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Case No
**COMP/M.4980 - ABF/
GBI BUSINESS**

Only the English text is authentic.

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

Article 8 (2)
Date: 23/09/2008



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23/09/2008

C(2008) 5273

PUBLIC VERSION

COMMISSION DECISION

of 23/09/2008

**declaring a concentration to be compatible with the common market
and the EEA Agreement**

(Case No COMP/M.4980 - ABF/ GBI BUSINESS)

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(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹, and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 16 April 2008 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations²,

Having regard to the final report of the Hearing Officer in this case³,

WHEREAS:

1 INTRODUCTION

- (1) On 22 February 2008, the Commission received a notification pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("Merger Regulation") concerning the proposed acquisition of several subsidiaries engaged in the yeast business and owned by GBI Holding B.V. ("GBI Holding") as well as a group of assets owned by GBI Ingredients The Netherlands B.V. ("GBI Ingredients") and DSM Bakery Ingredients BV ("DSM Bakery", the target assets together referred to as "the GBI Business"⁴), by

1 OJ L 24, 29.1.2004, p. 1

2 OJ C200. , p....

3 OJ C200. , p....

4 For The purpose of this decision, "GBI" will be used as synonym for the GBI Business, unless otherwise indicated.

Associated British Foods plc ("ABF" or "the notifying party") (ABF and GBI Business are hereinafter together referred to as "the parties").

- (2) The Commission's competence in this case is based on the referral request of 7 November 2007 by the Spanish Competition Authority under Article 22(1) of the Merger Regulation, which was joined on 28 and 29 November 2007 by the Portuguese and French Competition Authorities, respectively. The Commission accepted the requests by decision pursuant to Article 22 (3) of the Merger Regulation of 13 December 2007. Subsequently, ABF notified the operation to the Commission on 22 February 2008.
- (3) During the initial proceedings ("Phase 1"), the notifying party offered initial commitments with a view to rendering the concentration compatible with the common market. Following several weaknesses highlighted in the market test conducted by the Commission, it concluded that the concentration raised serious doubts as to its compatibility with the common market and the EEA Agreement. Proceedings in accordance with Article 6(1)(c) of the Merger Regulation were therefore initiated on 16 April 2008. The parties replied to the 6(1)(c) decision on 5 May 2008. On 10 July 2008, the Commission sent an Article 11 (3) decision to ABF and subsequently suspended the time limits effective 26 June 2008. The suspension ended on 16 July 2008.
- (4) During the in-depth investigation ("Phase II"), the notifying party offered revised commitments, which removed any serious doubts as to the compatibility of the notified operation with the common market. The concentration is therefore to be declared compatible with the common market and the EEA Agreement pursuant to Articles 8(2) and 10(2) of the Merger Regulation and Article 57 of the EEA Agreement.

2 THE PARTIES

- (5) ABF is an international food, ingredients and retail group with activities in Europe, North America, Australia and New Zealand. ABF's activities include the production and sale of yeast and are managed through the AB Mauri division, which has production plants worldwide. At the time of notification, ABF had five plants in the EU (UK, Ireland, Germany, Spain and Portugal). ABF's German yeast production facility based in Nuremberg was sold on 31 March 2008 pursuant to the terms of the clearance decision issued by the German competition Authority ("Bundeskartellamt")⁵, ABF also owns two bakery ingredients plants in the UK (Cereform Ltd).
- (6) The GBI Business' core activity is the production and sale of different types of yeast, including fresh yeast (in liquid and compressed forms) and dry yeast for artisan, industrial and home bakers.⁶ The GBI Business does not have any production plants in

⁵ See recital (13).

⁶ GBI Holding. divested all of its bakery ingredients business to Werhahn Muehlen KG on 1 August 2006 except for some activities through Uniferm and has since then only been active in the production and supply of bakery yeast.

Spain, Portugal or France, and the total amount of yeast it commercializes in that region comes from the GBI Business' Italian plant (Casteggio) or from a plant in Germany operated by the JV Uniferm GmbH & Co KG ("Uniferm"), in which it holds a 50% stake. The GBI Business is being sold by the Dutch private equity house Gilde Buy-Out Partners ("Gilde") who ultimately controls it.

3 THE CONCENTRATION

- (7) According to the Share and Purchase Agreement ("SPA") signed by ABF and Gilde on 2 October 2007, the notified operation consists of the proposed acquisition by ABF of GBI Holding's yeast operations in Belgium, The Netherlands, France, Spain, Portugal, Germany and Italy, as well as a 50% share in Uniferm and 10% of the capital of Somadir SA (Morocco). ABF will also acquire some assets from GBI Ingredients and from DSM Bakery, including employees, customer contracts and intellectual property rights in the Netherlands, as well as part of GBI Holding's export business operated by the Bakery Export Group.
- (8) As a result of the agreement, ABF will acquire sole control over the GBI Business⁷ and it therefore constitutes a concentration within the meaning of Article 3 of the Merger Regulation.
- (9) The acquisition of control by ABF over these assets constitutes a single concentration. First, there is a single SPA agreement signed on 2 October 2007 in which, after a single negotiation process, the seller agreed to sell the entire GBI Business (consisting of a number of assets) to one purchaser, with one set of general conditions and clauses and, notably, with one clear business rationale to transfer the whole of the GBI Business to the purchaser ABF.
- (10) This rationale is *inter alia* based in the strong economic link between the different assets of the acquired business: for example, all of the GBI Business' yeast sales in Spain stem from its plant in Italy. Furthermore, Uniferm supplies fixed amounts of yeast to the GBI Business in France.
- (11) The agreement itself comprises a number of elements which, taken together, demonstrate that the various parts of the GBI Business are economically linked. The SPA shows that the key assets (notably the German and Italian production facilities and intellectual properties) to be acquired are interlinked with the acquisition of the other assets (sales and distribution).^{8*}
- (12) These contractual elements underpin the business rationale of the deal, which is to acquire the GBI Business, as specified in the single SPA, as a whole.

⁷ The remainder of GBI Holding's European yeast business, essentially its UK activities, has been acquired by Lesaffre. That transaction was examined by the Commission following a referral from the British Office of Fair Trading (OFT), cf. case COMP/M.5020 – Lesaffre/GBI UK, Commission decision of 11 July 2008, not yet published.

⁸ [...]*

* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk

- (13) The transaction has been implemented prior to referral in all Member States except for Portugal, Spain and Germany, where it had to be notified to the Competition Authorities. On 29 November 2007, the Bundeskartellamt cleared ABF's acquisitions of the yeast operations of the GBI Business in Germany (a 50% stake in the German company Uniform conditional on the sale of ABF's existing German yeast operations ("the Nuremberg Business") to the Swiss company Indawisa (this divestiture was offered by the parties as an up-front remedy). The two-staged⁹ implementation of the concentration does not alter the unitary economic rationale of the deal. These different implementing steps concern only the the closing of the transaction and not the acquisition of the assets and were imposed by the different regulatory regimes applying to the assets.

4 COMMISSION'S JURISDICTION

- (14) The concentration does not have a Community dimension within the meaning of Article 1 of the Merger Regulation, according to the information provided by the competent authorities and ABF. However, on 13 December 2007, the Commission decided, pursuant to Article 22(3) and (4) of the Merger Regulation, to examine the concentration following the requests of the competition authorities of Spain, France and Portugal, on behalf of these Member States¹⁰. The competent authorities of the Member States and the undertakings concerned were subsequently informed of these decisions. The Commission's jurisdiction has therefore been established by means of these Article 22 decisions.

5 RELEVANT MARKETS

5.1 RELEVANT PRODUCT MARKETS

- (15) Yeast is an essential ingredient in the production of bread and other bakery products, pizza, dough bases, beer, wine and other foodstuffs. It is a living micro-organism belonging to the fungi family and in the baking process it acts as a raising agent, it improves aroma and flavour and it also improves the elasticity of dough. The current transaction only concerns yeast for the bakery sector¹¹.

⁹ In the first step, ABF implemented the concentration in Member States where no national notifications were required, and in the second step in those Member States where the concentration had to be notified.

¹⁰ Pursuant to paragraph 50 of the Commission Notice on Case Referral in respect of concentrations, O.J. 2005, C 56/02, of 5th March 2005, where the Commission pursuant to Article 22 examines a concentration on behalf of one or more Member States, the Commission is required to examine the impact of the concentration within the territory of those Member States (in this case Portugal, Spain and France). The Commission has not examined the effects of the concentration in the territory of the Member States which have not joined the request.

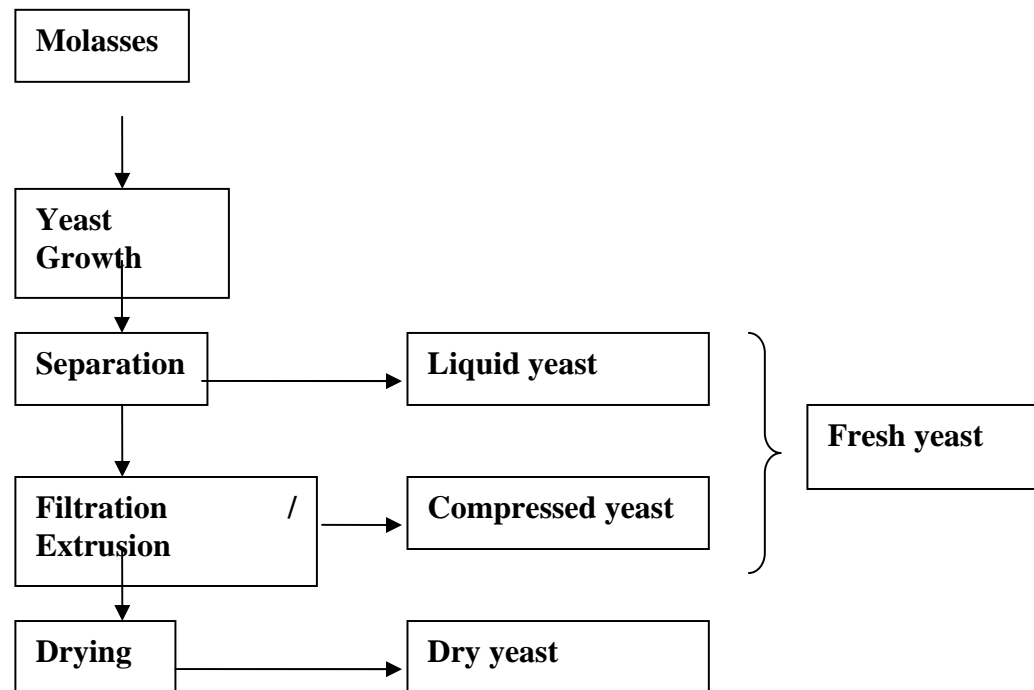
¹¹ For the purposes of this Decision, 'yeast' always means bakery yeast unless otherwise indicated.

- (16) Yeast production consists of reproduction of yeast by cell duplication (from original “mother yeast”) in sugar molasses.¹² At the beginning, a strain of yeast is developed in a laboratory. Different yeast strains may have different characteristics and therefore a specific strain must be chosen according to the applications required in the end product. A fermentor is filled with molasses and water, inoculated with a specific strain of yeast and grown into a basic yeast product. Fermentation is an energy consuming process in which the actual yeast is produced by duplication of the yeast cells. After fermentation, yeast cells are separated from the fermentation liquid and concentrated to the basic liquid yeast product. The fermentor is then cleaned and sterilised. Each time the fermentor has been cleaned a completely new production process can start. This allows many different batches to be made at the same facility, each forming a different specification. The number of different kinds of yeast a supplier will consider producing at a factory differs between suppliers.
- (17) This basic product, essentially corresponding to *liquid yeast*, is cooled and stored and can be put in containers or trucks as an end product, which is typically suited for larger industrial customers. However, liquid yeast can also be fed into the next step of the production process- filtration. After filtration and dehydration, the excess water is removed from the yeast cream and the yeast is extruded and compressed to a further end product, *compressed yeast*. Compressed yeast can either be cut to form blocks of yeast (a standard yeast block weighs 0.5 kg and is usually packaged in paper), or alternatively, pressed through a grid with small holes to form granular yeast, which is packaged in larger bags. The end product is immediately transferred to refrigerated storage to be later transported in refrigerated vehicles to refrigerated storage facilities close to clients. Liquid yeast and compressed yeast are together referred to in the industry as *fresh yeast* (or *wet yeast*). In order to obtain yeast with a much longer shelf life, compressed yeast can also be further processed by being dried in large dryers to obtain a high dry matter percentage.¹³ This creates so called *dry yeast*.

¹² Molasses are the key feedstock used for the yeast reproduction process. Molasses is a liquid by-product of sugar production (be it cane or beet) containing sugar (over 45% generally) vitamins, nutrients and minerals.

¹³ On average, depending on the dry matter percentage, the production of 1 kg of dry yeast requires about 3.5 to 4 kg of compressed yeast equivalents (which is also referred to as fresh yeast equivalent). In turn, in order to obtain 1 kg of compressed yeast, one has to use on average 1.5 liquid yeast. These conversion ratios correspond to the dry matter percentage of the products.

Figure 1: Yeast production process



- (18) The three basic yeast products are described as follows:
- (19) **Liquid yeast** is a form of fresh yeast and is essentially the raw product from the manufacturing process. It generally has yeast solids of approximately 20% - 25%. It has a shelf life of around three weeks if refrigerated.
- (20) Liquid yeast is mainly supplied to industrial bakers. They produce bakery products and other products where yeast is needed in large industrial production sites and have the equipment to use liquid yeast. Liquid yeast is typically distributed directly from the manufacturing facility to the site of the customers by refrigerated trucks.
- (21) However, in some instances, liquid yeast is also distributed in smaller containers such as 1.5 litre Tetrapaks which do not require the customer to use such equipment. This is used by artisan bakers. However, this is a niche product and the sales of this liquid yeast sold in small containers are marginal.
- (22) **Compressed yeast** usually has a dry matter content of approximately 30%-35%. It is produced by filtering the liquid yeast and extruded into blocks, wrapped in wax paper and refrigerated until distribution. These blocks are distributed in cartons by refrigerated trucks. Customers need a cool room in which the compressed yeast is stored. Compressed yeast has a shelf life of maximum 45 days.
- (23) Compressed yeast in block form is typically used by small and medium sized artisan bakeries. The most standard packaging of compressed yeast 0.5 kg blocks packaged by 20. However, compressed yeast is also supplied in granulated form and used by larger semi-industrial or industrial bakers..

- (24) *Dry yeast* is characterised by a dry matter percentage above 95%. It is produced by drying the compressed yeast and has a shelf life of approximately 2 years. Producers in less developed countries are more likely to use dry yeast given the need of refrigerated transport and storage as well as less developed distribution system required for fresh yeast, and, correspondingly, only relatively little dry yeast is sold within the Community.

5.1.1 Demand Side Substitutability

- (25) The notifying party takes the view that customers do not regard fresh yeast and dry yeast as substitutable and that within fresh yeast, there is likely to be limited scope for demand substitution between compressed yeast and liquid yeast.¹⁴
- (26) Indeed, from a demand-side perspective, fresh and dry yeast cannot be regarded as substitutable, due to their different features, dosing mode and shelf life which is translated into the habits of European bakers (both industrial bakers and artisan bakers) who typically do not use dry yeast for their baking process, but rather rely on fresh yeast. The amount of dry yeast sold in the Community is limited.¹⁵ Some quantities of dry yeast (in small sachets) are also sold in Europe in supermarkets for household use. Competitors also point out that there is very limited customer switching from fresh to dry yeast in Europe.¹⁶
- (27) As regards liquid and compressed yeast, they are substitutable in their general function, as is the case with dry yeast, but there are considerable differences between the use of two yeast product types which mean that the mutual substitutability of compressed and liquid yeast by customers is very limited.
- (28) First, liquid yeast is supplied primarily in bulk quantities, designed for the use of industrial bakers which have the equipment necessary to process and store it. For the industrial baking process, which is to a large degree automated, liquid yeast offers a functional superiority compared to compressed yeast as it achieves a more consistent result and can be used to achieve a greater degree of automation in the baking process than compressed yeast, namely as the product is not packaged.¹⁷ In order for industrial customers to start using bulk liquid yeast, adjustments in the production process and special equipment are necessary. Such an installation system comprises storage tanks, refrigerated units, piping and related equipment. Installing this equipment requires considerable financial investments for clients (approximately EUR 300 000 to EUR 350 000)¹⁸ and can take up to a year to plan and install the handling equipment. It is apparent that the advantages of using liquid yeast are only accessible to bakers of a

¹⁴ Form CO, paragraph 166.

¹⁵ Form CO, paragraph 166.

¹⁶ See, for example, response of Lesaffre of 7 April 2008 on Commission questionnaire of 29 February 2008, question 8. Response of Lallemand of 11 March 2008 on the same questionnaire, question 13. Lallemand observes that except in Nordic countries, switches to dry yeast have not occurred in Europe.

¹⁷ See response of Lesaffre of 7 April 2008 on Commission questionnaire of 29 February 2008, question 8.

¹⁸ Liquid yeast producers also offer customers the option of leasing the necessary equipment, in return for exclusivity for the duration of the leasing contract.

certain scale (and level of industrialisation), which would justify the investment into the handling equipment. Switching from compressed to bulk liquid yeast is only possible for bakers of a certain size. The economic limitations involved in such a switch thus excludes a considerable part of the demand represented by artisan bakers, the proportion of which is particularly high in the Member States concerned by the investigation.

- (29) Second, substitutability is considerably limited with regard to the larger industrial clients who could possibly switch to bulk liquid yeast and enjoy the benefits. It has been observed that larger industrial customers do indeed switch from compressed to liquid yeast and this is also confirmed by competitors.¹⁹ It appears that, rather than a mere reaction to price developments, such switching is a strategic choice for the customer, as it involves considerable costs, requires advanced planning time and is thus not immediate and involves a technical choice to be made on how the production process is arranged. This also implies that once this strategic choice has been made, it is unlikely that the customer would switch back to compressed yeast. This is consistently put forward by market participants, including the notifying party.²⁰
- (30) Smaller industrial customers and artisan bakeries (supplied via distributors) typically use compressed yeast. These customers would not be able to switch to bulk liquid yeast as they do not have the scale to purchase the necessary equipment or the large sourcing needs which would justify the use of bulk liquid yeast. In addition to liquid yeast supplied in bulk quantities, GBI and Compagnie des Levures Lesaffre ("Lesaffre") introduced liquid yeast in small containers (GBI in 1.5 litre Tetrapaks and Lesaffre in 20 litre containers called 'Kastalia') on the market some years ago, targeted at small and medium sized customers. However, this is considered a niche product and still does not represent considerable volumes. For example, GBI data on Fermipan liquid Tetrapak confirms minute volumes sold and, regarding the Spanish market, decreasing trend of sales. Market participants questioned during the investigation pointed out that the commercial potential of these niche products is quite limited and it is not expected to develop into large volumes or significantly affect the sales volumes of compressed yeast.²¹ The quality of the Tetrapak product of GBI was also questioned.²²
- (31) In reply to the market investigation, the large majority of distributors (who are serving smaller industrial customers and the artisan bakers) confirmed that their clients would not switch between different forms of yeast in case of a permanent price increase of 5% to 10%.²³

¹⁹ Over the last five years, it has been observed in Spain that in the consumption path of industrial customers, the amount of liquid yeast purchased has increased and the amount of compressed yeast has decreased, suggesting some degree of substitution. In France and Portugal, an increase in liquid yeast purchased has been observed but not followed by a reduction in the consumption of compressed yeast.

²⁰ Form CO, para 167.

²¹ See, for example, minutes of conference calls with Lallemand of 19 May 2008.

²² Due to the oxygen emerging from the liquid product, causing deformation to the Tetrapak, which can also lead to "explosion".

²³ Commission questionnaire of 28 February 2008 to distributors, question 12.

5.1.2 Supply Side Substitutability

- (32) The notifying party argues that there is a large degree of supply-side substitutability between the different forms of yeast and that it is easy for a supplier to switch production from one type to another.
- (33) Whilst it is true that there is degree of supply-side substitutability as the production process of the yeast forms is interlinked, switching production processes also has certain constraints. It was pointed out in the market investigation that if the particular production facility already has all the necessary equipment installed for a particular type of yeast, it would be relatively easy to switch production types. However, if the plant is currently optimised for producing a certain output in terms of compressed, dry and liquid yeast, it would become necessary to invest in particular equipment to allow for an increased production of a particular type of yeast.
- (34) Switching to the production of dry yeast involves considerable investment in the necessary drying equipment (a drier can cost up to EUR 6 million), which imposes a constraint on the producer. In fact, not all production plants and not all suppliers (especially the smaller ones) are producing dry yeast.
- (35) Also, a change from liquid yeast to compressed yeast would require special filtration machines, packaging equipment and cold storage facilities. This presupposes enough space to install these facilities, which is not always available at all production sites. This investment is estimated to take about 6 to 12 months, which demonstrates that the switch would not be immediate and would involve significant costs.
- (36) The limitations involved with switching are clearly demonstrated by the answers of smaller producers – Gebrueder Asmussen GmbH + Co. KG ("Asmussen"), a small German producer, for example, only considers switching from liquid yeast to compressed yeast easy (not the other way around), probably because of technical bottlenecks and optimisation. Similarly, Zeus I.B.A. SPA ("Zeus"), a small Italian producer, explains it would not be switching to dry yeast since its production plant does not have any drying equipment installed.
- (37) Furthermore, it appears that a mere 5% to 10% increase in price of a particular product is not enough to make the sales of a particular yeast type attractive enough to justify diverting the production of other types of yeast. In particular, if a producer is supplying large industrial clients with liquid yeast, it would not want to lose those clients just because the price level of compressed yeast increases. As one competitor explains, it plans its plant utilisation well in advance in response to the anticipated demand of particular yeast types and gives the example of increasing liquid yeast production at the expense of compressed yeast only once the liquid yeast volumes were secured through an agreement with customers. The security of continuing liquid yeast sales is often enhanced by leasing contracts for liquid handling equipment offered by the suppliers. Diverting supplies of liquid yeast from industrial customers to compressed yeast largely sold by distributors to the artisan segment and where no sales are guaranteed may therefore involve a commercial risk that the producer is reluctant to take.
- (38) Another consideration to take into account regarding the supply-side substitutability between compressed and liquid yeast is the difference between the shipping distances of the two products. Even if switching at the production level is possible at some cost,

producers supplying compressed yeast in a region at a greater distance would find it very difficult, if not impossible to supply liquid yeast in that region. This is evidenced by GBI who supplies compressed yeast into Spain and Portugal from Casteggio in Italy, but is unable to supply bulk liquid (only small volumes of small Tetrapak containers) into these markets. GBI lost all of its bulk liquid customers in Spain and Portugal when it moved its yeast production from Portugal to Italy around 2001. The shelf life and perishability of liquid and compressed yeast are different., Accordingly, shipping distance is of key importance, as long-distance refrigerated transport may also influence the quality of the yeast, which is particularly relevant for liquid yeast in bulk quantities. Transport costs are much higher for liquid yeast (transporting water), thus it is not economically viable to transport it from further away. Industrial customers primarily seek stability of quality and of supplies and delivery times, so there is a higher risk from further distances which they are generally not willing to take.

- (39) However, this does not mean that the possibility of switching capacities used for the production of different forms of yeast is not to be taken into account in the competitive assessment. The constraints of switching from different forms of yeast, mainly from dry yeast to compressed yeast, is analysed in the relevant section of the competitive assessment.

5.1.3 Conclusion on the relevant product markets

- (40) Even if a degree of supply-side substitutability between different forms of yeast is observed, it is considered, on balance, that the very limited demand-side substitutability justifies separate product markets for dry, compressed and liquid yeast.
- (41) Liquid yeast in small format (such as the 1.5 litre Tetrapack containers) constitutes no alternative for industrial clients who source bulk liquid yeast. Moreover, this small format can be shipped over wider distances. Therefore, it is appropriate to exclude liquid yeast supplied in smaller containers from the market for bulk liquid yeast (hereinafter in this decision, liquid yeast will be used as a synonym for bulk liquid yeast). On the other hand, these products seem to compete, to some extent, with compressed yeast. The issue as to whether liquid yeast sold in small containers should be included within the compressed yeast product market may nonetheless be left open. These products were developed for artisan bakers, are sold through distributors, and therefore may be said to be substitutable for compressed yeast. However, the minute quantity sold in Portugal, Spain and France, together with the market investigation showing that these sales are not expected to grow by any substantial amount, means that the competitive assessment will not differ should the compressed yeast market include liquid yeast in small containers. Therefore, it can be left open in this case whether compressed yeast and liquid yeast in small containers belong to the same product markets, as the competitive assessment would not change.²⁴

²⁴ Only GBI and, to a lesser extent, Lesaffre are supplying these products in the markets analysed, and the changes in market shares would not be significant (not more than 1% on any possible market). Moreover, GBI's and Lesaffre's share would increase if liquid yeast supplied in smaller containers was calculated together with compressed yeast, which would raise concerns in the competitive assessment.

- (42) It is thus concluded that liquid yeast (comprising bulk liquid yeast, but not liquid yeast supplied in smaller containers), compressed yeast and dry yeast constitute three separate relevant product markets for the purpose of this decision.

5.2 RELEVANT GEOGRAPHIC MARKETS

5.2.1 Compressed yeast

- (43) The in-depth investigation which was carried out in this case provided several elements supporting the conclusion that the markets for compressed yeast are national in scope for the territories of France, Portugal, and Spain.
- (44) According to the Commission's notice on the definition of the relevant market for the purposes of Community competition law, "*the relevant market comprises the area in which the undertakings concerned are involved in the supply and demand of products and services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas*".²⁵ Indeed, the conditions for competition differ significantly in France, Spain and Portugal.

5.2.1.1 Market shares and positions of suppliers vary considerably

- (45) The market structure in France, Spain and Portugal varies considerably. With regard to suppliers, it is observed that their market share varies widely from Member State to Member State, which to a large extent reflects their historic presence and tradition on the markets.
- (46) Lesaffre is the clear market leader in its home-market of France ([60-70]% market share for compressed yeast), with over 100 years history and three production plants. Lesaffre is also very strong in Spain ([40-50] %) where it also has a production plant, while in neighbouring Portugal Lesaffre has only [20-30]% market share and is considered a relative newcomer, only entering the market in the nineties.
- (47) GBI is the market leader in Portugal ([40-50] %) where it has a very strong foothold and traditional position with 80 years history. GBI used to operate a production plant in Portugal until 2001-2002 when production was re-located to northern Italy as part of a consolidation process. In neighbouring Spain, GBI has only a [10-20]% market share and only a [10-20]% share of the market in France (in France it is still perceived as a 'French' player due to its historic presence and a former plant in France).
- (48) ABF is stronger in Spain and Portugal where it has its production plants ([20-30] % market share in Portugal and [30-40] % market share in Spain) and much less strong in France ([10-20] % market share) where it is considered a foreign producer.

²⁵ OJ C 372, 9.12.1997, para. 8

- (49) The presence of fringe players is also different: Puratos Group ("Puratos"), a Belgian producer of yeast, is the largest fringe player in France with a [0-5]% market share, while it is virtually inexistent in Spain and Portugal with regard to compressed yeast.²⁶
- (50) The large differences in market shares of the main suppliers reflect their different positioning and different market leadership roles in a given Member State. The respective market structures and positions naturally affect their behaviour on the market and have an effect on the competitive interaction of the players.²⁷

5.2.1.2 The structure of demand and distribution systems are considerably different on a national basis

- (51) The structure of demand is very different in France, Portugal, and Spain. First, there is a striking difference between the proportion of the two customer groups – artisan bakers (which are served by distributors) and direct customers (mostly large industrial bakeries, or in-store bakeries of supermarkets). In Portugal, the distribution segment typically serving artisan bakers represents about [90-100] % of the compressed demand, while direct clients represent only [0-5] % of that demand. Portugal is a country of artisan bakers and industrial bakers have not developed. In Spain, direct/industrial customers constitute [20-30] % of the compressed yeast demand and in France, up to [50-60] of that demand..
- (52) Such large differences in the composition of the market with regard to the two market segments necessarily influence the conditions in which the players compete in a given market.
- (53) Second, the distribution system which serves mostly the artisan sector is completely different in France from that of Spain and Portugal, while Spain and Portugal also have specific features as regards distribution.
- (54) As referred by the notifying party and confirmed by the market investigation, most French distributors are attached to one of the three or four large distribution/purchasing groups (*groupement d'achat*) which together cover a large majority of the distribution for compressed yeast in France. These groups have typically nationwide coverage and join independent distributors of yeast and a large number of other products for bakers. The purchasing groups are internally divided into exclusive local regions for each member. The group negotiates the supply conditions (mainly discounts) on behalf of their members with the producers, who are then referenced by the group (each group references two or sometimes three suppliers). The distributors – who are members of the group - would then typically source their yeast supplies from the producers which are referenced by their group, as they benefit from discounts and other benefits negotiated at the group level.
- (55) No such structures exist in Portugal and Spain where the market investigation has clearly demonstrated that the distribution system operates in a completely different

²⁶ The sales of other smaller players who are based in different areas (such as Zeus (Italy), Asmusen (Germany), Lallemand (based in Germany and Austria), Pakmaya (Turkey)) represent only marginal market shares in each of the three Member States.

²⁷ The different competitive interaction is also evidenced by the different price evolutions in a given Member State (see below, paragraph 5.2.1.5).

manner. Distributors in these two countries have either an exclusive relationship with one supplier only or, in the absence of written contracts, they operate typically on a *de facto* exclusive basis, meaning that apart from very small exceptions, one distributor works only with one yeast producer. There is no nation-wide distribution group and distributors are typically regional with a strong local focus.

- (56) There are also differences between the distribution systems in Portugal and Spain.
- (57) Indeed, at least with regard to the distributors of ABF and GBI, distributors in Portugal have fixed margins and do not determine the final price for artisan bakers themselves, which puts them in a position similar to that of mere agents and logistic operators of their supplier, with no influence on the final price. This is different to the situation in Spain, where distributors are free to determine the final price to end consumers of yeast.

