorizations, relevant data, books, records, and other documents linked to the divestment business. It includes also the assignment of the manufacturing agreements currently in place between Kraft and other manufacturers linked to the divestment business.

58. Kraft offered furthermore to divest its manufacturing facility in Orozko. As not all of the above-mentioned brands are produced in this plant, whereas certain products not included in the divestment business are produced in Orozko, Kraft undertakes to relocate the relevant productions in or out of Orozko within [...]. Prior to these relocations, Kraft and the Purchaser shall agree on co-manufacturing arrangements. Finally, in order to keep the remedies effective, Kraft proposes to include as an option for the buyer its marketing and sales forces serving the divestment business.

b) Suitability for removing the serious doubts

59. The Commission has analyzed and market tested the remedies in view of ensuring that, regardless of the acquirer, the divested business is a viable stand-alone business

¹⁹ Market test of remedies of 19th October 2007.

²⁰ *Artinata, Artichoco, Articoco, Artiavellana, Artilimon, Artiturrón, Digesta, Princesa, Mini Princesa, Mila, Morena, Selección and Tentaciones*

²¹ *Chiquilin Ositos and Chiquilin Energy*

²² *Filipino Negro, Filipino Blanco, Filipino Caramelo, Minifilipinos Blanco, Minifilipinos Negro, Agujeros de Filipinos Blanco and Agujeros de Filipinos Negro*

capable to exert, post-merger, a competitive pressure on the new entity comparable to that of Danone Biscuits on Kraft pre-merger.

60. The divestiture would almost remove the entire overlap between the merging parties as the divested brands represent [10-20]% of the market. As strongly backed-up by the majority of answers during the market test, the offered brands are well-known national brands in Spain, some of them being "must-have" brands such as *Filipinos*. All nineteen respondents with the exception of two competitors found the offered commitments as an attractive portfolio of brands. Even if a respondent raised the issue that the divestment business does not include one specific type of indulgence biscuit, called sandwich biscuit, this should not alter the viability or attractiveness of the divestment business, as sandwich biscuits did not appear as a key element to compete successfully. The biscuits of these brands represent altogether a strong and full set of product portfolio covering a comprehensive range of products from traditional biscuits to indulgence products.
61. The Orozko plant is one of two Spanish manufacturing facilities of Kraft. It was inaugurated in 1981 and has historically been the base for the production of *Artiach* branded products. Its equipment is modern, for the majority installed in the 1990's. It has five production lines, including different production technologies. Additionally it has significant capacity for expansion. The divestment would include all the functions necessary to ensure that the plant continues to perform its activity.
62. One of the brands, *Marbú Dorada* is currently sold under the *Fontaneda* umbrella brand. In order to ensure viability of the divestment business, Kraft undertakes in its commitment to license the Purchaser the use of the *Fontaneda* brand for a 12 month transitory period. In view of the fact that this duration corresponds and even exceeds the norms for the transitional use of an umbrella brand, the Commission is satisfied that this period will allow the Purchaser to successfully introduce its own umbrella-brand.
63. Finally, an issue invoked during the market test was the inclusion of customer contracts in the divestment business. In that regard it should be noted that the merging parties supply their customers in general on the basis of yearly, not brand-specific framework contracts. However, where it is possible Kraft undertakes to assign customer contracts to the Purchaser and to provide details for each customer allowing a smooth transition of the customer contracts. It also undertook to confer the negotiation for renewal of these contracts to the Hold Separate Manager during the divestiture period.
64. The commitment package ensures that the acquirer can be a company already manufacturing biscuits, or a financial investor, such as a private equity fund. In view of the remedies and the reaction of market participants, the Commission finds that the commitments will remove the serious doubts in the Spanish market for biscuits.

B. Market for chocolate countlines in Hungary

a) Description of the commitments

65. With regard to the Hungarian market for chocolate countlines, Kraft proposes to divest the entire overlap between the merging parties by divesting the *Balaton brand* including relating rights, (including trademarks, recipes, manufacturing know-how, related copyrights) title and interests, finished good inventory, work in process, sales and promotional material, data, books and records relating to the divestment business. Kraft offered on an optional basis the production line relating to the manufacturing of

the Balaton chocolate countlines, unless the Purchaser opts to enter into co-manufacturing arrangement.

