

***Case No COMP/M.6348 -
ARLA FOODS/ ALLGAULAND***

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/11/2011

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.6348 – ARLA FOODS/ ALLGÄULAND
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 15.09.2011, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Hansa-Milch AG ("Hansa", Germany) belonging to Arla Foods Amba ("Arla", Denmark) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Allgäuland-Käseereien GmbH and AL Dienstleistungs-GmbH (together referred to as "Allgäuland", Germany) by way of purchase of shares.² (Arla and Allgäuland are designated hereinafter as the "Parties".)

I. THE PARTIES

2. Arla is a dairy cooperative owned by Swedish and Danish dairy farmers and, with effect from January 1, 2011, also indirectly owned by German dairy farmers who are members of Hansa-Milch eG, the latter being a corporate member of Arla. The company is active in the production and sale of a variety of dairy products.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² Publication in the Official Journal of the European Union No C 279, 23.09.2011, p. 36.

3. Allgäuland consists of the German companies Allgäuland-Käsereien GmbH and AL Dienstleistungs-GmbH and its subsidiaries. Allgäuland is mainly a cheese dairy but also has other activities on various fresh dairy product markets. Geographically Allgäuland is situated in the southernmost part of Germany.
4. The six German cooperative societies Allgäuland Käsereien eG, Allgäuer Bergbauern-Milch Sonthofen-Schönau eG, Milchwerk Donau-Alb eG, Milchwerke Bad Wörishofen eG, Central-Molkerei Augsburg eG, Butterwerk Langenau eG ("the Dairy Cooperatives") and the German cooperative society Allgäuer Emmentalerkäserei Leupolz eG jointly hold 97.82% of the share capital of Allgäuland-Käsereien GmbH, none of them exceeding an owner's share of 25%. The remaining 2.18% of the share capital is held by the German dairy company Milei GmbH ("Milei", Germany). The Dairy Cooperatives hold the entire share capital of AL Dienstleistungs-GmbH, none of them exceeding an owner's share of 25%.

II. THE OPERATION

5. Arla, through its subsidiary Hansa-Milch AG, will acquire sole control over Allgäuland. It will purchase 97.82% of the shares in Allgäuland-Käsereien GmbH from the six Dairy Cooperatives and from the dairy cooperative Allgäuer Emmentalerkäserei Leupolz eG. In addition, Hansa-Milch AG will also acquire 100% of the shares in AL Dienstleistungs-GmbH from the six Dairy Cooperatives.³

III. CONCENTRATION

6. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. EU DIMENSION

7. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million⁴ (in 2010, the combined turnover of all the undertakings concerned was over EUR [...]). Each of them has a EU-wide turnover in excess of EUR 250 million (Arla: EUR [...], Allgäuland: EUR [...]) and only Allgäuland achieves more than two-thirds of its aggregate EU-wide turnover within one Member State, namely Germany. The notified operation therefore has an EU dimension.

V. PROCEDURE

8. After having been informed that based on the initial results of the market investigation it could not be excluded at that stage of the procedure that the transaction might raise serious doubts as to its compatibility with the internal market with regard to whey protein concentrate, the Parties offered commitments on 13 October 2011 with a view to remove possible serious doubts. A modified version of these commitments was submitted to the Commission on 24 October 2011. However, given that the further

³ Prior to the transaction the Dairy Cooperatives have supplied Allgäuland with raw milk from the farmer members of the milk cooperatives. Butterwerk Langenau eG, one of the Dairy Cooperatives, is currently not supplying milk to Allgäuland. Arla and the remaining Dairy Cooperatives are negotiating the terms according to which the cooperatives and farmer members will supply raw milk to Arla post-transaction.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

market investigation demonstrated that the transaction does not raise serious doubts as to its compatibility with the internal market, the commitments were found to be unnecessary.

VI. COMPETITIVE ASSESSMENT

9. The activities of Arla and Allgäuland give rise to horizontal overlaps in the procurement of raw milk, fresh products (milk, liquid dairy cream, yoghurt and quark), longlife products (milk, liquid dairy cream), butter, cheese and whey. These overlaps are discussed in section A.
10. In addition, the transaction raises a potential horizontal coordination issue concerning markets for the production of whey-based products namely lactose, permeate and whey protein concentrate - because of a minority shareholding of Allgäuland. This horizontal coordination issue is dealt with in section B.

A. Arla and Allgäuland

A.I. Relevant product markets

A.I.1. Procurement of raw milk

11. Raw milk is collected from the farms and delivered to the dairies for further processing. It has a perishable nature, since it has undergone no treatment other than cooling.
12. The Commission has found in a previous case that the procurement of raw milk should be split into two separate markets: 1) the procurement of conventional milk, and 2) the procurement of organic milk.⁵ In relation to the German market, the Commission has so far left open whether the raw milk market should be split into conventional and organic raw milk markets. The Parties agree with this market definition.
13. The precise definition can be left open in the present case because, regardless of the definition used, the transaction does not raise serious doubts as to its compatibility with the internal market.

A.I.2. Fresh dairy products

14. The Parties submit – following the Commission's decision in M.6119 - *Arla/Hansa*⁶ – that within dairy products a distinction should be made between fresh and longlife dairy products. Furthermore, within fresh dairy products, separate product markets should be defined: fresh milk, fresh buttermilk, plain yoghurt, value added yoghurt, fresh cream and quark.⁷
15. Fresh milk is milk with a standardised fat content, which is pasteurised at 72° Celsius ("C") for 15 seconds. In M.6242 - *Lactalis/Parmalat*, the Commission left open the question whether there could be a health segment within the market for fresh milk.⁸

⁵ M.5046 - Friesland/Campina, para. 52. See also M.6119 - Arla/Hansa, paras. 10-11 and M.6242 - Lactalis/Parmalat, paras. 10-13.