5.2.1.3 Importance of local presence in terms of sales force and local distribution network

- (58) The market investigation has also shown that a local sales force is very important for suppliers to support sales of yeast.
- (59) In order to maintain a meaningful presence in a country, suppliers have to rely on a dedicated sales force that keeps in touch with distributors and industrial customers. It is not uncommon that dedicated sales personnel also visit artisan bakers. Sales people do promotions and demonstrations of new products and in general establish and maintain good relationships with distributors and clients who are considered very important in the baker's business.
- (60) Market participants explain how important it is for them to have a national dedicated sales force to support yeast sales in a given country.
- (61) For example, the Belgian producer Puratos who is present in the French market considers that "it is vital in the yeast business to have a good local sales and distribution network, at least in the French market, where there is a high proportion of artisan bakers. Puratos (via Patisfrance) has own sales people visiting the artisan bakers and 'pushing' for their brands."²⁸
- (62) Lallemand Inc ("Lallemand") similarly explains that "Local sales force is key in the yeast business, the sales people of Lallemand also visit the artisan bakers and establish relationships, this is very important."²⁹
- (63) In the same vein, the Swiss competitor Indawisa, who now runs the former ABF yeast business in Germany, reports "having a local sales force in a given country is of key importance. There is little chance a supplier would expand without sales people.

²⁸ Minutes of conference call with Puratos, of 20 May 2008.

²⁹ Minutes of telephone conference with Lallemand of 19 May 2008.

Indawisa even has sales force in the Netherlands, even if the volumes sold there are relatively minor."³⁰

- (64) In Spain, Portugal and France, all players who have a significant presence on the market (ABF, GBI, Lesaffre, and to a much less significant degree Puratos in France) do have local sales forces on which they rely in their contact with the market. It is observed that on the contrary fringe players in those countries (like Lallemand, Zeus, Asmusse) do not have any sales people on the ground and merely rely on rather anecdotal sales to some individual distributors.
- (65) Sales forces develop relationships with key industrial customers for which reliability of supply and quality is essential and where quick reactions in case of any disruptions is sought as a guarantee. .
- (66) Local presence with sales people is also particularly important in countries where a large proportion of sales is to the artisan segment and where suppliers must have a steady contact with their distributors. It was reported that it is very difficult to enter a foreign market without having contacts there, in particular as regards the development of a distribution chain.³¹ In particular, traditional relationships of suppliers with distributors are of key importance in the business in Spain and Portugal.
- (67) Relationships with distributors in Spain and Portugal have been described by the local GBI manager as "*intense relationship where loyalty is needed to be assured*."³² This is largely driven by the formal or *de facto* exclusive relationships with distributors which are the norm in Spain and Portugal and where tradition plays a significant role. In Spain, for example, the parties mostly do not have a written contract with their distributors and a lot is built upon trust. In Portugal, sales employees of GBI and ABF even negotiate discounts to individual artisan customers of the distributors, as the latter are not entitled to set the final prices to their customers but rather act as the 'arms' of their suppliers.
- (68) The distributors in Spain and in Portugal are indeed generally very loyal to their supplier. The absence of a local presence, loyalty of distributors and the regional focus of distributors makes it difficult for newcomers to establish a distribution network of reasonable scale to supply the national territories from a distance.

5.2.1.4 Brands vary from Member State to Member State

- (69) Local brand notoriety in a particular Member State is also important with artisan bakers. Yeast is an essential product for the baking process of bakers and as such quality and reliability play a big role. Brand in association with the image of the producer gives an assurance on quality of the product. In the industrial segment, brands are not important.

³⁰ Minutes of telephone call with Indawisa of 16 May 2008

³¹ Minutes of conference call with Uniferm, Call on 19 May 2008.

³² Minutes of conference Call with GBI Spain and GBI Portugal of 22 May 2008.

- (70) As one competitor observes (here specifically with regard to the French market where he is active), "*Artisan bakeries (...) care very much about brands and, even though yeast is a commodity, they are willing to pay a premium for a known brand.*" Strong local players use the quality image of their established brands to charge higher prices.³³
- (71) It is observed that within the three countries examined, the brands of the main suppliers vary a lot – some local traditional brands which are very popular in one Member State are hardly known in another, indicating that the local notoriety of particular brands is quite different and that brand portfolios of the producers are far from homogenous across the region.
- (72) For example, the leading brands of GBI in Portugal are *Activa* and *Jacto*, making up [...] of GBI's sales in that Member State, whereas they are not sold at all in Spain or in France. Lesaffre's brand [...] has important sales in Spain whereas it is not sold in France or Portugal and [...], which is another important Lesaffre brand in Spain, only has minor sales in France or Portugal. ABF makes most of its sales in France with the brands *Universal* and *Europa*, whereas they are not sold in Spain or Portugal. Even though some brands are to be found across Member States, like [...] brand, the position of this brand is very different in France where it is the clear best-seller to its position in Portugal for example, where its sales are much lower compared [...].

5.2.1.5 Price levels and dynamics of price movements is different in France, Portugal, and Spain

- (73) Price levels also differ in France, Portugal and Spain. There is a clear gap between the average price for compressed yeast in Portugal (where average prices are highest), Spain and France (where average prices are lowest), which may, to a large extent, reflect the different demand structure in each market.
- (74) The notifying party submits that ABF's average price for compressed yeast sold in France is EUR [...] per tonne, EUR [...] per tonne in Spain and EUR [...] per tonne in Portugal. Based on these figures, the average selling price of ABF's compressed yeast was [...] in Spain compared to France, whereas ABF's average price in Portugal was [...] than in Spain and [...] than in France. The average price of compressed yeast sold by GBI follows a similar pattern with a significant gap between Spain, Portugal and France – EUR [...] per tonne in France, EUR [...] per tonne in Spain and EUR [...] per tonne in Portugal.³⁴
- (75) What is even more telling about the differences in competitive interaction in each Member State is the dynamic evolution of price levels. Based on monthly transaction data submitted by main suppliers in relation to their sales of compressed yeast in France, Spain and Portugal, the average price movements were reconstructed in the

³³ Minutes of conference call with Puratos, Call on 20 May 2008.

³⁴ Annex 7.4 to Form CO, 2006 average prices for compressed yeast.

respective countries. They are shown in the graphics in Figure 2, Figure 3 and Figure 4.³⁵

Figure 2 Average price for compressed yeast in Spain



³⁵ In the Figures 2, 3 and 4, the actual figures were removed due to confidentiality reasons, but the scale on all three figures is the same.

Figure 3 Average price for compressed yeast in Portugal

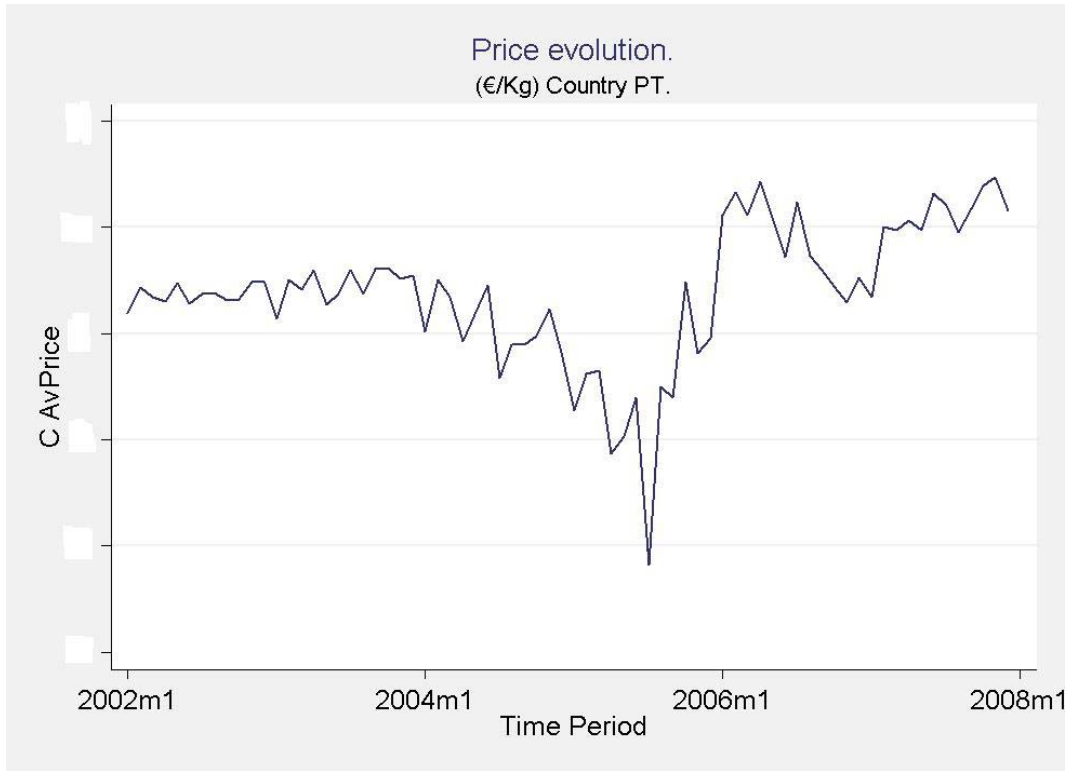
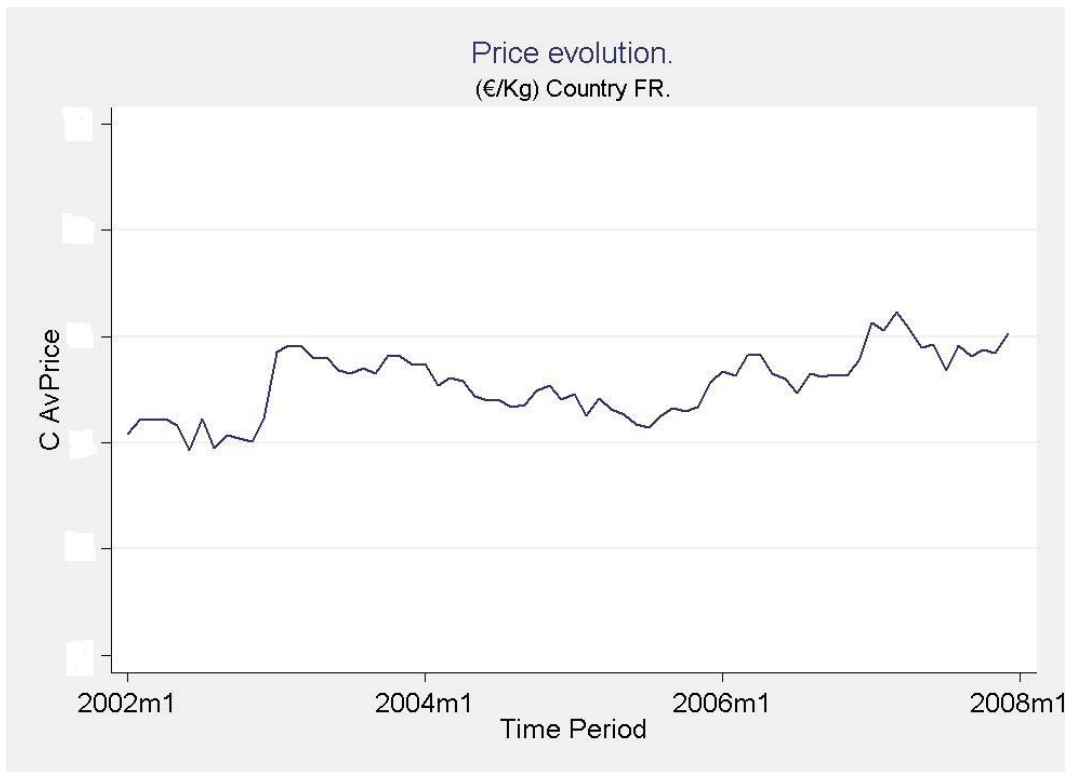


Figure 4 Average price for compressed yeast in France



- (76) From the price movements as shown above, a striking difference is observed between the dynamics of prices in Portugal in comparison with neighbouring Spain in particular. Whereas the average prices in Portugal were in decline between 2003 and mid-2005 and then rose sharply again at the end of 2005 and the beginning of 2006, the evolution of prices in Spain shows a constant increasing trend since 2002. The large price level drop which occurred in Portugal does not seem to have had any influence on the Spanish prices. This indicates that the dynamics of the market are indeed different in these two Member States and that the competitive interplay between producers and demand is to a large degree independent.
- (77) Moreover, correlations of average price movements reconstructed on regional levels show that within all regions of Spain prices moved in a very homogenous manner, whereas the correlation is not as strong when compared to regions in Portugal and France. For example, the graph in Figure 5 depicts the price correlations with the base region of Madrid, the intensity of the colour indicates the strength of the correlation. The graph shows that prices across all regions of Spain are very much correlated with the price in the region of Madrid and to a lower extent with the region outside Spain.

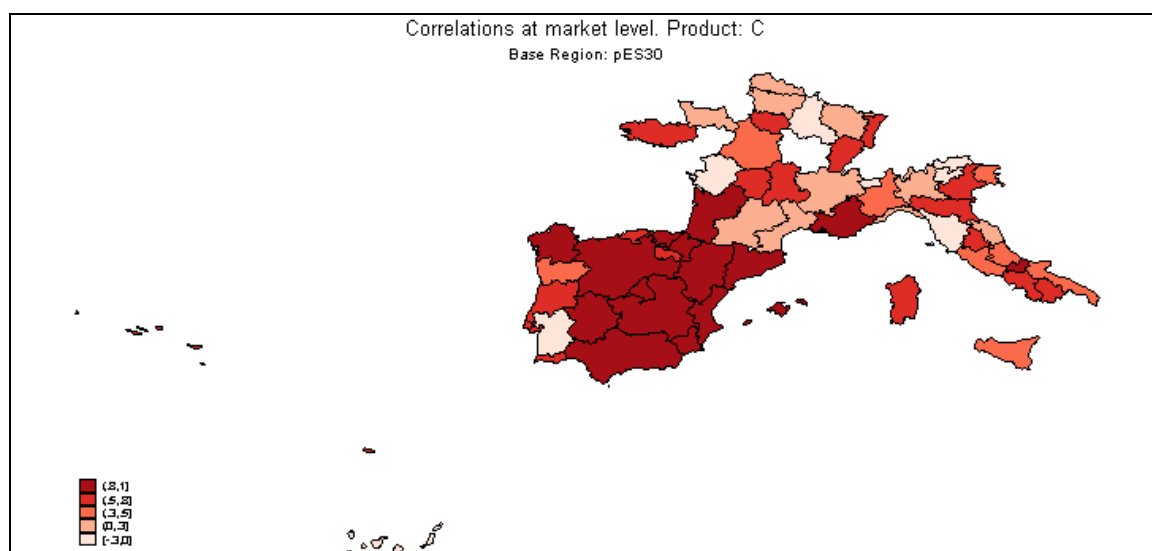


Figure 5 Price correlation between regions with Madrid as base region.

5.2.1.6 Supply-side considerations

- (78) The notifying party puts forward the fact that compressed yeast is shipped from production facilities over national borders, explaining that shelf life and transport costs are not an obstacle to supply, even across long distances. Essentially, the fact that compressed yeast travels is demonstrated by the supply patterns of the main players. The notifying party also points at supplies to Spain, Portugal and France from

smaller producers located further away, arguing that it is profitable to supply over large distance and that this would even be so in case of price rises³⁶

- (79) Compressed yeast is indeed transported over national borders and producers do not necessarily have a production plant in the particular Member State where they are present. This is best demonstrated by GBI, which supplies the Spanish, Portuguese and a part of the French territory from its large plant in Casteggio (Italy). Some of GBI's French customers are also served from Monheim (Germany) from the production of Uniferm JV. ABF has a plant in Setúbal (Portugal) which supplies Portuguese customers [...]*. ABF's second plant in Córdoba (Spain) almost entirely supplies the Spanish market [...]*. Lesaffre's production facility in Valladolid (Spain) produces mainly for [...]*Fringe players indeed transport their yeast from their home base, for example Italy or Germany.
- (80) Among the three Member States analyzed, the investigation revealed particular links between the Spanish and Portuguese territories from a supply side perspective. First, the geographic proximity and location of the Spanish and Portuguese markets does play a role both in the context of shipping radius of (potential) yeast supplies produced in other regions of Europe and also as regards the proximity of supplies within the Iberian Peninsula. The latter is best demonstrated by Lesaffre, which has a production plant in Valladolid (Spain), which is located very close to the Portuguese border and thus very well suited to serve Portuguese customers as well. Second, the relatively minor size of the Portuguese market compared to Spain and its geographic isolation make Portugal, from a supply perspective, to a certain degree linked to the neighbouring Spanish market which is more than three times bigger in size. This, perhaps coupled with a relative cultural proximity, is likely the reason why two major suppliers in the region – GBI and Lesaffre – both have a central regional head office making business decisions for both Portugal and Spain.
- (81) However, taking a balanced approach and considering the very strong national characteristics of the markets as described in the sub-sections above, the markets for compressed yeast are considered national in scope, despite the links between Spain and Portugal on the supply side, and the fact that the products are not necessarily produced locally but often shipped cross-border. Naturally, the competitive constraints imposed by producers located within a reasonable supply distance from Spain, Portugal and France have been fully analysed within the relevant sections of the competitive assessment of this Decision.

5.2.1.7 The notifying party's view on geographic market for compressed yeast

- (82) In the Form CO, the notifying party takes the view that the market for compressed yeast is most likely wider than national and increasingly European in its geographic scope, essentially relying on supply-side considerations.
- (83) It is, however, interesting to note that in an earlier submission to the Commission made in relation to a referral request pursuant to Article 22 of the Merger

³⁶ Form CO, paras. 208-246, containing the notifying party's views on the relevant geographic market.

Regulation³⁷, the notifying party puts forward arguments speaking strongly in favour of national markets. In particular, in the context of inter-state trade, ABF states that *"while ABF acknowledges [...] that on the supply side of the yeast market there are competitive constraints from imports into each territory, on the demand side, for the reasons described in the [national] notifications, the patterns of demand are manifestly national, with different distribution structures, different distributors and pattern of retail demand and different wholesale and retail pricing"*³⁸ The notifying party states in its submission that *"It is clear from the national notifications that there are distinct national features of the geographic markets concerned"*³⁹. ABF also acknowledges that *"on the supply side, the structure of the national territories differs significantly between Member States"* pointing at significant differences in market shares⁴⁰. ABF also points out at further differences in the demand characteristics: *"the bread markets in Spain and Portugal are characterised by a much large number of craft/artisanal bakers who are supplied by distributors, although the distribution structures between those two territories are materially different."*⁴¹ ABF further argues that a further difference is evidenced by the fact that consumption of liquid yeast in Spain represents a far greater share of the total yeast consumption than it does in Portugal, which corresponds to the greater proportion of artisanal bakery in Portugal, this giving rise to different features of distribution in the two territories. *"In Portugal, where there are many small 'drop' sizes, distribution networks are key and ABF has accordingly entered into exclusive distribution agreements. In contrast, in Spain, ABF tends not to have any formal agreements with distributors; any exclusivity is de facto, rather than contractual and is decided by distributors, not ABF."*⁴² Further, ABF argues that *"another factor strongly indicating the national focus of the Transaction is the significant price differences for yeast between each Member States"*⁴³. ABF concludes that *"In light of the particular supply and demand characteristics explained above, and the significant differences in yeast prices*

37 Submission of ABF of 20 November 2007 "Briefing Note to the European Commission concerning a request by the Spanish CNC pursuant to Article 22 of the EC Merger Regulation"

38 page 5, para 4.3 of the submission of ABF of 20 November 2007 "Briefing Note to the European Commission concerning a request by the Spanish CNC pursuant to Article 22 of the EC Merger Regulation"

39 Page 6, para 5.1 of the submission of ABF of 20 November 2007 "Briefing Note to the European Commission concerning a request by the Spanish CNC pursuant to Article 22 of the EC Merger Regulation"

40 Pages 6-7, para 5.4 and 5.5 of the submission of ABF of 20 November 2007 "Briefing Note to the European Commission concerning a request by the Spanish CNC pursuant to Article 22 of the EC Merger Regulation"

41 Page 8, para 5.7 of the submission of ABF of 20 November 2007 "Briefing Note to the European Commission concerning a request by the Spanish CNC pursuant to Article 22 of the EC Merger Regulation"

42 Page 8, para 5.7 of the submission of ABF of 20 November 2007 "Briefing Note to the European Commission concerning a request by the Spanish CNC pursuant to Article 22 of the EC Merger Regulation"

43 Page 9, para 5.10 of the submission of ABF of 20 November 2007 "Briefing Note to the European Commission concerning a request by the Spanish CNC pursuant to Article 22 of the EC Merger Regulation"

between Member States, the focus of any competition assessment will be in the national markets..."⁴⁴.

5.2.1.8 Conclusion on geographic market for compressed yeast

(84) In light of the above, it is considered that the geographic market for compressed yeast is national in the territories of Spain, Portugal and France.

5.2.2 **Liquid yeast**

(85) The notifying party submits that the relevant geographic market for liquid yeast might be rather limited and could be national. It provides examples of cases where liquid yeast has been supplied across borders, for example from GBI's plant in Italy into Spain and Portugal, but admits that these (marginal) cases were supplies of liquid yeast in 1.5 litre Tetrapak cartons and not bulk supplies of liquid yeast to industrial clients, which account for the overwhelming majority of supplies of liquid yeast.

(86) Shipping distances depend on several factors such as demand and preferences of an individual customer or a group of customers in a specific region (such as frequencies of deliveries and reliability), as well as the size of the production facility which determines the level of efficiencies of scale and margins. These factors determine the maximal technically feasible and economical shipping radius which is necessarily plant-specific.

(87) The shipping data on a plant-by-plant basis submitted by the parties indicates that this type of yeast is almost exclusively supplied to customers in the country where the plant is located, with some exceptions of supplies, consistent over time, by GBI from Germany and Italy into France. Competitors explained that they would always first seek opportunities relatively close to their production sites, since they would face the challenge of ensuring sustainable quality of this sensitive product at higher transport costs than competitors whose plants might be closer to a given customer.

(88) In the market investigation, customers and competitors indicate that due to the limited shelf life of liquid yeast (approximately 3 to 4 weeks) and the costs related to the transport of bulk liquid yeast in refrigerated container trucks, this type of yeast is usually only supplied over maximum distances of 300 km to 600 km. It is only under certain, very specific circumstances that suppliers could find it commercially attractive to supply this type of yeast over further distances.⁴⁵

⁴⁴ Page 10, para 5.12 of the submission of ABF of 20 November 2007 "Briefing Note to the European Commission concerning a request by the Spanish CNC pursuant to Article 22 of the EC Merger Regulation"

⁴⁵ There are indications that it could be up to 800 km to 1000 km, but this would only be feasible for the suppliers, on the one hand, if they had a sufficient client base that source regularly and in high quantities, since it would only make sense for them if they could send at least one container truck per week with a volume of 12 to 20 tonnes to a customer located further away. On the other hand, another pre-condition for such quantities of long distance supply is the scale and production capacity of a given plant.

- (89) Both the shipping patterns of the parties themselves, as well as the results of the market investigation, therefore, point towards a national market scope for bulk liquid yeast. However, for the purpose of the present decision it not necessary to determine the exact scope of the geographic market for liquid yeast.

5.2.3 Dry Yeast

- (90) The notifying party submits that the geographic market for dry yeast is global, as a result of important and significant cross-border trade flows within the Community as well as between the Community and third countries in the Middle East, Asia and Africa. It submits that dry yeast has a very long shelf life (approximately 2 years), which allows for cheap transport in very large units over wide distances. For example, [...]*
- (91) The market investigation has broadly confirmed that the relevant geographic market for dry yeast is at least EEA-wide, if not worldwide. However, for the purpose of the present decision the exact market definition can be left open.

6 COMPETITIVE ASSESSMENT

- (92) There exist a number of structural similarities between the markets for liquid, compressed and dry yeast. However, the evidence uncovered by the market investigation indicates that the merger raises competition concerns only in the compressed market. With respect to the liquid and dry yeast markets, in spite of indications of limited competitive interaction, it can be expected that the merger will have no significant impact.

6.1 YEAST PRODUCERS ACTIVE IN THE AFFECTED MARKETS

6.1.1 The main players

- (93) ABF is a worldwide bakers yeast producer with a strong presence in all continents. Within the Community, ABF has yeast production facilities in a number of Member States, namely the United Kingdom (Hull), Ireland (Dublin), Spain (Córdoba) and Portugal (Setúbal). It has been present in the Spanish and Portuguese markets for several decades, whilst it entered the French market more recently (in the early nineties). ABF is not vertically integrated into distribution to artisan bakers and therefore does not own in-house distributors. In terms of distribution, ABF relies on a network of formally independent distribution agents linked through long-term relationships. It has subsidiary offices in Portugal, Spain and France.
- (94) GBI currently operates plants in Casteggio (Italy), and in Germany through the Uniform joint venture. It has traditionally been present in Portugal (for more than 80 years)⁴⁶ and entered the Spanish market only in 1992. Like ABF, GBI is not vertically integrated into distribution. It has subsidiary offices in Portugal, Spain and France.

⁴⁶ See agreed non-confidential minutes of conference call on 22 May 2008 with the General Manager of GBI Portugal and GBI Spain.

(95) Lesaffre focuses its core business on the production of bakers yeast, with a strong presence in all continents. In Western Europe, it has one plant in Spain (Valladolid) and others in France, Belgium and Italy. As in the cases of ABF and GBI, Lesaffre is active in the dry, liquid and compressed yeast sectors, with local offices in Portugal, Spain and France and is not vertically integrated into the distribution of yeast to artisan bakers. Lesaffre's market conduct and actions are followed systematically by its rivals. This is demonstrated by a number of internal documents accessed during the investigation, such as [...] ⁴⁷.

6.1.2 Fringe players

(96) There are also some smaller players with marginal presence in Portugal, Spain and France:

(97) Lallemand is originally a Canadian company, also active in the US, that began its activities in Europe in 1993 with the acquisition of a plant in Estonia. In the last few years, it has adopted a strategy of acquiring smaller yeast production plants (the largest one having currently 10kt to 20kt following a recent capacity expansion) ⁴⁸ from smaller independent producers in Northern, Central and Eastern Europe. It has no plants in Southern or Western Europe and currently, it supplies very small quantities of compressed yeast into Portugal ([...]t in 2007), Spain ([...]t) and France ([...]t) - these quantities are minimal and account for market shares of a maximum of [0-5%] in the relevant markets. Lallemand's closest production plants are in Germany and Austria. Lallemand has no sales force or distribution structure in France, Spain or Portugal.

(98) Puratos is a Belgian company whose main focus of business is on bakery ingredients and chocolate. Puratos has only one production plant of a relatively small size in Belgium (17kt) ⁴⁹ where it produces yeast, but has explained that it currently gives priority to its in-house consumption and only sells the rest to the merchant market to complement its range of bakery ingredients. Puratos sells liquid yeast in Belgium and small amounts of compressed yeast in France (with a share of [0- 5%]) and Belgium. In any event, it has had no sales of compressed yeast in Portugal and Spain in the last three years, with very minimal volumes of dry yeast sold in Spain. It has no sales presence or structure for the sale of compressed yeast in Portugal or Spain.

(99) Zeus (formerly know as Grechi (Italy)) is a traditional family business with most of its activity based in its local Italian market. It has only one plant based in Florence, which according to ABF's estimates (discussed in more detail below) would amount to 20kt, selling only marginal quantities of compressed yeast in France and Spain ([...]k) to a small number of customers, but nothing of any significance into Portugal. It has no sales force or any type of formal structure in France, Spain or Portugal.

(100) Asmussen (Germany) only has a small plant (7kt) with limited available capacity (only 1kt) in the north of Germany. It has only very minimal sales of compressed

⁴⁷ [...]*

⁴⁸ See further Annex 18 to the Capacity to Supply memorandum sent by ABF on 9th June 2008.

⁴⁹ See Table 2.

yeast in Spain [...]k which would amount to a negligible share on that market of [0-5]%. It is not present in Portugal and France. Its main business focus is the supply of liquid yeast to bakeries in the north of Germany.

6.1.3 Alleged Potential Entrants

- (101) ABF argues that a number of players can be regarded as potential entrants in Spain and Portugal. ABF mentions that it "perceives" the presence, in particular of Pakmaya and Somadir in Spain.⁵⁰ However from the data retrieved from ABF itself, Pakmaya, Somadir or Akmaya only have very minor supplies of compressed yeast as well as few quantities of dry yeast in France, Spain and Portugal. The market investigation has confirmed that none of these players currently supply liquid or compressed yeast into Spain, Portugal or France and with respect to dry yeast, the existing negligible sales can be considered sporadic.
- (102) Nonetheless, ABF has argued that Pakmaya, Somadir, Akmaya, and also Indawisa would be either potential entrants or could expand their presence in the French, Spanish or Portuguese national markets in response to an increase in price.
- (103) With regard to Pakmaya, they distribute only compressed yeast in Spain through the distributor Lozano according to ABF. It has three relatively large manufacturing sites in Turkey, approximately 4000 km from Spain, which the notifying party estimates has significant spare capacities.⁵¹ It is significant that none of the [...]*internal documents regarding the yeast business in Europe mention Pakmaya as a competitor of compressed yeast in Europe.⁵²⁵³ Other producers have referred to the fact that when Pakmaya tried to enter certain markets within the Community, the company was faced with lower prices in its home Turkish market as a reaction of the European incumbents that also have local plants in Turkey, and has since reduced its competitive efforts in Europe.⁵⁴
- (104) Somadir is a Moroccan producer of yeast with two plants in Morocco producing 20k and 50k⁵⁵, respectively – Gilde, the owner of GBI, has a 10% stake in Somadir, which is also the object of the projected concentration operation by ABF. Although the notifying party alleges that Somadir distributes in "small quantities" in Portugal, none of the distributors that participated in the investigation undertaken by the Commission referred to Somadir as even a possible supplier of yeast in Portugal. The investigation revealed that distribution of yeast by Somadir in Spain is in minute quantities and was a spot acquisition by a distributor that does not intend to purchase

⁵⁰ Paragraph 2.32 of the document "Observations of ABF in response to the Commission's Article 6(1)(c) Decision of 16 April 2008 in Case M. 4980 ABF/GBI Assets", dated 5th May 2008.

⁵¹ See further Annex 18 to the Capacity to Supply memorandum sent by ABF on 9th June 2008.

⁵² [...]*

⁵³ [...]*

⁵⁴ See for example: agreed minutes of a conference call with Lallemand dated 14.02.2008.

⁵⁵ Information provided by ABF

more due to quality issues.⁵⁶ No internal documents [...] mention Somadir with respect to their European yeast businesses'.