b) Suitability for removing the serious doubts

66. As outlined above, the proposed remedy removes the entire overlap between the parties as Danone is only present in chocolate countlines in Hungary through this single brand. Respondents in the market test confirmed that they consider *Balaton* as a strong, leading brand and its divestiture will allow the Purchaser to be competitive on the market. They found the divestment business attractive, as one of the competitor indicated: "*leading brand, can be a platform for other product introductions*". Many of them however expressed doubts that a financial investor could take over such a small business and indicated that it is highly desirable that a company already active in the manufacturing of chocolate confectionary or biscuit acquires the divested business.
67. As regards production, the market test did not reveal that a divestiture of the production line would be essential. As a result of the remedy, the Purchaser can opt to enter into a co-manufacturing arrangement for a transitory period, which is a common practice in the industry. Following the market test, the commitments were adjusted in order to ensure that the originally proposed 2 year transitory period for the co-manufacturing arrangement is prolonged to 3 years. Some competitors also pointed to the necessity of transferring logistics contracts and customer contracts. Although these contracts are often not brand-specific, the notifying party adjusted the proposed remedy accordingly and undertook to assign customer, service and supply contracts wherever possible. It also undertook to include all customer details in the divestment business and to assign the right for contract-renewal negotiations to the Hold Separate Manager during the divestiture period.
68. In view of the modified remedies and the reaction of market participants, the Commission finds that the commitments will remove the serious doubts in the Hungarian market.

C. Conclusion on the commitments

69. The Commission therefore considers the commitments suitable for remedying the serious doubts on the compatibility of the concentration with the Common Market and the EEA, which have been established in the previous sections of this Decision.

V. CONDITIONS AND OBLIGATIONS

70. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.
71. The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(5) of the Merger Regulation. The undertakings concerned may also be

subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

72. In accordance with the basic distinction described above, the decision in this case is conditioned on the full compliance with Sections B to E of the Commitments submitted by the notifying party on 19 October 2007 and modified on 6 November 2007.
73. The remaining requirements set out in the other Sections of the Commitments submitted by the parties are considered to constitute obligations.

VI. CONCLUSION

74. For the above reasons the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement pursuant to Article 2(2) of Council Regulation (EC) No 139/2004, subject to full compliance with the commitments as described above and in the related text in the commitments annexed to this decision that forms an integral part to this decision.
75. Consequently, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) and Article 6(2) of Council Regulation (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission

Case No M.4824 Kraft/Danone Biscuits

European Commission
DG Competition
Rue Joseph II 70 Jozef-II straat
B-1000 BRUSSELS

Case M.4824 Kraft/Danone Biscuits

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) No. 139/2004 (the "**Merger Regulation**"), Kraft Foods Global, Inc. ("**Kraft**") hereby provides the following Commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare the acquisition of the biscuits business of Groupe Danone S.A. ("**Danone Biscuits**") to be compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the "**Decision**").

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and under Commission Regulation (EC) No 447/98.

SECTION A. DEFINITIONS

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by Kraft and/or by the ultimate parents of Kraft, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission's Consolidated jurisdictional notice under Council Regulation (EC) No 139/2004.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Danone: Groupe Danone S.A., 17, Boulevard Haussman, 75009 Paris, France.

Divestment Businesses: the assets comprising each of the businesses that Kraft commits to divest, as further described in Section B and attached Schedules (each respective business described in the Schedules herein referred to as a "**Divestment Business**").

Divestiture Trustee: one or more natural or legal person(s), independent from Kraft, who is approved by the Commission and appointed by Kraft and who has received from Kraft the exclusive Trustee Mandate to sell the Divestment Businesses to one or more Purchasers at no minimum price.

Effective Date: the date of the adoption of the Decision,

First Divestiture Period: the period of [...] from the Effective Date.

Hold Separate Manager: the person or persons appointed by Kraft to manage the day-to-day business of a Divestment Business under the supervision of the Monitoring Trustee.

Key Personnel: the personnel necessary to maintain the viability and competitiveness of the Divestment Businesses, as listed in the Schedules.

Kraft: Kraft Global Foods, Inc., Three Lakes Drive, Northfields, Illinois, 60093, USA.

Monitoring Trustee: one or more natural or legal person(s), independent from Kraft, who is approved by the Commission and appointed by Kraft, and who has the duty to monitor Kraft's compliance with the conditions and obligations attached to the Decision.

Parties: Kraft and Danone.

Personnel: with regard to the Divestment Business as described in Schedule 1, the personnel listed in Schedule 1.

