

***Case No COMP/M.5109 -
DANISCO / ABITEC***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/07/2008

***In electronic form on the EUR-Lex website under document
number 32008M5109***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15/07/2008

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

SG-Greffe (2008)D204581
C(2008)3819

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party::

Dear Sir/Madam,

**Subject: Case COMP/M.5109 - Danisco/ Abitec
Notification of 10 June 2008 pursuant to Article 22 (3) of Council Regulation
No 139/2004¹**

1. On 10 June 2008, the Commission received a notification of a concentration pursuant to Article 4 and following a referral pursuant to Article 22 (3) of Council Regulation (EC) No 139/2004 ("the Merger Regulation") by which Danisco A/S ("Danisco", Denmark) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the undertaking Abitec Limited ("Abitec", United Kingdom) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Danisco is a global producer of food ingredients, including emulsifiers. It also develops and produces animal feed ingredients, sweeteners and sugar. The company has an international presence with facilities located in Denmark, Brazil, United States, Malaysia and China.

¹ OJ L 24, 29.1.2004 p. 1.

4. Abitec, a subsidiary of Associated British Foods plc ("ABF") manufactures emulsifier products primarily for the food market as well as the nutritional, cosmetic and personal care markets. Its manufacturing plant is located in the United Kingdom.

II. THE OPERATION AND THE CONCENTRATION

5. The proposed transaction consists in the acquisition of sole control by Danisco Holdings (UK) Limited (100% subsidiary of Danisco) of Abitec. It therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The proposed transaction does not meet the thresholds set out in Article 1 of the Merger Regulation. However, following a referral request made by Germany pursuant to Article 22 of the Merger Regulation on 4 March 2008, and later on joined by the UK on 1 April 2008, the Commission accepted such a request and therefore the transaction is deemed to have Community dimension.

IV. ASSESSMENT

A. RELEVANT MARKET DEFINITIONS

7. Danisco and Abitec activities overlap mainly in the production of synthetic emulsifiers. Emulsifiers are used in food such as bakery or dairy products ("food-grade emulsifiers"), in products which are in contact with food but not used in the food itself, such as packaging products ("contact-with-food grade emulsifiers") and non-food applications such as pharmaceutical, cosmetic or personal care products ("non-food grade emulsifiers"). Danisco and Abitec mainly produce food-grade emulsifiers and have only minor activities in the other types of emulsifiers. Danisco makes no sales of non-food grade emulsifiers and Abitec's sales are limited (less than [...]). With respect to contact-with-food grade emulsifiers, Abitec makes no sales while Danisco's sales represent [...] % of its total sales of emulsifiers.
8. For the sake of completeness, Danisco and Abitec's activities also overlap in the medium chain triglycerides ("MCT"), a form of saturated fatty acids. Danisco is a minor supplier of MCT (its EEA share of supply is less than [...] %). Abitec supplies are estimated to account for [...] % of sales in the EEA, with major competitors including Cognis, Sasol, Berg & Schmidt, Procter & Gamble/Cremer, Lasem, Nat-Oleo, Stearine Dubois and Uniqema/Croda. Accordingly, this is not an affected market for the purposes of the ECMR.
9. The assessment will therefore be focused on food-grade emulsifiers.

A.1. RELEVANT PRODUCT MARKETS

10. Synthetic emulsifiers have different functions in the production of food. They provide several functions such as the control of texture, oil stabilization, aeration and freshness enhancement.

The main types of emulsifiers are *Undistilled Monoglycerides* ("MONO-DI"), *Distilled Monoglycerides* ("DISMO"), *Diacetyl Tartaric Esters of Monoglycerides* ("DATEM"), *Sodium or Calcium Stearoyl Lactylates* ("SSL/CSL") and a large group of other emulsifiers, which are globally referred to as "*other esters*" having different functionalities. MONO-DI are used for emulsion de-stabilisation in ice-cream, in chewing gum, for creaminess and aeration of cream products and dairy desserts and as antistatic in plastic. DISMO are mainly used for softening and anti-stalling, emulsion stabilisation (e.g. in margarines or spreads), and as anti-statics in plastics. DATEM are used in bakery production for dough strengthening. SSL/CSL have their main application in dough strengthening.