- (105) Akmaya is a Turkish operator founded in 1994 with one yeast plant producing both fresh and dry yeast in Turkey. There is no information available to the Commission as to any compressed yeast sales that Akmaya might have had in France, Spain or Portugal. It is also significant that none of [...] internal documents regarding the yeast business in Europe, monitor Akmaya as a competitor of compressed yeast in Europe.⁵⁷
- (106) Finally, as a result of an up-front remedy before the Bundeskartellamt, the Swiss company *Indawisa* acquired the Nuremberg plant and the attached sales force of ABF, with sales only to the German market. Traditionally, Indawisa had only been present in the Swiss market, a market that is described by Indawisa as being characterised by higher prices than elsewhere in the EEA as there are import duties for imported yeast making entry difficult. However, during the procedure Indawisa indicated that the plant in Nuremberg is currently already at full capacity, and that it does not foresee the possibility of selling yeast in France, Spain or Portugal.⁵⁸

6.2 BACKGROUND OF THE TRANSACTION

- (107) Before being acquired by Gilde in 2005, the yeast business of GBI Holding (previously owned by Gist-Brocades and DSM) had achieved the second position in Western Europe with a clear leadership in Germany, Portugal and Netherlands, the third position in Latin America with a clear leadership in Chile and first position in Africa. In Western Europe, GBI Holding's yeast business has been the incumbent player in the Portuguese, German and Dutch markets. Before the sale of the GBI Business to ABF and the UK activities to Lesaffre, GBI Holding was significantly present in the Community with three large yeast plants: Felixstowe in the United Kingdom, Casteggio in Italy and the Uniferm Joint-Venture in Moonheim, Germany. With these three plants, GBI Holding was in a position to supply large parts of the markets in Western, Southern and Central Europe. With plants located in South America, GBI Holding also had a strong position in the South American market for fresh yeast. GBI Holding was also present in the worldwide market of dry yeast.
- (108) At the time of the acquisition by the Dutch private equity firm Gilde and considering that the previous owner of GBI Holding's activities, Gist-Brocades, wished to sell the entire yeast activities connected with GBI Holding in one package, Gilde saw the opportunity, given that it considered that the acquisition of the whole business by Lesaffre, ABF, and perhaps by Lallemand would raise antitrust issues, to purchase the yeast activities of GBI Holding and resell, at a profit, parts of GBI Holding's yeast business in the short-term to several purchasers⁵⁹.

⁵⁶ Agreed minutes of conference call of 3 July 2008 with [Spanish distributor].

⁵⁷ [...].*

⁵⁸ See agreed minutes of conference call with Indawisa of 3 April 2008.

⁵⁹ See internal document of Gilde "Investment Proposal DSM Bakery Ingredients" dated March 2005 : "DBI is considered an attractive target particularly for the three largest competitors - ABF (who recently

- (109) Gilde therefore had the intention of selling GBI Holding's yeast business at the earliest opportunity. Accordingly, Gilde did not undertake any long-term business plans and/or development projects, but rather, developed a short term strategy aimed at raising short term gains.
- (110) The objective of GBI Holding accordingly seemed to be to avoid fierce price competition in Europe, as is apparent from their internal documents: *"Looking at the yeast market it is good to realize that the three major players besides GBI, i.e. Lesaffre, ABF and Lallemand, have been fighting a price war in the USA already for more than 10 years. Yeast prices in this country are the lowest worldwide, all three players have been losing money for years. There are no signs that this situation will change in the (near) future. It is hard to understand why they are not able to solve this problem but it will be clear that we are cautious to avoid such a market situation in Europe."*⁶⁰
- (111) This short term profit maximizing strategy was further confirmed when a GBI Holding internal document refers that: *"Our objective is to increase the yeast prices in such a way that we will be able to keep the EBIT at the present level or, if possible, higher. Due to the fact that for the bakers the costs for yeast amount to less than 3% of the cost price of bread and the fact that the mentioned cost increases are valid for the whole yeast industry, we assume - at least at this moment - that we will succeed in these price increases."*⁶¹
- (112) The negotiations between Gilde and the potential purchasers concluded with the yeast business of GBI Holding being divided and sold in two parts with Lesaffre acquiring the facilities in the United Kingdom and South America⁶² and ABF acquiring the German and Italian facilities. The two acquirers, Lesaffre and ABF, are respectively the worldwide number 1 and number 2 players in the yeast business. By acquiring the parts of the yeast business of GBI Holding in South America and the United Kingdom, Lesaffre consolidated its positions in geographic areas where it was relatively weak in terms of market share as compared to ABF. On the other hand, ABF, by acquiring the GBI Business, located in Continental Europe, would acquire a more solid position in Western Europe, where traditionally Lesaffre has had the strongest market presence. Via the GBI Business' plants located in Casteggio (Italy) and the joint venture with Uniferm (after having divested the Nuremberg facility to Indawisa), ABF would strengthen its position in France (Lesaffre's home market), Portugal and Spain.

acquired Philip Burns), Lesaffre and Lallemand. Except maybe for Lallemand [...] we believe that these competitors will run into antitrust issues when acquiring DBI as a whole."

⁶⁰ Memo of August 11, 2006 of GBI Holding NV

⁶¹ Memo of August 11, 2006 of GBI Holding NV.

⁶² See Form CO, paragraph 65, see also paragraph 115.

6.3 COMPRESSED YEAST MARKETS

(113) There are certain market characteristics, both in relation to demand and supply, which are similar across the three national compressed yeast markets (Spain, France and Portugal). It is therefore useful, before assessing the most likely competitive effects of the proposed merger in each individual market, to provide an overall background analysis of demand and supply conditions in these markets.

6.3.1 Common market characteristics for the three affected compressed yeast markets

6.3.1.1 Demand for compressed yeast is relatively stable or in slight decline

(114) The market for bakers yeast in the Community can be regarded as relatively mature. Demand for bakers yeast is primarily driven by population size, age and income distribution and the pattern of food consumption within a national or regional area. These factors generally change very slightly over time.

(115) As regards compressed yeast, the market can be considered relatively stable but has experienced a slight decline over the last five years. In Portugal, demand for compressed yeast declined from approximately [...] in 2002 to [...] by 2007. In Spain, this decline was from [...] in 2002 to [...] in 2007 and in France the demand decreased from [...] in 2002 to [...] in 2007.

(116) According to the parties, this slight decline in demand for compressed yeast can be largely explained by a gradual switch from artisanal to industrial bakers, in particular for France and Spain⁶³. Industrial bakers, in general terms, tend to consume more liquid yeast, and may also use yeast more efficiently. However, there is little indication that this trend will continue much longer. Indeed, despite this trend towards more industrial buyers in the bakers yeast market, in general, artisan bakers still represent the most significant proportion of the demand. For example, the distribution segment which primarily serves artisan bakers account for about [40-50]% of the compressed yeast turnover in France, [70-80]%⁶⁴ in Spain and [90-100]% in Portugal.

(117) In all three markets demand can be moderately seasonal, with less yeast being consumed during the warm months than the cold months. This is mainly due to two reasons: (a) consumption of bread, especially in Southern Europe reduces during the warm months and (b) during warm months less yeast is required to produce the same amount of dough.

⁶³ Paragraph 310 to paragraph 314 of the Form CO.

⁶⁴ See [...].

6.3.1.2 Concentration of Supply

- (118) In the last few years, the market for bakers yeast in the Community has been characterised by consolidation, as the smaller traditional family plants and businesses have been acquired by some of the major players on the world stage, such as ABF, Lesaffre and Lallemand. At the same time, plants have been closed all over the Community, with very few new plants built in the last decades. This supports the view that the yeast production business in Europe is relatively mature.
- (119) The combined entity would have a market share of [70-80]% in Portugal, [40-50]% in Spain and [30-40]% in France, accompanied by a limited number of small players currently active on this market, with the two main producers post-merger (ABF/GBI and Lesaffre) accounting for [90-100]% of the market in Portugal, [90-100]% in Spain and [90-100]% in France.

Table 1 Market shares for compressed yeast in 2007 in Portugal, Spain and France

Company	Portugal [90-100]% distributors [0-5]% direct *	Spain [70-80]% distributors [20-30]% direct *	France [40-50]% distributors [50-60]% direct *
ABF	[20-30%]	[30-40%]	[10-20%]
GBI	[40-50%]	[10-20%]	[10-20%]
Combined	[70-80%]	[40-50%]	[30-40%]
Lesaffre	[20-30%]	[40-50%]	[60-70%]
Lallemand	[0-5%]	[0-5%]	[0-5%]
Puratos (BE)	-	-	[0-5%]
Zeus/Grechi (IT)	-	[0-5%]	[0-5%]
Asmussen (DE)	-	[0-5%]	-

Source: market investigation

*indicative proportion of direct (mostly industrial) clients, and clients served via distributors (primarily artisan bakers)

6.3.1.3 Technological maturity of yeast production

- (120) The technology of yeast production is mature, and the basic production process has not been altered to any significant extent in quite some years, and ABF has shown that whilst some patents do exist they are a number of competing ways of achieving the same equivalent products and results⁶⁵.
- (121) Further, whilst there seems to be some room in the industry for process innovation and marginal improvements on packaging technology for example, the market investigation shows that no market players expect that any technological leap-

⁶⁵ The market investigation has confirmed that this viewpoint is widely shared. According to paragraph 474 of the Form CO "ABF's yeast division estimates that it spent less than [...] of its revenue on R&D, demonstrating that R&D costs are not significant in this sector."

frogging can threaten the established position of the existing incumbents in the affected markets (or elsewhere), namely ABF, GBI and Lesaffre.

- (122) Finally there have been some recent products developed and sold (such as the liquid yeast in Tetrapak by GBI and Kastalia by Lesaffre), but these have had a very minor impact on the market and the industry does not expect these to grow to any significant extent.

6.3.1.4 The role of distributors

- (123) The market investigation has revealed that distributors play a very significant role in the distribution of bakers yeast, in particular as regards the artisan segment of the compressed yeast market, as they provide the access point needed for these clients.
- (124) The artisan segment by definition involves operators that require small but frequent supplies, particularly in view of the need for the refrigerated storage of compressed yeast. However, none of the yeast producers have their own integrated distribution networks to supply these customers. It should be noted that artisan bakers account for about [70-80]% of the total turnover in Spain, [90-100]% in Portugal and [40-50]% in France.
- (125) The importance of regular contacts between artisan bakers and distributors cannot be overstated. The artisan bakers' marketplace is fairly traditional. Most artisan bakeries are family businesses with a local focus, often in activity for many years, in some cases even generations. In this context, personal contact and stable relationships with trusted suppliers is considered of fundamental importance. Nonetheless, there are certain differences as regards the role of distributors in France with those of Spain and Portugal.

6.3.1.4.1 Portugal and Spain

- (126) In the Spanish and Portuguese markets, the relationship between yeast producers and distributors on the one hand, and distributors and artisan bakers on the other, is characterised by durable and long-term relationships.
- (127) This is clearly stated in the responses received from the distributors, both in Portugal and Spain, but can be also inferred, as regards Portugal, from existing written contractual arrangements between the yeast producer and distributor⁶⁶. Such contracts, for the most part, formally cover a period of one year, but incorporate automatic extensions or renewals so that it is rarely the case that a distributor discontinues its relationship with its former supplier and switches to another.
- (128) The sample distribution contracts sent by the notifying party as annexes to the Form CO, as well as the market investigation, indicates that in Portugal all distribution arrangements are of an exclusive nature, meaning the distributors may not distribute competitors' yeast and may only distribute within a determined geographic area.

⁶⁶ For ABF contracts see, for example, the "Agency Contract" [...]*(Annex 8.40C to the Form CO), signed in 1988 and Contract/terms of Trade between AB Mauri and [...]*(Annex 8.40A to the Form CO), signed in 2000. For GBI contracts see for example the contract with [...]*, signed in 1989.

Indeed, in Portugal, an extremely limited number of distributors have changed yeast supplier in the last few years.⁶⁷

- (129) In Spain, GBI has similar arrangements with its distributors amounting to *de facto* exclusivity, which is also the norm for other players.⁶⁸ Indeed, ABF itself claims that "*Spanish distributors usually purchase yeast products at any one time from one supplier only*"⁶⁹ but is referred to in more categorical terms by other operators in the marketplace.
- (130) Whilst there are some exceptions to this (*de facto*) exclusivity of supply to distributors, there are very few examples, often caused by very particular circumstances.
- (131) It may therefore be concluded that, to a very significant extent, ABF, GBI and Lesaffre work with a network of *de facto* or contractually exclusive distributors who only distribute yeast from one producer. In addition, these distributors are essentially arranged in a way that within one regional or smaller territory there would mostly one distributor of a given supplier (see recital (214)).⁷⁰ As in the case of Portugal, the market investigation in Spain has also shown that very few distributors have changed supplier in the last few years.⁷¹
- (132) As a result of these long-term, traditional and exclusive vertical relationships between distributors and yeast producers, artisan bakers tend to regard a particular distributor as the distribution arm of a particular yeast producer in a given province or geographic region.⁷²
- (133) In turn, as mentioned in recitals (125) and (126), artisan bakers prefer to develop long-term and close relationships with their distributors (and hence with the supplying yeast producer). Nonetheless, it is not uncommon for an artisan baker to rely primarily on one distributor for the large part of its supplies of yeast but to also build links with a secondary supplier. The reason for this is mainly to be assured of supply, given that discontinuity in supplies on a given day can have serious consequences for the

⁶⁷ In Portugal, the very few exceptions include [...]*, from ABF to Lesaffre in 1994, whilst [...]* sells ABF in its delimited exclusivity zones and Lallemand elsewhere since 2006. See also analysis of switching data in recital (309).

⁶⁸ See, for example, minutes of the conference call with GBI Spain and GBI Portugal on 22nd May 2008.

⁶⁹ See paragraph 352 of the Form CO.

⁷⁰ Although Lesaffre has divided its distributors, especially in Portugal, according to brands, so there may be more than one distributor of Lesaffre's yeast products supplying a given area.

⁷¹ The notifying party refers to "a number of distributors formerly distributing for ABF in [Spanish region]*" now distributing Zeus yeast in Spain. However, the market investigation revealed that there are only two distributors of Zeus in [Spanish region]*, one of which has ceased being supplied by ABF since the nineties (see minutes of conference call with [Spanish distributor] of 26 June 2008); the other distributor, [name of distributor] distributed Zeus yeast before it started to distribute ABF. The analysis of transaction data also confirms minimal switching of distributors in Spain -see recitals (238).

⁷² See, for example, agreed non-confidential version of the minutes of a conference call with Prodipani, on 29 May 2008.

reputation of an artisan baker and directly affect his/her livelihood. A "back-up" distributor, in principle, can also allow the artisan baker to obtain information concerning prices of other yeast producers and may thus offer some margin of negotiation on prices.⁷³ However, the market investigation revealed that whilst quantities bought from a particular distributor (and hence a particular supplier) may vary, this is driven largely by temporary changes in the proportion of purchases obtained from the "primary" supplier relative to purchases obtained from the "back-up". Such shifts in purchases occur when the primary supplier increases prices earlier than the back-up supplier and thus tend to only be temporary. When the back-up supplier increases its prices to the same level as the primary supplier, the relative proportion of purchases reverts back to past levels.⁷⁴

(134) It should be noted that the loyalty of an artisan baker to its primary distributor not only derives from past experience and the distributor's proven reliability but also from on-going direct contacts, including weekly visits of distributors to their clients and, in some cases, by the distributor's ability to supply other complementary bakery ingredients and their knowledge of a given artisan bakers overall needs⁷⁵. These factors contribute to cementing the loyalty of an artisan baker to its primary supplier.

6.3.1.4.2 France

(135) In France, the distribution system is organised somewhat differently with a number of large scale national central purchasing organisations, such as Backeurop France ("Backeurop"), Most French distributors are regrouped in one of the three large purchasing groups (which together cover more than four fifths of the distribution market) which negotiate the supply conditions (mainly discounts) on behalf of their members with the yeast producers, who are then referenced by the group (each group has two or three suppliers).

(136) The large distribution groups do not have exclusive relationships with a single supplier of yeast. Final distributors are free to set the final prices.

6.3.1.5 Past cases of collusion in compressed yeast markets

(137) There is a history of past cartel decisions in the fresh yeast sector by a number of National Competition Authorities. For instance, the French Competition Authority adopted a decision in 1989 regarding illegal collusive conduct in the market of fresh yeast in France.⁷⁶ At the time, the French market was characterized by a duopolistic structure relying very much on distributors where the two players were Lesaffre and

⁷³ As explained above, given that yeast producers (with exceptions on the side of Lesaffre) effectively rely on a single distributor in a given region or smaller territory (see recital (214)), the secondary supplier of a given artisan baker will mostly distribute yeast from a different yeast producer.

⁷⁴ As will be more closely examined in recitals (222) to (227) as regards Spain and (318) to (320) as regards Portugal, prices of ABF, GBI and Lessafre have all been increasing within a very short time difference since 2006. This has been corroborated by the interviews undertaken

⁷⁵ See for example: confirmed minutes of conference call with Prodiapani on 29 May 2008.

⁷⁶ French Competition Authority, Conseil de la Concurrence decision dated 22.03.1989 and numbered 89-D-08.

Gist-Brocades (former GBI). The main elements put forward in support of this decision were: (a) price parallelism, with almost simultaneous price increases to artisan bakeries; (b) Lesaffre was generally the leader in announcing these price increases and (c) coordinating firms were engaged in a targeted reaction to new entry in the fresh yeast market. In this case, Italian and German producers tried to enter the French market and Lesaffre, followed by Gist-Brocades, engaged in a system of retaliation based on free or reduction of delivery charges.

- (138) Another more recent example concerns a finding of collusive conduct by the Turkish Competition Authority.⁷⁷ Bakers' yeast producers were fined for setting allegedly cartel prices and sharing customers. In particular, yeast manufacturers had posted uniform price increases unrelated to any changes in costs.⁷⁸

6.3.2 Coordinated effects in the Spanish and Portuguese compressed yeast markets

- (139) The evidence uncovered in the market investigation taken as a whole provides strong indications that the elimination of GBI as an independent operator and the emergence of a quasi-duopolistic market structure with two large compressed yeast producers will very likely give rise to coordinated effects in Spain and Portugal.

- (140) By its very nature, tacit coordination can be difficult to prove. Price-fixing or market sharing agreements in violation of Article 81 EC Treaty can generally be proven by way of hard evidence (generally written documents). In contrast, tacit coordination, as indicated by the Court of Justice, "*is likely to emerge if competitors can easily arrive at a common perception as to how the coordination should work*".⁷⁹ Tacit coordination can thus only be inferred indirectly from observing and adequately interpreting the actual conduct of market players in light of existing market conditions, affecting their ability and incentives to tacitly coordinate their actions. This is reflected in the Commission's Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines")⁸⁰ in paragraph 43: "*in assessing the likelihood of coordinated effects, the Commission takes into account all available relevant information on the characteristics of the markets concerned, including both structural features and the past behaviour of firms.*"

- (141) In this respect, in its recent judgement *Sony/BMG v Impala*⁸¹, the Court of Justice held, in paragraphs 120-121, that:

⁷⁷ Turkish Competition Authority's Board Decision dated 23.09.2005 and numbered 05-60/896-241

⁷⁸ Although there was no qualitative data proving the existence of a cartel, that is, explicit collusion, the cost-price analysis compared to inflation with a period of three years showed there was at least a concerted practice between the producers.

⁷⁹ Paragraph 123 of the judgement in Case C-413/06 P *Bertelsmann and Sony Corporation of America v Impala* [2008], OJ C 223 of 30.08.2008, p.7.

⁸⁰ OJ C 31, 5.2.2004, p. 5, paragraph 43.

⁸¹ Case C-413/06 P *Bertelsmann and Sony Corporation of America v Impala* [2008], OJ C 223 of 30.08.2008, p.7.

"(120) In the case of an alleged creation or strengthening of a collective dominant position, the Commission is obliged to assess, using a prospective analysis of the reference market, whether the concentration which has been referred to it will lead to a situation in which effective competition in the relevant market is significantly impeded by the undertakings which are parties to the concentration and one or more other undertakings which together, in particular because of correlative factors which exist between them, are able to adopt a common policy on the market (see Kali & Salz, paragraph 221) in order to profit from a situation of collective economic strength, without actual or potential competitors, let alone customers or consumers, being able to react effectively.

(121) Such correlative factors include, in particular, the relationship of interdependence existing between the parties to a tight oligopoly within which, on a market with the appropriate characteristics, in particular in terms of market concentration, transparency and product homogeneity, those parties are in a position to anticipate one another's behaviour and are therefore strongly encouraged to align their conduct on the market in such a way as to maximise their joint profits by increasing prices, reducing output, the choice or quality of goods and services, diminishing innovation or otherwise influencing parameters of competition. In such a context, each operator is aware that highly competitive action on its part would provoke a reaction on the part of the others, so that it would derive no benefit from its initiative".

- (142) Furthermore, in paragraph 123 of the same judgment in *Sony/BMG v Impala*, the Court of Justice (recasting the CFI decision in *Airtours v Commission*, paragraph 62⁸²) also held,

"(123) Such tacit coordination is more likely to emerge if competitors can easily arrive at a common perception as to how the coordination should work, and, in particular, of the parameters that lend themselves to being a focal point of the proposed coordination. Unless they can form a shared tacit understanding of the terms of the coordination, competitors might resort to practices that are prohibited by Article 81 EC in order to be able to adopt a common policy on the market.

Moreover, having regard to the temptation which may exist for each participant in a tacit coordination to depart from it in order to increase its short-term profit, it is necessary to determine whether such coordination is sustainable. In that regard, the coordinating undertakings must be able to monitor to a sufficient degree whether the terms of the coordination are being adhered to. There must therefore be sufficient market transparency for each undertaking concerned to be aware, sufficiently precisely and quickly, of the way in which the market conduct of each of the other participants in the coordination is evolving.

Furthermore, discipline requires that there be some form of credible deterrent mechanism that can come into play if deviation is detected. In addition, the reactions of outsiders, such as current or future competitors, and also, the reactions of customers, should not be such as to jeopardise the results expected from the coordination."

⁸² Case T-342/99 *Airtours/First Choice* [2002] ECR II-2585

- (143) The section on coordinated effects in the Horizontal Merger Guidelines lays out the analytical approach prescribed by the Courts in a systematic way. Consistent with the guidance offered by the Court of Justice the Horizontal Merger Guidelines identify four cumulative conditions to establish the likely emergence and sustainability of coordinated conduct: (a) firms have the ability to agree tacitly on the terms of coordination, (b) there is sufficient transparency to monitor any deviations; (c) there are deterrent mechanisms and (d) outsider reactions cannot undermine the coordinated outcome.
- (144) It follows from all of the above that the assessment of the coordinated effects of the proposed merger can be structured into three parts:
- (a) Assessment of the presence of market conditions conducive to tacit coordination
 - (b) Identification of a likely mechanism for tacit coordination and the resulting degree of tacit coordination that can be expected in the absence of the merger
 - (c) Assessment of the extent to which the merger significantly impedes effective competition by making the existing degree of tacit coordination easier, more stable or more effective for the three firms concerned either by making such coordination more robust or by permitting firms attain even higher prices.
- (145) In the first part of the analysis, a number of structural market conditions likely to facilitate the emergence and sustainability of tacit coordination are identified. These factors are common to both the Portuguese and the Spanish markets. Following the Court of Justice in *Sony/BMG v Impala*, "it is necessary to avoid a mechanical approach involving the separate verification of each of those criteria taken in isolation, while taking no account of the overall economic mechanism of a hypothetical tacit coordination".⁸³ In the second part, for each relevant market, an assessment is made as to the extent to which market conditions facilitate a tacit understanding between Lesaffre, ABF and GBI and possible terms of coordination, the monitoring of deviations, deterrence of deviations and the reasons why outsiders have no ability to undermine the resulting degree of tacit coordination.
- (146) Finally, it is established case law that the Commission must further show, on the basis of a prospective analysis, the extent to which the "*the alteration in the [relevant market] structure that the transaction would entail significantly impedes effective competition by making coordination easier, more stable or more effective for the three firms concerned either by making the coordination more robust or by permitting firms to coordinate on even higher prices*".⁸⁴ Accordingly, in the third part of this section, it is shown that in the markets for compressed yeast in Spain and Portugal, for essentially similar reasons, "*the alteration in the [relevant market] structure that the transaction would entail*" is likely to significantly impede effective competition by making coordination easier, more stable or more effective for the two remaining firms concerned either by making the coordination more robust or by permitting firms to coordinate on even higher prices.

⁸³ See paragraph 125 of the judgement in Case C-413/06 P Bertelsmann and Sony Corporation of America v Impala [2008], OJ C 223 of 30.08.2008, p.7.

⁸⁴ Case T-342/99 *Airtours/First Choice* [2002] ECR II-2585, paragraph 61.

6.3.2.1 Structural characteristics conducive to tacit coordination in the Spanish and Portuguese compressed yeast markets

6.3.2.1.1 Few active competitors in the affected markets

- (147) According to economic theory, coordinated conduct is more likely to emerge the lower the number of firms required for it to be sustainable. Currently there are indeed very few active players in Spain and Portugal. The C3 concentration ratio, involving ABF, GBI and Lesaffre in both cases is [3500 to 4000] ([90-100]% combined market share) and is [3500 to 4000] ([90-100% combined market share), respectively (see Table 1). Therefore, the markets in Portugal and Spain may be defined as an oligopoly with three main players and a small fringe.
- (148) Economic theory provides a solid analytical foundation for the view that suppliers who face numerous rivals will be constrained in their incentive and ability to coordinate. There are a number of reasons to expect this.
- (149) First, coordination is more difficult the larger the number of parties involved. This is particularly true when coordination is only based on a tacit understanding of the terms of coordination. For example, identifying a common “focal point”, in terms of prices or market shares, may be difficult, particularly when firms are not symmetric, and thus have different incentives.
- (150) Second, when suppliers face more rivals, each supplier will tend to have a weaker self-interest in contributing to the reduction in industry output that is required to elevate the market price artificially.
- (151) Third, it can be harder to detect and punish cheating against a consensus when rivals are more numerous. Cheating by any single seller is more apt to go undetected because it is unlikely to have a dramatic effect on price. When cheating does not dramatically affect price, rivals will also be less willing to punish a cheater severely. And when severe punishments lose their credibility, discounting is likely to become sellers’ preferred pricing strategy.
- (152) More generally, since firms must share the overall profit arising from tacit coordination, as the number of firms increases each firm gets a lower share of the pie. This has two implications. First, the gain from deviating increases for each firm since by undercutting the coordinated outcome a firm can steal market shares from all its competitors; that is, in having a smaller share, each firm would gain more from capturing the entire market. Second, for each firm the long-term benefit of coordinating their conduct is reduced, precisely because it gets a smaller share of the total profit. Thus, the short-term gain from deviation increases, while at the same time the long-term benefit of coordinating, is reduced. It is thus more difficult to prevent firms from deviating.
- (153) ABF, GBI and Lesaffre currently all have a strong presence in Spain and Portugal, and face virtually no threat of entry or expansion from competitors. Hence they stand to benefit significantly from tacitly coordinating a higher price and sustaining such coordination as opposed to engaging in fierce competition for each other's customers and market share.

6.3.2.1.2 Repeated interaction

- (154) According to economic theory, tacit coordination is unlikely to emerge in the absence of frequent and repeated interaction among market players. As such, interaction needs to be relatively frequent in order to avoid detection lags in which firms could deviate without being punished. This also implies that transactions should be in the form of many frequent and small orders instead of large and lumpy orders. Similarly, coordination is unlikely when firms interact only infrequently, since the short-term gains from undercutting a tacitly coordinated price could then be “punished” only far in the future.
- (155) The market investigation has clearly demonstrated that the compressed yeast market is characterized by the high frequency of interaction between suppliers, indirectly via their distributors. All three firms concerned - ABF, GBI and Lesaffre - supply directly to customers or distributors on a regular basis. Their distributors in turn supply artisan bakers on a weekly and even bi-weekly basis, reporting back to their yeast suppliers.

6.3.2.1.3 Compressed yeast demand elasticity is likely to be low

- (156) According to economic theory, concerns regarding coordination are more serious when demand is inelastic, as it becomes more profitable to coordinate and to pass on the price increase to consumers. When choosing a price, the firms must trade off the profit generated by a price increase with the reduction in sales triggered by that price increase. When demand elasticity is low, firms can afford to keep prices high without losing too many customers.
- (157) The investigation has shown compressed yeast demand to be relatively inelastic. The main reasons are that:
- (a) yeast is a necessary ingredient in the production of bakery products, that is not to any significant degree, substitutable by other products. This is likely to lead to low bargaining power, especially in the artisan baker sector as the size of the artisans are relatively small. Thus, artisan bakeries' daily bakery production relies entirely on a regular delivery of yeast;
 - (b) fresh yeast is a perishable ingredient and has a limited shelf life (30 to 45 days for compressed yeast) as its quality in any case deteriorates over time. This makes stocking or storage relatively uneconomical and undesirable, in particular for small artisan bakers. The investigation has confirmed a customer preference for fresh yeast and weekly (and sometimes by-weekly) supply delivery; and
 - (c) relative to the cost of other ingredients, yeast still remains a small cost component in the production of bakery products (ranging between 3% and 10%).
- (158) All these factors taken together provide an important indication that demand elasticity is relatively low in the compressed yeast market.

6.3.2.1.4 High Barriers to entry and expansion

- (159) Tacit coordination is difficult to sustain if there are low barriers to entry. First, in the absence of entry barriers, any attempt to maintain supra-competitive prices would trigger entry (for example, short-term or “hit-and-run” entry strategies), which would

erode the profitability of collusion. Second, the prospect of future entry tends to reduce the scope for retaliation, which in turns limits the sustainability of collusion. The basic idea is that firms have less to lose from future retaliation if entry occurs anyway. More precisely, the prospect of future entry does not affect the short-run benefit that a firm can obtain from a deviation, but it reduces the potential cost of deviation in terms of foregone future profits. Indeed, retaliation against a deviating firm is less significant if entry occurs, since entry dissipates profits irrespective of the past behaviour of incumbent firms. Firms are then more tempted to undercut collusive prices and the ability to collude thus declines when the likelihood of entry increases.