Purchaser: with regard to each Divestment Business, the entity or entities approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

SECTION B. THE DIVESTMENT BUSINESS

Commitment to divest

1. In order to restore effective competition, Kraft commits to divest, or procure the divestiture of, the Divestment Businesses by the end of the Trustee Divestiture Period each as a going concern to one or more Purchasers and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 16. To carry out the divestiture, Kraft commits to find, for each Divestment Business, a Purchaser and to enter into a final binding sale and purchase agreement for the sale of such Divestment Business within the First Divestiture Period. If, in respect of either Divestment Business, Kraft has not entered into such an agreement at the end of the First Divestiture Period, Kraft shall grant the Divestiture Trustee an exclusive mandate to sell the relevant Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.
2. Kraft shall be deemed to have complied with this commitment if:
 - (a) By the end of the Trustee Divestiture Period, Kraft or an Affiliated Undertaking has entered into a final binding sale and purchase agreement for each of the Divestment Businesses,
 - (b) The Commission approves the Purchaser or Purchasers and the terms in accordance with the procedure described in paragraph 16 and,

- (c) The closing of the sale of each Divestment Business takes place within a period not exceeding [...]after the approval of the purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, Kraft shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Businesses, 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 Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.
4. Prior to the acquisition of Danone Biscuits by Kraft, Kraft shall endeavour to cause Danone to adhere, mutatis mutandis to the commitments mentioned in paragraphs 6, 7, 8, 9, 10, 11, 26 and Schedule 2.

Structure and definition of the Divestment Business

5. The Divestment Businesses consists of :
- (a) The Spanish biscuits business of the Parties as defined in Schedule 1, including:
- (i) the Kraft umbrella brand *Artiach* and the following sub-brands under the *Artiach* umbrella brand: *Artinata, Artichoco, Articoco, Artiavellana, Artilimon, Artiturrón, Digesta, Princesa, Mini Princesa, Mila, Morena, Selección and Tentaciones*;
- (ii) the Kraft brand *Chiquilin* and the following sub-brands: *Chiquilin Ositos* and *Chiquilin Energy*;
- (iii) the Kraft brand *Filipinos* and the following sub-brands: *Filipino Negro, Filipino Blanco, Filipino Caramelo, Minifilipinos Blanco, Minifilipinos Negro, Agujeros de Filipinos Blanco* and *Agujeros de Filipinos Negro*;

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- (iv) the Kraft brand *Marbú Dorada*;
 - (v) the Danone Biscuits brand *Dinosaurus*; and
 - (vi) the manufacturing facilities at Orozko.

- (b) The Balaton business of Danone Biscuits in Hungary as defined in Schedule 2, including:
 - (i) the *Balaton* brand; and

 - (ii) the production line relating to the production of the *Balaton* chocolate countlines, unless the Purchaser opts to enter into co-manufacturing arrangements.

- (c) In relation to each Divestment Business as mentioned under (a) and (b), and as described in Schedules 1 and 2:
 - (i) the tangible and intangible assets (including intellectual property rights), which contribute exclusively to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;

 - (ii) the contracts, leases, and customer orders insofar as they relate to the Divestment Business; all customer credit and other records of the Divestment Business; and

 - (iii) at the option of the Purchaser and in compliance with applicable employment laws and other relevant legislation, the Personnel as described in Schedules 1 and 2 or, at the option of the Purchaser, provide transitional services in accordance with customary market practice

SECTION C. RELATED COMMITMENTS

Preservation of Viability, Marketability and Competitiveness

6. From the Effective Date until Closing, Kraft shall preserve the economic viability, marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimize as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular Kraft undertakes:
- (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Businesses;
 - (b) to make available sufficient resources for the development of the Divestment Businesses, on the basis and continuation of the existing business plans
 - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Businesses.

Hold-separate obligations of Kraft

7. From the Effective Date until Closing Kraft shall make all reasonable efforts to separate the Divestment Businesses from the businesses it is retaining and to ensure that Key Personnel of the Divestment Businesses - including the Hold Separate Manager - have no involvement in any business retained and vice versa. Kraft shall also ensure that the Key Personnel do not report to any individual outside the Divestment Businesses.
8. Until Closing, Kraft shall assist the Monitoring Trustee in ensuring that the Divestment Businesses are managed as distinct and saleable entities separate from the businesses retained by Kraft. Kraft shall appoint one or more Hold Separate Managers who shall be

responsible for the management of the Divestment Businesses, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Businesses independently of Kraft and in the best interest of each business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Kraft.

Ring-fencing

9. Kraft shall implement all reasonably necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Businesses. In particular, the participation of the Divestment Businesses in a central information technology network shall be severed to the extent reasonably practicable, without compromising the viability of the respective Divestment Businesses. Kraft may obtain information relating to the Divestment Businesses which is reasonably necessary for the divestiture of any of the Divestment Businesses whose disclosure to Kraft is required by law.

Non-solicitation clause

10. Kraft undertakes, subject to customary limitations, not to solicit, and to procure that its respective Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Businesses for a period of 2 years after Closing.

Due Diligence

11. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Businesses, Kraft shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential purchasers such information as regards the Divestment Businesses as is reasonably required to effect the sale;

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(b) provide to potential purchasers such sufficient information relating to the Personnel and allow them reasonable access to the Personnel as is reasonably required to effect the sale.