11. The parties also submit that other products such as lecithin and bakery enzymes can substitute in many applications, at least partially, the emulsifiers cited above and have the advantage of being considered as "clean label" and healthier products.
12. The parties consider that food-grade emulsifiers should be considered as a single relevant product market based on demand and supply side considerations. The Commission considers, however, that there are various aspects pointing towards a narrower product market definition according to the types of emulsifiers described above. If narrower product market definitions are retained, the only affected markets would be DISMO, DATEM and the group of "other esters". The market definitions are therefore focused on these products.

Production process and supply side substitutability

13. Synthetic emulsifiers are produced from vegetable oils and fats, animal fats, glycerin, fatty acids, glycerol, organic acids and sorbitol. Monoglycerides (MONO-DI, DISMO, and DATEM) are produced in a process including oil and glycerol. For the production of MONO-DI a reactor is used which may be either a glyceride reactor or an ester reactor. For the production of DISMO it is necessary to add a distillation column to that reactor. The production of DATEM uses MONO-DI or – less frequently – DISMO which is reacted with other chemical substances. The production of DATEM always requires an ester reactor.
14. The market investigation has confirmed that it is possible to switch production between different kinds of synthetic emulsifiers. However, the possibility to switch is limited, and may take some time and lead to additional costs. For example, the investigation has confirmed that it is relatively simple to switch from the production of other esters products to the production of DATEM as it is not necessary to modify the equipment. However, producers who only produce MONO-DI or DISMO would need to undertake substantial changes to start the production of DISMO or DATEM which is not possible in the short term without incurring significant additional costs.
15. As to the production of different grades of emulsifiers, the market investigation has confirmed that the suppliers offer or would be able to offer all grades of DISMO and DATEM without great difficulties. Therefore it is not appropriate to sub-segment the various grades of DISMO and DATEM into separate relevant product markets.

Demand Side Substitutability

DISMO

16. DISMO is an emulsifier which is mainly used in the production of bakery products and for emulsion stabilisation in margarine and other spreads. Some customers use DISMO as antistatic in plastic applications.
17. In the market investigation only a minority of customers for food-grade applications confirmed that DISMO can completely be replaced by other synthetic emulsifiers whereas other customers saw for their application only a limited possibility of substitution. For some specific applications, customers did not consider other synthetic emulsifiers as an alternative to DISMO. Complete or partial alternatives to DISMO can be MONO-DI, SSL/CSL, or DATEM. For antistatic purposes in plastic applications it appears that a substitution of DATEM is not feasible.
18. With respect to the possibility of substitution between different grades of DISMO, it appears that the particular type of grade play a less important role although some customers observed that for their specific application they have to use a certain grade providing the required quality. In particular, customers choose the physical form of DISMO (liquid, pellets, powder, etc.) according to their specific needs. In general, only some customers referred to difficulties which they would encounter if they changed between different grades of DISMO.
19. Lecithin as a natural emulsifier is also not a complete substitute for DISMO. The advantage of Lecithin is that it is not labelled with an E-number which gives the product a more natural appearance and meets growing consumer demand for E-number-free products. However, most customers see rather limited possibilities of switching to Lecithin, and for specific applications this possibility does not exist.
20. Finally, enzymes can be used in bakery products as well. The role of enzymes is growing as it enables the food industry to produce E-free products. However, although in some cases genetically modified enzymes have a higher functionality, consumers in the EEA are generally reluctant to buy products which contain genetically modified organisms ("GMO"). Therefore, some food producers for the EEA may refrain from using these enzymes.

DATEM

21. DATEM is primarily used for dough strengthening in the production of bread.
22. In the market investigation only a minority of customers for food-applications confirmed that DATEM can completely be replaced by other synthetic emulsifiers whereas other customers saw for their application only a limited possibility of substitution. This is the case for example with respect to SSL/CSL, for which some customers confirmed that they may be used to partially substitute DATEM for certain bakery applications from 20% to 50%. For some specific applications, customers did not consider other synthetic emulsifiers as an alternative to DATEM.
23. As is the case for DISMO, it appears that the particular type of grade play a less important role. Some customers observed that for their specific application they had to use a grade with

specific quality requirements. In particular, customers refer to the tartaric acid content and the amount and the type of anti-caking agent used in DATEM. Other criteria may be the physical characteristics of DATEM (powder, past or liquid form).