- (160) The notifying party argues that there are no barriers to entry for production and sale of compressed yeast in Spain and Portugal⁸⁵. However, the market investigation has largely refuted this claim. Successful *new* entry or expansion into the affected markets from other geographic areas requires access to a local distribution system, with local sales persons and recognised brands.
- (161) The market investigation reveals that both industrial and artisan bakers value the quality of the yeast as well as the reliability of supplies extremely highly. In this respect, and in particular as regards the artisan bakers, brands play, in all three compressed yeast markets, an important role as they allow artisan bakers to identify the origin of the yeast and thereby attest its quality. Brand recognition is therefore a barrier to entry particularly for the supply of yeast to artisan bakers, as brands signal quality and reliability of the product. Whereas in France there is more brand segmentation into more reputed and cheaper brands (so called "marques de premier prix"), in Spain and Portugal the price differences are not that big between the main established brands. However, there is a significant difference in price level between the brands of the established producers and by the fringe players who do not enjoy notoriety and reputation. A new brand from a supplier which is not traditionally known on the market would only be possible if the product would be positioned with a very low price, to persuade the most price-sensitive customers to switch.
- (162) Furthermore, the need for an established local sales force together with the setting up of a distribution network is a high barrier to entry for non-established competitors.⁸⁶ Competitors explained that it would be very difficult to expand significantly without an active local sales force. In Spain and Portugal distributors are usually relatively small and have no technical support, so it is not only necessary to have a local sales force in order to build up and develop relationships with distributors but also in the offering of the technical back up required to assist these in their relationship with their artisan bakers clients.
- (163) Further, the necessity to develop the network of distributors is a significant barrier to entry in Portugal and Spain, where the majority of compressed yeast is sourced by artisan bakers who buy the yeast from their local distributors. The distributors in Spain and Portugal are generally very small companies, with a local or regional outreach, often serving their artisan customers for generations. In addition, distributors normally distribute only the yeast of one supplier, with which they have a

⁸⁵ See for example paragraph 19(g) in the Form CO.

⁸⁶ On the importance of local presence in terms of sales force and local distribution network, see also recitals (58) to (68).

de facto or formal exclusive relationship. The market investigation showed a significant degree of loyalty of the distributors to their yeast suppliers⁸⁷ even in the absence of written distribution contracts for many distributors (which in turn confirms the traditional relationships build on trust over time). Establishing a network of distributors of a more significant scale would therefore take considerable time for a newcomer on the Spanish and Portuguese market. The absence of an established sales force together with a distribution network was mentioned by most distributors and competitors in the market investigation as barrier to entry for a new supplier.

- (164) The importance of brand recognition and the necessity of developing an effective and reliable distribution network has been confirmed both by bakers' yeast producers⁸⁸ and by both Portuguese and Spanish distributors, in particular as regards their outlook on the possibility of being supplied in the future by other yeast suppliers other than Lesaffre and the merging parties.
- (165) Players such as Pakmaya (Turkey) and Somadir (Morocco) sporadically enter and leave the markets but are considered to be unreliable and have no stable foothold in the markets⁸⁹. In general, distributors do not consider these players as real alternatives due to reliability and quality problems⁹⁰. Indeed, small alterations in quality can have a strong influence on the final product. Many distributors, for example, dismissed yeast offered by Turkish producers as of inferior quality⁹¹. It follows that in a traditional market like the artisan segment most customers stressed that it can take a long time for a new entrant like these players to establish such a reputation for reliability of an ingredient which is considered critical.
- (166) In summary, barriers to new entry barriers are significant, and successful entry or expansion requires access to a local distribution system, with local sales persons and recognised brands. In addition, new entrants in these geographic areas require the establishment of a reputation for quality and reliability of supplies.

6.3.2.1.4.1 No greenfield entry can be expected in the foreseeable future

- (167) It is highly unlikely that new plants will be built anywhere in Western Europe in the next few years. According to the notifying party's submissions, the investment needed to set up a new yeast manufacturing facility producing 25 000 to 35 000 tonnes of fresh yeast would cost between EUR [20-30]* to [30-40]* million, and could be constructed in a timeframe of between [10-20]* to [20-30]* months, and could be fully operational after a further period of [1-5]* to [5-10]* months. However, very few plants have been built in Western Europe in the last few decades, and there are a

⁸⁷ See analysis of distributor switching recitals (309) for Portugal, and recital (237) and footnote 71 for Spain.

⁸⁸ See for example: agreed minutes of a conference call with Lallemand dated 14.02.2008 – "it takes years to build its quality reputation in new markets".

⁸⁹ Minutes of conference call of 22 May 2008 with General Manager of GBI Portugal and GBI Spain.

⁹⁰ See also minutes of conference calls with EuroYeast on 26 June 2008 and Anfecor on 3 July 2008.

⁹¹ See for example: agreed minutes of ANFECOR conference call of 3 July 2008.

number of very significant environmental concerns related, amongst other aspects, to waste water treatment.

- (168) In effect, only one plant has been constructed in Western Europe in the last 10 years, - the Puratos plant with 17kt built in 2000⁹². ABF also refers to a new plant that is being established by Lesaffre in Valladolid, Spain. However this is only a relocation from the city centre to another less central location in the same city. Other competitors have confirmed that the construction of greenfield plants is difficult under the current environment of a saturated market and highly unlikely. In fact, none of the competitors have indicated that they have any plans to construct new plants in Europe involving a new capacity on the market.
- (169) In fact, the opposite trend is observed in the marketplace - namely the reduction in yeast production plants in Europe. Apart from the yeast operations of GBI Holding itself, which closed its two plants in France and Portugal in recent years and consolidated that production into its plant in Casteggio in Italy, a number of further yeast plants have also been closed since 2002 in the EEA. These include Lessafre's plants in Austria (2002), Czech Republic (2006), Trento (2006, consolidated with the Parma plant), as well as Lallemand's Polish Lublin plant (acquired and closed in 2006)⁹³ – the market investigation and the market characteristics showed that these closures were mainly due to consolidation and cost efficiency considerations.
- (170) This consolidation of smaller plants into bigger plants suggests that this is an industry where economies of scale play a significant role, as was indeed referred by most competitors during the investigation.⁹⁴ In fact, the owner of GBI, Gilde, was itself identifying the "scale play" as a barrier to entry.⁹⁵ This, in turn, depresses the prospect of new entrants emerging in the affected markets. In the presence of significant scale economies entrants may doubt their ability to win enough sales to justify entry, even at high pre-entry prices, and if the scale of its entry is necessarily large it may fear that it will have a serious negative impact on prices. Both of these effects will deter entry to the extent some of the entry costs are sunk while the lack of established distribution networks in the traditional business relationships with artisan bakers, lack of brand notoriety and reputation would deter customers from switching

⁹² Paragraph 2.63 of the document "Observations of ABF in response to the Commission's Article 6(1)(c) Decision of 16 April 2008 in Case M. 4980 ABF/GBI Assets", dated 5th May 2008.

⁹³ Information contained in Annex 8.14 to the Form CO.

⁹⁴ See for example: agreed minutes of a conference call with Lallemand on 14 February 2008: "The business is very capital-intensive in comparison to normal prices: the increasing cost of regulations (safety, labour, environmental, etc.) leads to the promotion of economies of scale and to the difficulty to maintain small plants in operation. Central large scale plants have increased transportation costs but the balance is usually still in their favour. Having large-scale plants with low cost of water, waste treatment, energy and substrate is what to a large extent determines how competitive a supplier can be. Economies of scale are very important in that business."

⁹⁵ This is confirmed by the industry appreciation in a document entitled "INVESTMENT PROPOSAL DSM Bakery Ingredients March 2005", prepared by Gilde in the context of the acquisition of DBI in 2005: "*Barriers to entry are high as yeast production is a "scale play"; high capacity plants are required to run near full capacity to be cost competitive. DBI has in recent years optimized its (European) production plants by closing smaller plants and integrating volumes in its plants in Italy (130kton), Germany (110kton) and UK (75kton).*"

from the incumbent firm to the new entrant. Furthermore, as demand is relatively stable, any potential new entrant faces the additional difficult task of stealing customers away from the existing suppliers.⁹⁶

- (171) It can be concluded that given the market conditions, the significance of scale economies in these markets, and, in particular, the apparent lack of any plans by competitors to build new plants with new capacity brought on the market, the entry via the construction of a new yeast plant in the broader region, notably in France, Spain and Portugal is highly unlikely. In any case, given the regulatory barriers in identifying a suitable site, it is clear that, besides the lack of economic incentives, there is no evidence to support with a sufficient degree of likelihood that any of the competitors referred in the Form CO to enter the markets under analysis in a sufficiently timely and sustained manner so as to deter or defeat the exercise of market power by the merged entity.
- (172) Another way in which entry could occur according to the notifying party is through acquisition of existing production facilities. ABF cites Lallemand, an important yeast producer in the US and Canada, as having pursued this strategy in the purchase of existing plants in Europe. However, there are very few independent plants in the broader region South-Western Europe (only the Zeus plant in Florence is currently not owned by Lesaffre, GBI or ABF). The notifying party does not mention or in any way offer information that may suggest any such plants may be acquired by a new entrant in this geographic area.

6.3.2.1.4.2 Limited ability for actual or potential competitors in neighbouring markets to expand capacity into supplying Spain or Portugal

- (173) The notifying party argues that actual and potential suppliers exercise competitive pressure on the incumbents in Spain and Portugal. Allegedly, fringe competitors can enter or expand their presence through cross-border trade, using plants currently supplying other regions of Europe⁹⁷.
- (174) According to the notifying party, this may be done by either using spare capacities or by diverting current supplies to other geographic areas into Spain and/or Portugal. ABF further argues that in order to calculate existing spare capacities, current spare capacity should be considered together with capacity that is being used for the production of dry yeast within a certain range around the affected markets.

⁹⁶ See agreed minutes of telephone conference with Lallemand of 19 May 008: "*producers with the knowledge of the yeast production would likely build or expand facilities only once sales volumes are secured. The yeast markets in the south-western Europe are saturated and it would be a too high risk to invest significantly in new capacity not knowing to whom to sell since the export competitiveness of European plants has been essentially lost as a result of the changes to the EU sugar regime and the increase in the Euro exchange rates and the stricter environmental restrictions that are now imposed. The production of yeast entails high fixed costs and suppliers seek stability of sales. When a producer is entering a market, it has to sell with significantly lower prices to attract customers and one has to take into account that the artisan sector is very brand loyal and declining in relative importance.*"

⁹⁷ Given that no competition concerns arising from the transaction were identified for the French compressed yeast market (see Section 6.5.1.5), this market will not be the subject to the following in-depth capacity assessment, which is focused on the Spanish and Portuguese markets.

- (175) Whereas some re-optimising of the product mix between liquid, compressed and dry may be possible for certain plants in response to temporary variations in market conditions, there are certain costs involved in a more permanent switch of production from dry to compressed. First, the expansion of production of compressed yeast will likely require additional investments in extruding, filtering and packaging capacity.
- (176) Further, there are inevitable opportunity costs deriving from not selling the dry yeast, as for there to be an incentive to make the change, the producer in question has to make a significantly higher margin from selling compressed yeast, and, in this regard, the notifying party does not back up its claims that such incentives exist merely stating that "yeast suppliers will supply the product upon which they can generate the biggest returns"⁹⁸.
- (177) ABF refers only to general global trends that indicate that there might be change of production from dry yeast to compressed yeast sometime in the future, given current exchange rate trends and a number of new yeast plants being built in other markets such as Russia, China and Kazakhstan. However, of the markets referred, only the latter is referred to by ABF as being supplied by a plant in France (Lesaffre). Furthermore, internal ABF documents show that these are markets where demand for dry yeast is also growing at the highest rates ([...]*), so that local production in those countries is likely to stay in those markets.
- (178) No reports or plans were supplied by ABF as evidence that such an incentive to change from dry to compressed yeast exists.
- (179) Finally, even if dry yeast production capacities would be computed for the effects of calculating spare capacity to produce compressed yeast, the fact is that this would not materially change the scenario referred to in Table 2, in the geographic area considered, as only ABF, Lesaffre and Puratos produce dry yeast. The investigation did not provide any indications that Lesaffre or Puratos have current plans of changing current production mix from dry to fresh yeast. For all these reasons, the Commission considers that it is unlikely that producers of dry yeast have the ability or incentive to switch their production to compressed yeast.
- (180) With respect to the diversion of compressed yeast from other geographic regions into Spain and Portugal, as the notifying party accepts, similar considerations apply. However, it is necessary to take into account the opportunity cost of selling where they are currently selling, for example in Germany. Secondly, in the context where the distant competitors have no established local presence in terms of distribution networks, notoriety and sales force and have thus to offer significantly lower prices, they are in a position of a disadvantage in terms of transport costs that have to be incurred compared to serving areas relatively closer to their production plants.
- (181) Transport costs were cited by most competitors during the investigation as a very important factor to consider when entering more distant markets. In fact, it is observed that the yeast producers first try to serve the markets which are relatively close to their

⁹⁸ See paragraphs 3.22-3.24 of the Memorandum on Capacity to Supply of 9 June 2008 and paragraph 6.3 (iii) of the ABF memorandum to the European Commission in preparation for the state of play meeting scheduled for 16th June 2008 concerning the acquisition by ABF of certain parts of GBI Holding's yeast businesses.

production sites, as they can benefit from the transport costs advantage, on top of the usually traditional establishment of the suppliers in their "home" region. The further the region from the plant, the less attractive it is to ship refrigerated transport. As one competitor observes, and "the margin is literally 'on the road'" and affects competitiveness vis-à-vis local producers.⁹⁹ However, while transport costs are a very important element for competitors to consider when entering a distant market, it appears that transport costs alone, taken in isolation, are not an insurmountable obstacle for a supplier to ship to a more distant location. This is demonstrated by the supplies of GBI to Spain and Portugal from a distance (its Casteggio plant—apparently, economies derived from consolidation of production in one large plant outweighed the additional transport costs when GBI decided to re-locate its production from Portugal to Casteggio around 2001). Transport costs, although not being prohibitive by itself as demonstrated by the example of GBI, shall be seen in combination with other barriers to entry linked with a need to establish a local presence in terms of distribution networks, reputation and brand recognition and sales force, particularly in such traditional markets as Spain and Portugal. In contrast to newcomers from distant regions, GBI benefitted from its well-established position on the market so it was able to maintain a strong presence within the distribution segment despite supplying from distance. This being said, it is still considered that transport costs play an important role in considerations about a new entry.

- (182) ABF claims that transportation of compressed yeast up to 4000 km from the Barcelona depot of GBI is possible, arguing that it is attractive even for very distant producers to enter the Spanish and Portuguese markets. When looking at the distance deliveries of compressed yeast out of Casteggio, Cordoba or Setubal, deliveries over 4000 km very rarely occur, if at all. Indeed, the transport costs over such distance would represent a very significant amount.¹⁰⁰

⁹⁹ Minutes of conference call with Puratos of 12 March 2008.

¹⁰⁰ Compared to average selling price of EUR [...] per tonne of compressed yeast in Spain and Portugal and accepting the parties' assumptions that it would be about [10-20]%, which seems to be a rather conservative figure. The figure is based on average transport costs of EUR [...] per 1000 km per tonne, which the notifying party submits as a proxy for calculation of average transport costs. Note that average transport costs incurred by GBI, transporting yeast from Italy to Portugal and Spain, is in the range of EUR [...] per tonne per 1000 km (Memo of ABF of 10 June 2008 on Transport Costs and Logistics, point 2.5.c). Based on this calculation, the transport costs would amount to about [20-30]% to [20-30]% of the average selling price. Note that, in addition, the selling price of fringe players in Portugal and Spain is considerably lower than the average selling price in these countries, so the calculation is only an imperfect proxy.

- (183) With respect to proximate competitors, specifically Lallemand, ABF claims that it has the ability and would also have the incentive, in the event of a price increase, to supply both Portugal and Spain¹⁰¹. ABF bases this conclusion on an analysis of the percentage of transport costs over final price charged, calculating the difference in costs in relation to distance covered, on a point to point basis.¹⁰² However, this analysis is overly simplistic and does not take into account the additional entry barriers, as discussed elsewhere in this section, which this competitor or any other newcomer would have to overcome when developing a reasonable presence in Spain and Portugal. A distant competitor would always be at certain disadvantage in terms of transport costs and, in the absence of an established presence with the Spanish and the Portuguese distributors and final customers, it would be very vulnerable to attacks from strong incumbents defending their home market. In addition, as shown in the following recitals, Lallemand, like other (potential) smaller competitors on the Spanish and Portuguese markets with plants located at a reasonable distance from the Iberian Peninsula, have little spare capacity with which they can supply these markets, contrary to the three incumbents.
- (184) In light of the available evidence, it is considered, for the purposes of this decision, that a 2500 km incremental distance from the Iberian Peninsula represents a reasonable maximum limit of the universe of yeast plants that may be considered as potentially having the ability and incentive to supply Portugal and Spain¹⁰³. Further, it should be considered that this calculation refers to a 2500 km incremental distance from the Barcelona depot of GBI, so that distances to other western regions of Spain and Portugal would be even higher.

¹⁰¹ Para 5.26 of the ABF memorandum to the European Commission in preparation for the state of play meeting scheduled for 16 June 2008 concerning the acquisition by ABF of certain parts of GBI Holding's yeast businesses.

¹⁰² Based on the calculation method as explained in footnote 100, the difference in the percentage of total costs is not insignificant depending on whether there is a 1000 km incremental distance or 2500 km incremental distance – it is the difference between, [0-5]* % of total price, and [10-20]* % of total price respectively (taking into account EUR [...] per 1000 km per tonne as average transport costs). If a proxy of EUR [...] per 1000 km per tonne is taken as a basis (average transport costs of GBI serving Portugal and Spain from its Italian distribution hub), the figures would be accordingly [0-5]* % to [5-10]*% of the total price in the case of 1000 km, to [10-20]* % to [10-20]*% for an 2500 km incremental distance.

¹⁰³ This is further confirmed by the document entitled "INVESTMENT PROPOSAL DSM Bakery Ingredients March 2005", prepared by Gilde in the context of the acquisition of DBI in 2005: "Due to the relatively short shelf-life of FY and the costs involved in refrigerated transportation, FY is generally produced regionally and distributed within a 1,500 kilometer radius of the plant."

(185) Therefore, it is considered that the applicable spare capacities that may be considered in the current analysis are those set out in Table 2:

Table 2 Spare Capacity in Fresh Yeast Equivalent (FE) in 2007

	Company name								
Country	ABF	Asmussen	GBI	Zeus	Indawisa	Lallemand	Lesaffre	Puratos	
Austria						[...]*			
Utilised						[...]*			
Belgium							[...]*	[...]*	
Utilised							[...]*	[...]*	
France							[...]*		
Utilised							[...]*		
Germany		[...]*	[...]*		[...]*	[...]*			
Utilised		[...]*	[...]*		[...]*	[...]*			
Italy			[...]*	[...]*			[...]*		
Utilised			[...]*	[...]*			[...]*		
Portugal	[...]*								
Utilised	[...]*								
Spain	[...]*						[...]*		
Utilised	[...]*						[...]*		
UK	[...]*						[...]*		
Utilized	[...]*						[...]*		
Total Sum of Yeast production capacity (FE) ('000 t)	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
Total Sum of Total Current yeast production (FE) ('000 t)	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
Sum of spare capacity*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*

Source: ABF.

* The notifying party claims that these existing production capacities can be expanded in the very short term in through running these facilities on a 24/7 basis although only the plant owned by Zeus is referred as running on a lower cycle than a 24/7, since, for example, Indawisa already operates on this basis, as the ABF itself refers (cfr. paragraph 1.2 of the Note on Capacity to Supply dated 9 June 2008). However, smaller players like Asmussen and Zeus are constrained to increasing weekly cycles as they have only one plant and need enough margin to undertake necessary repairs as should a problem in the production of yeast arise no back up production exists. Such a possibility has therefore not been considered in the current analysis of available production capacities..

- (186) Within this universe of yeast plants, Asmussen, Zeus, Indawisa, Lallemand and Puratos have a total amount (together) of spare capacity of 7.8kt. Considering that in 2007 the total compressed market size in Spain is 46kt and in Portugal is 14.5kt, it appears that competitors, even taken as a whole and assuming the extreme scenario that all spare capacity of all these players together is directed to Spain and Portugal (and not to other closer regions), this capacity could cover only a small proportion (less than 13%) of the market and consequently exert negligible competitive pressure on the three incumbents.
- (187) Furthermore it should be emphasised that even in the event of an unlikely demand calling for increased supplies, ABF currently has [...]*, GBI [...]*and Lesaffre [...]* of spare capacity including the Felixstowe plant, [...]* excluding this plant (as shown in Table 2). Both parties therefore enjoy sufficient slack to expand sales in Spain or Portugal thereby pre-empting any possible new entry or expansion by rivals.

6.3.2.1.5 High degree of product homogeneity

- (188) Economic theory suggests that greater product homogeneity can be a facilitating factor by making the monitoring easier, to the extent that homogeneity often implies the existence of common shocks of demand to the brands of different suppliers. Given that all three incumbents use similar mature technology and all supply yeast for the same applications downstream (mostly bread and other bakery products), it is likely that the compressed yeast of the different suppliers are influenced and react in similar ways to exogenous shocks of demand or supply. This would tend to increase the ability to anticipate the conduct of rivals and thus to monitor deviations.
- (189) In this context, it should be stressed that some players even described compressed yeast as a commodity market. The product is relatively homogeneous, in particular, for the yeast of those suppliers with an established reputation in a given national market.
- (190) Whilst there is some differentiation in brands, each supplier only has a limited number of brands active in Portugal and Spain. As explained above, brands are used mostly to increase recognition and help the producer to benefit from its reputation in terms of service and reliability. Also brands help distinguish between two different type of end customer segments based on pricing and packaging.
- (191) In any event, few brands and types of packaging are in fact currently sold in the compressed yeast market in Portugal and Spain. In effect, each of the three main players covers almost the totality of its compressed yeast demand using only 3 to 4 brands in each Member State. The packaging of the compressed yeast is very similar, with packages having similar weights and sizes: the majority is 20 blocks of ½ kg each and 25 kg sacks. The product itself does not differ to a significant extent between

ABF, Lesaffre and GBI in terms of their main competitive dimensions important to buyers of quality, durability, availability, after-sale service. It can therefore be concluded that compressed yeast is fairly homogenous across suppliers and thus subject to similar supply or demand shocks as explained above.

6.3.2.1.6 Market transparency in competitors' final prices, volumes and capacity

- (192) The lack of transparency of prices and sales does not necessarily prevent tacit coordination but makes it both more difficult to sustain and more limited in scope. This is because when a firm's sales fall in a given period it can either be because of "bad luck" (adverse shock on demand), or because another market participant has "cheated or deviated" (undercut the coordinated price). That is, the more transparent a market, the more clearly the market participants are able to monitor any deviation from the common policy, and the more feasible it becomes to sustain tacit coordination.
- (193) The compressed yeast market can generally be considered as relatively transparent regarding competitors' prices. Interviews with market participants have revealed that producers of yeast are relatively well informed concerning the prices of competitors. Puratos states that: *"The information of a competitors' price increase spreads quite rapidly in the industry. Customers start shop around and asking for new offers. The price increase due to increase in the input prices can be verified in the press. The bakery industry is covered by a large number of journals"* and Indawisa confirms that: *"Information on prices and information on price increases circulate in the market and become common knowledge quite rapidly."*¹⁰⁴ This is further reinforced by the market investigation undertaken at the distributor level in both Portugal and Spain.
- (194) Not only are prices very transparent, but so are other dimensions of competition, in particular capacities. The parties have been able to compile capacity data for all production sites and all competitors in the EEA and in Turkey. They submit that this data is based on their own market intelligence. Even though the figures do not always correspond exactly to figures submitted by competitors in the market investigation, the overall precision and detail with which capacity of competitors in relation to own capacity (overall, but also current use for production of the three different types of yeast) remains striking and indicates a very high degree of transparency in that respect. The fact that capacity figures and production rates are transparent in the industry has also been confirmed by a number of competitors.
- (195) Moreover, the process leading to the change of ownership of the yeast business of GBI Holding in the last five years, from Gist-Brocades to Gilde and now to ABF and Lesaffre has meant that most of the competitors, including Lallemand and Puratos, have undertaken due diligence of GBI Holding's assets, thereby acquiring detailed knowledge of GBI Holding's production plants.¹⁰⁵

¹⁰⁴ See agreed minutes of conference call with Puratos, Call on 20 May 2008 and agreed minutes of telephone conference with Indawisa 16 May 2008.

¹⁰⁵ See agreed minutes of telephone conference between members of the case team and Lallemand held on 14 February 2008: *"The bidding procedure organised by Gilde for the sale of GBI further provided participants with rather detailed insight into this company's situation by providing participants with an Information Memorandum and allowing them to conduct a due diligence investigation."*

- (196) Overall the market transparency of the industry is rather high. As confirmed by Lallemand, *"the yeast business is a small industry and it is very porous. People know each other through the main suppliers (equipment, molasses) as well as through customers (the competing offers of competitors are often used by (mainly) industrial suppliers in price negotiations). Former employees are sometimes fluctuating to competing firms and some people from the smaller 'independent' companies have also met in various research projects which they cooperated and shared in the cost. Sometimes competitors are even invited to see the plant of another competitor upon the initiative of some equipment suppliers who want to demonstrate a particular piece of equipment."*¹⁰⁶
- (197) In this context, both distributors and suppliers also explain that it takes less than two months to discover to whom a customer has been lost. *"Puratos explains that the sales man detects in general within a 2 months delay to whom industrial customers substitute away from purchasing its own yeast."*¹⁰⁷ It is not uncommon for a distributor to visit the atelier of artisan customers. As for prices, the supplier will be informed of consumption variation and the identity of the "stealer" due to reporting obligation/practice by the distributor. In this regard, local sales forces appear to be fundamental assets: *"In the countries where Lallemand has local sales force, it has a good sense of what is happening on the market. The yeast markets are transparent if you have good market intelligence via sales people on the ground – it is not so difficult to find out the prices of competitors (for example sometimes bakers even show the invoices they pay to competitors) or usually to find out to whom the customer switched away. Customers often provide this type of information in the framework of price negotiations with other suppliers in order to negotiate a better price. Lallemand thinks it is not so difficult for sales people to monitor the customers' behaviour in term of quantity variations of purchases."*¹⁰⁸
- (198) At the level of national markets, there is also significant evidence of market transparency concerning prices and volumes specifically in Spain and Portugal as explained in detail in the relevant sections below, particularly taking into consideration the role of distributors in these two countries.

6.3.2.1.7 Very limited risk of leap-frog innovation

- (199) Tacit coordination is easier to sustain in mature markets where innovation plays a smaller role than in innovation-driven markets. The occurrence of technological shock in the supply side has the effect of destabilising coordination as this would lead to a misalignment of incentives among the several players that would want to exploit their technological innovations. Therefore, this is an important factor in assessing whether coordination is a serious concern.
- (200) There is a widespread perception in the market that the technology of yeast production is mature. The basic production process described above has not been altered in decades. There is room in the industry for process innovation and marginal

¹⁰⁶ See agreed minutes of telephone conference with Lallemand on 14 February 2008.

¹⁰⁷ See agreed minutes of conference call with Puratos, Call on 20 May 2008.

¹⁰⁸ See agreed minutes of telephone conference with Lallemand of 19 May 2008.

improvements on packaging technology. However none of the market players expects any technological leap-frogging of the kind observed in more dynamic or hi-tech markets which could threaten the established position of the existing incumbents in the affected markets (or elsewhere), ABF, GBI and Lesaffre.

- (201) Research and development is a relatively minor aspect of the business of producing yeast, and ABF has shown that whilst some patents do exist, there are a number of competing ways of achieving equivalent products and results¹⁰⁹. There have been some recent products developed and sold (such as the liquid yeast in Tetrapaks by GBI and Kastaglia by Lesaffre). However, all market data collected throughout the investigation, as well as the interviews undertaken, have shown that these have had a minor impact on the market (see recital (30)).

6.3.2.1.8 Extensive multi-market contacts

- (202) Multi-market contact refers to situations where firms interact in more than one market at the same time. In particular, multi-market contact can mute market level asymmetries, for example, if each firm has a major competitive advantage in one market (which could include one geographic area of a single product market). In this respect, extensive multi-market contacts make it easier for firms to sustain coordinated outcomes.
- (203) ABF, GBI and Lesaffre currently meet in a number of markets besides compressed yeast in Portugal and Spain. In particular, all three players have extensive presence across a significant number of geographic markets, not only within Europe, but also across the world, both in dry and compressed yeast as well as other bakery ingredients. It is also worth noting that the sale of part of GBI's assets to ABF and part to Lesaffre will lead to a more symmetric position of both players at worldwide level (see also section 6.2).
- (204) Generally, it is possible that market conditions or incentives facilitating coordinated conduct may be less strong within some of these individual geographic markets. For example, demand could grow rapidly on one particular geographic market and grow slowly on a neighbouring one. It is also possible that on one market, firms can observe or respond more quickly to cheating and thus punishment starts sooner. In these cases, there is a range of parameters, for which with multi-market contact and tacit coordination is facilitated and induced on both markets, whereas, in the absence of such contacts, tacit coordination would be comparatively more difficult to sustain on one market individually. In a similar way, tacit coordination in one market can make more effective or sustainable tacit coordination in an adjacent market served by the same players.¹¹⁰

¹⁰⁹ The market investigation has confirmed that this viewpoint is widely shared. According to paragraph 474 of the Form CO "ABF's yeast division estimates that it spent less than [...] of its revenue on R&D, demonstrating that R&D costs are not significant in this sector."

¹¹⁰ In technical terms, if full collusion is possible in one market but only some degree of collusion is possible on a second separate market, the pooling of the incentive constraints across both market relaxes the binding constraint on the second market enabling colluding firms to raise overall profits there.

(205) In the particular context of this case, the fact that market conditions are conducive to coordination in the Spanish market may also facilitate coordination in Portugal, and vice versa. Indeed, Lesaffre has [...] of spare capacity in Spain in Valladolid (see Table 2), very close to the Portuguese border, whereas this spare capacity corresponds to approximately [significant proportion] of the whole Portuguese compressed yeast market. Furthermore, because of its already established presence in Portugal, Lesaffre faces virtually none of the barriers to entry or expansion identified in section 6.3.2.1.4. However, to the extent that Lesaffre likely benefits from some degree of tacit coordination in Spain, it faces the risk that significant effort to expand its presence in Portugal may lead to tougher competition in Spain. This is underlined by the fact that the Portuguese market is relatively minor in size compared to the close Spanish market which can be thus much more important for Lesaffre. The actual mechanism of tacit coordination and the effects of the notified merger are discussed for each market separately in the next sections.