⁶ M.6119 - Arla/Hansa, para. 20.

⁷ M.5046 - Friesland/Campina, paras. 207, 460, 927 and 1381, and M.6119 - Arla/Hansa, para. 20.

⁸ M.6242 - Lactalis/Parmalat, para. 31.

The Parties do not believe there is a relevant market covering a health segment for fresh milk. This question can be left open as the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition.

16. Fresh buttermilk is a specific kind of milk which is thicker and sourer than ordinary milk. The Commission found fresh buttermilk to constitute a separate product market, because there was only limited demand side substitution.⁹ In addition, the Commission concluded that organic fresh buttermilk forms a separate relevant product market as opposed to conventional fresh buttermilk.¹⁰ The Parties do not necessarily agree with this split, but accept it for the purpose of the assessment of this transaction.
17. Fresh plain yoghurt is a fermented product also produced from raw milk, which has been partially skimmed and pasteurised and fermented by adding special yoghurt cultures. The Commission concluded that organic fresh plain yoghurt forms a separate relevant product market as opposed to conventional fresh plain yoghurt.¹¹ The Parties do not necessarily agree with this split, but accept it for the purpose of the assessment of this transaction.
18. Value added yoghurt is made from basic plain yoghurt which has been added with flavours, colouring, sugar, fruits and additives.¹² It is normally sold in packs varying from 100 ml to 1 litre. In *M.5046 - Friesland/Campina*, the Commission concluded that plain yoghurt and flavoured yoghurt were distinct product markets due to different consumption habits and significant price differences.¹³ In addition, the Commission left open in *Friesland/Campina* the question whether value added yoghurt should be further divided into health and indulgence segments.¹⁴ The Parties further submit that with regard to a possible distinction between value added yoghurt and quark the result of the market investigation in *Friesland/Campina* was not equally clear and that, to a certain extent, there is demand-side substitutability between the two products. For the purposes of the present case, these questions can be left open as the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition.
19. Fresh dairy liquid cream is raw milk which has been standardised to a fat content of 8% or more (often up to 38%). Cream is low-pasteurised at 78° C for 15 seconds or a similar combination. Cream is essentially a commodity produced as a by-product of milk processing and the production of various fresh dairy products. In a previous case, the Commission distinguished between liquid and spray cream,¹⁵ as well as dairy and non-dairy cream.¹⁶ As Allgäuland does not produce spray cream nor non-dairy cream, the only overlap would be in respect of liquid dairy cream. The Commission has also left open whether fresh liquid cream and longlife liquid cream belong to the same

⁹ M.5046 - Friesland/Campina, para. 156. See also M.6119 - Arla/Hansa, para. 14.

¹⁰ M.5046 - Friesland/Campina, para. 460.

¹¹ M.5046 - Friesland/Campina, para. 460.

¹² M.5046 - Friesland/Campina, para. 891.

¹³ M.5046 - Friesland/Campina, para. 154. See also M.6119 - Arla/Hansa, para. 16.

¹⁴ M.5046 - Friesland/Campina, para. 927.

¹⁵ M.5046 - Friesland/Campina, para. 1338.

¹⁶ M.5046 - Friesland/Campina, para. 1351.

relevant product market.¹⁷ The Parties reserve the right to argue that they belong to the same market but accept the distinction for the purpose of the assessment of this transaction. This question can be left open as the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition.

20. Quark is made from skimmed milk. The milk is heated to a maximum of 30° C, and subsequently the milk is stored and starter cultures are added. After this process, the quark and the leftover is separated, and finally cream, ingredients and flavouring such as fresh fruit, herbs and/or spices are added. The Parties submit that flavoured quark and non-flavoured quark belong to the same product market. In *Arla/Hansa*, the Commission left this question open.¹⁸ In addition, the Commission left open in *Friesland/Campina* the question whether quark should be further divided into health and indulgence segments.¹⁹ For the purposes of the present case, these questions can be left open as the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition.
21. Finally, for all fresh dairy products, the Commission precedents²⁰ have considered a possible distinction according to distribution channel, i.e. retail and out-of home, as well as between branded and private label products. The Parties oppose to such split. Given the absence of serious doubts as to the compatibility of the transaction with the internal market under any alternative market definition, these questions can be left open in the present case.

A.I.3. Longlife dairy products

22. The Parties' activities in longlife dairy products overlap in milk and cream.
23. Longlife milk is liquid milk produced from raw milk. It is either produced through sterilisation or ultra high temperatures (UHT). However, the production methods have the same effect on the milk: it can be kept for months at room temperature. The Commission has previously defined a separate product market for longlife milk,²¹ and the Parties agree with this definition of the product market. Previously the Commission left open the questions whether longlife milk should be further divided into health and indulgence segments, and whether the health segment could be further divided into calcium enriched milk, omega 3-enriched milk, growth milk and lactose-free milk.²² These questions can be left open as the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition.
24. Liquid longlife dairy cream is, according to the Parties, a distinct market from fresh cream since market conditions such as demand and logistics differ. As mentioned before, the Commission distinguished between liquid and spray cream, as well as dairy and non-dairy cream. As Allgäuland does not produce spray cream nor non-dairy cream, the only overlap would be in respect of liquid dairy cream. The Commission

¹⁷ M.5046 - Friesland/Campina, para. 1364. See also M.6119 - Arla/Hansa, para. 17.