24. The investigation has not confirmed the parties' claim that Lecithin as a natural emulsifier is a suitable substitute for DATEM. However, it has been confirmed that enzymes can be used in bakery products as a substitute for DATEM to some extent, although it is difficult to replace DATEM completely. Customers confirmed that the use of enzymes as substitute for DATEM is increasing and that, given the increase in prices of emulsifiers due to the increase of the raw material's costs, enzymes are becoming more and more a viable substitute for DATEM. The parties submit that in fact the market for DATEM is shrinking and that it is explained by the increasing pressure exerted by enzymes. This submission is also confirmed by industry reports².

Conclusion

25. In light of the foregoing, it appears that from demand-side perspective, the possibility to substitute DISMO or DATEM by other emulsifiers depends very much on the specific application, the production process of the customer and the specifications of the final product. Furthermore, the market investigation confirms that immediate supply-side substitution is not possible, at least between MONO-DI, DISMO and DATEM. All these elements, although making difficult the adoption of a clear cut distinction between the various emulsifiers, tend to confirm that each emulsifier constitutes a separate relevant product market.
26. The final product market definition can however be left open since, under the narrowest possible definition, the proposed transaction does not raise doubts as to its compatibility with the common market and the EEA Agreement.

A.2. RELEVANT GEOGRAPHIC MARKETS

27. The parties submit that the relevant geographic market for emulsifiers is regional covering large geographical areas such as the EEA, Australia/New Zealand, South East Asia or North America. The main producers tend to concentrate their production facilities and supply customers from a few plants located around the world serving wide geographic areas. For example, Danisco has production plants in Denmark, Brazil, Malaysia, the US and China; Abitec's only plant is in the UK from which it supplies through the EEA and even outside the EEA; Riken is located in Malaysia from where it supplies globally and Europe in particular, and Kerry has plants in the Netherlands and also in Malaysia from where it also serves the European markets.
28. The parties also mention other aspects such as the lack of need for national distribution (distribution made by third party haulers), the product does not perish during transportation, just in time deliveries are rarely a requirement and transport costs are relatively low (around [...] % of ex-factory price). Therefore, the parties consider that the market for emulsifiers, independently of the emulsifier considered, is at least the EEA.

² The Frost & Sullivan Report.

29. The market investigation has confirmed the parties' views. In particular, and given that Abitec is the only producer located in the UK, and its sole production plant is located there, the Commission has verified whether there may be some specificities which would characterise the UK as a market separate from the EEA. However, this is clearly not the case as it is demonstrated by the fact that imports and exports of emulsifiers in the UK (either considered as a whole or individually for each type of emulsifier) represent more than [80-90] and more than [70-80]% (except for MONO-DI, which represent [40-50]%) respectively of the merchant sales in the UK³.
30. In light of the foregoing, for the purposes of this investigation it can be concluded that the market for emulsifiers is at least EEA-wide.

B. COMPETITIVE ASSESSMENT

31. The present transaction takes place at a moment on time in which the emulsifiers market is characterised by large increases in the prices of raw materials. This fact, [...] has therefore an important role in the assessment of the possible competitive impact of the proposed transaction on the market. In addition, there is also an increasing pressure on competition from alternative products such as lecithin or bakery enzymes, the use of which is increasing along with the demand by consumers for healthier/non-artificial products.

B.1. ASSESSMENT OF EMMULSIFIERS CONSIDERED AS SEPARATE RELEVANT PRODUCT MARKETS

Market structure

32. The Commission has been able to reconstruct the market structure to a large extent with respect to the markets for DISMO and DATEM, the two markets in which the transaction has a greater impact. In fact, the Commission's investigation has confirmed that the combined market share of the parties for these two markets is lower than the parties' own estimates provided in the Form CO, which were [40-50]% ([35-45]% based on the Commission's data) for DISMO and [40-50]% ([35-45]% based on the Commission's data) for DATEM⁴.
33. Table 1⁵ shows the estimated market shares in the EEA of the main emulsifiers producers at the level of the various markets in which the emulsifier market can be sub-segmented:

³ Source: Form CO, Annex 46.

⁴ Taking into account the sales to Cereform.

⁵ Source: Form CO, Annexes 19 and 24 and the Commission's reconstruction of the market shares for DISMO and DATEM on the basis of the replies to the market investigation's *Questionnaire to Competitors* of 13 June 2008. Data in brackets is confidential based on the replies of the producers; other data is based on the parties' information and estimates.