6.3.2.2 The Spanish compressed yeast market

6.3.2.2.1 Mechanism of Tacit Coordination

6.3.2.2.1.1 Ability to reach an understanding on the terms of coordination

(206) According to the Horizontal Merger Guidelines, *"Coordination may take various forms. In some markets, the most likely coordination may involve keeping prices above the competitive level. In other markets, coordination may aim at limiting production or the amount of new capacity brought to the market. Firms may also coordinate by dividing the market, for instance by geographic area or other customer characteristics, or by allocating contracts in bidding markets."*

(207) Quantitative and qualitative evidence obtained during the market investigation reveals that, the Spanish compressed yeast market already exhibits some degree of tacit coordination allowing ABF, GBI and Lesaffre to influence prices and/or the levels of sales in individual regions through, *inter alia*, exclusive relations with distributors. These terms of coordination have been further corroborated by information supplied by a number of customers (distributors) as explained below.

(208) First, as explained in section 6.3.2.1.6, there is a significant degree of transparency as to the prices, sales and capacity levels of each of the three incumbents in compressed yeast markets, including Spain. Transparency with respect to capacities has been shown in recitals (194) and (195).

(209) With respect to sales, there exist historical relationships between producers and their distributors and, in turn, between distributors and their customers, as explained in section 6.3.1.4.1. This, combined with a relatively stable market demand and relatively stable market shares for the three major players in Spain, as reflected in the Table 3, ensures that there is extensive transparency as regards the historical distribution of customers across producers (regarding switching see also section 6.3.2.2.1.2)

Table 3 Evolution of market shares from 2005 to 2007 in the compressed Spanish market

	2005	2006	2007
Lesaffre	[50-60]%	[50-60]%	[40-50]%
ABF	[20-30]%	[20-30]%	[30-40]%
GBI	[10-20]%	[10-20] %	[10-20]%
Zeus	[0-5]%	[0-5]%	[0-5]%
Lallemand	[0-5]%	[0-5]%	[0-5]%
Asmussen	[0-5]%	[0-5]%	[0-5]%

* Source: Market Investigation

- (210) With respect to prices, transparency is enhanced through various mechanisms. First, as explained in section 6.3.2.1.5, reaching terms of coordination is made easier by the fact that compressed yeast differs little between ABF, Lesaffre and GBI in terms of quality, durability, availability, sale service, or other dimensions that may be important to buyers. There is thus no need for suppliers to specify coordination terms separately for each product dimension and develop a consensus on what constitutes ‘similar enough’ products for purposes of setting price and non-price terms.
- (211) Second, bakeries will often enquire about prices charged by different suppliers and inform competing distributors with the expectation of obtaining a better price. In this sense, customers serve as an effective communication channel regarding prices of the other two market players. However, customers often do not benefit themselves, since (a) a particular producer will learn quickly about price increases from rivals, subsequently adjusting their own prices and (b) even if a certain price difference remains, producers provide incentives to distributors to withhold supply to customers historically served by a rival, as explained in more detail below.
- (212) Third, distributors play an important role in the ability to reach a tacit understanding on the terms of coordination and in the enhanced ability to implement and sustain the common policy of price increases.
- (213) As mentioned in section 6.3.1.4.1 above, distribution in Spain is *de facto* exclusive and distributors have tight long-term relationships with suppliers and final customers. Even if most of the distributors have no written contract and hence no formal exclusivity, it is the norm to work only with one supplier.¹¹¹ ABF also confirm that this is the usual practice.
- (214) The market investigation confirms that the suppliers have their distributors essentially arranged in a way so that generally only one distributor¹¹² serves a given

¹¹¹ "[He] considers that exclusivity is the norm in the market, i.e. that distributors only distribute one producer's yeast. This is for GBI as is for the rest of the yeast suppliers." (from agreed minutes of conference Call with GBI Spain and GBI Portugal 22 May 2008)

¹¹² In Portugal especially, Lesaffre additionally divides its distributors according to the brands, so there can be more than one distributor of Lesaffre's products serving a given area with 'his' Lesaffre brands.

area, even without having formal territorial exclusivity agreements. The general manager of GBI Spain and Portugal with vast experience in the yeast market confirms that "(...) *geographic exclusivity, mainly based on provinces is the norm, although, depending on the size of the province the allotted territory of the distributors may be based on parts of provinces*"¹¹³. Even if ABF claims that it does not have any exclusive territorial arrangements, distributors also confirm that if there are more of them in a given province, the province is then in practice naturally sub-divided into smaller areas between the distributors, often as a result of the historic presence of the distributors. Informal territorial arrangements seem to be in place and can be attached to regions or when demand is high to smaller territories. For example, ABF has more distributors in the same region (on a 'distribution map' of ABF it shows up to about [...] distributors in or around [Spanish region]*). During the market investigation, an ABF distributor in the [same Spanish region as in previous sentence]* confirmed that the [...] distributors are very small and each have their part of the region (such as only one serving the city centre), while none of them covers the whole region, and they thus virtually do not compete against each other (except in the "border" areas) and stay in their traditional area of supply.¹¹⁴ Similarly, an ABF distributor in the [...] region (for which ABF indicates around [...] distributors) states that he is an exclusive distributor in a given territory.¹¹⁵

- (215) The incentive for distributors to expand and operate at a larger scale appears to be limited. Distributors explain that they stay in their region and it would not be profitable for them to expand beyond that region, due to high costs of refrigerated transport to serve artisans further away for example. The system in place seems to significantly limit the ability to expand by distributors. As one distributor puts it: "*the whole system is organized in a way that impedes/makes difficult for distributors to expand*"¹¹⁶.
- (216) Given that distributors in Spain are not contractually bound as to the prices they set to their customers, the control of the (normally exclusive) distributor by each supplier is a key element in the ability of the supplier to simultaneously (or within a short time lag) increase prices. The control is exercised by the commitment of each supplier to provide his respective distributors (for each territory) with the normal volume based on historical consumption.
- (217) As a result, given the (*de facto*) exclusivity arrangements which are a general feature of the Spanish market, the structure of the market at a local level is very simple and enhances transparency. As a norm, each territory is populated by essentially the (*de facto*) exclusive distributors of the three main suppliers and the market is in essence divided by the commitment of each supplier to provide his distributor(s) in the given area by just the right amount of volume, as otherwise the distributor(s) would have the

¹¹³ See agreed minutes of conference Call with GBI Spain and GBI Portugal 22 May 2008

¹¹⁴ Confirmed minutes of a call with a [Spanish distributor] of 10 September 2008.

¹¹⁵ Answer of [a Spanish distributor] on question 5 and 6 of the Commission's questionnaire of 28 February 2008.

¹¹⁶ From agreed minutes a conference call with [Spanish distributor] of 11 June 2008r.

incentive to expand and try to sell more quantity.¹¹⁷ To do so, the distributor might decide either to source from other suppliers or try to extract more quantity (by cheating on his current needs) from the supplier. The overall effect would be a disruption of the coordinated outcome with increased competition and a price level which would return to a competitive level.

- (218) To compensate the distributors, suppliers have thus to offer them a sufficient margin on the final price. Overall, the situation generates quite high revenues for the distributors. The market investigation confirms that distributors in Spain indeed enjoy a margin (price cost margin) in the range of [...]*.
- (219) The market investigation confirms that when attempts of this type occur, the suppliers respond quickly to credibly eliminate any ability and/or incentive of the distributor to expand. The current supplier threatens the distributor to cut his current supply or to raise prices disproportionately. This demonstrates how the system corrects itself when a distributor is trying to deviate from the paradigm imposed by the suppliers. The market investigation revealed a number of cases where this has occurred.¹¹⁸
- (220) Further, as suggested by economic theory in a territory where distribution is exclusive, and there are two distributors each selling one brand, suppliers of each brand may have reduced incentives to lower prices, further creating conditions of sustainability of a common price increase policy¹¹⁹.
- (221) The impact of exclusive distribution in facilitating the tacit understanding on the terms of coordination is thus threefold. First, exclusive territories reduce competition between the distributors beyond their assigned territory. Second, exclusive territories also tend to restrict competition between distributors of different suppliers and may thereby contribute to stabilise tacit coordination. Coordination is therefore more effective by way of freezing the existing relationships with distributors and amounts of yeast supplied to them. Third, exclusive distribution contributes considerably to enhanced transparency in the market, thereby further facilitating coordination on

¹¹⁷ In Spain, suppliers tend to have only one distributor in a given area, be it a region or a smaller part of the region if there are more distributors in the bigger region, as explained in recital (214). However, even if there are more than one distributors of a given supplier serving the same area (like in particular in the case of Lesaffre, whereas Lesaffre's distributors may only sell certain brands and not the whole range), the same reasoning can be applied as the supplier simply adds-up the volumes of the distributors which serve the area in parallel.

¹¹⁸ See, for example, agreed minutes of conference call of 3 July 2008 with [Spanish distributor].

¹¹⁹ The reasoning for this result is as follows: Imagine that supplier 1 unilaterally lowers its wholesale price. Under exclusive dealing, when the first distributor revises its retail price (p_1) downwards, it attracts customers from the second distributor, who would then be strongly motivated to revise its retail price (p_2) downwards. On the other hand, if distribution is non-exclusive, the sole distributor selling both products would feel less pressure to lower p_2 as p_1 is lowered, since customers switching to product 1 would not be switching distributors. Thus the net change in the retail price differential is likely to be greater under non-exclusive distribution. But this suggests that as the wholesale price is lowered, the sales of product 1 will rise by an amount greater under non-exclusive dealing than under exclusive dealing. The same reasoning can be applied to the other manufacturer. The overall effect is that the perceived demands of the manufacturers are rendered more inelastic under exclusive dealing, much as if the products were more greatly differentiated. One then expects wholesale prices to be higher, and manufacturer profits greater, under exclusive dealing. With more than two brands, the reasoning is similar.

prices and monitoring. Typically, in a given region or part of a region in Spain, there would only be one distributor for each supplier. This contributes to ensure that distribution system in Spain is simple and transparent, with limited intra-brand competition.¹²⁰

- (222) Moreover, the pricing data obtained during the market investigation, though partially incomplete at the stage when the parties submitted remedies, reveals that average prices of all three competitors remained relatively stable in the years previous to 2006. As of 2006, there was a simultaneous increase in prices for all three producers.
- (223) Note that in the recent past, particularly since 2006, prices have been increasing significantly in Spain and the three players - ABF, Lesaffre and GBI - have aligned their price increases whilst at the same time the market shares have been relatively stable and there has been virtually no new entry and very limited expansion by the fringe¹²¹. Indeed, Lallemand gradually reduced its prices up to 2005 with very limited impact on the prices of the three incumbents - ABF, GBI and Lesaffre, - which, during the last five years, have always kept their combined market share above [90-100] %.
- (224) It is useful to analyse the gradual and parallel increase in prices as of 2005 in more detail. It appears that as of 2005, input costs started to increase. Such supply shocks can, in some circumstances, disrupt any efforts to tacitly coordinate conduct, particularly to the extent that they may affect some players more than others. However, as mentioned in section 6.3.2.1.5, given common technology and climatic conditions of the plants of ABF, GBI and Lesaffre serving the Spanish market, increased input costs can be expected to affect all three players in a similar manner. Internal documents from GBI Holding suggest indeed this was expected to be the case.
- (225) The opportunities to increase margins through more effective coordination, arising from common input cost increases is made more explicit in an internal memo of GBI Holding: *"Our objective is to increase the yeast prices in such a way that we will be able to keep the EBIT at the present level or, if possible, higher. Due to the fact that for the bakers the costs for yeast amount to less than 3% of the cost price of bread and the fact that the mentioned cost increases are valid for the whole yeast industry, we assume - at least at this moment - that we will succeed in these price increases"*¹²²
- (226) Such quotes suggest that GBI Holding's pricing strategy was driven by the belief there would be a common perception among the three major players in the market to

¹²⁰ Even if there is more than one distributor of a given supplier in an area (like, for example, one selling certain brands of the supplier and another one selling other brands, as may be in case of Lesaffre), the level of transparency and market simplicity is still very high in Spain (and in Portugal), given that the supplier is in possession of information from all of its distributors in the area and knows, given the reporting of the distributors, whether the distributors lost or won business from each other or from competitors. In addition, the supplier can simply add up all the sales of his distributors in a given area to the evolutions of the market on a micro-aggregated level.

¹²¹ Even for different brands the market investigation reveals that price is being determined in the same way for all brands (regardless of the physical characteristics of each brand), meaning that prices differences across brands (as well as volumes) remain relatively stable over time.

¹²² Memo of August 11, 2006 of GBI Holding NV.

implement price increases, as opposed to competing more fiercely for increased sales to offset the possible loss in margins resulting from increased input costs.

- (227) The behaviour of GBI Holding was indeed well understood by ABF which mentions, shortly after the Gilde acquisition of the yeast activities of GBI Holding, as early as January 2006, that: "*We expect less price pressure from Gilde as they strive to increase profitability*".¹²³
- (228) Finally, and as explained in the Horizontal Merger Guidelines, "*Evidence of past coordination is important if the relevant market characteristics have not changed appreciably or are not likely to do so in the near future. Likewise, evidence of coordination in similar markets may be useful information*". Useful lessons can be learned as to the most effective way to coordinate behaviour from past cartels in the same product market, as they not only shed light on the likely most efficient terms of agreement to all the players but also give priors on the interpretation and the reasons of a specific firm behaviour, reducing the information needed to sustain a tacit agreement.
- (229) It is striking that in the cases of alleged cartel behaviour referred to in Section 6.3.1.5 price increases were at issue, which reinforces the view that price increases act as a focal point that helps Lesaffre, ABF and GBI form a common perception as to each others likely conduct¹²⁴.

6.3.2.2.1.2 Incentives to deviate and monitoring of deviations

- (230) According to the Horizontal Merger Guidelines in paragraph 49, "*Coordinating firms are often tempted to increase their share of the market by deviating from the terms of coordination, for instance by lowering prices, offering secret discounts, increasing product quality or capacity or trying to win new customers. Only the credible threat of timely and sufficient retaliation keeps firms from deviating. Markets therefore need to be sufficiently transparent to allow the coordinating firms to monitor to a sufficient degree whether other firms are deviating, and thus know when to retaliate*".
- (231) As explained in section Section 6.3.2.1.6 the compressed market in Spain can be considered relatively transparent with respect to prices, sales and capacities. Such transparency facilitates the monitoring of deviations in various ways:
- (232) First, it is to be noted that in a market where prices are increasing, as was the case in Spain since 2005, deviations from tacitly coordinated prices are possible when a price increase applied by one player is not followed by any of the others and, as a result, the

¹²³ ABF internal doc [...]*.

¹²⁴ A further case concerns the Polish compressed yeast market. In 2003, the Polish Competition Authority adopted a decision punishing an alleged cartel in the compressed market for yeast in Poland. According to the decision, the organization of the cartel was based on geographical market sharing based on proximity to each plant. In effect, each firm was allocated a leadership position in the surrounding area (or province) where its plant was located, and prices were increased by similar amounts simultaneously. The decision was overturned by the Court for the Protection of Competition and Consumers in its decision on October 6, 2005, considering that the Polish Competition Authority had not produced hard evidence of a cartel between these 7 suppliers.

deviator is getting business that it would not have otherwise obtained. In the context of frequent deliveries, this is simply verified by observing significant decrease in volumes with respect to the previous year for a given territory. Indeed when market demand is relatively stable, as is the case in Spain, inferring deviations from collusive conduct is easier and requires less market data than when the market demand fluctuates significantly and unpredictably.

- (233) Second, although deviations can be detected by the observation of quantities or unexpected market share variations within a region, in the manner described above, deviations can also be detected via monitoring of price, as mentioned in recital (211)
- (234) In this regard, distributors play an important role as channels of information. As described in recitals (132) to (133), the long term, traditional and *de facto* exclusive relationships between the suppliers and the distributors, and the distributors and the artisan bakers, mean that information flows to the supplier as to the pricing behaviour of competitors, in targeting those customers whose patterns of consumption of yeast have changed.
- (235) Distributors also play a very significant role in discovering to whom the quantities have gone to, in order to identify the deviator and trigger the retaliation against him. Further, not only are distributors offering reliable data about the market but also offering such information in a short delay means, providing data in a timely fashion.
- (236) With weekly deliveries, the time lag to detect a deviation from tacit coordination is relatively short, as per recital (197), since the occurrence of lower than expected sales to existing clients are readily observed. Seasonality does not result in reduced transparency since the pattern is regular and hence largely predictable. A loss of sales, therefore, can indicate, within a very short time that a competitor may have increased its sales¹²⁵.
- (237) A distribution system arranged in a way where there are small distributors confined to their local area also reduces the incentives to deviate in the first place as this limits the possible short-term gains obtained from cheating on the terms of tacit coordination. The benefit of lower prices (in terms of expanded output) are likely confined to the region / area in question, unless the supplier provides low prices to all its distributors and assures increased supplies. Such an action, however, would be detected relatively quickly due to the numerous price adjustments that the supplier should apply to several distributors.
- (238) Consistent with the view that the incentives to deviate are limited and that it is relatively easy to monitor deviations, the market investigation reveals very few instances of switching from one producer to the other on the part of direct customers or distributors. For example, in the period from 2006 to 2007, the data, collected up to the date when remedies were offered, shows one instance of switching in Spain over

¹²⁵ Where demand is relatively elastic, seasonality may increase the incentives to deviate. This is because undercutting rivals is more tempting when demand is high. In addition, however, the perceived cost of future price wars is lower when the cycle is at its top, since retaliation will only occur later, thus in periods of lower demand. However in the case of compressed yeast, as explained in section 1.2.1.4.5, demand elasticity is likely to be rather low throughout the year. This implies that the threat of retaliation remains severe also in periods of comparatively lower demand. Furthermore the difference of volumes between the peak quarter and the following quarter is less than 10% thus relatively low.

419 customers identified and in the period from 2005 to 2006, the data shows four instances of switching in Spain over 451 customers identified.¹²⁶

6.3.2.2.1.3 Deterrence

- (239) In *Impala v Commission*¹²⁷ the CFI held at paragraph 465 that: "*It follows from the case-law that in order for a situation of collective dominant position to be viable, there must be adequate deterrents to ensure that there is a long-term incentive in not departing from the common policy, which means that each member of the dominant oligopoly must be aware that highly competitive action on its part designed to increase its market share would provoke identical action by the others, so that it would derive no benefit from its initiative*".
- (240) In the compressed yeast market, a return to fully competitive interaction would act as a sufficient deterrent mechanism. This is for at least two reasons.
- (241) First, given the low elasticity of demand (see section 6.3.2.1.3) for compressed yeast any output expansion would likely have a significant impact on prices thereby rapidly reducing profitability.
- (242) Second, all three players- GBI, ABF and Lesaffre - currently hold excess capacity in their plants serving Spain, sufficient to initiate a long-lasting price war in the event of any of them deviating from coordinated interaction. Moreover, ABF and Lesaffre are able to serve the Spanish market from Portugal or France respectively, where they also hold additional capacity or can shift current sales from these markets for a temporary period as an additional threat. Shifting volumes from one geographic market to the other, though likely uneconomical on a permanent basis given the opportunity cost of lost sales, allows the three producers to reinforce the threat of significantly expanding sales without necessarily holding excessive idle capacity.
- (243) Retaliation would also likely be timely as transactions in the yeast market are characterized by weekly or bi-weekly supply. As seen in section 6.3.2.2.1.2, there is sufficient transparency in the market to determine the identity of a player deviating from the common policy. This has the effect of making the punishment timely. This, in turn, further decreases the incentive to deviate in competing for small and regular orders. Market transparency derived from the role of distributors also contributes to the effectiveness of any retaliation. This is because "punishment" cannot be confused with a slump in demand.
- (244) The credibility of deterrence is enhanced by multi-market contacts among the three players (see Section 6.3.2.1.8) which implies that retaliation can take place in adjacent regions within Spain, in other geographic markets¹²⁸, in other yeast markets in

¹²⁶ Switching is here defined as the change by a customer of his main supplier from one year to the other. The main supplier is defined as the one from which a customer buys the largest share of the entire acquired quantity.

¹²⁷ Case T-464/04 *Impala v Commission* [2006], OJ C 224 of 16.09.2006, p.39

¹²⁸ On a geographical scope, GBI, Lesaffre and ABF meet across various EU markets (and also worldwide), including Portugal and France where all three firms are present. Retaliation can therefore occur in different geographic regions

particular liquid, or with respect to a specific segment of customers, such as direct customers. As earlier explained firms can sustain tacit coordination more easily when they are present on several markets.

6.3.2.2.1.4 Reaction of outsiders

(245) Tacit coordination is only successful if the actions of non-coordinating firms and potential competitors, as well as customers, should not be able to jeopardise the outcome expected from coordination.

6.3.2.2.1.4.1 Fringe competitors face high barriers to entry and/or expansion

(246) In the absence of entry barriers, any attempt to maintain supra-competitive prices would trigger entry (for example, short-term or “hit-and-run” entry strategies), which would erode the profitability of collusion. Second, the prospect of future entry tends to reduce the scope for retaliation, which in turns limits the sustainability of collusion. The basic idea is that firms have less to lose from future retaliation if entry occurs anyway. More precisely, the prospect of future entry does not affect the short-term benefit that a firm can obtain from a deviation, but it reduces the potential cost of deviation in terms of foregone future profits. Indeed, retaliation against a deviating firm is less significant if entry occurs, since entry dissipates profits irrespective of the past behaviour of incumbent firms. Firms are then more tempted to undercut collusive prices and the ability to collude thus declines when the likelihood of entry increases.

(247) According to the notifying party entry and/or expansion could occur a number of ways: (i) new entry with the construction of a new plant in the region or acquisition or expansion of existing production facilities; or (ii) expansion into the area by using spare capacities and/or diversion from other geographical areas or yeast products. However, as explained in detail in section 6.3.2.1.4 the market investigation has demonstrated that not only are there barriers to entry and expansion but also that the available spare capacity is not sufficient to undermine the degree of tacit coordination.

(248) In particular, successful entry and or expansion requires access to (a) a local distribution system, with (b) local sales persons and (c) recognised brands. In addition, new entrants in these geographic areas require (d) the establishment of a quality and consistency of supplies reputation, which does not seem to have been taken seriously into account by the notifying party.

(249) Traditional relationships with distributors play an important role in Spain (where the distributors channel accounts for [70-80] % of the market), as these relationships are to a vast degree long-standing and even, in some cases, inter-generational. Distributors in Spain have a significant influence on the final artisan bakers, as they have supplied them for a long time, on a very frequent basis – once or even twice weekly. Moreover, the distribution structure is very rigid, with exclusive distributors for all three main producers divided into their exclusive territories.

(250) The need for an established local sales force together with the setting up of a distribution network is thus a high barrier to entry for non-established competitors. Competitors explain that it would be very difficult to expand significantly without an

active local sales force¹²⁹. In Spain, distributors are usually relatively small and have no technical employees, so it is not only necessary to have a local sales force in order to build up and develop relationships with distributors but also to provide a technical back up required to assist the sales force in developing their distribution network. The development of a network of distributors takes time and, given the outreach of the three current major players (with [90-100] % of the market), it was cited as fundamental by most distributors and competitors in the market investigation as barrier to entry of a new supplier.

- (251) Brand notoriety is another factor to consider with artisan bakers, as brands represent quality and reliability of the product. A brand which is not traditionally known or has little standing in the marketplace, and introduced by a newcomer would only be considered if the product would be positioned with a very low price, to persuade the most price-sensitive customers to switch.
- (252) However, the quality and reliability of the product are further fundamental factors to be considered by bakers in using a yeast brand as even small changes in quality can affect the final product. Many distributors, for example, dismissed compressed yeast offered by Turkish producers as being of inferior quality¹³⁰. Further, customers need the compressed yeast to arrive on a continuous basis. It follows that in a traditional market like the artisan segment most distributors contacted during the investigation stressed that it can take a long time for a new entrant to establish such a reputation for reliability.
- (253) Finally, investment costs for new plants are high and there are regulatory difficulties associated with building new plants, essentially due to environmental constraints. What is more, this comes within the setting of a relatively stable demand for bakers yeast and a saturated market. In effect, only one plant has been built in Western Europe in the last 10 years, - the Puratos plant with 17kt built in 2000. In fact, in the recent past, there has been a trend towards consolidation of smaller plants into bigger plants which indicates that this is an industry where economies of scale play a significant role.
- (254) In short, entry barriers are significant and successful entry or expansion requires access to a local distribution system, with local sales persons and recognised brands. In addition, new entrants in these geographic areas require the establishment of a reputation for quality and reliability of supplies.
- (255) These barriers impact the ability and incentives for the current marginal players such as Lallemand and Zeus, as well as the possible new entrants, such as the Turkish yeast producers.
- (256) As regards the current marginal players, the market investigation has shown that non-coordinating firms would not be able to jeopardise the common policy in the compressed yeast market in Spain. It is useful to recall here that the three major incumbents hold approximately [90-100] % of total demand in Spain. Outsiders have currently, therefore, only a very marginal presence in Spain and there are no

¹²⁹ See agreed minutes of Conference Call with Zeus of 12.03.2008.

¹³⁰ See for example: agreed minutes of ANFECOR conference call of 3.07.2008

indications in the form of expansion plans or agreements with distributors suggesting that either Lallemand or Zeus are currently seeking to expand their presence in Spain. However, Lallemand and Zeus hold only [...] and [...] spare capacity, respectively, in the relevant geographic area (see Table 2). In addition, due to stable demand, in order to obtain customers suppliers must 'steal' customer from other producers.¹³¹

- (257) Further, Zeus, a player already with a presence in Spain, even if very marginal, has no space to build more production facilities or to expand them.
- (258) Moreover, both Zeus (with [...]) and Lallemand (with [...]) have plants that are some distance away from Spain, and so are at a transport cost disadvantage in relation to both ABF's and Lesaffre's plants in the Iberian Peninsula, which is a further disincentive to expand on top of the very important disadvantages such as the absence of an established extensive network of distributors, brand recognition and notoriety with final customers which serve as an important entry barrier.¹³² In fact, Zeus and Lallemand have only three and one distributor(s) in Spain, respectively.¹³³
- (259) This shows that not only do they lack a nationwide distribution network but also a solid and consolidated reputation for quality and reliability and well known brands¹³⁴.
- (260) More generally, as to new entry into the Spanish compressed yeast market by players not currently present on this market, ABF referred, namely, to players such as Pakmaya, Akmaya and Somadir.
- (261) According to numerous Spanish distributors, new entrants operating from plants further afield, such as the Turkish producers Akmaya and Pakmaya, as well as Somadir from Morocco, are unable to credibly and sustainably become a competitor in Spain. Supplies by these players have been negligible and irregular, with supplies arriving for a time and then ceasing, so they are perceived by distributors and artisan bakers as unreliable. Even more than in the case of Lallemand and Zeus, not only are these players located at a transport disadvantage given the very far location of their plants but also given the lack of any local sales forces, as well as quality and reliability issues identified in the investigation.

¹³¹ See also agreed minutes of telephone call with Indawisa of 16 May 2008 : "*Generally, before an expansion of production capacity could be considered, one has to know where the yeast could be sold. Currently, the yeast market is saturated in Europe. This means that a supplier would have to take customers from its competitors, and then as a reaction one has to expect that the competitors would take his own customers. In the current situation where market is even slightly declining (even if the demand for bread is stable, the industrialisation of bakes means that there is less yeast needed on the market), it is thus not reasonable to expand capacities.*"

¹³² GBI also supplies the Iberian markets from distance from the plant in Casteggio and it is also incurring some additional transport costs, however Casteggio has a relatively lot of spare capacity ([...]) in the plant where it consolidated its production with the former production from its Portuguese plant closed around 2001 (presumably, due to better economies of scale of a consolidated production). Even more importantly, GBI was able to leverage from its long lasting established position on the Spanish market including distribution structures and recognised brands, so it faced no entry barriers whatsoever.

¹³³ See agreed minutes of conference call with Zeus on 12th March 2008.

¹³⁴ See for example: agreed minutes with Panificação Costa e Ferreira, as regards Lallemand.

- (262) The likelihood of new entry is further reduced by past aggressive behaviour which has created a reputation for squeezing out attempts to supply in Spain. Indeed, several distributors described during the market investigation many instances of such behaviour.¹³⁵ Indeed, the strong presence of ABF, GBI and Lesaffre in the Spanish market, and the fact that they hold sufficient spare capacity, is likely to provide a disincentive for potential entrants to attempt to undermine any possible of tacit coordination. The reason is that a potential entrant must take into consideration (a) the fact that if entry triggers competition by destabilising the existing tacit coordination the post-entry price may be insufficient to cover for any sunk costs of developing a distribution network in Spain or expanding capacity to serve the Spanish market (b) given the degree of transparency in the market it is likely that any entry will be easily detected and the producer from which sales have been diverted has sufficient capacity to target the affected customers with lower prices, defeating the rationale for entry, or even lower prices/increase sales in the domestic markets of the potential entrant. For example in the case of Zeus or Lallemand, both GBI or Lesaffre can retaliate in Italy and Eastern Europe, respectively¹³⁶¹³⁷
- (263) It is worth noting that in the case of the alleged cartel in France, collusion extended to retaliation against any potential entrants (see section 6.3.1.5 above). In that case, a German and an Italian producer both attempted to enter the French market but incumbents successfully targeted the customers of the entrant by offering free deliveries. Other instances were cited by Lallemand as regards the entry of Puratos into the dry yeast market, namely when it built a dry yeast plant in Wallonia and was subject to a *"very strong competitive reaction by Lesaffre ...in Israel from Lesaffre's plants in Turkey"* so that *"in spite of its great reputation and established distribution networks it has had a very hard time penetrating profitably the yeast markets Puratos is now not very aggressive in the market, according to Lallemand"*.¹³⁸
- (264) Apparently, targeted retaliation is still in use, more specifically in the Spanish market. Market participants provided specific evidence showing how the incumbents retaliate when distributors attempt to purchase from the new coming fringe players.¹³⁹

¹³⁵ See, for example, agreed minutes of the conference call with Lallemand dated 14.02.2008.

¹³⁶ In the case of alleged collusion in France, coordination extended to retaliation against any potential entrants (see section 6.3.1.5 above)

¹³⁷ Another example referred by Lallemand is the attempt of Pakmaya to enter in Romania: *"Another competitor, Pakmaya (Turkey), produces and supplies fresh yeast in Turkey and more recently in Romania and dry yeast worldwide and has a very good quality product in the dry yeast, according to Lallemand. However, when it decided to export to Europe, Lesaffre and GBI dropped their prices in Turkey, a major market for Pakmaya, which seems to have now decided to stop exporting fresh yeast to Western Europe."* See agreed minutes of a conference call with Lallemand dated 14.02.2008.