¹⁸ M.6119 - Arla/Hansa, para. 18.

¹⁹ M.5046 - Friesland/Campina, para. 927.

²⁰ M.5046 - Friesland/Campina, M.6242 - Lactalis/Parmalat and M.6119 - Arla/Hansa.

²¹ M.5046 - Friesland/Campina, para. 406-415.

²² M.5875 - Lactalis/Puleva Dairy, para. 129 and M.6242 - Lactalis/Parmalat, paras. 39-41.

has also left open the issue whether the fresh dairy cream and longlife dairy cream belong to the same market. In addition, the Commission distinguished liquid coffee whiteners from longlife dairy cream.²³ Given the absence of serious doubts as to the compatibility of the transaction with the internal market under any alternative market definition, these questions can be left open in the present case.

25. Finally, for both longlife dairy products, the Commission precedents²⁴ considered a possible distinction according to distribution channel, i.e. retail and out-of home, as well as between branded and private label products. The Parties oppose to such split. Given the absence of serious doubts as to the compatibility of the transaction with the internal market under any alternative market definition, these questions can be left open in the present case.

A.I.4. Butter

26. Butter is roughly what is left of milk when all other non-fat components have been removed; economically, it is a by-product. The butter is packed in 25 kilogram cartons (bulk butter) or in 250 gram wrappers (packet butter).
27. The Parties submit that bulk butter can either be considered as a separate product market or part of a total market of bulk yellow fats including margarine and liquid vegetable oil. In *Friesland/Campina*, the Commission defined a separate market for bulk butter.²⁵ The Commission has previously decided that packet butter does not form part of the same product market as bulk butter.²⁶ In *Friesland/Campina* and *Arla/Hansa* the Commission also considered that margarine and packet butter are not part of the same product market.²⁷
28. In *Arla/Hansa*, the Commission left open the question of whether the butter markets should be further split according to distribution channel, i.e. retail and out-of home, as well as between branded and private label products.²⁸ For the purposes of the present case, these questions can be left open since the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition.

A.I.5. Cheese

29. In previous decisions,²⁹ the Commission considered dividing the cheese market according to cheese categories – (i) spreadable cheese; (ii) fresh cheese; (iii) soft cheese; (iv) semi-hard cheese; and (v) hard cheese –, but also according to even narrower cheese types (e.g. mozzarella), the type of presentation (slice, fixed weight, variable weight), type of milk used (e.g., mozzarella using different milks might belong

²³ M.5046 - Friesland/Campina, para. 1364.

²⁴ M.5046 - Friesland/Campina, M.6242 - Lactalis/Parmalat and M.6119 - Arla/Hansa.

²⁵ M.5046 - Friesland/Campina, para. 824-825.

²⁶ M.5046 - Friesland/Campina, para. 870. See also M.6119 - Arla/Hansa, para. 30.

²⁷ M.5046 - Friesland/Campina, para. 855 and M.6119 - Arla/Hansa, para. 30.

²⁸ M.6119 – Arla/Hansa, para. 31.

²⁹ M.4135 - Lactalis/Galbani, paras. 8-15, M. 5046 - Friesland/Campina, para. 500 and M.6242 - Lactalis/Parmalat, paras. 51-53.

to separate product markets) and protected geographical status (e.g. “*appellations d’origine contrôlée*”).

30. The Parties submit that the cheese market can be split into hard/semi-hard cheese (includes types such as Gouda, Edam, Maasdam, Tilsit, Emmental, Cheddar, Manchego, Danbo, etc), spreadable cheese (cream cheese and soft processed cheese), cheese specialties (Gorgonzola, Roquefort, Camembert, Brie, feta, cottage cheese, mozzarella, etc) and cheese sold to the industry.
31. According to the Parties, hard/semi-hard cheeses may vary with regard to rind, age, fat and salt. They are of firm texture and can be cut or broken. In retail, these cheeses are often sold as sliced cheese. Cheese spreads are cheeses with soft texture (spoonable) and includes cheese which can be spread out. Cheese specialties include cheese types such as blue and white mould cheese, fresh cheeses or mozzarella type cheese. Cheese sold to the industry is sold to industrial customers who either use the cheese in for instance industrial pizza production, or who further slice or treat whole purchased cheeses and package and sell it under their own brands to retail customers and others.
32. Given the absence of serious doubts as to the compatibility of the transaction with the internal market under any alternative market definition, the precise product market definition can be left open in the present case.

A.I.6. *Whey*

33. According to the Parties, whey is a liquid by-product deriving from the production of primarily cheese, which in itself is not of significant value and is often used as animal feed. Whey can however also be used for the production of proteins, mineral mixtures, whey protein concentrate and lactose assuming that the necessary processing facilities are available. There are no precedent decisions by the Commission concerning whey.