Table 1 - Market shares 2006/07 - EEA

	DISMO		MONO-DI		DATEM		SSL/CSL		OTHER ESTERS	
	MT	%	MT	%	MT	%	MT	%	MT	%
Danisco	[...]	[25-35]%	[...]	[0-10]%	[...]	[25-35]%	[...]	[0-10]%	[...]	[30-40]%
Abitec	[...]	[5-15]%	[...]	[0-10]%	[...]	[5-15]%	[...]	[5-15]%	[...]	[0-10]%
Combined	[...]	[35-45]%	[...]	[5-15]%	[...]	[35-45]%	[...]	[10-20]%	[...]	[30-40]%
Kerry	[...]	[5-10]%	[...]	[20-30]%	[...]	[15-25]%	[...]	[30-40]%	[...]	[10-20]%
Cognis	[...]	[5-10]%	0	0%	[...]	[30-35]%	[...]	[0-10]%	[...]	[10-20]%
Palsgaard	[...]	[5-10]%	[...]	[0-10]%	0	0%	[...]	[10-20]%	[...]	[10-20]%
Beldem	[...]	[5-10]%	[...]	[0-10]%	[...]	[0-5]%	0	0%	[...]	[0-10]%
Croda	[...]	[5-10]%	[...]	[0-10]%	0	0%	0	0%	[...]	0%
Riken	[...]	[0-5]%	0	0%	0	0%	0	0%	[...]	[0-10]%
Others	[...]	[10-20]%	[...]	[30-40]% %	0	0%	[...]	[10-20]%	[...]	[15-25]%
Total	[50 000-70 000]	100%	[20 000-40 000]	100%	[10 000-30 000]	100%	[5 000-25 000]	100%	[10 000-30 000]	100%

B.1.1. MONO-DI, SSL/CSL AND OTHER ESTERS

34. As it can be concluded from Table 1 above, the impact of the transaction on the markets for MONO-DI and SSL/CSL is very low given the modest market shares of the parties which do not lead to affected markets.
35. With respect to "Other Esters", Danisco's market share is much more important ([25-35]%), however, the transaction gives rise to a very minor overlap of [0-10]%. There are three other important players, namely Kerry ([10-20]%), Cognis ([10-20]%) and Palsgaard ([10-20]%) as well as a number of other smaller ones such as Riken and Beldem, who are all of them stronger than Abitec.
36. In addition, the market investigation has not raised competition concerns as regards MONO-DI, SSL/CSL and Other Esters, either from the customers' or from the competitors' side.
37. In light of the foregoing, the Commission concludes that the transaction is not likely to raise serious doubts as to its compatibility with the common market and the EEA Agreement with

respect to MONO-DI, SSL/CSL and Other Esters. The assessment will therefore be focussed on the impact of the transaction on the markets for DISMO and DATEM

B.1.2. DISMO

38. The proposed transaction would lead to a combined market share of [35-45]% (Danisco [25-35]%, Abitec [5-15]%), while the remainder part of the market would be served by a relatively high number of players such as Kerry, Cognis, Palsgaard, Beldem, Croda and Riken, with market shares within the range [5%-10]%.
39. Despite the relatively high market share that the parties would enjoy post-merger, the results of the market investigation with respect to the possible impact of the transaction are mixed, although the majority of customers consider that the transaction is not likely to have negative effects on competition. Where concerns have been raised, the number of complainants has been higher (although not the majority) among Abitec's customers.
40. The market investigation tends to confirm the general statement made by the parties that Abitec is rather a "commodity" supplier cheaper than Danisco, who is considered more as a supplier of quality products and able to provide added-value services that Abitec is not in a position to provide. Some customers stated, however, that, despite this possible difference in the business model between Abitec and Danisco, customers tend to perceive both players as competitors and even when they do not purchase from Abitec they consider that Abitec's lower prices discipline Danisco. There are therefore fears that, post merger, Abitec customers will lose a cheap supplier and that Danisco customers will not be able to discipline Danisco on the basis of Abitec prices, leading to price increases.
41. The Commission considers, however, that there are various factors making a possible increase of prices post-merger as a result of the proposed transaction unlikely.