¹³⁸ See agreed minutes of the conference call with Lallemand dated 14.02.2008.

¹³⁹ See, for example agreed minutes of a conference call with [Spanish distributor] of 11 June 2008 showing how he was threatened and actually retaliated by an incumbent supplier via a very significant rise of prices to this distributor (resulting in the loss of his customers), as a reaction on the distributor's choice to distribute yeast from a fringe player. The same distributor reported that subsequently, he was informed by the fringe player that the latter is under pressure from the incumbents not to grow sales in Spain, otherwise he would be risking losing clients in his home market.

(265) For entry or expansion to be considered a sufficient competitive constraint on the merging parties, it must be shown to be not only likely but also timely and sufficient to deter or defeat any potential anti-competitive effect of the merger. It is clear from the evidence presented that there are no plans to expand current spare capacities that could be used to profitably serve this market.

6.3.2.2.1.4.2 Limited countervailing buying power of distributors and artisan bakeries

(266) A related factor concerns the countervailing buying power of customers. If buyers are powerful, even a monopolist or a fully collusive oligopoly may find it difficult to impose high prices. More generally, actions by power buyers may reduce the profitability of tacit coordination. Economic theory suggests that large buyers can successfully break collusion by concentrating their orders, in order to make firms' interaction less frequent and to increase the short-term gains from undercutting rivals; more generally, large buyers can design procurement schemes that reduce the scope for tacit coordination.

(267) Artisan bakers, a large majority of the final customers, are very numerous and small and are reliant for their yeast purchases on distributors, given that their bread making process is highly dependent on yeast. In Spain the distributors channel the vast majority of the compressed yeast sales of the yeast producers (approximately [70-80]%), the remaining being sold directly by the producers to mostly industrial customers.

(268) As to distributors they have only a limited role to play as independent players from the suppliers of bakers yeast. In effect, as detailed above in recitals (213) to (221), the division of Spain by producers into small territories for its distributors (for example along province boundaries) ensures that each individual distributor only accounts for a small share of total sales. This reduces the risk of any given distributor growing in size so as to increase sufficient bargaining power vis-à-vis suppliers.

(269) The geographic allocation system verified in Spain has also another important implication. The alternatives left to a distributor who wishes to source yeast from suppliers other than ABF, GBI and Lesaffre, and given that the three significant suppliers have already nationwide distribution networks, are very limited.

(270) Finally, the distributors are also to an extent dependent on the technical and commercial back-up that may be provided by the local sales and technical people that are part of the ABF, GBI and Lessafre's dedicated local force.

(271) Therefore, whilst the role of distributors is an important one *vis a vis* the artisan bakers, since they provide the logistic platform on which all the individual artisan bakers may be reached by the suppliers of yeast, they do not have, for the reasons given above, a strong negotiating position *vis a vis* the yeast producers.

(272) It follows that neither distributors nor artisan bakers have any countervailing buyer power.

6.3.2.2.2 The effect of the transaction in the Spanish compressed yeast markets

- (273) It is established case law that the Commission must further show, on the basis of a prospective analysis, the extent to which the “*the alteration in the [relevant market] structure that the transaction would entail*”¹⁴⁰ significantly impedes effective competition by making coordination easier, more stable or more effective for the three firms concerned either by making the coordination more robust or by permitting firms to coordinate on even higher prices.
- (274) In the previous section it was shown that a series of structural and behavioural elements are in place supporting the conclusion that the Spanish compressed yeast market already exhibits some degree of tacit coordination allowing ABF, GBI and Lesaffre to influence prices and/or the levels of sales in individual regions through, *inter alia*, (de facto) exclusive relations with distributors.
- (275) In a range of market outcomes, in which at the extremes there are a competitive oligopoly and a perfectly collusive oligopoly, the acquisition of GBI Assets by ABF as notified will likely enhance the ease, stability and the effectiveness with which tacit coordination leading to a significant increase in prices beyond the level that would have prevailed in the absence of the merger.
- (276) This increase in the degree of tacit coordination in Spain would result from either one of the following mechanisms (or coordinated effects), which taken together, reinforce each other¹⁴¹.
- (277) First, the break up and sale of GBI's assets into ABF further increases transparency by reducing the number of players in the market in Spain, thereby facilitating the ability to detect deviant conduct and to retaliate effectively.
- (278) Second, relative to ABF and Lesaffre, GBI exhibits certain differences, which may, in the absence of the merger, induce greater incentives to favour different strategic choices than its coordinating competitors would prefer. These differences relate to the fact that (a) its plant is located outside the Iberian Peninsula, and (b) GBI is not present in the industrial direct clients segment. The merger eliminates the risk that as a result of an occasional misalignment of incentives, GBI deviates from the terms of coordination. It follows that by further increasing the similarity between Lesaffre and the merged entity the notified merger would increase the future sustainability of tacit coordination.
- (279) These effects reinforce one or more of the necessary conditions required for tacit coordination.
- (280) In the case of Spain, the effects of the merger identified above will likely make tacit coordination easier to sustain, more resilient and more effective by removing GBI as a potential source of independent pricing variation from the market and allowing the remaining two players to align their incentives and better monitor compliance with agreed terms of coordination.

¹⁴⁰ Case T-342/99 *Airtours/First Choice* [2002] ECR II-2585, paragraph 61.

¹⁴¹ Note that such prospective assessment of the coordinated effects of the merger must be undertaken irrespective of the exact degree of tacit coordination presumed.

(281) In addition, in Spain, the merger, by increasing symmetry not only in terms of cost structure but also in terms of market shares, contributes to better align the incentives to coordinate between Lesaffre and ABF and to sustain a tacit understanding over the terms of such coordination.

6.3.2.2.2.1 The merger reduces the number of major competitors from three to two in Spain

(282) The notified merger would essentially lead to a duopolistic market structure between the merged entity and Lesaffre across almost every customer segment and region, in the market for compressed yeast in Spain

(283) Post-merger, ABF and Lesaffre would hold similar spare capacities (approximately [...]*) each) in the feasible area of supply, and would be the only producers to have established distribution networks. Together they would hold [90-100] % of the Spanish compressed yeast markets.

(284) While any horizontal merger will tend to make tacit coordination incrementally easier to negotiate and sustain, the quantitative importance of this effect will vary with the pre-merger structure of the market. A merger that reduces the number of major rivals in a relevant market from three to two carries with it a presumption both from economic theory and empirical studies that coordination can be significantly facilitated by the elimination of an independent decision-maker in a highly concentrated market. The reduction of competitors from three to two will likely make it incrementally easier to tacitly coordinate their conduct, for at least five reasons.

(285) First, the presence of a lower number of rivals tends to increase the incentives to coordinate. With higher concentration, the merged entity and Lesaffre face a lower base of rivals' customers from which to attract new sales, thus depressing the short-term gains from behaving more aggressively in terms of prices or output. At the same time, through the merger, ABF expands its installed base of customers on which it will wish to protect its above-competitive margin, thus raising the long-run return to preserving tacit coordination¹⁴².

(286) Second, two players instead of three will likely be better able to tacitly agree on the terms of coordination. The merger will reduce the number of independent parties who must be brought together to tacitly coordinate thereby facilitating the forming of expectations regarding rivals' conduct. With three suppliers, ABF for example, must form an expectation regarding both Lesaffre's and GBI's likely conduct and response to ABF's actions and each other's. In contrast with two players, each firm needs to form an expectation only about each other's future conduct.

(287) Third, monitoring of competitors' sales in the market appears to already be possible. However, the concentration from three to two players will tend to increase transparency, thereby further reducing the time lag necessary to detect a deviation.

¹⁴² Conversely, since firms must share the collusive profit, as the number of firms increases each firm gets a lower share of the pie. This has two implications. First, the gain from deviating increases for each firm since, by undercutting the collusive price, a firm can steal market shares from all its competitors; that is, having a smaller share each firm would gain more from capturing the entire market. Second, for each firm the long-term benefit of maintaining collusion is reduced, precisely because it gets a smaller share of the collusive profit. Thus, the short-run gain from deviation increases, while at the same time the long-run benefit of maintaining collusion is reduced. It is thus more difficult to prevent firms from deviating.

Generally, the more firms present in the market, the harder it will be to determine the identity of the deviator once whenever it is suspected that cheating has occurred. In contrast, when the number of coordinating firms is two, as opposed to three, the identity of the deviator can be easily determined. If, for example, the distributor of Lesaffre in a specific region in Spain informs that it is losing significant sales to one or more of its historical customers, in most cases, it will be possible to presume that the merged entity has deviated.

- (288) Fourth, as concentration increases, punishments that are intended to maintain pricing discipline will gain credibility because the opportunity cost grows of turning a blind eye to more aggressive conduct by a now larger rival. Moreover, increased transparency also facilitates the effectiveness of the punishment threat since to the extent rivals may disagree on which firm is better placed to punish a deviator a reduction in the number of players from three to two also eliminates the risk that one firm may prefer to free-ride on the punishment efforts of the other.
- (289) Finally, a decrease in the number of firms increases the impact of an individual firm's action on the aggregate market parameters. Thus, if the merged entity believes that its actions are more easily monitored, it will be less likely to deviate from the tacit coordination.

6.3.2.2.2 The merger eliminates the risk of GBI destabilising the existing degree of tacit coordination

- (290) There are many situations whereby a merger might facilitate coordinated interaction by narrowing asymmetries between suppliers. For example, a merger may homogenize competing suppliers' product attributes, cost structures, planning horizons, geographic coverage, or excess capacity holdings. Homogenisation along such dimensions can align more closely producers' incentives and ability to coordinate and can make it easier for the remaining suppliers to reach and defend a consensus on price, output, or market allocation.
- (291) GBI has characteristics that gives it a greater incentive to favour different strategic choices than its coordinating competitors would prefer in the face of future unanticipated demand or supply shocks:
- (a) First, GBI serves Portugal and Spain from its single plant in Casteggio, which is also the second largest in Western Europe.
 - (b) Second, GBI has made recently a number of innovative improvements in the production and packaging of compressed yeast leading to patents.
 - (c) Third, GBI is not present in the market for liquid yeast in Spain or Portugal, whereas ABF and Lesaffre are both present.
- (292) The size and location of GBI's plant imply that it may be affected in different ways that ABF and Lesaffre by future unanticipated demand or supply shocks. This may make it more difficult for these two suppliers to make inferences regarding GBI's intended conduct from market observables and can ultimately destabilize any degree of existing coordination in the absence of the merger.

- (293) For example, from Casteggio, GBI serves markets other than Spain and Portugal. Asymmetric demand shocks in these markets (for example a sharp temporary decline in demand) may encourage GBI to attempt to expand its sales in the Iberian Peninsula.
- (294) Post merger, the merged entity can rationalise production for the Iberian Peninsula into its plants in Setubal and Cordoba, reducing the supplies originating in Casteggio into Spain. For example, Setubal, which supplied France, could be used to serve the Iberian markets and Casteggio could in turn be used to increase supplies into France. The spare capacity available in ABF's plants can cover the reallocation of Casteggio production to other areas. This will reduce the impact of asymmetric demand shocks on GBI's incentives, in the absence of the merger, to tacitly coordinate with ABF and Lesaffre.
- (295) Furthermore, such reallocation will also increase cost symmetry between the merged entity and Lesaffre, thereby further aligning their incentives to sustain and enhance tacit coordination¹⁴³. Indeed, a firm with a lower marginal cost may insist in lower prices than what the other firms would wish to sustain. Further, extreme asymmetries in suppliers' cost structures may rule out simple focal points that suppliers otherwise might have used to simplify reaching a tacit agreement on pricing schedules. In addition, technical efficiency would require allocating market share to low-cost firms, but this may be difficult to sustain in the absence of explicit agreements and side-payments. GBI faces a cost disadvantage in terms of transportation and logistics to the Iberian Peninsula relative to ABF and Lesaffre. Recall that compressed yeast, needs to be transported in special refrigerated trucks, which makes transport relatively expensive. Suppliers therefore first seek opportunities relatively close to their production sites. A reallocation of production from Casteggio to Cordoba and Setubal also eliminates these differences and would again contribute to better align the incentives between the merged entity and Lesaffre. Greater commonality in the cost structures of Lesaffre and ABF narrows conflicts of interest in price setting or market allocation, and can facilitate suppliers' identification of focal points for reaching a sustainable tacit understanding on the term of coordination.
- (296) The reasoning extends to other differences in cost structure, or to differences in production capacities. Capacity constraints potentially affect the sustainability of collusion in two ways. First, a capacity-constrained firm has less to gain from undercutting its rivals. Second, capacity-constraints limit firms' retaliatory power. At first glance, capacity constraints thus appear to have an ambiguous effect on tacit coordination, since they reduce both the incentives to deviate and the ability to punish such deviations. And indeed, studies that have focused on symmetric capacities have confirmed this apparent ambiguity.
- (297) According to established economic theory, however, asymmetry in capacities will generally make tacit coordination more difficult to sustain¹⁴⁴. Compared with a

¹⁴³ In recent years, the theoretical literature has explored various possibilities: Rothschild (1999) on costs, Compte et al (2002) on capacity, Kuhn (2004) on the number of products. Vasconcelos (2004) on capacity/costs. Although the details of these models vary, the underlying mechanism always works through the asymmetry this causes between firms in the profitability of/ability to punish and/or deviate.

¹⁴⁴ This results from the fact that the smallest firms cause the highest competitive pressure given they have the most to gain via business stealing (even if they cannot cover the market), and the largest firms are least likely to follow punishment strategies given they have the most to lose in punishment phases. Furthermore the incentives to deviate of each of the smaller firms independently in absence of binding

situation where all firms face the same capacity constraints, increasing the capacity of one firm at the expense of the others both raises the first firm's incentive to undercut the others and limits these other firms' retaliatory power. Overall, therefore, introducing such asymmetry hinders tacit coordination. In contrast, by increasing symmetry in capacities, incentives to tacitly coordinate are better aligned. In effect, post-merger both Lesaffre and ABF would have almost identical spare capacities (approximately [...] each) in the Iberian Peninsula.

- (298) The tendency towards increased symmetry also manifests itself with respect to market shares. In the case of the Spanish compressed yeast market, the effects of the merger in increasing symmetry in market share are particularly stark. Post-merger ABF/GBI will have a market share of [40-50] % and Lesaffre's [40-50] %.
- (299) Another additional consideration is that innovation makes tacit coordination less easy to sustain. The reason is that innovation, particularly if it is a break-through in the industry, may allow one firm to gain a significant advantage over its rivals. This prospect reduces both the value of future tacit coordination and the amount of harm that rivals will be able to inflict if the need arises. This idea is in fact a particular variant of the more general point about cost asymmetry¹⁴⁵. Whilst yeast production uses relatively mature technology, GBI has, in the recent past, made investments in R&D, leading to some innovation – namely as regards the Tetrapak liquid yeast cartons for the use of artisan bakers.
- (300) In fact, the merger also rests on an IP sharing agreement between Lesaffre and ABF, whereby [...] According to this agreement, [...]. Such an agreement may significantly enhance the sustainability of tacit coordination, in that it enhances transparency regarding each other's product features and establish a continuous and long-term link between the coordinating firms.
- (301) Under the terms of the transaction, by sharing GBI patents, the coordinating firms (a) eliminate GBI as a source of potentially destabilizing innovation and (b) ensure neither of the two coordinating firms inherits the competitive advantage that may eventually derive from IP rights. Furthermore, such sharing of IP rights may significantly enhance the sustainability of tacit coordination in at least two ways. First, it enhances transparency regarding each other's product features. Second, and by extension, it makes the product offerings of both firms more homogenous.
- (302) Finally, note that GBI, unlike ABF and Lesaffre does not serve the liquid yeast market in Spain. In the absence of the merger this could result in misaligned

capacity constraints are greater than that of the merged entity given that the merged entity can only increase sales by attracting customers from Lesaffre. In other words, when the productive capacity is such that no firm is able to cover all aggregate demand, a merger that increases symmetry by strengthening the two smaller firms will enhance the ability of the merged entity to retaliate in case of a deviation by the larger firm

¹⁴⁵ For example, consider an industry where, in the absence of any innovative activity, the incumbents would benefit from a secure, stable situation. They would then hesitate before cheating on a collusive conduct, which would trigger a price war and dissipate their future rents. Suppose now that, with some probability, one incumbent makes a drastic innovation, which drives its rival out of the market. If the probability of successful innovation is substantial, the incumbents then anticipate that their market position is short-lived (at least in expected terms); they thus put less emphasis on the cost of future retaliation and are more tempted to cheat on collusion.

incentives over time should market conditions lead to significantly higher sales in the liquid market at the expense of sales of compressed yeast. The merger would also eliminate this source of asymmetry.

(303) Similarly, GBI operates largely through distributors in Spain and thus has limited direct sales in comparison with ABF and Lesaffre. This can be explained by the fact that GBI lost almost all of its industrial customers when moving production in 2001-2002 to Casteggio, as they were unwilling to risk delays or quality changes given the large distances. Thus post-merger, Lesaffre and the merged entity will be more homogenous also with respect to the distribution of their customer base in Spain.

6.3.2.2.3 Conclusion

(304) Based on the above, it is concluded that the proposed merger would significantly impede effective competition in the market for compressed yeast in Spain. However, as seen below, the remedies offered by ABF were sufficient to solve the identified competition concerns and to restore effective competition in those markets.

6.3.2.3 The Portuguese compressed yeast market

6.3.2.3.1 Mechanism of Tacit Coordination

6.3.2.3.1.1 Ability to reach an understanding on the terms of coordination

(305) In the Portuguese market for compressed yeast, similarly to Spain, there is a significant degree of transparency as to the prices, sales and capacity levels of each of the three incumbents, as explained in section 6.3.2.1.6 and section 6.3.2.2.1.

(306) In the Portuguese market for compressed yeast, as in Spain, there exist historical relationships between producers and their distributors and in turn between distributors and their customers, as explained in section 6.3.1.4.1. Overall demand and market shares are also relatively stable over time, as reflected in Table 4. This implies that also in Portugal there is extensive transparency as regards the historical distribution of customers across producers (regarding switching see also section 6.3.2.3.1.2 below).

Table 4 Evolution of market shares from 2005 to 2007 in the compressed Portuguese market

	2005	2006	2007
GBI	[40-50]%	[40-50]%	[40-50]%
ABF	[30-40]%	[20-30] %	[20-30]%
Lesaffre	[10-20]%	[20-30]%	[20-30]%
Lallemand	0.0%	[0-5]%	[0-5]%

Source: market investigation

- (307) With respect to prices, transparency is also enhanced through product homogeneity as explained in section 6.3.2.1.5, and the role of distributors as collectors of information with regards rivals' prices and switching behaviour by customers.
- (308) An analysis of the written contracts submitted by ABF in the Form CO, clearly demonstrates that distributors in Portugal are exclusive and [brief description of the limited degree of distributors' pricing autonomy and of their reporting obligations]*
- (309) These are long standing relationships, often intra-generational, with very limited instances of switching by distributors over time. In the period from 2006 to 2007 and from 2005 to 2006, the data shows not a single instance of switching in Portugal over 53 and 56 customers identified, respectively.¹⁴⁶
- (310) The distribution system in Portugal is also very rigid. In Portugal, distributors tend to only carry yeast from one supplier and to have geographic exclusivity for a specified area. The market investigation revealed only one distributor selling yeast from more than one producer. In effect, distributors have a long-standing relationship with their yeast suppliers. ABF, Lesaffre and GBI already have a complete network of distributors covering Portugal which makes extremely unlikely that distributors may switch to other suppliers.
- (311) Take for example the case of Prodipani. Prodipani is one of the more important distributors of ABF in Portugal. Recently, it attempted to extend its yeast sales activity beyond its designated exclusive. Despite its importance, ABF refused to support this action and Lesaffre also refused to provide compressed yeast as its network was also covered. Ultimately Prodipani turned to Lallemand, from which it now acquires directly from its factory in Austria. However, it appears it has been unable to sell more than just relatively small quantities from the latter.
- (312) In some cases, the contracts with distributors include minimum quantity obligations and/or other types of restrictions. For example, [...] *Distribution contracts are also designed to limit the incentives of the distributor to sell beyond the historical level. On the contrary, the emphasis is on the maintenance of present customers. For examples, [...] *¹⁴⁷.
- (313) Both ABF and GBI's distributors do not set the final prices, as the market investigation revealed that both final prices and distributors' margin are, in most cases, determined by the producer. In few cases, where distributors may have some freedom to set prices, the fact that these distributors have very low margins¹⁴⁸ limits their price setting ability.
- (314) Furthermore, in most cases, distributors are not entitled to negotiate prices in case one customer asks for a price reduction. It appears from the market investigation that for both ABF and GBI distributors, the commercial representatives of these producers

¹⁴⁶ Switching is here defined as the change made by a customer with regard to his main supplier from one year to another. The main supplier is defined as the one from which a customer buys the largest share of the entire acquired quantity.

¹⁴⁷ See, for example, contracts provided as annex 8.40B of the Form CO.

¹⁴⁸ See for example, agreed minutes with Sodifer of conference call on 26th May 2008

are directly involved in the negotiations of prices that differ from the recommended prices and, in case of a price cut, they will compensate the distributor.

- (315) Additionally, the ability to control distributors' prices is coupled with the ability to control volumes sold by the suppliers to the market. Distributors are dependent on their producer and if they lose him, there is little possibility to have a credible alternative supplier, as other established producers also typically have exclusive distributors in the region.
- (316) As a result, given the *de facto* or contractual exclusivity of distributors, at a local level, the structure of the market is very simple, and enhances transparency, as each territory is essentially populated by only the exclusive distributors of the three main suppliers.¹⁴⁹
- (317) The impact of a *de facto* exclusive distribution in facilitating a tacit understanding on the terms of coordination has been explained in section 6.3.2.2.1 concerning the mechanism of coordination in Spain. In summary:
- (a) exclusive territories reduce competition between the distributors beyond their assigned territory;
 - (b) exclusive territories also tend to restrict competition between distributors of different suppliers ; and
 - (c) exclusive distribution contributes considerably to enhance transparency in the market.
- (318) The evolution of prices in Portugal follows a similar pattern to that in Spain. Prices went up consistently after the acquisition of GBI by Gilde, coinciding with increases in input costs. Prices by the three large incumbent players, increased in parallel, but this was not followed by similar price increases in magnitude by Lallemand¹⁵⁰.
- (319) The market investigation also indicates that, in contrast to Spain, GBI commands higher prices, which reflects their stronger market position, whereas Lesaffre, and to some extent also ABF, appear to act as a follower.
- (320) The reasoning concerning the increase in prices observed between 2005 and 2007 as described in recitals (222) to (227) for Spain, also applies in the case of Portuguese market. Indeed, price increases in Portugal have been simultaneous by the three suppliers - Lesaffre, ABF and GBI. In fact, internal documents of the notifying party ABF demonstrate that the pricing behaviour in Portugal was closely monitored, and there was to some extent an understanding of how the remaining players would react

¹⁴⁹ In case of ABF and GBI there would be normally only one distributor for a given area, Lesaffre tends to use specialised distributors for separate brands. This, however, does not compromise the transparency and relative simplicity of the system. See also footnote 120.

¹⁵⁰ Even for different brands the market investigation reveals that price is being determined in the same way for all brands (regardless of the physical characteristics of each brand), meaning that price differences across brands (as well as volumes) remain relatively stable over time.

to pricing movements: "*we announced increase in December, we understand LSF will increase in February*". This further confirms that the market players consider the market to be fairly transparent.

(321) In the case of the Portuguese market it is particularly striking that Lesaffre, despite being the weakest supplier, in fact has a plant in Valladolid, much closer to Portugal than GBI's plant in Italy. Importantly, Lesaffre has had approximately [...] of spare capacity in the past year yet it has not expanded its presence in Portugal. In fact, quantitative data from Lesaffre suggests that in the last three years, it has behaved rather passively in the Portuguese market for compressed yeast. It appears Lesaffre was content to follow price increases as opposed to taking the opportunity to expand market shares significantly as input prices went up, failing to take advantage of the proximity of its plant in Valladolid that has spare capacity, and the already established position on the market.

6.3.2.3.1.2 Incentives to deviate and monitoring of deviations

(322) For essentially the same reasons mentioned in section 6.3.2.1.6, the compressed market in Portugal can also be considered relatively transparent. Such transparency facilitates the monitoring of deviations in the same way as described in recitals (231) to (233) concerning Spain.

(323) Moreover, in the case of Portugal, the market investigation clearly shows that distributors are subject to full reporting obligations with regard to changes in market conditions. For example, ABF's distributors have contractual obligations to report fully (that means [...]).

(324) For example, [...]*GBI's distributors have also contractual obligation to report fully. Examples are [...].

(325) Therefore, suppliers can interpret and verify the competitors' pricing behaviour. An internal document of ABF relating to situation in Portugal at the beginning of 2006 states that "*Our sales price increase was implemented from January although not complete. Gilde (GBI) implemented on 1 February and we understand Lesaffre will implement during February*". This suggests that there is a high degree of transparency at the supplier level as regards competitor's policies relating to price increases.

(326) Further, not only do distributors offer reliable data about the market but they also offer such information within a very short delay, namely, they provide data in a timely fashion. With weekly deliveries and full monthly reporting obligations, the time lag before a deviation from tacit coordination can be detected is relatively short, as per recital (197), since the occurrence of lower than expected sales to existing clients can be readily observed. Seasonality does not result in reduced transparency since the pattern is regular and hence largely predictable. A loss of sales therefore can in a very short time indicate that a competitor may have increased its sales¹⁵¹.

¹⁵¹ Where demand is relatively elastic seasonality may increase the incentives to deviate. This is because undercutting rivals is more tempting when demand is high. In addition, however, the perceived cost of future price wars is lower when the cycle is currently at its top, since retaliation will only occur later, thus in periods of lower demand. However in the case of compressed yeast, as explained in section 1.2.1.4.5, demand elasticity is likely to be rather low throughout the year. This implies that the threat of retaliation

(327) In conclusion, as in the Spanish market, distributors play a very significant role in discovering to whom the quantities have gone to, and therefore in identifying the deviator and trigger retaliation.

6.3.2.3.1.3 Deterrence

(328) For the same reasons as identified in section 6.3.2.2.1.3 concerning Spain and applicable to the Portuguese compressed yeast market, a move back to fully competitive interaction would act as a sufficient deterrent mechanism.

6.3.2.3.1.4 Reaction of outsiders

(329) All the reasons mentioned in section 6.3.2.2.1.4 as to the inability of new entrants or customers to undermine the existing degree of tacit coordination in Spain, apply equally in the case of the Portuguese compressed yeast market. Fringe players here have even a lower share of the market than in Spain, Zeus and Asmussen not being present and Lallemand having essentially one distributor only, while the arguments made about unlikely entry or expansion of the fringe players apply equally.

(330) Furthermore, relative to Spain the further distance of the Portuguese market with respect to producers outside the Iberian Peninsula, together with its smaller size in absolute terms add to the barriers to entry and the limited incentives for expansion identified in section 6.3.2.1.4.

6.3.2.3.2 The effect of the transaction in the Portuguese compressed yeast markets

(331) In the previous section it was shown that a series of structural and behavioural elements are in place supporting the conclusion that the Portuguese compressed yeast market already exhibits some degree of tacit coordination allowing ABF, GBI and Lesaffre to control prices and/or the levels of sales in individual regions through, *inter alia*, (*de facto*) exclusive relations with distributors.

(332) This increase in the degree of tacit coordination in Portugal results primarily from the fact that the sale of GBI assets to ABF further increases transparency by reducing the number of players in the compressed yeast market, thereby facilitating the ability to detect cheating behaviour and to retaliate effectively. In this respect, all the reasons identified in recitals (284) to (289) in relation to the Spanish market, as regards the effects of a reduction in the number of players from three to two, also apply, *mutatis mutandis*, in the case of the Portuguese market.

(333) Furthermore, GBI's historical presence in Portugal for many decades implies that it benefits from a well recognized brand and a well established network of distributors. These factors allow GBI to maintain a strong market position despite a competitive disadvantage arising from the lack of domestic production, even relative to ABF. In the absence of the merger, it can be expected that over time, in the event of asymmetric demand or supply shocks these two firms might run into conflict as to which of them should take the initiative to set prices for the others to follow.

remains severe also in periods of comparatively lower demand. Furthermore the difference of volumes between the peak quarter and the following quarter is less than 10% and thus relatively low.

(334) The merger eliminates the threat that conflicting expectations as to the role of either of the merging parties in sustaining the existing degree of tacit coordination would lead to disruption of an otherwise effective coordination mechanism as described in section 6.3.2.3.1. This is because the merger eliminates the uncertainty as to the identity of the leader in setting the terms of coordination and in particular prices. Post merger, it can be expected that the merged entity would assume this role whereas Lesaffre would remain a market follower.

(335) The differences in the market shares of the merged entity and of Lesaffre post-merger would also confirm the leadership role of the merged entity in the tacit collusion. In that respect, the absence of symmetric market shares on the Portuguese market is not an obstacle to effective coordination. On the other hand, symmetry among the players will be enhanced on the production side (having influence on cost structures), as both Lesaffre and the merged entity will likely both serve the market from local plants in Spain and Portugal, eliminating the asymmetry arising from GBI supplying the yeast from a distant production plant in Italy.

6.3.2.3.2.1 Conclusion

(336) Based on the above, it is concluded that the proposed merger would significantly impede effective competition in the market for compressed yeast in Portugal. However, as seen below, the remedies offered by ABF were sufficient to solve the identified competition concerns and to restore effective competition in those markets.

6.3.3 No evidence of coordinated effect in the French compressed yeast market

6.3.3.1.1 French compressed yeast market is lead by Lesaffre

(337) The French compressed yeast market is slightly larger in size than the Spanish market and about four times larger than in Portugal. It is characterised by the incumbent producer Lesaffre's very strong position, who enjoys about [60-70] % market share. Lesaffre is the world leader in the yeast business and in its home country, France, it enjoys a clear leading position. Lesaffre is the only yeast producer active in France having local yeast production facilities in the country, operating three plants in France. Particularly, in the artisan segment served through distributors (distributors cover about half of the compressed market in France) and where brand-value plays an important role in France, Lesaffre is leading the market with its reference brand *L'Hirondelle*. This is by far the most sold and most reputed and traditional compressed yeast brand in France. Lesaffre complements its portfolio with two other high-end brands, *Springer* and *Fala*. On the lower end of the market, Lesaffre mainly offers *Levamax*.