12. Kraft shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

13. Kraft shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

SECTION D. THE PURCHASER

14. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:

- (a) be independent of and unconnected to the Parties;
- (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with Kraft and other competitors;
- (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the

"Purchaser Requirements").

15. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Kraft has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Kraft must be able to demonstrate to the Commission that the Purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the Purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed Purchaser.

SECTION E. TRUSTEE

I. Appointment Procedure

16. Kraft shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Kraft has not entered into a binding sale and purchase agreement for either of the Divestment Businesses one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Kraft at that time or thereafter, Kraft shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee, in relation to the Divestment Business or Divestment Businesses concerned. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period for the relevant Divestment Business.
17. The Trustee shall be independent of Kraft, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by Kraft in a way that does not impede the independent and effective fulfillment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of a Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by Kraft

18. No later than one week after the Effective Date, Kraft shall submit a list of one or more persons whom Kraft proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Kraft shall submit a list of one or more persons whom Kraft proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 17 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfill its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

19. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfill its obligations. If only one name is approved, Kraft shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Kraft shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Kraft

20. If all the proposed Trustees are rejected, Kraft shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 16 and 17.

Trustee nominated by the Commission

21. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Kraft shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

22. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Kraft, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

23. The Monitoring Trustee shall:
 - (a) Propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
 - (b) Oversee the on-going management of the Divestment Businesses with a view to ensuring their continued economic viability, marketability and competitiveness and monitor compliance by Kraft with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (i) Monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, and the keeping separate of the Divestment Businesses

from the business retained by Kraft, in accordance with paragraphs 6 and 7 of the Commitments

;

(ii) Supervise the management of the Divestment Businesses as distinct and saleable entities, in accordance with paragraph 8 of the Commitments;

(iii) In consultation with Kraft, determine all necessary measures to ensure that Kraft does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Businesses, in particular strive for the severing of the Divestment Businesses' participation in a central information technology network to the extent reasonably practicable, without compromising the viability of the Divestment Businesses, and decide whether such information may be disclosed to Kraft as the disclosure is reasonably necessary to allow Kraft to carry out the divestiture or as the disclosure is required by law;

(iv) Monitor the splitting of assets and the allocation of Personnel between the Divestment Businesses and Kraft or Affiliated Undertakings;

(c) Assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;

(d) Propose to Kraft such measures as the Monitoring Trustee considers necessary to ensure Kraft's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Businesses, the holding separate of the Divestment Businesses and the non-disclosure of competitively sensitive information;

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- (e) Review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process,
 - (i) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
 - (ii) potential purchasers are granted reasonable access to the Personnel;
- (f) Provide to the Commission a written report within 15 calendar days after the end of every month, and send Kraft a non-confidential copy at the same time. The report shall cover the operation and management of the Divestment' Businesses so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Kraft a non-confidential copy at the same time, if it concludes on reasonable grounds that Kraft is failing to comply with these Commitments;
- (g) Within one week after receipt of the documented proposal referred to in paragraph 16, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the relevant Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser

.Duties and obligations of the Divestiture Trustee

24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price any Divestment Business that remains unsold to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 16. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Kraft, subject to Kraft's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
25. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 calendar days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Kraft.

III. Duties and obligations of Kraft

26. Kraft shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Kraft's or the Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Kraft and the Divestment Businesses shall provide the Trustee upon request with copies of any document. Kraft and the Divestment Businesses shall make available to the Trustee one or more offices on their premises and shall be available for

meetings in order to provide the Trustee with all information necessary for the performance of its tasks

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27. Kraft shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. Kraft shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Kraft shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
28. Kraft shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Kraft shall cause the documents required for effecting the sale and the Closing to be duly executed.
29. Kraft shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Kraft for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

30. At the expense of Kraft, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Kraft's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary

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or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Kraft refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Kraft. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 31 shall apply to such advisors *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Kraft during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

31. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
 - (a) the Commission may, after hearing the Trustee, require Kraft to replace the Trustee; or
 - (b) Kraft, with the prior approval of the Commission, may replace the Trustee.
32. If the Trustee is removed according to paragraph 31, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16-21.
33. Beside the removal according to paragraph 31, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have 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.

SECTION F. THE REVIEW CLAUSE

34. The Commission may, where appropriate, in response to a request from Kraft showing good cause and accompanied by a report from the Monitoring Trustee:
- (a) grant an extension of the time periods foreseen in the Commitments, or
 - (b) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Kraft seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Kraft be entitled to request an extension within the last month of any period.

Signed on behalf of Kraft Foods Global, Inc.

By Susan Hinchliffe, Partner, Arnold&Porter LLP

Date: 7 November 2007

Signature:..