There are other suppliers considered as credible alternatives to Abitec

42. The market investigation has confirmed that, in case prices were to increase, customers would have alternative suppliers to which they could switch sales. In particular Abitec customers mentioned as their main alternative suppliers Kerry and Palsgaard followed by Beldem. They considered that Danisco, Riken and Cognis are considered as alternative suppliers in fewer cases. In addition, when questioned about whether or not Abitec and Danisco are close competitors⁶, only a minor proportion of respondents considered them as such.
43. In some instances, some customers have indicated that the switch to an alternative supplier can be difficult in some cases as it can take time due to the need for tests, trials and approval processes. There are however no reasons to conclude that this process would be only applicable to customers willing to change from Abitec or Danisco to an alternative supplier, and not to customers willing to change from Abitec to Danisco, or vice versa. This would only be the case if Abitec and Danisco were the only suppliers of a given product which is very

⁶ *Questionnaire to Customers* of 13 June 2008, question 13.

rare and in any event these customers would always have the ability to engage approve alternative suppliers.

The market is characterised by large levels of spare production capacity

44. The market investigation has not only shown that Abitec and Danisco customers can rely on a number of other suppliers to purchase DISMO, but also that these suppliers have ample spare capacity available.
45. Based on the data gathered during the market investigation, Table 2⁷ shows the levels of production⁸ and spare production capacity in the market for DISMO:

Table 2 – Production and spare production capacities for DISMO

	Production		Spare capacity	
	MT	%	MT	%
Danisco	[...]	[25-35]%	[...]	[20-30]%
Abitec	[...]	[5-15]%	[...]	[0-10]%
Combined	[...]	[35-45]%	[...]	[20-30]%
Kerry	[...]	[15-20] %	[...]	[25-30] %
Cognis	[...]	[5-10] %	[...]	[0-5] %
Palsgaard	[...]	[15-20] %	[...]	[25-30] %
Beldem	[...]	[5-10] %	[...]	[5-10] %
Croda	0	0%	0	0%
Riken	[...]	[0-10]%	[...]	[0-10]%
Others	[...]	[0-10]%	[...]	[10-20]%
Total	[80 000-100 000]	100%	[20 000-40 000]	100%

46. From the above data, and taking into account that the EEA merchant market size is around [...] kt, the available spare capacity of the merged entity's competitors for the production of DISMO ([...] kt) represents at least [30-40]% of the EEA merchant market (taking into consideration only the producers from which the Commission has obtained data) and may

⁷ Source: Form CO, Annexe 47 and Commission's information on the basis of the replies to the *Questionnaire to Competitors* of 13 June 2008. Data in brackets is confidential based on the replies of the producers; other data is based on the parties' information and estimates. The market shares in the EEA given in Table 1 and the shares of production given in Table 2 can differ in some cases due to three factors: firstly, the possible captive use of part of the production by some companies for their internal use; secondly, some producers have production plants located outside the EEA from where they sell emulsifiers not only in the EEA but also worldwide; and thirdly, other producers have production plants located in the EEA from where they sell emulsifiers both in the EEA and outside the EEA. This is why production of suppliers active in the EEA and sales in the EEA do not necessarily equal each other.

⁸ With respect to the levels of production, it has to be taken into account that some players such as Danisco itself or Kerry, have production plants outside Europe from where they supply worldwide. Therefore, the table reflects the strength of the main emulsifier suppliers in the EEA regardless of where the production plant is located.

reach [40-50]% ([...] kt) if the parties' estimate on the spare capacity of the "Others" producers is correct.

47. It can therefore be concluded that the market for DISMO is far from being capacity constrained and that the spare production capacity held by the remaining market players would be more than enough to cover any additional demand derived from the merged entity's customers wishing to change supplier as a result of price increases.
48. The above conclusion is not affected by the fact that [...]. Abitec's current production is around [...] kt, [...] and there would still remain around [...] kt (or [20-30]% of the EEA demand) in the hands of Danisco's competitors.

Conclusion

49. In light of the foregoing, the Commission concludes that it is unlikely that Danisco will have the incentives to increase prices given customers ability to react by switching to alternative suppliers with sufficient spare production capacity.

B.1.3. DATEM

General overview of the market and results of the market investigation

50. The market for DATEM is a declining market characterised by increasing competitive pressure from other products, in particular from enzymes. This trend can be clearly observed in Table 3, where the volumes and values of DATEM sold in the EEA are compared to those of DISMO and to those of all food-grade emulsifiers taken together.

Table 3 – Sales of DATEM in the EEA compared to other emulsifiers

Emulsifier	2004/5		2005/6		2006/7	
	Volume (MT)	Value (EUR '000)	Volume (MT)	Value (EUR '000)	Volume (MT)	Value (EUR '000)
DATEM	[...]	[40 000-60 000]	[...]	[40 000-60 000]	[...]	[40 000-60 000]
DISMO	[...]	[80 000-100 000]	[...]	[80 000-100 000]	[...]	[80 000-100 000]
ALL	[...]	[240 000-260 000]	[...]	[240 000-260 000]	[...]	[240 000-260 000]

Note: source Form CO, Annex 19; data given for DATEM do not include Abitec's internal sales, which, if taken into account, amount to around 22 212 kt for 2006/7 as indicated in Table 1.