(338) Lesaffre is also the clear leader with regard to supplies to direct (mostly industrial) customers.

(339) Lesaffre has retained its leading position in the French compressed yeast market over the past years and its market share was relatively stable.

Table 5 Evolution of market shares from 2005 to 2007 in the compressed French market

	2005	2006	2007
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Lesaffre	[60-70]%	[60-70]%	[60-70]%
GBI	[20-30]%	[20-30]%	[10-20]%
ABF	[5-10]%	[10-20] %	[10-20]%
Puratos	[0-5]%	[0-5]%	[0-5]%
Zeus	[0-5]%	[0-5]%	[0-5]%
Lallemand	[0-5]%	[0-5]%	[0-5]%

Source: market investigation

(340) ABF has around [10-20] % market share on the French compressed market. It established a presence on the market much later than Lesaffre, around early nineties, and is supplying yeast predominantly from its Setubal plant in Portugal. ABF's sales were increasing in the past. Due to lack of tradition on the market it is still considered as a foreign company. In addition to supplying direct customers, it also supplies yeast to distributors, whereby it heavily relies on one distribution group (Back Europe), which alone sells almost [...] of ABF's compressed yeast in France (and about [...] of ABF's sales to the artisan/distribution segment). ABF sells mainly Universal and Europa brands (for both, Back Europe is the exclusive distributor in France), which are brands on the lower end of the market.

(341) GBI is still considered a traditional producer in France, with a relatively long presence in the country, achieving around [10-20] % market share in 2007. It used to have a production facility in France until the nineties and the company now supplies its products mostly from its plant in Casteggio, Italy, and also from Uniform JV in Germany. GBI benefits from traditional high brand recognition of its main brand La Parisienne and complements its portfolio with a cheaper brand Levareal.

(342) The fourth player on the French market, the Belgian producer Puratos, achieves about [0-5]% of the market, supplying direct clients and also the artisan sector via its own distribution network (which is supplying many other bakery ingredients). Fringe players Lallemand and Zeus achieve each only around [0-5] % market shares, supplying to a few distributors.

6.3.3.1.2 Structural features of the demand unfavourable to sustain coordination

(343) There are several features in the French compressed market which, in stark contrast to the Portuguese and Spanish markets, contribute to lower entry barriers, stronger countervailing buyer power and less market transparency and make thus possible coordination less sustainable.

6.3.3.1.2.1 Industrial bakers with higher market power

(344) In contrast to Spain and Portugal, France has a much higher proportion of industrial bakers. These clients are served directly by the producers and they tend to multisource, in order to achieve a better security of supply and also gain more leverage in negotiations with the suppliers. The industrial clients, in particular the larger ones, thus have a certain degree of buyer power with which they may be able to animate the competition.

(345) In addition, in contrast to direct customers in Spain and in Portugal, a number of industrial clients responding to the market investigation in France showed more openness to be supplied by companies not established in France. This is in line with the fact that all suppliers other than Lesaffre are delivering yeast from abroad (GBI from Germany and from Italy, ABF from Portugal and Puratos from Belgium). To recap, in Spain and Portugal, direct customers are supplied almost only by suppliers producing in the Iberian Peninsula, as GBI lost most of its direct customers when the production was relocated to Italy. The relative geographic closeness of industrial customers thus makes entry/expansion of outside producers more likely than in Spain and Portugal.

6.3.3.1.2.2 Role of large distribution groups in facilitating entry

(346) The artisan segment in France is served, as in Portugal and Spain, by distributors. The distribution system in France is however completely different. Instead of a network of (*de facto*) exclusive distributors offering only products of one producer, the French distributors are in essence regrouped in one of the three large distribution groups/purchasing organisations. The sales conditions (mainly discounts) are then negotiated with two or three yeast producers by the group on behalf of all its members and these producers are then referenced by the group and all members can enjoy the centrally set conditions. This increases the buyer power of the organisation when compared to individual members. The groups then compete against each other on the distribution level, together with some non-affiliated distributors (the number of which is becoming smaller) and some private distribution networks developing in the country, *inter alia*, by buying individual distributors.

(347) The purchasing organisations seem to have a certain influence on the purchasing decisions of its members, as the group sometimes directs its members to sell products of a particular producer. Some groups tend to be more loyal to their 'preferred supplier', as they are incentivized by their discount schemes and other benefits, and therefore expanding presence in these groups may be very difficult for other suppliers. However, one large group confirmed that it is currently organising a tender for an alternative yeast supplier, as it has a policy of diversifying its supplies and looking for a low-price alternative to the established brands with high notoriety and higher price-positioning.¹⁵² Therefore, entry or expansion of a new player into the French market can be facilitated significantly by cooperation with such a large distribution group. This is demonstrated by ABF supplying [...] of its sales to the artisan/distribution segment in France via one distribution group with which it was able to grow.

(348) In France, customer preference for the leading brands is incontestable, and a large part of artisan customers are ready to pay a premium for the products with high reputation and brand value, where the fidelity to the brands was often built through generations. However, there is a smaller but growing price sensitive segment of the customers who opt for "marque de premiere prix" (best value brands) and where brand recognition plays a minor role, provided that the reliability and quality of the product is satisfactory.

(349) This appears to be the segment where ABF is active and it seems that, in exchange for exclusivity, the large distribution group Back Europe was able to develop the sales of

¹⁵² Minutes of telephone interview with [distribution group] of 30 May 2008.

these brands. For this large distribution group, the support of a producer's local sales force is not very important as it is large enough to have own means to promote the brands it is selling. Also, logistics arrangements can be relatively simple, as these groups would have a central depot and the products can be re-distributed intra-group. Thus, although large-scale entry which would be able to significantly constraint Lesaffre seems unlikely in France, entry into this lower segment is much more likely and is facilitated by the role of large distribution groups.

6.3.3.1.2.3 More complicated distribution structure makes the market less transparent to monitor deviations

(350) In Spain and Portugal, the distribution of compressed yeast shows a very high degree of market "simplicity" and a particular distributor typically only serves one supplier, often serving as a prolonged arm of the producer, with reporting mechanisms put in place to ensure that market information is passed very quickly from distributor to the producer. In France, such a system does not appear to exist and distributors often distribute products of more than one producer at the same time, typically in line with the referenced suppliers of their group. There is no reporting obligation or practice for the distributors to report back to their supplier, as they are simply not affiliated to any particular supplier. French distributors are completely free to set the final prices. The presence of more parallel distribution groups, in addition to independent distributors and private networks, make the market more complicated and reduce transparency.

(351) While distributors of certain groups are supplied directly by the producers and the group only acts as an intermediary in negotiations, the producers supply another group centrally, to the group's warehouse, while the group takes care of distributing the products to its members all over the country. In that case, suppliers do not know the final destination of the products supplied and it is more difficult to swiftly identify the location and cause of a possible drop in volumes (which could possibly be due to competitors' actions or promotions).

6.3.3.1.3 The merger does not change the balance of power in France

(352) Currently, the French compressed yeast market is clearly led by Lesaffre, whose very strong position is rooted in its incumbent status fortified with strong brand recognition of its three high-end traditional French brands. In France, a large part of artisan customers rely on established brands for which they are ready to pay a premium of up to 30%. Lesaffre, leveraging on its position in the higher end, is also able to compete on the lower end of the market with its lower brands as well as on the segment of industrial bakers. In addition, Lesaffre has a cost advantage with regard to its rivals in terms of transport costs, benefitting from its local French production sites. Post merger, there will remain asymmetries between Lesaffre and the merged entity, in particular on the production side and also in terms of market shares, whereas the leading position of Lesaffre with [60-70] % of market share is likely to continue post-merger. After the merger, the combined entity with [30-40] % market share would, like ABF and GBI pre-merger, likely not be able to easily challenge Lesaffre's position on the market.

6.3.3.1.4 Conclusion

(353) While it is true that seen in the overall framework of multi-market contacts of the likely post-merger coordination in Spain and Portugal, France may play a role as a

possible retaliation territory for the merged entity against Lesaffre. Similarly, trying to vigorously challenge Lesaffre in its home market may not be likely as this may destabilize the possible degree of coordination in Spain and Portugal. However, when analysing the French market as such on its own merits, and when taking into account all structural features of the market and the strength of the links to the neighbouring Spanish market, it is concluded, on balance, that the merger will not likely trigger coordinated effects.

- (354) While the analysis of the Portuguese market in section 6.3.2.3 concluded that in Portugal the merger is likely to lead to coordinated effects in the form of a collusive price leadership which is also strongly influenced by possible coordinated behaviour in neighbouring Spain, the situation in France is different. Apart from the different structural features of the French market discussed above which make less likely to sustain coordination, namely buyer power and lower barriers to entry and lower degree of market transparency, there are two additional elements which make the situation sufficiently different.
- (355) First, the links between the Spanish and Portuguese markets are much larger than between Spain and France from the supplier's perspective. Although from a demand perspective Portugal and Spain clearly form two separate markets as was discussed in the section on relevant geographic market, there are certain links which the merged entity and Lesaffre will likely take into account post merger. As production reallocation seems to be a rational choice for the merged entity, this would result in a situation where both the merged entity and Lesaffre would serve the two markets from local Iberian production facilities. The relatively small size of the Portuguese market located very close to a much larger Spanish market may influence the alignment of strategies for both markets. This is strengthened by the fact that the regional businesses decisions of Lesaffre and of GBI are currently made in a common Iberian head office, serving both Portuguese and Spanish markets. The possible coordination in Spain thus necessarily would have certain influence on the strategic behaviour of the colluding companies in Portugal. In contrast, the links from the Spanish market to the relatively large and more self-standing French market are more distant.
- (356) Second, the ability of the respective follower in France (the merged entity) and in Portugal (Lesaffre) to challenge the position of the market leader seems to differ in these two markets. In France, the strength of Lesaffre is very hard to dispute and the possibility of expanding at its expense is, regardless of the merger, rather limited. On the other hand, in Portugal, Lesaffre is likely to expand on that market. Therefore, the follower role of Lesaffre in Portugal post-merger is likely to be based on a conscious strategy to constraint its own growth rather than the inability to grow.
- (357) Based on the above, it is concluded that the merger will not lead to coordinated effects on the compressed yeast market in France.

6.3.4 Non-coordinated effects in France

- (358) There are no indications that the proposed transaction will lead to non-coordinated effects in France. Lesaffre will remain the clear market leader, and there are no indications that the removal of the competitive interaction between ABF and GBI will lead to relevant anti-competitive effects in this environment. In fact, the proposed transaction will create a stronger second force on the French yeast markets.

6.3.5 Non-coordinated effects in Spain and Portugal

(359) For the purpose of the present decision, it is not necessary to further assess the likelihood of non-coordinated effects as a result of the merger. Even if the present transaction gave rise to competition concerns with regard to possible non-coordinated effects, such concerns would be removed by the commitments entered into by the notifying party, which will (as explained in more detail in the assessment of the commitments in section 7) remove the overlap brought about by the transaction entirely and provide a third party with production capacity comparable to GBI.

6.4 LIQUID YEAST MARKETS

(360) Table 6 below shows the market structure on the market for liquid yeast – based on ABF's own best estimates – at the national level in Portugal, Spain and France in 2006. The results of the market investigation broadly confirm this picture.

Table 6 Liquid Yeast 2006 (source: ABF's estimates)

Company	Portugal	Spain	France
ABF	[90-100]*%	[30-40]* %	-
GBI	0%	0%	[30-40]* %
Combined	[90-100]*%	[30-40]* %	[30-40]* %
Lesaffre	-	[60-70]* %	[50-60]* %
Others	-	-	[5-10]* %

(361) Historically, GBI had been active in the sales of liquid bulk in Portugal and Spain. However, after the closure of the Portuguese plant in 2001, GBI lost the totality of the bulk liquid yeast business¹⁵³. This was due to the difficulty to transport bulk liquid over long distances (see recital (88) above) and also given that industrial customers require reliability and proximity of supplies.

(362) On the other hand, according to the Notifying party, its liquid sales are entirely bulk liquid to industrial customers. Thus, both in Spain and Portugal, GBI is not active in the same segment of the liquid yeast markets as ABF.

(363) In addition, GBI's efforts to promote the sale of liquid yeast in Tetrapak cartons have had so far only limited success.

(364) With regard to the French bulk liquid market, there is no overlap between GBI and ABF as ABF has no sales of liquid yeast in France.

(365) It can be excluded that the merger will further strengthen ABF's already strong position on the Portuguese market for liquid yeast. In Spain and France, the parties' activities overlap only marginally. The merger will not give rise to any non-coordinated or coordinated effects.

(366) In the light of these considerations, it is concluded that the concentration is compatible with the common market in respect of any possible market definition as regards the supply of liquid yeast.

¹⁵³ According to Form CO paragraph 319, GBI lost its last direct industrial customer in [...] in Spain.

6.5 DRY YEAST MARKETS

- (367) The vast majority of world consumption of dry yeast is in Africa, the Middle East, Russia and Asia due to the lack of infrastructure (refrigerated transport or storage) and the lack of distribution network. According to the data provided by the notifying party, only [0-5]*% of the [...] of dry yeast sold worldwide was sold in Europe. Even though [...] of dry yeast is produced in Europe, only [...] is sold in this geographic area. Of this [...]*, approximately [...] (which amounts to approximately [30-40]*% of European total of dry yeast consumption) were imports from China, Turkey and South Africa.¹⁵⁴
- (368) The significant share of imports into Europe together with the long shelf life (approximately two years) of dry yeast suggests that barriers to enter are relatively low.

Table 7 Dry Yeast 2006 (Source: ABF's estimates)

Company	EU	Worldwide
ABF	[10-20]* %	[10-20]* %%
GBI	[20-30]* %	[0-10]* %
<i>Combined</i>	[30-40]* %	[20-30]* %
Lesaffre	[30-40]* %	[30-40]* %
Lallemand (CEE)	[0-5]* %	[0-5]* %
Pakmaya (Turkey)	[10-20]* %	[10-20]* %
Akmaya (Turkey)	[0-5]* %	[0-5]* %
Puratos (Belgium)	[0-5]* %	[0-5]* %
Zeus (Italy)	[0-5]* %	[0-5]* %
Angel (China)	-	[5-10]* %
Others	[5-10]* %	[10-20]* %

- (369) As shown in Table 7, there are a number of players currently already active in the sales of dry yeast in Europe and also a number of important worldwide producers, such as Angel in China, which would not face, in the event of a price increase, significant barriers in order to profitably start supplying Europe.
- (370) As regards non coordinated effects, those are less likely given the over supply of dry yeast in Europe. The presence of significant imports from a number of worldwide producers and the potential for additional supplies from other countries have the likely effect of defeating any non coordinated and/or coordinated post merger price increase.

¹⁵⁴ According to Form CO paragraphs 569 et seq.

7 COMMITMENTS SUBMITTED BY THE NOTIFYING PARTY

- (371) During Phase I of the proceedings, the notifying party already submitted commitments to render the transaction compatible with the common market. It proposed to divest GBI's current activities in relation to the sale and distribution of yeast products in Spain and Portugal. The remedy proposal did not include a production plant, but a supply toll-manufacturing agreement to last for at least three years for the supply of yeast from GBI's plant in Casteggio, Italy.
- (372) The result of the market test of the aforementioned remedies offered in Phase I was negative. Without a production plant, the divested business would not be viable and would not represent a sufficient competitive force that could compete effectively with ABF and Lesaffre in Spain and Portugal on a long term basis. The reasons for this were that a new entrant being supplied by his competitor who has detailed knowledge and can influence his cost basis could not be competitive. The potential suitable purchaser of the divested business would have to rely entirely on supplies from Casteggio with the risk of production problems and interruptions which could weaken his position as a credible and reliable supplier.¹⁵⁵ In addition, the remedy had some insufficiencies regarding the limited duration of the trademarks licenses and also, at that time, there were no sufficiently clear indications that a potential purchaser would be effectively interested in entering the relevant markets on the basis of such an arrangement.

7.1 PROCEDURE

- (373) In order to render the concentration compatible with the common market, the notifying party offered new commitments pursuant to Article 8 (2) of the Merger Regulation, which are annexed to this decision. The draft commitment package was submitted by the notifying party on 10 July 2008.¹⁵⁶ The notifying party was given further advice how to improve the remedy proposal pursuant to the Commission Notice on Remedies Acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.¹⁵⁷ On 15 July 2008¹⁵⁸, the notifying party submitted a new draft and on 23 July 2008¹⁵⁹ the final version of the commitments.
- (374) [...] *It demonstrates for the purposes of this investigation that [...] *is a potential purchaser of those businesses.

¹⁵⁵ Case COMP/M.4980, ABF/GBI, Article 6(1)(c) decision, recital 114.

¹⁵⁶ Email of 10 July 2008.

¹⁵⁷ OJ C 68, 2.3.2001, p.3, paragraph 40. See also Draft Revised Commission Notice on Remedies Acceptable under the Merger Regulation, published on ec.europa.eu/comm/competition/mergers/legislation, paragraph 88.

¹⁵⁸ Email of 15 July 2008.

¹⁵⁹ Email of 23 July 2008. The final version has no material changes in comparison to the version of 17 July 2008 which was market tested.

(375) The market investigation of the proposed commitments was initiated on 17 July 2008 in order to obtain the opinion of market players active in Spain and Portugal (customers and competitors) on the suitability of the proposed commitments to remedy the competition problems identified during the investigation.

7.2 DESCRIPTION OF THE COMMITMENTS

(376) ABF essentially proposes to either sell the current GBI distribution businesses in Spain and Portugal to a suitable purchaser who will possess dedicated production capacity in Felixstowe (UK) for supplying GBI businesses in Spain and Portugal or, as an alternative remedy, to sell the distribution businesses in Spain and Portugal together with GBI's production facility in Setúbal. The second alternative is necessary as one condition of the first alternative remedy – the acquisition of the Felixstowe plant in parallel by the suitable purchaser – depends on a third party's decision.¹⁶⁰ Indeed, Felixstowe is being divested as a result of the authorization by the Commission of the acquisition by Lesaffre of GBI UK under case COMP/M. 5020 – Lesaffre/GBI UK, decision of 11 July 2008.¹⁶¹

(377) ABF committed to pursue both alternative divestments in parallel. The divestiture period [...] *If ABF has not entered into an agreement by the end of the [...] *period, the divestiture trustee has the exclusive mandate to sell the Setúbal plant together with GBI's distribution business in Spain and Portugal. [...] *the alternative structure of the remedy ensures that either way, the identified concerns are removed.

(378) The two divestiture alternatives are summarized in the sections 7.2.1 and 7.2.2 below.

7.2.1 First alternative remedy

(379) The first alternative comprises a divestiture of GBI's current activities in relation to the sale and distribution of yeast products in Spain and in Portugal which are currently operated by the Spanish and Portuguese subsidiaries of GBI (GBI Bakery Ingredients Spain, S.L. (“GBI Spain”) and GBI Unipessoal, Lda (“GBI Portugal”), which ABF commits to divest. The divestiture includes:

- (a) all tangible and intangible assets including intellectual property rights which contribute to the current operation or are necessary to ensure the viability and competitiveness of the divested business, including if necessary information on strains and recipes used to manufacture products currently sold by GBI Spain and GBI Portugal;
- (b) all licences, permits and authorizations issued by any governmental organization for the benefit of the divested business;

¹⁶⁰ For the possibility of such alternative remedies see Commission Notice on Remedies Acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98 OJ C 68, 2.3.2001, p.3, paragraph 22,23. See also Draft Revised Commission Notice on Remedies Acceptable under the Merger Regulation, published on ec.europa.eu/comm/competition/mergers/legislation, paragraph 44-46.

¹⁶¹ Not yet published.

- (c) all contracts, leases, commitments and customer orders of the divested business and all customer, credit and other records of the divested business;
- (d) the personnel of GBI Spain and GBI Portugal;
- (e) all trade marks (whether through transfer of the trade mark or a perpetual licence for the territory of Spain and Portugal) associated with products sold by GBI Spain and GBI Portugal; and
- (f) the benefit at the option of the purchaser, for a period of 1 year after closing of supply arrangements under which ABF or affiliated undertakings will continue to supply products or services to the divested business.

(380) ABF acknowledges that the Commission will only approve the sale of the businesses of GBI Spain and GBI Portugal to a suitable purchaser who (a) has acquired the former GBI production plant for yeast located in Felixstowe (UK) currently being owned and sold by Lesaffre and (b) demonstrates to the Commission's satisfaction that it will deploy the necessary capacity from Felixstowe, on a long lasting basis, to supply the GBI Spain and GBI Portugal businesses. As a standard condition, the suitable purchaser will also possess proven expertise, financial resources, and incentive to maintain and develop the business.

7.2.2 Second alternative remedy

(381) As a second alternative remedy, ABF commits to divest the distribution businesses of GBI Spain and GBI Portugal (as described in the first alternative divestment) together with ABF's production facility in Setúbal, Portugal. The production plant includes in particular:

- a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the production facility;
- b) all licences, permits and authorizations issued by any governmental organization for the benefit of the production facility;
- c) all contracts, leases and commitments of the production facility; all other records of the production facility except insofar as the sale and distribution of yeast is concerned;
- d) all personnel associated with the manufacture and production of yeast at the production facility excluding those employees associated with the sale and distribution of yeast; and
- e) at the option of the purchaser the benefit of supply arrangements including waste water treatment services and raw material supply arrangements.

(382) ABF and the purchaser will enter into transitional supply arrangements for a period of 1 year after closing to allow both parties to migrate their business, in the case of ABF away from the Setúbal production facility, and in the case of the purchaser, from the

production sites(s) serving GBI Spain and GBI Portugal to the Setúbal Production facility.

7.3 EVALUATION OF THE PROPOSED COMMITMENTS

(383) In the market investigation, the Commission received replies from more than 30 customers and from (potential) competitors in Spain and in Portugal, in particular from Lesaffre, Lallemand, Zeus, and Puratos. The market test revealed overall positive results. However, some respondents explicitly saw transport costs as a factor to be taken into account when assessing the viability of the remedy proposal. Others considered that the duration of the transitional supply agreement should not be too short in order to give the acquirer of the divested business the possibility to adapt the production to the needs of customers in Spain and Portugal.

7.3.1 Effectiveness

(384) The divestiture of GBI's Spanish and Portuguese subsidiaries to a suitable purchaser with sufficient production capacities will entirely eliminate the overlap brought about by the present transaction with respect to the Spanish and Portuguese compressed yeast market and thus will remove the serious doubts as to the compatibility of the transaction with the common market.

(385) With respect to the Spanish market, the remedy will restore the market structure which existed pre-merger. The suitable purchaser of GBI Spain will have an initial market share between 10% and 20%, compared to ABF with approximately [30-40] % and Lesaffre with approximately [40-50]%.¹⁶² In any event, the suitable purchaser will have at least the same ability and incentive to supply compressed yeast to the Spanish market as GBI has today.

(386) First of all, the remedy will maintain a market structure with three players whereas the merger as initially notified would have brought about a market structure with only two players left. The reduction of the major competitors from three to two in Spain would have been a major step towards a stable coordination in that market as it would have increased the incentives to coordinate, facilitated the process of reaching terms of coordination and of monitoring the competitor's behaviour as well as retaliating in case of deviations.¹⁶³ Absent the remedy, non-coordinating firms or potential suppliers would not have been able and would have had no incentive to jeopardise the outcome expected from the coordination.

(387) Furthermore, the suitable purchaser of GBI Spain will be a newcomer who is unlikely to stabilize the existing terms of coordination on the market as the merged entity would have done. The increased symmetry in cost structures and in market shares which would have been a result of the transaction is eliminated and thus the increase in incentives to tacitly coordinate brought about by the merger is removed.¹⁶⁴

¹⁶² Table 1.

¹⁶³ Recital (282)

¹⁶⁴ Recital (295)

- (388) The suitable purchaser of the divested business in Spain is likely to be a competitive force which is at least equivalent to GBI. It can be expected that the suitable purchaser will adapt to the specific demand of customers in Spain and will at least be able to defend GBI's current market share. Provisions in the remedies package in particular the transfer of all trade marks, and at the option of the suitable purchaser a transitional supply agreement will ensure that the new entrant can compete successfully with ABF and Lesaffre on the Spanish market.
- (389) With respect to the Portuguese market the remedy will restore the market structure which existed pre-merger. The suitable purchaser of GBI Portugal will have an initial market share of approximately [40-50] %, compared to ABF with approximately [20-30] % and Lesaffre with approximately [20-30] %.¹⁶⁵ In any event, the suitable purchaser will have at least the same ability and incentive to supply compressed yeast to the Portuguese market as GBI has today.
- (390) As in the Spanish market, the remedy will maintain a market structure in Portugal with three players whereas the merger as initially notified would have brought about a market structure with only two players left. The reduction of the major competitors from three to two in Portugal and the resulting market structure would have been a major step towards a stable coordination.¹⁶⁶ Like in the Spanish market, non-coordinating firms or potential suppliers would not have been able and would have had no incentive to jeopardise the outcome expected from the coordination.
- (391) Furthermore, the suitable purchaser of GBI Portugal will be a newcomer who is likely to introduce a destabilizing element and thus eliminate the danger of the competitors finding terms of coordination on the market.
- (392) Like in Spain, the suitable purchaser of the divested business in Portugal is likely to be a competitive force which is at least comparable to GBI. It can be expected that the suitable purchaser will adapt to the specific demand of customers in Portugal and will at least be able to defend GBI's current market share. Provisions in the remedies package in particular the transfer of all trade marks, and at the option of the suitable purchaser a transitional supply agreement will ensure that the new entrant can compete successfully with ABF and Lesaffre on the Portuguese market.

7.3.2 Independence, viability, and competitiveness of the divested business

- (393) The remedy package combines the GBI distribution in Spain and Portugal with production capacity either in Felixstowe in the United Kingdom, which is currently owned by Lesaffre, or in Setúbal which is currently owned by ABF.
- (394) It has already been confirmed in the market test of the remedies submitted by the notifying party in Phase I that the divestiture of the distribution alone is not sufficient to remove the concerns relating to the proposed transaction. The market test concluded in essence that the divestment of the distribution business without a production plant would make the purchaser without own capacity wholly dependent on ABF, and that the competitive constraint which GBI has so far been exercising on

¹⁶⁵ Table 1.

¹⁶⁶ Recital (332)

its competitors would not be replaced but eliminated. The fact that the remedy offered at that time failed to address the need for the purchaser to supply the Spanish and Portuguese markets with its own production capacity led the Commission to reject the remedy in Phase I.¹⁶⁷

(395) The market test of the remedy package which the notifying party offered in Phase II was generally positive as it combines distribution and production. A majority of respondents, comprised of both of Spanish and Portuguese customers and of competitors, agreed that the suitable purchaser of GBI Spain and of GBI Portugal will be able to compete effectively with ABF and Lesaffre. However, some respondents referred to two aspects in the remedy proposal which in their view could make it difficult for the suitable purchaser to compete on the same level as did GBI before the transaction: Increased transport costs as a consequence of sourcing from Felixstowe instead of Casteggio and the limitation of the transitional supply agreement between ABF and the suitable purchaser to a maximum of one year. However, for the reasons explained in the following recitals, it is not likely that the viability of the divested business is negatively influenced in any respect. In any event, the commitments essentially restore the pre-merger situation and remove competition concerns specific to the merger which were identified by the Commission.

7.3.2.1 Transport Costs will not prevent the suitable purchaser in the first alternative from effectively competing

(396) The existing supply structure shows that it is not necessary to have a production plant on the Iberian Peninsula to compete effectively with ABF and GBI in the Spanish and Portuguese markets for compressed yeast. If it were necessary for a competitor in Spain and Portugal to have a production facility in this region, it would be impossible for GBI to supply the Portuguese and the Spanish market from Italy and reach the substantial levels of sales that it currently does.¹⁶⁸ In that respect, the acquisition of GBI's distribution business in Spain and Portugal by a suitable purchaser having production facilities outside the Iberian Peninsula restores the market situation which existed pre-merger with GBI sourcing compressed yeast from Italy. Accordingly, it results from all the information obtained in the Second Phase market investigation that it is technically feasible (in terms of transport logistics and preservation of the yeast quality) and economically viable for a producer with production facilities located several hundreds of kilometres away from Portugal and Spain, to effectively supply these markets, in a situation where he has a strong local foothold in terms of an established position, distribution network, sales force and recognized brands.

(397) A suitable purchaser with production facilities located in the United Kingdom will face higher transport costs than competitors like ABF with production facilities in the Iberian Peninsula. However, the market investigation confirmed that the incremental transport costs for shipping compressed yeast from the United Kingdom to Spain and Portugal will not prevent supply to the Spanish and Portuguese markets at competitive prices, in a situation not very different to GBI supplying from Casteggio. In fact, the increment in transport costs resulting from the longer distance transports from

¹⁶⁷ Case COMP/M.4980, ABF/GBI, Article 6(1)(c) decision, recitals 105 et sequ.

¹⁶⁸ In 2000 / 2001 capacities in Casteggio were enlarged to supply the Portuguese market after closing GBI's (Gist –brocades) production facility in Portugal.

Felixstowe is rather limited and will not compromise the viability of and competitiveness of the business.¹⁶⁹

(398) Finally, Lallemand, a potential acquirer of the Felixstowe plant, confirmed that it is worthwhile to supply compressed yeast to the Spanish and the Portuguese market from Felixstowe. Even if crossing the channel is likely to increase transport costs, there are available options in the market to optimize transports from the United Kingdom to Spain and Portugal, according to Lallemand.¹⁷⁰

(399) Furthermore, the Felixstowe plant has ample spare capacity for the production of compressed yeast (see Table 2) which, given the need to achieve sufficient economies of scale, creates incentives to serve the Spanish and Portuguese compressed yeast markets, offsetting the additional transport costs. The suitable purchaser must demonstrate long term commitment to supply these markets in competitive terms.¹⁷¹

7.3.2.2 The transitory supply agreement ensures that the suitable purchaser can adapt production facilities to the needs of the Spanish and Portuguese market

(400) The transitory supply agreement which is part of the commitment package will give the suitable purchaser of the divested business the necessary time to adjust production to the specific needs of the Portuguese and Spanish markets, in particular in the first alternative. However, it is necessary to limit the duration of the supply agreement to what is strictly necessary for the adaptation of the production processes. Otherwise, prolonging these arrangements to periods longer than a strict minimum risk rendering the new suitable purchaser dependant on ABF, and consequently decreasing the incentive for the new suitable purchaser to become an independent force on the market and exercise an effective competitive constraint on ABF after the transaction.¹⁷²

7.4 CONCLUSION ON THE COMMITMENTS

(401) In light of the above, the Commission considers that the commitments as submitted on 23 July 2008 would remove the significant impediment to effective competition in the compressed yeast markets in Portugal and Spain.