SCHEDULE 1

Spanish Biscuits Business

1. This Divestment Business consists of:
 - (a) Rights, title and interests in the biscuits currently marketed by Kraft (other than those mentioned in Paragraph 3 under the names *Artiach*, *Artinata*, *Artichoco*, *Articoco*, *Artiavellana*, *Artilimon*, *Artiturrón*, *Digesta*, *Princesa*, *Mini Princesa*, *Mila*, *Morena*, *Selección*, *Tentaciones*, *Chiquilin*, *Chiquilin Ositos*, *Chiquilin-Energy*, *Filipinos*, *Agujeros de Filipinos Negro*, *Agujeros de Filipinos Blanco*, *Filipino Blanco*, *Filipino Caramelo*, *Minifilipinos Blanco*, *Minifilipinos Negro*, and *Marbú Dorada* ;
 - (b) Rights, title and interests, other than those mentioned in Paragraph 3, in the biscuits currently marketed by Danone Biscuits under the *Dinosaurus* name (together with (a) the "**Divestment Biscuits**"); and
 - (c) Subject to paragraph 4 below, the biscuit manufacturing plant at Orozko currently owned by Kraft Foods Galletas, S.A.U., including all production lines owned by Kraft and used in the production of the Divestment Biscuits, as fully described in Annex 1 A ("**Orozko**").¹
2. The Divestment Biscuits business includes:
 - (a) Finished goods inventory, work in process, sales and promotional material (where available) relating exclusively to the Divestment Biscuits business and held at the date of Closing;
 - (b) All trademarks owned by Kraft that are specific to the Divestment Biscuits business. For the avoidance of doubt this shall not include any other logos,

Details of the Orozko manufacturing site are set out in the attached Annex la.

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devices, brands or trademarks or any rights or interests. Particular such exclusions are mentioned for illustration in paragraph 3;²

- (c) Rights to all other intellectual property rights available to Kraft and necessary to give the Purchaser the right to manufacture and sell the Divestment Biscuits. These intellectual property rights consist of recipes, manufacturing know-how and other secret know-how, rights to the trade dress and all related copyright;
- (d) All licenses, permits and authorizations specific to the Divestment Biscuits business, including all relevant dossiers relating to such licenses, permits and authorizations available to Kraft;
- (e) Copies of all relevant data, books, records, and other documents available to Kraft and exclusively related to or necessary for the operation of the Divestment Biscuits business, including existing customer records of the Divestment Biscuits business (including by way of example relevant details concerning orders, deliveries, invoicing and billing collection of Divestment Biscuits for each such customer sufficient to provide the Purchaser with a working knowledge of customers' requirements and preferences), provided that Kraft may redact from such copies any information that does not relate to the Divestment Biscuits business;
- (f) Where possible to do so, the assignment of contracts with its customers insofar as they relate to Divestment Biscuits; where contracts with customers are due to be renewed during the First Divestiture Period or, if relevant, the Trustee Divestiture Period, the Hold Separate Manager shall be entitled to negotiate with customers for renewal of contracts in so far as they concern the Divestment Biscuits. Likewise, during the First Divestiture Period or, if relevant, the Trustee Divestiture Period, the Hold Separate Manager shall be entitled to negotiate new contracts with customers for the Divestment Biscuits;

A list of all relevant trademarks is included in the attached Annex lb.

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- (g) Subject to obtaining any necessary consents (which in the case of agreements with United Biscuits shall not be unreasonably withheld or delayed), the assignment of the manufacturing agreements currently in place between Kraft and [...] respectively insofar as they relate to the manufacturing and supply of any of the Divestment Biscuits;³
- (h) In line with applicable employment laws and other relevant legislation, all employees employed by Kraft Foods Galletas at the Orozko manufacturing facility as at the date of Closing (such employees corresponding to approximately [...] full time equivalents).⁴
- (i) Unless the Purchaser does not require them, and in line with applicable employment laws and other relevant legislation, the Personnel required for the marketing and sales functions of the Divestment Business, corresponding to approximately [...] full time equivalents,⁵ together with customary transitional services agreements in line with market practices, for other relevant functions, as listed in Annex 1 e.

3. For the avoidance of doubt, the Divestment Business does not include:

- (a) subject only to Paragraphs 3(b) and 3 (c) below, the KRAFT brand or logo, the NABISCO brand or logo, the DANONE brand or logo, the LU brand or logo, or any house brand of Kraft or Danone, other than as specifically mentioned in Paragraph 1;
- (b) in relation to *Marbú Dorada*, a divestment of the *Fontaneda* brand, except that Kraft will license the Purchaser to use the *Fontaneda* brand in association with *Marbú Dorada* for a period of 12 months from Closing;

A list of all relevant manufacturing agreements is included in the attached Annex Id.

4

Details of the Orozko employees are set out in the attached Annex If.