51. As shown in Table 3 above, while the market size of the emulsifiers market in general, and of DISMO in particular, is growing in terms of volume, the market for DATEM is declining, both in terms of volumes and values. In fact, the value per tonne sold has been steady, or even slightly decreased, from 2004/5 ([...] EUR/tonne) to 2006/7 ([...] EUR/tonne), even in an

environment of significant increases in the cost of raw materials in the last years reported by Danisco⁹ and confirmed by the market investigation.

52. The proposed transaction would lead to a combined market share of [35-45]% (Danisco [25-35]%, Abitec [5-15]%), considering that part of the current internal Abitec sales to its parent company ABF or its affiliates would become merchant sales post transaction. In contrast with the market for DISMO, the remainder part of the market would be covered by a limited number of players, namely Kerry (15%-25%), Cognis (30%-35%) and Beldem (0%-5%). The transaction therefore leads to a similar combined market share as compared to DISMO but in a market with a higher level of concentration, with only two strong alternative suppliers (Kerry and Cognis) and a smaller one (Beldem).
53. The results of the market investigation with respect to the possible impact of the transaction are also mixed, but the number of complaints is higher than was the case for DISMO.
54. As in the case of DISMO, the market investigation tends to confirm that Abitec is rather a "commodity" supplier whose products are cheaper than Danisco's, but that both compete in many instances against each other for the same customers. Around half of the complaints raised by Abitec customers referred to the negative effects that the transaction may have on the market for DATEM. Also among Danisco customers the concerns tended to be more focussed on DATEM. The concerns relate in particular to the possible anti-competitive effects as a result of the reduction in the number of suppliers in an already concentrated market and, in few instances, the effect that the transaction may have in particular grades of DATEM.. There are also fears that post merger Danisco may re-align the prices of Abitec's customers with Danisco's prices leading to price increases. Finally, it has also been indicated in some instances that prices have increased above the level of the increases in raw material costs. However, the Commission also notes that the concerns are not generalised, and that around half of all customers who replied to the market investigation have not expressed any type of competition concerns.
55. Accordingly, the Commission investigated the concerns and reached the conclusion that that there are various factors rendering a possible increase in prices post-merger, as a result of the transaction, unlikely.

Abitec is not considered as the closest alternative to Danisco nor vice versa

56. Most of the respondents multisource either from Kerry, Cognis or Danisco and, to the extent that they only purchase DATEM from Abitec, do not consider Danisco and Abitec as close competitors, which is in line with the findings about closeness of competition in DISMO. With respect to possible alternative suppliers, Abitec customers do not mention Danisco as an alternative supplier preferred to Kerry, Cognis or even Beldem. Also among Danisco customers, Kerry and Cognis are mentioned at least as frequently as Abitec as alternative

⁹ For example, prices for palm oil have increased, according to information provided by Reuters, from around 350 €/tonne beginning 2006 up to 700-800 €/tonne beginning 2008, and for rapeseed oil from around 600 €/tonne up to 900-1.000 €/tonne. Source, Form CO, Annex 40.

suppliers. It can therefore be concluded that Abitec does not appear to be considered the best alternative to Danisco (or vice versa).

57. In fact, the Commission has confirmed on the basis of internal information provided by the parties that most of Abitec's DATEM sales are concentrated in certain grades for which all the remaining competitors offer comparable alternatives. For a great proportion of the remaining grades there are (apart from Danisco) three other alternative suppliers and for the remaining minor proportion, at least two alternative suppliers¹⁰.
58. Furthermore, an assessment of how the more important DATEM customers of Abitec have changed to other suppliers over the last years shows that Danisco is not an alternative preferred to Kerry, Cognis or Beldem¹¹.

Abitec customers will be able to source DATEM from Danisco [...]