A.II. Relevant geographic markets

34. The Parties submit that the market for procurement of raw milk should not be considered narrower than national (i.e. regional/local). The Commission has concluded in past decisions that the relevant geographic markets for procurement of raw milk are not wider than national in scope.³⁰ In *Lactalis/Parmalat*, the Commission left open the question whether the geographic scope of the market for procurement of raw milk in Italy was national or narrower (regional), while according to the Parties the Bundeskartellamt has defined regional markets for the procurement of raw milk in Germany.³¹ For the purposes of the present case, the question can be left open since no serious doubts as to the compatibility of the transaction with the internal market would arise under either alternative.
35. In previous decisions,³² the Commission concluded that, with regard to fresh milk, fresh buttermilk and fresh plain yoghurt, as well as their possible segments, the geographical scope should be defined as national. In *Lactalis/Parmalat*, the

³⁰ M.5046 - Friesland/Campina, para. 80, M.5875 - Lactalis/Puleva Dairy, para. 46 and M.6119 - Arla/Hansa, p. 35.

³¹ Sektoruntersuchung Milch (B2-19/08).

³² M.5046 - Friesland/Campina, para. 230 and M.6119 - Arla/Hansa, para. 36.

Commission left open the question of whether the geographic scope of the market for fresh milk in Italy was national or narrower (regional), as the market investigation suggested that fresh milk could be transported up to a maximum of 650 km, and consumer preferences, brands and prices varied substantially according to regions.³³ However, as regards Germany, the Bundeskartellamt in its December 2009 milk sector report indicated that the relevant geographic markets in the sector are at least national.³⁴ For the purpose of this case the Parties have submitted that the market is national in scope. For the purposes of the present case, the question can be left open since no serious doubts as to the compatibility of the transaction with the internal market would arise under any alternative.

36. With respect to value added yoghurt, quark and fresh cream, as well as their possible segments, the Commission concluded in *Friesland/Campina* that the market is wider than national.³⁵ The question was subsequently left open in *Arla/Hansa*.³⁶ The Parties submit that the markets for value added yoghurt and quark are national in scope and that fresh cream is EU-wide in scope. For the purpose of the present case, the precise market definitions can be left open as no concerns would arise even on a national level.
37. Longlife products can be transported over longer distances than fresh products which results in broader geographical markets. With regard to longlife milk and longlife dairy cream, the Commission has previously concluded that the geographical scope of the supply of these products is wider than national.³⁷ In *Lactalis/Parmalat*, the Commission analysed the effects of the transaction in these markets at national level.³⁸ The Parties submit that the geographical market for longlife products is wider than national and covers the entire EU. For the purpose of the present case, the precise market definition can be left open as no serious doubts as to the compatibility of the transaction with the internal market would arise even on a national level.
38. The Commission has previously found that the market for bulk butter is EEA-wide.³⁹ With regard to the market for packet butter, the Commission has defined the geographical scope as at least regional (i.e. a scope wider than national, comprising more than one Member State) and maybe EEA-wide.⁴⁰ The Parties submit that both markets are at least EEA-wide. Given the absence of serious doubts as to the compatibility of the transaction with the internal market under any alternative market definition, the precise market definition can be left open in the present case.

³³ M.6242 - Lactalis/Parmalat, para. 33.

³⁴ Sektoruntersuchung Milch (B2-19/08), p. 46: *"In räumlicher Hinsicht grenzt die Beschlussabteilung die Märkte in ständiger Praxis (mindestens) bundesweit ab. Je nach Produktgruppe können die räumlich relevanten Märkte grenzüberschreitend oder auf das Gebiet der Bundesrepublik Deutschland beschränkt sein."*

³⁵ M.5046 - Friesland/Campina, para. 935 and 1393.

³⁶ M.6119 - Arla/Hansa, para. 37.

³⁷ M.5046 - Friesland/Campina, para. 422 and 1393 and M.6119 - Arla/Hansa, para. 38.

³⁸ M.6242 - Lactalis/Parmalat, paras. 42 and 48.

³⁹ M.5046 - Friesland/Campina, para. 834.

⁴⁰ M.5046 - Friesland/Campina, para. 874.

39. The Parties submit that the market for cheese is EU-wide given the low transport costs and the absence of trade barriers within the EU. However, in previous decisions the Commission has defined the geographic scope of the cheese markets as national.⁴¹ In any event, the precise market definition can be left open as no serious doubts as to the compatibility of the transaction with the internal market would arise even on a national level.
40. As regards whhey, the Parties submit that in the present case the question whether the geographic scope of the supply of whey is national or EEA-wide can be left open as the Parties' combined market share does not give rise to serious doubts as to the compatibility of the transaction with the internal market on either a German or a European level.

A.III. Competitive assessment

41. Since Arla's and Allgäuland's activities are geographically complementary in the procurement of raw milk, the transaction leads to no overlap in this market. In Germany, the Parties estimate their combined market share for the procurement of raw conventional milk at [0-5]% (Arla: [0-5]%; Allgäuland: [0-5]%), well behind DMK ([20-30]%), Müller Milch ([5-10]%) or Hochwald ([5-10]%). Regarding the procurement of raw organic milk, the Parties estimate their combined market share at [5-10]% (Arla: [0-5]%; Allgäuland: [0-5]%), facing competition, for example, from Andechser ([10-20]%), Gläserne ([5-10]%) or Söbbeke ([5-10]%). If a regional geographic scope is considered, Arla procures its milk from farmers who are located in Schleswig-Holstein, Mecklenburg-Vorpommern, Niedersachsen and Brandenburg (all in Northern Germany) and does not procure any milk in Southern Germany. On the other hand, Allgäuland is located in Wangen, in the southernmost part of Germany (Southwest of Munich and just north of the Austrian border) and procures by far the most of its raw milk from farmers located in Southern Germany. In addition, [0-5]% of Allgäuland's total procurement of raw milk in 2010 was sourced from Austria.
42. As regards the potential relevant markets for most of the fresh dairy products (fresh milk, fresh buttermilk, plain and value added yoghurt, and flavoured quark), longlife milk, as well as longlife dairy cream, the proposed transaction leads to combined market shares below 15%. Consequently, these markets will not be discussed further in the competitive assessment.
43. The proposed transaction would lead to affected markets in relation to the following potential relevant markets:
- (i) Liquid dairy cream;
 - (ii) Non-flavoured quark;
 - (iii) Packet butter; and
 - (iv) Cheese.