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Details of the such personnel are set out in the attached Annex Ig.

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- (c) in relation to *Dinosaurus*, a divestment of the LU brand, except that Kraft will licence the Purchaser to use the LU brand in association with *Dinosaurus* for a period of 12 months after Closing;
 - (d) any rights, title and/or interests in the biscuits sold under the brands *Oreo*, *Chips Ahoy!*, *Fontaneda Digestive*, *Ritz* or any other biscuits manufactured by or for Kraft or Danone;
 - (e) any rights, title and/or interests in the *Filipinos* brand in Belgium, the Netherlands, Luxembourg or France until 1 January, 2009 (these having been licensed to [...]until that date).
4. Kraft undertakes to relocate the manufacture of those biscuits that are currently manufactured at Orozko but which are not part of the Divestment Biscuits to another site within [...]of Closing [...]. Prior to the relocation, Kraft and the Purchaser shall agree reasonable terms for the Purchaser to manufacture the biscuits produced on the lines dedicated to their production as of the date of Closing.
 5. Kraft undertakes to relocate the manufacture of those biscuits that are currently manufactured by it outside Orozko but which are part of the Divestment Biscuits to Orozko within [...] of Closing [...]. It is currently envisaged that this will involve the [...]. Prior to the relocation, Kraft and the Purchaser shall agree reasonable terms for Kraft to manufacture those biscuits for the Purchaser,
 6. The Purchaser shall license Kraft to use the *Dinosaurus* brand for 12 months from Closing in countries outside Spain on reasonable terms to be agreed between Kraft and the Purchaser,
 7. The Purchaser shall license Kraft to use the *Artiach* brand in connection with *Oreo* and *Chips Ahoy!* for 12 months from Closing in Spain and Portugal on reasonable terms to be agreed between Kraft and the Purchaser.

**SCHEDULE 2 Balaton
Divestiture Schedule**

1. This Divestment Business consists of:
 - (a) Rights, title and interests in the chocolate countlines currently marketed under the brand *Balaton*;
 - (b) The production line used for the production of the *Balaton* chocolate countlines, unless the Purchaser opts to enter into co-manufacturing arrangements with Kraft.⁶
 - (c) If the Purchaser does not wish to purchase the production line mentioned in (b), the provisions of paragraph 3 shall apply.
2. The Balaton business includes:
 - (a) Finished goods inventory, work in process, sales and promotional material (where available) relating exclusively to the Balaton business and held at the date of Closing;
 - (b) All *Balaton* trademarks transferred to Kraft;⁷
 - (c) Rights to all other intellectual property rights available to Kraft and necessary to give a Purchaser the right to manufacture and sell the *Balaton* countlines. These intellectual property rights consist of recipes, manufacturing know-how and other secret know-how, rights to the trade dress and all related copyright;
 - (d) Copies of all relevant data, books, records, and other documents available to Kraft and exclusively related to or necessary for the operation of the Divestment business, including existing customer records of the Balaton business (including by way of example relevant details concerning orders, deliveries, invoicing and billing collection of Divestment Biscuits for each such customer sufficient to provide the

Details of the manufacturing line is included in the attached Annex 2a. A

list of all relevant trademarks is included in the attached Annex 2b.

Purchaser with a working knowledge of customers' requirements and preferences), provided that Kraft may redact from such copies any information that does not relate to the Balaton business.

- (e) where contracts with customers are due to be renewed during the First Divestiture Period or, if relevant, the Trustee Divestiture Period, the Hold Separate Manager shall be entitled to negotiate with customers for renewal of contracts in so far as they concern the Balaton business. Likewise, during the First Divestiture Period or, if relevant, the Trustee Divestiture Period, the Hold Separate Manager shall be entitled to negotiate new contracts with customers for the Balaton Business.
3. In the circumstances described in paragraph 1(c), and at the option of the Purchaser, Kraft or an Affiliated Undertaking shall enter into a supply or toll-manufacturing arrangement with the Purchaser for the supply or toll-manufacturing of the *Balaton* chocolate countlines in the EEA, for up to three years from the date of Closing, and on reasonable terms and conditions to be agreed with the Purchaser. Under exceptional circumstances, this period can be reasonably extended by the Monitoring Trustee until such time that the Purchaser has established the Divestment business, as certified by the Monitoring Trustee.
 4. Where possible, the assignment of all other agreements with customers, suppliers and service providers necessary to operate the Divestment Business described in this Schedule 2.
 5. At the option of the Purchaser, Kraft shall provide reasonable technical assistance to the Purchaser to assume responsibility for the manufacture of the Balaton chocolate countlines in the EEA for a period not exceeding [...] from the date of Closing, as certified by the Monitoring Trustee, and on a reasonable terms and conditions to be agreed with the Purchaser. Under exceptional circumstances, this period can be reasonably extended by the Monitoring Trustee.
 6. For the avoidance of doubt, this Divestiture Business shall not include any right, title and/or interest in any other product manufactured or sold by Kraft or Danone in Hungary.