59. Despite the fact that Danisco is considered more as an added-value provider and Abitec as a cheaper commodity supplier, there are instances, as stated above, in which both companies compete against each other for the supply of commodity grades of DATEM. The risk of re-alignment of prices would be higher in case Danisco's strategy were to supply only products with added-value services so that Abitec customers would be forced to accept a new pricing policy. However, this does not appear to be the case. Firstly, the Commission has confirmed that Danisco [explanation on Danisco's prices strategy] ¹². Secondly, as explained below, there are other alternative suppliers with sufficient spare production capacity to discipline Danisco in case it increased prices for these customers. Therefore, the simple re-alignment of prices due to a totally different pricing policy between the parties does not appear to be a likely outcome in this case. This is even more the case for DATEM, an emulsifier which is less prone to added-value services and for which around [...] % of Danisco's sales are on a commodity basis.

The market is characterised by large levels of spare production capacity

60. The market investigation has also confirmed that Abitec and Danisco customers can rely on large amounts of spare capacity for the production of DATEM.
61. Based on the data gathered during the market investigation, Table 4 shows the levels of production and spare production capacity in the market for DATEM:

¹⁰ Source: Parties' submission of 7 July 2008, Annex 7, confidential to both parties.

¹¹ Source: Parties' submission of 7 July 2008, section 3.9 and Annex 10, confidential to Abitec.

¹² Source: Parties' submission of 7 July 2008, section 3.19.

Table 4 – Production and spare production capacities for DATEM

	Production		Spare capacity	
	MT	%	MT	%
Danisco	[...]	[15-25]%	[...]	[25-35]%
Abitec	[...]	[10-20]%	[...]	[0-10]%
Combined	[...]	[25-35]%	[...]	[35-45]%
Kerry	[...]	[20-30]%	[...]	[10-20]%
Cognis	[...]	[20-30]%	[...]	[10-20]%
Palsgaard	0	0%	0	0%
Beldem	[...]	[20-30]%	[...]	[25-35]%
Croda	0	0%	0	0%
Riken	0	0%	0	0%
Others	0	0%	0	0%
Total	[30 000-35 000]	100%	[10 000-15 000]	100%

62. Given that the EEA merchant market size is around [...] kt, the available spare capacity of the merged entity's competitors for the production of DATEM ([5-10] kt) represents at least [35-40]% of the EEA merchant market.
63. In light of the above it can be concluded that the market for DATEM enjoys substantial spare production capacity held by the remaining market players which would be more than enough to cover any additional demand derived from the merged entity's customers wishing to change supplier. The Commission also notes that there is no evidence indicating that the competitors may find difficulties in making use of these spare capacities. Firstly, the spare capacity reported by each producer takes into account that the production of the other products produced by each company is maintained at the same level, so that the additional production of DATEM does not in general imply the reduction of the current levels of production of other products. Secondly, producers have not reported problems of access to raw materials which may limit the available spare capacity¹³.
64. Finally, the spare capacities considered come from production plants that currently do supply EEA customers, who in addition confirmed that they multi-source from various suppliers.
65. Also, as is the case for DISMO, this conclusion is not affected by the fact that [...]. Abitec's current production of DATEM is around [...] kt and the spare production capacity is estimated to be around [...] kt, out of which [5-10] kt is held by the merged entity's competitors. This spare capacity would be enough to cover [...] around [15-20]% of the EEA demand.

¹³ The same arguments apply to DISMO.

Enzymes exert a significant constraint on the market for DATEM

66. The parties have stated that one of the main reasons affecting the decline of the DATEM market is the increasing competitive impact of enzymes. Even when enzymes and DATEM are not fully substitutable for all applications and therefore there are limitations to consider them as belonging to a single relevant product market, the market investigation has confirmed that the role of enzymes cannot be ignored.
67. The market investigation has clearly confirmed that enzymes can substitute DATEM in many applications (particularly dough strengthening) either partially or, to a lesser extent, totally. The investigation has also shown that this partial substitution is increasing over time and the increases of the emulsifiers' prices, due to the raise of the raw material prices, are facilitating this substitution.
68. This trend is also confirmed by industry reports such as "The Frost & Sullivan Report" which also notes the fact that the use of enzymes is also comparatively cost effective vis-à-vis emulsifiers since lower doses can be used, leading to a rapid substitution of synthetic emulsifiers like DATEM for enzymes. The parties also indicate that, based on that report, enzymes are replacing emulsifiers in the European bakery industry at a rate of 5-10 per cent per annum¹⁴.
69. Moreover, internal documents of Danisco¹⁵ also confirm the potential for enzymes to replace DATEM in the bakery industry and the increasing pressure exerted by Novozymes at the expense of Danisco emulsifiers. In terms of customers changing from DATEM to enzymes, Danisco has also provided evidence showing that between 2004 and 2007 DATEM's sales to its top ten customers have [description of the evolution of Danisco's sales], Danisco believes that the main driver is the partial substitution to enzymes.
70. Moreover, although Danisco is in the enzymes market (around [10-20]% market share in the EEA for dough strengthening), the current transaction does not change the market structure since Abitec is not active in this market and there are a number of other important suppliers such as Novozymes ([...]%), AB Enzymes ([...]%) or DSM ([...]%)¹⁶.
71. It therefore appears unlikely that Danisco will have post merger the necessary incentives to increase prices in the DATEM market given its declining trend and the increasing competitive pressure from enzymes, as this strategy would accelerate the substitution process and would possibly lead to an accelerated loss of sales.