A.III.i. Liquid dairy cream

44. The Parties' combined market share on a potential EEA market for fresh liquid dairy cream, at the retail level and for branded products only, would be [20-30]% in 2010,

⁴¹ M.4135 - Lactalis/Galbani, para. 18 and M.6242 - Lactalis/Parmalat, para. 55.

with Arla holding [20-30]% and Allgäuland [0-5]% market shares. In Germany the combined market share would be [20-30]% (Arla: [10-20]%; Allgäuland: [5-10]).⁴² On a hypothetical product market combining fresh and longlife liquid dairy cream, the Parties' combined market share would be [20-30]% in the EEA (Arla: [20-30]%, Allgäuland: [0-5]%) and [20-30]% in Germany (Arla: [10-20]%; Allgäuland: [0-5]%).⁴³

45. In this respect, it is noteworthy the limited increments brought by Allgäuland. Furthermore, according to the Parties, several other competitors are able to constrain the Parties post-transaction in both the EEA and German markets (FrieslandCampina, Lactalis, DMK, Sodial, Mlekpól at EEA level and DMK, Oetker, Hochwald, Mueller SM and Berchtesgadener in Germany). This was further confirmed by the market investigation, since the vast majority of competitors and customers did not have any concerns.
46. In view of the above, the proposed transaction would not give rise to any serious doubts in the market for fresh liquid dairy cream or in a market combining fresh and longlife liquid dairy cream.

A.III.ii. Non-flavoured quark

47. Arla and Allgäuland's combined market share for the supply of private label non-flavoured quark through the retail channel in Germany in 2010 was [10-20]% (Arla [10-20]%; Allgäuland [0-5]%). According to the Parties, other competitors are DMK ([40-50]% market share), Hochwald ([10-20]%) and FrieslandCampina ([10-20]%).
48. Based on the relatively low combined market share, the small increment, the number of sizeable competitors, as well as the absence of strong concerns resulting from the market investigation, the proposed transaction would not give rise to any serious doubts in the market for non-flavoured quark.

A.III.iii. Packet butter

49. On a potential EEA-wide market for packet butter at the overall retail level, the Parties' combined market share in 2010 was [10-20]% (Arla [10-20]%; Allgäuland [0-5]%). On a hypothetical product market for branded products only, the combined market share would be [10-20]% (Arla: [10-20]%; Allgäuland: [0-5]%).
50. According to the Parties' estimates, the merged entity would continue to face competition from various other producers, such as Lactalis ([10-20]%), IDB Irish Dairy Board ([10-20]%), FrieslandCampina ([5-10]%), Meggle ([0-5]%), Bongrain ([0-5]%) and Dairy Crest ([0-5]%). Based on the existence of post-transaction competition, the relatively low combined market share, the small increment added by the transaction, as well as the lack of competitor and customer concerns, the Commission considers that the proposed transaction would not give rise to any serious doubts in the market for packet butter.

⁴² As regards the retail distribution for private label products and the out of home distribution channel, the Parties' combined market share is below 15% both at the EEA level and in Germany.

⁴³ The Parties' combined market shares in the longlife liquid dairy cream market are below 15%.

A.III.iv. Cheese

51. On the market for spreadable cheese sold to retailers in Germany, the combined market share would reach [10-20]%, with Arla holding [10-20]% and Allgäuland adding [0-5]%. On a hypothetical market for branded products only, the combined market share would be [10-20]% (Arla: [10-20]%; Allgäuland: [0-5]%).
52. According to the Parties, there are other competitors in the retail market which are able to constrain the Parties post-transaction: Hochland ([20-30]%), Karwendel ([10-20]%), Kraft ([5-10]%), Bongrain ([0-5]%), and Bayernland ([0-5]%).⁴⁴ Based on the relatively low combined market share, the small increment, the number of sizeable competitors, as well as the absence of competitor and customer concerns concerning spreadable cheese, the Commission considers that the proposed transaction would not give rise to any serious doubts regarding this market.

B. Arla and Milei

53. Milei GmbH ("Milei", Germany), is a dairy company producing various whey-based products such as lactoferrin, lactose, lactulose, milk protein concentrates, milk sugar products, permeate products, and whey protein concentrate ("WPC"). Milei's current shareholders are Morinaga Milk Industry Co., Ltd. ("Morinaga", Japan) with approximately 69.3% and Allgäuland-Käsereien GmbH with 30.1%.⁴⁵ Arla's activities overlap with Milei's with respect to WPC, lactose and permeate.