¹⁶⁹ Distance from Coimbra, the Portuguese hub of GBI, to Casteggio is 1929 km and 2135 km to Felixstowe, a difference of approx. 200 km. The distance from the Barcelona distribution hub of GBI for Spain is 942 km to Casteggio and 1595 km to Felixstowe, a difference of approx. 650 km. Based on the calculation method as explained in footnote 100, the incremental transport costs of 200 km to Portugal would amount to [0-5]*% of the average selling price and additional 650 km to Spain of about [0-5]*% (considering the proxy of EURO [...] per 1000 km per tonne as average transport costs). If a proxy of EURO [...] per 1000 km per tonne is taken as a basis (average transport costs of GBI serving Portugal and Spain from its Italian distribution hub), the figures would be accordingly incremental [0-5]*- [0-5]*% for Portugal and [0-5]* - [0-5]*% for Spain.

¹⁷⁰ Such as benefitting from refrigerated truck mainly transporting goods from southern Europe to the UK and coming back empty. Minutes of telephone conference between members of the case team and Lallemand held on 19 May 2008.

¹⁷¹ From the information available to the Commission, the capacity situation in the Felixstowe plant is such that the plant has the ability to serve the Portuguese and Spanish markets.

¹⁷² Cf. the results of the market test of the remedy submitted in phase I, recital 1.

8 CONDITIONS AND OBLIGATIONS

- (402) Pursuant to the second subparagraph of Article 8(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.
- (403) 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.
- (404) In accordance with the basic distinction described above, the decision in this case is conditioned on the full compliance with Section B of the Commitments submitted by the notifying party on 23 July 2008, whereas all other sections are obligations within the meaning of Article 8 (2) of the Merger Regulation. The full text of the commitments is annexed to this decision and forms an integral part thereof.

9 OVERALL CONCLUSION

- (405) For the reasons outline above the notified operation, as modified, should be declared compatible with the common market and with the EEA Agreement pursuant to Article 2(2) of the Merger Regulation, subject to compliance with the Commitments in the Annex to this Decision.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Associated British Foods Plc acquires sole control of several subsidiaries engaged in the yeast business and owned by GBI Holding B.V. as well as a group of assets owned by GBI Ingredients The Netherlands B.V. and DSM Bakery Ingredients BV (the target assets together referred to as "GBI Business") within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 is hereby declared compatible with the common market and the EEA Agreement.

Article 2

Article 1 is subject to full compliance with the conditions set out in section B of the Annex.

Article 3

Article 1 is subject to full compliance with the obligations set out in the remaining sections of the Annex.

Article 4

This decision is addressed to:

Associated British Foods Plc

Weston Centre
10 Grosvenor Street
London W1K 4QY
United Kingdom

Done at Brussels, 23/09/2008

For the Commission

Signed by
Neelie KROES
Member of the Commission

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Case M.4980 - ABF/GBI Assets

COMMITMENTS TO THE EUROPEAN COMMISSION

By hand and by fax: 00 32 2 296 4301

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

Pursuant to Articles 8(2) and 10(2) of Council Regulation (EC) No. 139/2004 (the "**Merger Regulation**"), Associated British Foods plc and GBI Holdings BV (the "**Parties**") hereby provide the following Commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare the acquisition of certain parts of the yeast business belonging to GBI Holdings compatible with the common market and the EEA Agreement by its decision pursuant to Article 8(2) of the Merger Regulation, 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 light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 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 the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004.

Closing: the transfer of the legal title of the First Alternative Divestment Business or the Second Alternative Divestment Business to the Purchaser.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Associated British Foods plc ("ABF") and who has received from ABF the exclusive Trustee Mandate to sell the Second Alternative Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Alternative Divestment Business: has the meaning set out in paragraph 5 below.

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

Hold Separate Manager: the person appointed by ABF for the First Alternative Divestment Business and the Second Alternative Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the First Alternative Divestment Business, as listed in Schedule A and all personnel necessary to maintain the viability and competitiveness of the Production Facility, as listed in Schedule B.

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

Personnel: all personnel currently employed by the First Alternative Divestment Business and all personnel currently associated with the Production Facility, including Key Personnel as listed in Schedules A and B.

Production Facility: has the meaning set out in paragraph 7 below.

Purchaser: the entity approved by the Commission as acquirer of either the First Alternative Divestment Business or the Second Alternative Divestment Business in accordance with the criteria set out in Section D.

Second Alternative Divestment Business: has the meaning set out in paragraphs 6 - 10 below.

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

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

ABF, Associated British Foods plc incorporated under the laws of England, with its registered office at 10 Grosvenor Street, London W1K 4QY and registered with Companies House number 293262.

Section B. The Business being divested

Commitment to divest

- 1 In order to restore effective competition, ABF commits to divest or procure the divestiture of either:
 - (a) The businesses of GBI Bakery Ingredients Spain, S.L, ("GBI Spain") and GBI Unipessoal, Lda ("GBI Portugal") ("The First Alternative Divestment Business") as described in more detail in paragraph 5 below; or
 - (b) The production facility located in Setúbal, Portugal, together with all activities associated with the production of yeast at the Setúbal factory and the businesses of GBI Spain and GBI Portugal (together "the Second Alternative Divestment Business") as described in more detail in paragraphs 6 to 10 below.

Either of these divestments will guarantee effective competition on a permanent basis.

- 2 In order to restore effective competition, AFB commits to divest, or procure the divestiture of the First Alternative Divestment Business or the Second Alternative Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 22. To carry out the divestiture, ABF commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of either the First Alternative Divestment Business or the Second Alternative Divestment Business within the First Divestment Period. If ABF has not entered into such an agreement at the end of the First Divestiture Period, ABF shall grant the Divestiture Trustee an exclusive mandate to sell the Second Alternative Divestment Business in accordance with the procedure described in paragraph 32 in the Trustee Divestiture Period.

3 ABF shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, ABF has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 22 and if the closing of the sale of either the First Alternative Divestment Business or the Second Alternative Divestment Business takes place within a period not exceeding [...] months after the approval of the purchaser and the terms of sale by the Commission.

4 In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the business that is divested, 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 business that is divested is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

The First Alternative Divestment Business

5 The First Alternative Divestment Business consists of all of GBI's current activities in relation to the sale of yeast products in Spain and Portugal which are currently operated by GBI Spain and GBI Portugal respectively, further details of which are set out in Schedule A. The present legal and functional structure of the First Alternative Divestment Business as operated to date is described in Schedule A. The First Alternative Divestment Business, described in more detail in the Schedule, includes:

- (a) all tangible and intangible assets including intellectual property rights which contribute to the current operation or are necessary to ensure the viability and competitiveness of the First Alternative Divestment Business, including if necessary information on strains and recipes used to manufacture products currently sold by GBI Spain and GBI Portugal;
- (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the First Alternative Divestment Business;
- (c) all contracts, leases, commitments and customer orders of the First Alternative Divestment Business and all customer, credit and other records of the First Alternative Divestment Business;
- (d) the personnel of GBI Spain and GBI Portugal;
- (e) all trade marks (whether through transfer of the trade mark or a perpetual licence for the territory of Spain and Portugal) associated with products sold by GBI Spain and GBI Portugal in Spain and Portugal; and
- (f) the benefit at the option of the Purchaser, for a period of 1 year after Closing of supply arrangements under which ABF or Affiliated Undertakings will continue to supply products or services to the First Alternative Divestment Business, on the basis of the key terms set out in the Schedule, unless otherwise agreed with the Purchaser.

The Second Alternative Divestment Business

6 The Second Alternative Divestment Business consists of:

- (a) The First Alternative Divestment Business together with;
- (b) the production facility currently owned by ABF and located in Setúbal, Portugal ("the Production Facility")

- 7 The Production Facility includes:
- (a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Product Facility;
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Production Facility;
 - (c) all contracts, leases and commitments of the Production Facility; all other records of the Production Facility except insofar as excluded in paragraph 10 below;
 - (d) all personnel associated with the manufacture and production of yeast at the Production Facility excluding those employees associated with the sale and distribution of yeast referred to in paragraph 10 below; and
 - (e) at the option of the Purchaser the benefit of supply arrangements including waste water treatment services and raw material supply arrangements.
- 8 A more detailed description is set out in Schedule B.
- 9 ABF and the purchaser of the Second Alternative Divestment Business will enter into transitional supply arrangements for a period of 1 year after Closing to allow both parties to migrate their business, in the case of ABF away from the Setúbal Production Facility, and in the case of the Purchaser, from the production site(s) serving GBI Spain and GBI Portugal to the Setúbal Production Facility.
- 10 For the avoidance of doubt, the Second Alternative Divestment Business does not include any of ABF's existing sales operations and activities, and in particular, does not include:
- (a) all existing AB Mauri Portugal (whether written or oral) contracts for the supply of yeast;
 - (b) all AB Mauri Portugal trade marks, including for example, the Mauri brand and all other trade marks currently used by AB Mauri Portugal; and
 - (c) all personnel associated with AB Mauri's sales operations in Portugal.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

- 11 From the Effective Date until Closing, ABF shall preserve the economic viability, marketability and competitiveness of the First Alternative Divestment Business and the Production Facility, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the First Alternative Divestment Business and the Production Facility. In particular ABF 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 First Alternative Divestment Business and the Production Facility or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the First Alternative Divestment Business and the Production Facility;
 - (b) to make available sufficient resources for the development of the First Alternative Divestment Business and the Production Facility, 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 First Alternative Divestment Business and the Production Facility.

Hold-separate obligations of Parties

- 12 ABF commits, from the Effective Date until Closing, to keep the First Alternative Divestment Business and the Production Facility separate from the businesses it is retaining and to ensure that Key Personnel of the First Alternative Divestment Business and the Production Facility - including the Hold Separate Manager - have no involvement in any business retained and vice versa. ABF shall also ensure that the Personnel do not report to any individual outside the First Alternative Divestment Business and the Production Facility other than the Hold Separate Manager.
- 13 Until Closing, ABF shall assist the Monitoring Trustee in ensuring that the First Alternative Divestment Business and the Production Facility is managed as a distinct and saleable entity separate from the businesses retained by the Parties. ABF shall appoint a Hold Separate Manager who shall be responsible for the management of the First Alternative Divestment Business and the Production Facility, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the First Alternative Divestment Business and the Production Facility independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.
- 14 To ensure that the First Alternative Divestment Business and the Production Facility is held and managed as a separate entity the Monitoring Trustee shall exercise ABF's rights as shareholder in the First Alternative Divestment Business (except for its rights for dividends that are due before Closing) and the Production Facility, with the aim of acting in the best interest of the business, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling ABF's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of ABF. Upon request of the Monitoring Trustee, ABF shall resign as member of the boards or shall cause such members of the boards to resign.

Ring-fencing

- 15 ABF shall implement all 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 First Alternative Divestment Business and the Production Facility. ABF may obtain information relating to the First Alternative Divestment Business and the Production Facility which is reasonably necessary for the divestiture of the First Alternative Divestment Business and the Production Facility or whose disclosure to ABF is required by law.

Non-solicitation clause

- 16 The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the business that is divested for a period of 3 years after Closing.

Due Diligence

- 17 In order to enable potential purchasers to carry out a reasonable due diligence of the First Alternative Divestment Business or the Second Alternative Divestment Business, ABF shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
- (a) provide to potential purchasers sufficient information as regards the First Alternative Divestment Business and the Second Alternative Divestment Business;
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

- 18 ABF shall submit written reports in English on potential purchasers of the First Alternative Divestment Business or the Second Alternative 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 date of every month following the Effective Date (or otherwise at the Commission's request).
- 19 The Parties 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

- 20 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 First Alternative Divestment Business or the Second Alternative Divestment Business as a viable and active competitive force in competition with the Parties 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 First Alternative Divestment Business or the Second Alternative Divestment Business (the before-mentioned criteria for the purchaser hereafter the "**Purchaser Requirements**").
- 21 In the case only of the First Alternative Divestment Business, ABF understands that the Commission will approve a purchaser provided that purchaser meets the criteria set out in paragraph 20 and has acquired the former GBI production facility located in Felixstowe, UK, which is the subject of commitments in Case M.5020 Lesaffre/ GBI UK. The Purchaser should demonstrate to the Commission's satisfaction that it will deploy the necessary capacity from Felixstowe, on a long lasting basis, to supply the GBI Spain and GBI Portugal businesses.

- 22 The final binding sale and purchase agreement shall be conditional on the Commission's approval. When ABF 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. ABF must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the business divested is being sold in a manner consistent with the Commitments.
- 23 For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the business divested is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the business being divested without one or more assets or parts of the Personnel, if this does not affect the viability and competitiveness of the business being divested after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

- 24 ABF shall appoint a Monitoring Trustee to carry out the function specified in the Commitments for a Monitoring Trustee. If ABF has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by ABF at that time or thereafter, ABF shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
- 25 The Trustee shall be independent of the Parties, 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 the parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Second Alternative Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Parties

- 26 No later than one week after the Effective Date, ABF shall submit a list of one or more persons whom ABF 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, ABF shall submit a list of one or more persons whom ABF 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 fulfil 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

- 27 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 fulfil its obligations. If only one name is approved, ABF 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, ABF 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 the Parties

- 28 If all the proposed Trustees are rejected, ABF 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 19.

Trustee nominated by the Commission

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

II. Functions of the Trustee

- 30 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 ABF, 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

- 31 The Monitoring Trustee shall:
- (i) 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.
 - (ii) oversee the on-going management of the First Alternative Divestment Business and the Production Facility with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by ABF with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the First Alternative Divestment Business and the Production Facility, and the keeping separate of the First Alternative Divestment Business from the business retained by the Parties, in accordance with paragraphs 11 and 12 of the Commitments;
 - (b) supervise the management of the First Alternative Divestment Business as a distinct and saleable entity, in accordance with paragraph 13 of the Commitments;
 - (c) (i) in consultation with ABF, determine all necessary measures to ensure that ABF 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 First Alternative Divestment Business and the Production Facility, in

- particular strive for the severing of the First Alternative Divestment Business' and the Production Facility's participation in a central information technology network to the extent possible, without compromising the viability of the First Alternative Divestment Business or the Production Facility, and (ii) decide whether such information may be disclosed to ABF as the disclosure is reasonably necessary to allow ABF to carry out the divestiture or as the disclosure is required by law;
- (d) monitor the splitting of assets and the allocation of personnel between the Production Facility and the business retained by ABF or Affiliated Undertakings as specified in paragraph 10 above;
 - (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
 - (iv) propose to ABF such measures as the Monitoring Trustee considers necessary to ensure ABF'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 First Alternative Divestment Business and the Production Facility, the holding separate of the First Alternative Divestment Business and the non-disclosure of competitively sensitive information;
 - (v) 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, (a) potential purchasers receive sufficient information relating to the First Alternative Divestment Business or the Second Alternative Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;
 - (vi) provide to the Commission, sending ABF a non-confidential copy at the same time, a written report within 15 days after the date of every month. The report shall cover the operation and management of the First Alternative Divestment Business and the Production Facility 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 ABF a non-confidential copy at the same time, if it concludes on reasonable grounds that ABF is failing to comply with these Commitments;
 - (vii) within one week after receipt of the documented proposal referred to in paragraph 22, submit to the Commission a reasoned opinion as to the sustainability and independence of the proposed purchaser and the viability of the First Alternative Divestment Business or the Second Alternative Divestment Business after the Sale and as to whether the business divested is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the First Alternative Divestment Business or the Second Alternative Divestment Business without one or more Assets or not all of the Personnel affects the viability of the business divested after the sale, taking into account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

32 Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Second Alternative Divestment Business 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 22. 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 ABF, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

33 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 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

III. Duties and obligations of the Parties

34 ABF shall provide, shall cause its advisors and shall procure that GBI Holdings provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of ABF's or the Second Alternative Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and ABF and the Second Alternative Divestment Business shall provide the Trustee upon request with copies of any document. ABF and the Second Alternative Divestment Business 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.

35 ABF shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Second Alternative Divestment Business. This shall include all administrative support functions relating to the Second Alternative Divestment Business which are currently carried out at headquarters level. ABF 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. ABF 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.

36 ABF 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, ABF shall cause the documents required for effecting the sale and the Closing to be duly executed.

37 ABF 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 ABF 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 wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisers.

38 At the expense of ABF, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to ABF's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary 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 ABF refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard ABF. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 37 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served ABF during the First Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

39 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 ABF to replace the Trustee, or
- (b) ABF, with the prior approval of the Commission, may replace the Trustee.

40 If the Trustee is removed according to paragraph 39, 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 24 - 29.

41 Beside the removal according to paragraph 39, the Trustees shall cease to act as Trustee only after the Commission has discharged it from its duties after 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

42 The Commission may, where appropriate, in response to a request from ABF showing good cause and accompanied by a report from the Monitoring Trustee:

- (i) Grant an extension of the time periods foreseen in the Commitments; or
- (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where ABF 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 ABF be entitled to request an extension within the last month of any period.

.....
duly authorised for and on behalf of
Associated British Foods plc

SCHEDULE A

Introduction

1. The First Alternative Divestment Business constitutes the business operated by the following companies:
 - 42.1 GBI Bakery Ingredients Spain, S.L. ("GBI Spain"); and
 - 42.2 GBI Unipessoal, Lda ("GBI Portugal")
- 43 The sale of GBI Spain and GBI Portugal includes all the operations which ABF is acquiring from GBI in Spain and Portugal and therefore constitutes a structural divestment which removes altogether the overlaps between ABF and GBI in Spain and Portugal. A description of each the Divestment Business is set out below in Parts A (for GBI Spain) and B (for GBI Portugal).
- 44 ABF has also agreed, at the option of the purchaser, to supply yeast to the purchaser of the First Alternative Divestment Business on a transitional basis for a period of up to 1 year.

Part A - GBI Bakery Ingredients Spain, S.L.

GBI Bakery Ingredients Spain, S.L. ("GBI Spain") is a separate legal entity within the GBI Holdings BV group and constitutes the entirety of the GBI Business' yeast activities in Spain. This business currently continues to operate as an independent stand-alone business, ownership of which has been retained by the Vendor. Accordingly, the shares in GBI Spain are still owned by GBI Holdings BV. The entirety of this business will be sold to the purchaser of the Divestment Business.

GBI Spain's business consists of the distribution and sale of yeast and bakery ingredients for the bakery industry. GBI Spain's revenue during the 2006 financial year was EURO [5-10]* million. The total volume of sales during the 2006 financial year was [10-15 thousand]* tonnes of yeast (fresh yeast equivalent) and in 2007 [10-15 thousand]* tonnes.

Corporate organisation and employees

A structure diagram setting out the organisation of GBI Spain is set out below:

[...]*

The structure diagram set out above includes all of GBI Spain's employees, all of whom will be transferred with the Divestment Business.

GBI Spain operates from premises which are leased from GB Plange Spain S.L. ("GB Plange"). GB Plange is the Spanish bakery ingredients company formerly owned by GBI Holdings BV which was sold to Wehrhahn Muhlen in July 2006. Prior to this time, GBI Spain and GB Plange had operated jointly. Following the sale of the bakery ingredients businesses to Wehrhahn Muhlen, appropriate arrangements were put in place between GBI Spain and GB Plange as regards the services that had previously been operated jointly by these companies.

Support services

GBI Spain's operations are headquartered in offices leased from GB Plange as explained above. GBI Spain has contracts in place in relation to the provision of the following services:

- Office space and related support services such as administrative and IT related services, with GB Plange as well as car rental agreements and corporate credit card agreements with GB Plange and the relevant service providers.;
- Supply of yeast testing services, support services relating to analysis of quality issues, feasibility studies for product changes and developments;
- Supply of warehouse storage space and related services for GB Plange's warehouse located in Barcelona. This storage facility is the depot to which yeast is delivered from GBI Spain's yeast supplier;
- Supply of cold storage container facilities in which to store yeast at the Barcelona warehouse and related technical support services. These services are provided by CIMAT, S.A.; and
- Supply of logistical services for the distribution services to transport yeast from the depot to individual customers. These services are provided by Martínez Solera Hermanos, S.L..

The warehouse, cold storage and logistical services arrangements described above are the core operations of GBI Spain which form the basis of GBI's sales operations in Spain. The benefit of all of these arrangements will be transferred as part of the sale of GBI Spain.

Arrangements in relation to the supply of yeast products to GBI Spain are dealt with in further detail below.

Licences/permits

GBI Spain has been granted the following licences for the distribution of biological yeast:

- Spanish Health Ministry on 14 June 2006. The health registration number provided by the authorities is 31.02305/B; and
- Health Department of the Catalonian Administration on 3 May 2006 which is valid though until 3 May 2011.

These permits have both been granted to GBI Spain and accordingly will transfer with the business.

Intellectual property rights

GBI Spain does not own any trade marks and nor does it own any patent rights. GBI Spain sells a variety of yeast products in Spain:

Brand / Product Description	Format	Type (Compressed, Liquid, Dry)	Activity
Duo Cubes	25 g x 2	Compressed	Standard
Experta Red	20 x 500g blocks	Compressed	Standard
Fermipan Brown	20 x 500g blocks	Dry	Osmo
Fermipan Liquid	8 x 1.5kg packs	Liquid (Tetrapack)	Standard
Fermipan Red	500 g	Dry	Standard
Fermipan Sobres	60 envelopes of 11g / 15 and 10 kg boxes with 500g packs	Dry	Standard
Fermipan Soft Brown	20 x 500g	Dry	Osmo
Fermipan Soft Red	20 x 500g	Dry	Standard
Fermipan Super	20 x 500g	Dry	Standard
Hollandia	10 kg box with 500g packs	Dry	Slow
La Parisienne	500g blocks	Compressed	Standard
La Parisienne Granulada Industrial	25kg	Compressed	Standard
La Parisienne Osmo	500g blocks	Compressed	Osmo
Levadura Liquida Estable	950 kg container	Liquid	Standard
Levareal	500g blocks	Compressed	Standard

Parisienne	15 kg / 10 kg box with 500g packs / 11g envelopes	Dry	Slow
Sablon de Levure	2.5 kg	Compressed	Standard

GBI Spain sells the products listed above, certain of which are protected by trade marks.

ABF will transfer ownership or grant exclusive licences (on a perpetual basis) of all marks relating to Spain acquired from GBI Holding as part of its acquisition such that the purchaser will be the only person entitled to sell products using such marks in Spain.

Distribution contracts and customer goodwill

The GBI Spain corporate entity is being sold and accordingly all customer lists, customer databases, customer relationships and goodwill will transfer to the purchaser as part of the sale of GBI Spain.

In addition, the benefit of all of GBI Spain's distribution contracts with direct/industrial customers and distributors would also transfer with the sale of GBI Spain. These include the following written contracts:

[...]*

Transitional supply arrangements

In order to allow the purchaser of GBI Spain and GBI Portugal to migrate the supply of yeast to those businesses to the purchaser's own production facilities, ABF will provide a transitional supply agreement for a period of up to 1 year.

Part B - GBI Unipessoal, Lda

GBI Unipessoal, Lda ("GBI Portugal") is a separate legal entity within the GBI Holdings BV group and constitutes the entirety of the GBI Business' yeast activities in Portugal. This business currently continues to operate as an independent stand-alone business, ownership of which has been retained by the Vendor. Accordingly, the shares in GBI Portugal are still owned by GBI Holdings BV. The entirety of this business will be sold to the purchaser of the Divestment Business.

GBI Portugal's business consists of the distribution and sale of yeast and bakery ingredients for the bakery industry. GBI Portugal's revenue during the 2006 financial year was EURO [5-10]* million. The total volume of sales during the 2006 financial year was [5-10 thousand]* tonnes of yeast (fresh yeast equivalent) and [5-10 thousand]* tonnes in 2007.

Corporate organisation and employees

GBI Portugal obtains management services from GBI Spain. Accordingly, the General Manager of GBI Spain is also the General Manager of GBI Portugal. GBI Portugal also operates on a similar structural basis as GBI Spain, comprised of:

- a Commercial Manager;
- 2 sales office employees;
- 1 sales administration employee; and

- 3 sales force employees.

Support services

GBI Portugal's operations are managed and headquartered from GBI Spain's offices in Barcelona. GBI Portugal local operations are based in premises which are leased from GB Plange Portugal ("GB Plange Portugal"). GB Plange Portugal is the Portuguese bakery ingredients company formerly owned by GBI Holdings BV which was sold to Wehrhahn Muhlen in July 2006. Prior to this time, GBI Portugal and GB Plange Portugal had operated jointly. Following the sale of the bakery ingredients businesses to Wehrhahn Muhlen, appropriate arrangements were put in place between GBI Portugal and GB Plange Portugal as regards the services that had previously been operated jointly by these companies.

GBI Portugal has contracts in place in relation to the provision of the following services:

- Office space and related support services such as administrative and IT related services, with GB Plange Portugal as well as car rental agreements and corporate credit card agreements with GB Plange Portugal and the relevant service providers.;
- Supply of yeast testing services, support services relating to analysis of quality issues, feasibility studies for product changes and developments;
- Supply of warehouse storage space and related services for GB Plange Portugal's warehouse located in Lisbon together with appropriate cold storage container facilities in which to store yeast at the Lisbon warehouse and related technical support services; and
- Supply of logistical services for the distribution services to transport yeast from the depot to individual customers which is operated together with the distribution operations of GB Plange Portugal.

The warehouse, cold storage and logistical services arrangements described above are the core operations of GBI Portugal which form the basis of GBI's sales operations in Portugal. The benefit of all of these arrangements will be transferred as part of the sale of GBI Portugal.

Arrangements in relation to the supply of yeast products to GBI Portugal are dealt with in further detail below.

Intellectual property rights

GBI Portugal does not own any trade marks and nor does it own any patent rights. GBI Portugal sells a variety of yeast products in Portugal:

Brand / Product Description	Format	Type (Compressed, Liquid, Dry)	Activity
Activa	500g blocks	Compressed	Standard
Duo Cubes	25 g x 2	Compressed	Standard
Fermipan	12 x 1.5 lt	Liquid	2/3 of standard-

Crempack			block yeast
Fermipan		Dry	
Jacto	20 x 500g blocks	Compressed	Standard
La Parisienne Osmo	500g blocks	Compressed	Osmo

GBI Portugal sells the products listed above, certain of which are protected by trade marks.

ABF will transfer ownership or grant exclusive licences (on a perpetual basis) of all marks relating to Portugal acquired from GBI Holding as part of its acquisition such that the purchaser will be the only person entitled to sell products using such marks in Portugal.

Distribution contracts and customer goodwill

The GBI Portugal corporate entity is being sold and accordingly all customer lists, customer databases, customer relationships and goodwill will transfer to the purchaser as part of the sale of GBI Portugal.

In addition, the benefit of all of GBI Portugal's distribution contracts with direct/industrial customers and distributors would also transfer with the sale of GBI Portugal. These include the following written contracts:

[...]*

Transitional supply arrangements

In order to allow the purchaser of GBI Spain and GBI Portugal to migrate the supply of yeast to those businesses to the purchaser's own production facilities, ABF will provide a transitional supply agreement for a period of up to 1 year.

SCHEDULE B

1. The Production Facility as operated to date forms part of Mauri Fermentos, S.A. a subsidiary of Associated British Foods plc.¹⁷³
2. The Production Facility is currently used to produce yeast which is sold by Mauri Fermentos in Portugal and other ABF group companies elsewhere in the world. The Production Facility has a capacity of approximately [25-50]* KT. In terms of current output, approximately [...] of production is currently used to produce fresh yeast in liquid or compressed format and the remaining [...] is used to produce dry yeast.
3. Following paragraph 7 of these Commitments, the Production Facility includes, but is not limited to:
 - (a) The following main tangible assets including Mauri Fermentos' interests in the Setúbal factory building, associated administrative offices and all:
 - (i) fermenters located at the Production facility capable of producing [...] tonnes yeast per 8 hour shift;
 - (ii) ancillary equipment including extruders, transformers, air compressors, boilers;
 - (iii) packaging lines capable of producing yeast in 25g cube format, 500g compressed yeast blocks and in small and large bagged dry yeast formats together with associated palleting equipment;
 - (iv) drying plant comprised of vacuum filters, extruders, emulsifier mixers, dryers and silos;
 - (v) cold room storage facilities;
 - (vi) natural gas fueled boilers;
 - (vii) underground water wells; and
 - (viii) effluent treatment and discharge facilities.
 - (b) All licences, permits and authorisations associated with the production of yeast at the Production Facility;
 - (c) All contracts, agreements, leases (including the lease for the Setúbal Production Facility), commitments and understandings for the supply of raw materials, goods and services associated with the manufacture of yeast at the Production Facility;
 - (d) All credit records and other records associated with suppliers to the Production Facility;
 - (e) All personnel associated with the production and manufacture of yeast and related administrative and support services at the Production Facility, excluding those referred to in paragraph 4;
 - (f) The following Key Personnel:
[...]*.

¹⁷³ ABF owns 96% of the shares in Mauri Fermentos, SA with the remaining small local shareholders owning 4%.

- (g) The following transitional supply arrangements for a period of 1 year from Closing:
 - (i) The supply of fresh and dry yeast produced at the Production Facility to ABF and Affiliated Undertakings to allow ABF to purchase and install equipment, increase production and migrate such supplies to ABF's other yeast production facilities;
 - (ii) The supply by ABF and Affiliated Undertakings of fresh and dry yeast to the Purchaser of the Second Alternative Divestment Business to ensure continuity of supply for GBI Spain and GBI Portugal pending the migration of production from ABF's production facilities to the Production Facility.
 - (h) The benefit at the option of the Purchaser of supply arrangements including waste water treatment services and raw material supply arrangements.
4. The Production Facility shall not include any of ABF's existing commercial sales operations and activities and in particular shall not include:
- (a) any of Mauri Fermentos' (or any other ABF group companies') customer, credit or other records;
 - (b) any of Mauri Fermentos' contracts (whether written or oral) for the supply of yeast to customers in Portugal or elsewhere in the world and any goodwill associated with Mauri Fermentos' customers;
 - (c) any of Mauri Fermentos' trade marks and brands used to sell products, including (but not limited to) the following: Mauri and Mauripan;
 - (d) all personnel associated with AB Mauri's commercial sales operations in Portugal, including (but not limited to) [...]*; and
 - (e) all current and historic financial records in relation to Mauri Fermentos, SA.