DATEM prices are not increasing above the raw materials cost increases

¹⁴ Form CO, section 1.1.21.

¹⁵ Strategy document prepared by Danisco's enzymes division in 2007.

¹⁶ Form CO, section 6.9.9.

72. One of the concerns raised by some respondents to the market investigation is that already prior to the merger prices have increased above the level of the increases in the cost of the raw materials. The merger would therefore be likely to worsen this situation.
73. As stated above in recital 51 and footnote 9, raw material prices have in fact increased substantially in the recent past. However, the evidence provided by the parties to the Commission shows that in general the prices have not increased above the level of raw material costs. In particular, it appears that Danisco has simply passed on the increases in costs to its customers as is evidenced by the fact that gross margins for DATEM between 2006/07 and 2007/8 have remained constant at around [...] DKK per kilogram, a situation that is consistent with a competitive market.

Conclusion

74. In light of the foregoing, the Commission has concluded that it is unlikely that Danisco will have the ability or the incentive to increase prices in the DATEM market given customers' ability to react by switching to alternative suppliers with sufficient spare production capacity or to switch a substantial part of their purchases to a technically and economically viable substitute such as enzymes.

B.2. ASSESSMENT AT THE LEVEL OF THE OVERALL EMULSIFIERS MARKET

75. The overall emulsifiers market is characterised by a relatively high number of suppliers the main ones being Danisco, Kerry, Cognis and Palsgaard, followed by Abitec, Beldem, Croda/Uniquema, Riken and other smaller players. Table 5¹⁷ shows the estimated market shares in the EEA of these main producers:

¹⁷ Source: Form CO, Annexes 19 and 24, including current internal sales of Abitec to Cereform. Cereform is a subsidiary of ABF, Abitec's parent company, to which Abitec supplies emulsifiers. Post-merger, these internal sales will become merchant sales and therefore have been added to Abitec's market position. For the remaining players, the parties' estimates have been considered. The final market shares do not differ substantially from those obtained if the actual sales of the competitors for DATEM and DISMO are taken into account.

Table 5 – Market shares 2006/07 - EEA

	Volume		Value	
	MT	%	€ '000	%
Danisco	[...]	[20-30]%	[...]	[20-30]%
Abitec	[...]	[0-10]%	[...]	[0-10]%
Combined	[...]	[25-35]%	[...]	[25-35]%
Kerry	[...]	[10-20]%	[...]	[10-20]%
Cognis	[...]	[0-10]%	[...]	[10-20]%
Palsgaard	[...]	[0-10]%	[...]	[0-10]%
Beldem	[...]	[0-10]%	[...]	[0-10]%
Croda/Uniquema	[...]	[0-10]%	[...]	[0-10]%
Riken	[...]	[0-10]%	[...]	[0-10]%
Others	[...]	[20-30]%	[...]	[15-25]%
Total	[130 000-150 000]	100%	[250 000-270 000]	100%

76. The proposed transaction consists therefore in the acquisition by the market leader of the fourth larger player (in value) leading to a combined market share of around [30-40]%. The combined entity will however face strong competition from a large number of alternative suppliers such as Kerry, Cognis, Palsgaard, Beldem or Croda.
77. Given the above market structure and the modest role played by Abitec, it appears unlikely that anti-competitive effects will arise post-transaction.

V. CONCLUSION

78. In light of the foregoing, it can be concluded that the proposed concentration does not raise serious doubts as to its compatibility with the common market or the EEA Agreement.
79. For the above reasons, the Commission has therefore decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission,

(signed)
Neelie KROES
Member of the Commission