B.I. Relevant product markets

B.I.1. Whey protein concentrate

54. WPC is obtained from whey, which is a liquid by-product of cheese. Previously, whey was discarded or used as animal feed, but in the last decades a range of new processing technologies have allowed the isolation and purification of whey components, and various whey-based products have been launched on the market. These products are used for their functional and nutritional properties.
55. Whey can be processed into whey powder which is a commodity and a cost-efficient source of dairy calcium. However, whey is increasingly used for processing into more valuable products, like WPC, lactose and permeate.
56. WPC is obtained by ultrafiltration of whey, a process which separates the proteins from lactose, minerals and other constituents. WPC is usually characterised on the basis of its content of protein in solids (e.g. WPC 80 has 80% protein in solids). The protein content generally ranges from 35 up to 80%. Additionally, it is possible to obtain protein content around 90% by adding different processes to ultrafiltration, such as

⁴⁴ On a branded product market only, the competitors' market shares are: Kraft ([10-20]%), Karwendel ([10-20]%), Hochland ([10-20]%), Bongrain ([10-20]%), and Bayernland ([0-5]%). Additionally, even on a narrower market per cheese type, the only affected market would be Emmentaler, where the combined market share of the parties is [10-20]%. However, the increment brought by the transaction is minimal (Arla has a market share of [0-5]%). The transaction also gives rise to other overlaps considering markets per cheese type, but these would not constitute affected markets.

⁴⁵ Milei itself owns approximately 0.6% of the company's shares.

microfiltration and ion exchange. This WPC product is named whey protein isolate ("WPI").

57. Furthermore, whey processors have isolated individual whey proteins (e.g. alphas₁-lactalbumin) for specific nutrient-rich food systems, processing the whey into so-called whey protein fractions by applying different added-value processes.
58. The Parties initially submitted that the market should be viewed as an overall WPC market. However, the market investigation showed that it is necessary to distinguish between the WPC with low (below 50%) and high (above 50%) protein concentration, excluding WPI since it has different properties and different usages.
59. WPC 35-50 is in composition similar to skimmed milk powder and a cost efficient source of dairy solid. It is mainly, though not exclusively, sold to the animal feed industry. The market investigation suggests that prices of WPC 35-50 are expected to follow prices of skimmed milk powder.⁴⁶ The same does not appear to be true for WPC with high protein concentrates.⁴⁷
60. WPC 60-80 are higher value added products used for protein fortification in sports, infant and clinical nutrition.⁴⁸ They are also used in processed meat and fish products, and in the dairy industry for certain types of processed cheeses, yogurts and desserts. The majority of these products contain 80% protein level.
61. Furthermore, WPI and whey protein fractions substantially differ from WPC 60-80 products with respect to their properties and prices. The market investigation indicates that these products are more expensive to produce than WPC 60-80. For example, Arla sells all their products in the WPC 60-80 category at prices between [...] €/Kg, whereas it sells WPI and whey protein fractions at [...].
62. Also on the supply-side, substitutability of these products differ. Milei, for instance only produces WPC up to 80% protein content because further concentration is not possible on their current production facility. WPI requires special handling called microfiltration.
63. The market investigation generally confirmed that the WPC market could be subdivided into different segments according to the protein content as WPC 35, 60-80 and above 80 (i.e. WPIs) had different properties and usages.
64. Given the above, it appears appropriate to distinguish between WPC 35-50, WPC 60-80 and WPI. In this respect, Arla produces both WPC 35, WPC 60-80 and WPI while

⁴⁶ [...].

⁴⁷ [...].

⁴⁸ Some producers also supply WPC 55, but this is done in much smaller quantities and this product appears to be much less sought by customers. WPC 55 may to some extent compete with for example WPC 60, but the main product segmentation under consideration remains WPC 60-80.

Milei is mainly active in the WPC 60-80 segment.⁴⁹ The competitive analysis will therefore focus on the latter.

65. The Parties argue that a product category which they call functional milk proteins and blends constitute a separate product segment with respect to WPC 60-80. Functional milk proteins would consist in WPC 60-80 products which would be submitted to further chemical or physical treatment resulting in added functionalities. Blends would be produced by adding different constituents to WPC 60-80. It appears that a substantial part of the blends compete with products which are blended either by the customer or by independent third party blenders. This question can be left open in the present case given the absence of any competition concerns under any alternative market definition.

B.I.2. Lactose

66. Lactose - also known as milk-sugar - is a sugar derived from milk products. Cow milk contains 4% to 5% lactose. Whey is most commonly used as the major input and starting point of the lactose production. Lactose is derived by a crystallization process applied to the whey which is followed by washing and drying of the lactose crystals.⁵⁰
67. Lactose principally comprises two main grades: pharmaceutical grade lactose and food grade lactose. Edible grade lactose is used in fine chemical applications, the manufacture of infant formulae and is added to food and confectionery products. Pharmaceutical grade lactose is used as a pharmaceutical excipient. In *Friesland/Campina* the Commission considered that food grade lactose and pharmaceutical grade lactose form two distinct relevant product markets.⁵¹ In addition, in *Friesland/Campina* the Commission considered a further segmentation of the food grade lactose market into infant food lactose, fine chemicals lactose and food generic. The question whether the food grade lactose market should be further segmented can be left open given the absence of any competition concerns under any alternative market definition. Arla and Milei only overlap in food grade lactose.

B.I.3. Permeate

68. Permeate is a by-product generated from whey. According to the Parties, the production of permeate in a powder format follows from a process where first whey proteins are concentrated from the whey using ultrafiltration, and this concentrate is in a separate stream turned into whey protein concentrate. The remaining intermediate permeate product is then evaporated, crystallised and dried. As an alternative to the production of permeate powder, processors can choose to produce lactose from the remaining whey.

⁴⁹ Milei also produces [...] tons of WPC 35 and [...] tons of WPC 55 in 2010, which are very small quantities taking into account the total size of the market.