Annex Ia

The Divestment Business consists of the Orozko manufacturing operations, which include:

- (a) Facility built in 1981. The equipment is modern and for the majority installed in the 1990's.

- (b) Five (5) production lines, including the following production technologies: wafer, rotary moulding, rotary cutting, chocolate enrobing, and laminated.
 - Line 1 : [...]

 - Line 2[...].
 - Line 3[...].
 - Line 4 does not exist.
 - Line 5: [...].
 - Line 6: [...].

Please also refer to the charts below.

- (c) Efficient, linear materials and production flow.

- (d) Quality system in place that is expected to be certified as ISO 22000 compliant by the end of 2008. The facility is compliant with all applicable health and safety regulations.

- (e) Existing capacity of [...] tons (based on 365 days, 3 shifts a day).

- (f) Significant spare capacity and significant capacity for expansion.

- (g) Total land size of [...] m² with [...] built surface.

- (h) Skilled employee base of approximately [...] persons with an average service tenure of approximately [...] years that is capable of working across multiple production lines.

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Kraft will commit to work with the Purchaser to transfer the production of *Digestives*, *Ritz* and *Mini Chips Ahoy!* out of Orozko within a period of [...]months following Closing. This production is currently expected to represent a total volume of [...] tons in 2008.

Furthermore, Kraft will commit to work with Purchaser to transfer the production of *Marbu Dorada* and those *Chiquilin* products that are manufactured at Kraft's Viana plant into Orozko within a period of [...] months following Closing. This production is currently expected to represent a total volume of [...] tons in 2008.

An organisational chart for the manufacturing facility is included in Annex If.

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Orozko production lines

[...]

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[...]

Annex Ib

Trademarks

The trademarks listed below are owned by Kraft and will be transferred with the Divestment Business:

ARTIACH	FILIPINOS
ARTIACH (new logo)	AGUJEROS FILIPINOS (white chocolate)
ARTIACH CLASSIC	AGUJEROS FILIPINOS (dark chocolate)
ARTIACH DOURADA	FILIPINOS TABU DESIGN
ARTIACH in LEFT CORNER LOGO	
ARTIACH DIGESTA	
ARTIACH 'Device'	
ARTIACH & Design (Biscuits)	
ARTIACH (Stylized)	
ARTIACH ARTI NATA DESIGN	
ARTIACH ARTI AVELLANA	
ARTIACH ARTI FRESA (pack tridimensional)	
ARTIACH ARTI LIMON (PACK)	
ARTIACH ARTICHOCHO	
ARTIACH ARTICOCO	
ARTIACH ARTI NATA	
ARTIACH ARTITURRON	
ARTIACH BIARRITZ	
ARTIACH BIG BITS	
ARTIACH CHIQUILIN	
ARTIACH DELICATESSE	
ARTIACH MINI BITS	
ARTIACH PETIT BEURRE	
ARTIACH PETIT CHIQUILIN pack	
ARTIACH SELECCIÓN pack	
ARTIACH TENTACIONES pack	
GALLETA DIGESTA (ARTIACH)	

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CHIQUILIN ENERGY (ARTIACH)
CHIQUILIN ENERGY EXPLOSION
(ARTIACH)
GALLETA CHIQUILIN (ARTIACH) DESIGN
MINI CHIQUILIN ARTIACH Design
SOLO ARTIACH
PRINCESA*
PRINCESA (graphic)*
MILA
MORENA

* Also covers *Miniprincesa* brand.

CHIQUILIN	MARBU
CHIQUILIN (Little boy design)	MARBU FIBRA 'Device' MARBU &
CHIQUILIN (pack tridimensional)	(HAT) DESIGN MARBU DORADA
CHIQUILIN CHOCO POWER	(PACK) MARBU DORADA 3-D
CHIQUILIN CHOCOLATE	(PACK) GALLETAS MARBU
CHIQUILIN NIÑO	DORADA
CHIQUILIN OSITOS (chocolate flavour pack)	MARBU FIBRA (PACK) DESIGN
CHIQUILIN OSITOS (honey flavour pack)	MARBU FIBRA DESIGN CHOCO
GALLETA CHIQUILIN CHOCOLATE	MARBU
GALLETA CHIQUILIN DOS	
CHOCOLATES	MARBU DESIGN
GALLETA CHIQUILIN OSITOS (arms up)	MARBU DORADA DESIGN
CHIQUILIN DOS CHOCOLATES	MARBU, S.A.