⁵⁰ M.5046 - Friesland/Campina, paras. 1618-1619.

⁵¹ M.5046 - Friesland/Campina, para. 1642. Within pharmaceutical grade lactose, the Commission also found that dry powder inhalation (DPI) lactose forms a distinct product market from wet granulation and direct compression lactose - M.5046 - Friesland/Campina, para. 1694.

69. According to the Parties, whey permeate powder is sold as a cheaper substitute of whey powder or lactose or milk powder, and will often compete against a range of simple starch-based products (maltodextrins, dextrose etc.), in various dairy and bakery application, and a large share of the production is used in the animal feed industry. The Parties submit that for this reason a market delineation covering only the supply of permeate is too narrow, as a customer will usually have several alternatives, and permeate would form part of a wider ingredients market.
70. Given the absence of any competition concerns under any alternative market definition, these questions can be left open in the present case.

B.II. Relevant geographic markets

B.II.1. Whey protein concentrate

71. The Parties submit that the market for WPC is at least EU-wide and presumably worldwide, since WPC is traded globally and pricing is global.
72. Whereas transport costs do not seem to be prohibitive, it appears that at least WPC 60-80 imports into the EEA are very small. According to one competitor, it is not economical to transport these products overseas and this is mainly due to EU tariffs. EEA exports of WPC 60-80 vary significantly among producers and therefore the available data is inconclusive.
73. In any event, given the absence of any competition concerns under any alternative market definition, the precise market definition can be left open in the present case.

B.II.2. Lactose

74. The Commission has previously found that the market for food grade lactose is at least EEA-wide.⁵² The Parties submit that the market is at least EU-wide and presumably worldwide, since lactose is traded globally and pricing is global.
75. The precise market definition can be left open in the present case because no competition concerns would arise irrespective of whether the geographic scope is EEA-wide or wider.

B.II.3. Permeate

76. According to the Parties, when sold as a powder permeate can be transported over significant distances and the "shelf life" of permeate is 18 months. Although transportation cost are important permeate powder is traded across Europe and a large part is also exported out of the EEA, e.g. a very significant, growing and attractive market for whey permeate is developing in China for feed purposes. The Parties therefore submit that from a geographical perspective the market for permeate is at least EEA-wide and probably worldwide.
77. Given the absence of any competition concerns under any alternative market definition, these questions can be left open in the present case.

⁵² M.5046 - Friesland/Campina, paras. 1695-1696.

B.III. Risk of coordination between Arla and Milei

B.III.1. Introduction

78. In *Exxon/Mobil*,⁵³ the Commission looked into a minority shareholding held by Mobil in Aral, a competitor of Exxon. The Commission considered indisputable that Mobil had a very significant interest in Aral, which created a strong financial interest of the former in the welfare of the latter. The existence of such a link between Mobil and Aral was likely to reduce Mobil's incentives to compete against Aral and vice versa. The Commission therefore concluded that competition between the two operators seemed to be seriously weakened.
79. In the present case, the Commission found that the proposed acquisition raises a potential horizontal coordination issue concerning the markets where both Arla and Milei are active. There is indeed the possibility that the merged entity would stop competing with Milei for the reasons set below.

B.III.1. Representation in Milei's Supervisory Board

80. Allgäuland currently holds a 30.1% share in Milei.⁵⁴ Despite its lower shareholding, Allgäuland has the right to appoint [...] the members of Milei's Supervisory Board, which decides unanimously. If no decision is reached after two Supervisory Board meetings, the matter is decided in the shareholders meeting. At shareholder level, most of the decisions are taken with a two-thirds majority.⁵⁵
81. Regardless of whether Allgäuland's participation in Milei would enable Arla to exercise decisive influence over Milei post-transaction,⁵⁶ Arla may have access to significant information about Milei's activities by means of its presence on Milei's Supervisory Board. The merged entity could therefore have the possibility of making use of such information in such a way to distort competition in the markets where both Arla and Milei are active. As a result, Arla would stop competing with Milei and align its behaviour to the latter.

B.III.2. Allgäuland-Milei whey supply agreement

82. There is a whey supply agreement dated 1 October 1994 in force between Allgäuland and Milei and valid until [...]. According to this agreement Allgäuland sells [...] whey to Milei [...]. Furthermore, based on this agreement, Milei sources around [20-40]% of its whey from Allgäuland. The agreement could leave Milei in a vulnerable position vis-à-vis Arla, [...].
83. However, on 1 November 2011 Arla sent a letter to Morinaga stating that, if the proposed transaction were approved and implemented, Arla would:

⁵³ See Commission Decision in Case IV/M.1383 – Exxon / Mobil.

⁵⁴ [...].

⁵⁵ The only decisions which require 75% of the shareholders' votes are those concerning [...].

⁵⁶ In any event, Arla has confirmed that a full takeover of Milei would trigger a new notification to the relevant authorities.

- a. allow Milei to terminate the whey supply agreement within the [...] after the implementation of the transaction;
 - b. offer that in a period of [...] from the implementation of the transaction [...] whey from Allgäuland is supplied to Milei, [...]; and
 - c. offer to apply price conditions [...].⁵⁷
84. Based on the above, Milei would not remain dependent on Arla due to its current whey supply contract.
85. Nevertheless, should Arla and Milei decide to maintain their supply agreement in place, such link may increase the likelihood of coordination between the two entities.