Annex 1c

Licenses, permits and authorisations

The main licences, permits and authorisations relating to the Divestment Business include:

- Activity license;
- Sanitation register;
- Effluents permit;
- Boilers function;
- Minor hazardous waste; and
- Waste permit.

Annex Id

Assigned manufacturing agreements

Kraft commits to work with the Purchaser to assign to it the following manufacturing agreements insofar as they relate to the Divestment Business:

Co-manufacturing agreements with [...]:

- Agreement between [...] and [...] whereby [...] manufactures [...]products and supplies it to [...] in [...] packaging;
- Agreement between [...] and [...], whereby [...] manufactures [...] products which it supplies to [...] in [...] packaging;
- Agreement between [...] and [...] whereby [...] manufactures [...]which it supplies to [...]in [...] packaging.

Co-manufacturing agreements with [...]:

- Agreement between [...] and [...] whereby [...] manufactures [...] products which it supplies to [...] in [...] packaging.

Co-manufacturing agreements with [...] :

- Agreement between [...] and [...] whereby [...] manufactures [...] which it supplies to [...] in [...] packaging.

Annex le

Transitional service agreements

■ **Logistics support - Orozko**

Kraft currently outsources all logistics in relation to the operation of the Divestment Business to [...]. At the option of Purchaser, Kraft will provide reasonable assistance to the Purchaser to negotiate an agreement with [...] to obtain logistical services on terms and conditions comparable to the terms of the agreement currently in place between Kraft and [...].

■ **Other transitional support**

At the option of Purchaser, Kraft shall provide reasonable assistance to the Purchaser for the performance of the ancillary functions which support the manufacture, sale and marketing of the Divestment Business for such period as is required by the Purchaser to establish the Divestment Business as a viable and independent business, but not exceeding [...] months from the date of Closing, as certified by the Monitoring Trustee, and on a reasonable cost plus basis to be agreed with the Purchaser.

Under exceptional circumstances, this period can be reasonably extended by the Monitoring Trustee until such time that the Purchaser has established the Divestment Business, as certified by the Monitoring Trustee. Reasonable assistance to the Purchaser is currently envisaged to include:

- (a) Systems support, including but not limited to order processing and billing collection, and financial reporting;
- (b) Human resources;
- (c) Purchasing;

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- (d) Customer services;
- (e) Research and development; and
- (f) The provision of existing process flow diagrams, descriptions of the production, bills of materials, vendor information, and quality control testing procedures to the Purchaser.

The transitional assistance agreement referred to above shall include appropriate provisions designed to incentivise Kraft to provide assistance to the Purchaser expeditiously to be agreed with Purchaser. Kraft shall carry out the transitional assistance services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

Annex If Personnel at Orozko
manufacturing facility

[...]

[...]

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Annex lg

Sales and Marketing Personnel ([...] persons)

The following personnel are candidates for a transfer with the Divestment Business described in Schedule 1:

[...]

[...]

[...]

Annex 2a

Details of the Balaton production line

Székesfehérvár is Danone's local production facility in Hungary specialized in biscuits

There is one line called "Hebenstreit" which is mainly dedicated to the production of Balaton products. Its NBV at 31.12.2007 was [...] MHUF.

Hebenstreit has a capacity of [...] tons. Total production on this line in 2007 is [...] tons.

Out of these [...] tons, Balaton accounts for [...] tons.

The line contains [...].

The net book value of this line is [...]M Euros.

[...] people are dedicated to the line per shift.

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Biscuits**

Annex 2 b

Trademarks

	TM	Date of application	File number	Reg numb	Date of expiry	of Renewal	Notes	Class
1	Balaton szelet (régí design)	1992.12.18.	r M 92 06452	er 139 737	2002.12.18.	2012.12.18.	device	30
2	Balaton szelet	1996.06.27,	M 96	149 161	2006.06.27.	2016.06.27.	word	30
3	Medalion	2002.07.12,	M 020331	177 191	2012.07.12.		word	30
4	Kapcsold ki magad!	2005.01.11.	1 M 05 00102	185 658	2015.01.11,		slogan	30
5	Balaton medál	2002.11.08.	M 020509	179 077	2012.11.08.		Coloured device	30
6	Balaton 3 D	2004.05.05,	5 M 040213 6	183 979	2014.05.05.		Coloured device	30
7	Balaton (blue-yellow)	2002.11.08.	M 020509 4	179 765	2012.11.08,		Coloured device	30
8	Balaton (blue-yellow)	2004.08.30.	M 04 03652	184 914	2014.08.30.		Coloured device	30
9.	Balaton (green-yellow)	2004.08.30.	M 04 03650	184 008	2014.08.30.		Coloured device	30
10.	Balaton (red-yellow)	2004.08.30.	M 04 03651	184 913	2014.08.30.		Coloured device	30

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