B.III.3. Conclusion

86. Given Allgäuland's shareholding in Milei, the potential flow of information to which Arla would have access and the existence of a whey supply agreement between Allgäuland and Milei, there is a risk that the transaction may increase the likelihood of coordination between Arla and Milei.
87. In accordance with the approach which must be followed in the context of the merger control review, the Commission is to assume the worst possible scenario for the purposes of the substantial assessment. The Commission therefore assessed the potential effects of the proposed acquisition if ever the merged entity would stop competing with Milei and converge towards a single commercial policy. It should be nevertheless born into mind that the assessment below takes into account the fact that minority shareholding only allows a limited influence compared to a full acquisition of control.
88. However, for the reasons set below, even if the transaction would increase the likelihood of coordination, it would not raise serious doubts as to its compatibility with the internal market.

B. IV. Competitive assessment

B.IV.1. Whey Protein Concentrate

89. Both Milei and Arla produce WPC 35-50 and high concentrated WPC. However, while in WPC 35-50 their presence is minimal,⁵⁸ in WPC 60-80 both companies appear to be important players.

⁵⁷ Furthermore, Arla noted that these offers also regard kosher retentat and total milk protein (TMP) [...]. Arla's offer does not include any other supplies or cooperation that have previously or are currently taking place with Milei.

⁵⁸ Milei sold only [...] tons of WPC 35 in the EEA and a total of [...] tons worldwide. According to the data from the European Whey Producers Association (EWPA), which gathers a number of WPC producers from 15 Member States, Arla and Milei would represent less than 5% of the total sales of WPC below 50% produced in the EEA (including exports) by EWPA members alone. Customers and competitors confirmed that the market for WPC below 50% is more fragmented than the WPC above 50%.

90. In the market for WPC 60-80, the Parties estimated that Arla and Milei represent together [30-40]% of the EEA market with an estimated size of around 42 000 tons. Arla's EEA sales in 2010 amounted to [...] tons (including blends and functional milk proteins).
91. The market investigation collected sales data for WPC 60-80 from the main competitors. Table 1 shows the reconstructed market shares based on this information.

Table 1: Market shares in volume and value for the supply of WPC 60-80 to the EEA in 2010

Source: market investigation.

Company	EEA market	
	Volume	Value
Arla	[10-20]%	[10-20]%
Milei	[20-30]%	[20-30]%
Combined	[40-50]%	[30-40]%
FrieslandCampina	[10-20]%	[10-20]%
Volac	[10-20]%	[10-20]%
Sachsenmilch	[5-10]%	[5-10]%
Carbery	[5-10]%	[5-10]%
Lactoprot	[0-5]%	[0-5]%
Armor Proteines	[0-5]%	[0-5]%
Meggle	[0-5]%	[0-5]%
Others and imports	[5-10]%	[5-10]%
Total market size	42 000 tons	€192 million

Notes:

1. The sales volume declared by Arla includes blends and functional milk proteins.
2. Sachsenmilch only started producing WPC 60-80 in 2011. Therefore, its sales are estimates for 2011 and sales for "Others and imports" are conservative estimates based on Arla's estimates.
3. Sales value for Sachsenmilch's and "Others and imports" were estimated based on average price of remaining competitors.
4. On 26 October 2011, the Swedish Competition Authority cleared the acquisition of the Swedish company Milko by Arla. Milko is active in the production and commercialisation of a number of dairy products, among which WPC80.

92. The market reconstruction shows that Arla and Milei represent together [40-50]% of the EEA market for WPC 60-80. At the worldwide level, market shares would be lower given the existence of other major producers in the US, Australia and New Zealand (e.g. Davisco and Fonterra). At EEA level, any concerted action between Arla and Milei would be constrained by sizeable competitors such as Friesland Campina ([10-20]%) and Volac ([10-20]%), as well as by a number of other medium and small producers (Sachsenmilch: [5-10]%; Carbery: [5-10]%; Lactoprot: [0-5]%; Armor Proteines: [0-5]%; Meggle: [0-5]%).
93. Market competitors and customers in general agree that the market is in expansion, which is linked to growing demand, high prices and also to the future release of milk quotas. Sachsenmilch's quick and substantial entry⁵⁹ suggests that while getting access

⁵⁹ According to their estimated production, they would get a 6% market share in the first year of production, excluding exports.

to whey may be a challenge for some producers, there is scope for entry. Only one respondent indicated that the merger would hinder its potential entry in the WPC 60-80 market without further substantiation.

94. Customers have generally confirmed that they multisource and that even though the supplier market is to some extent concentrated, there are alternative suppliers.
95. During the market investigation, a few customers expressed concerns about the lack of alternative suppliers for WPC 60-80, especially for clinical and infant nutrition applications.⁶⁰
96. However, the market investigation showed that some of the concerns were related to very specific products manufactured by either Arla or Milei where no substitutable alternatives were available. These concerns were hence not merger specific. With the exception of very few cases involving trivial amounts, customers indicated that there were alternative suppliers for their purchases. In addition, some concerns were rather more generally related to the overall current high price level on the WPC.
97. Given the above, it can be concluded that even if any coordination between Arla and Milei would take place in the market for WPC, that would not raise serious doubts as to the compatibility of the transaction with the internal market for the following reasons: Arla and Milei would continue to be subject to significant competitive pressure exercised by sizeable market players; the market has experienced significant new entry in the recent past; and there is a lack of general concerns from customers. Lastly, it should be stressed that the assessment carried out by the Commission in the present case constitutes an analysis of a worst case scenario as indicated in paragraph 87.
98. In addition, one complainant claimed that the merged entity would have the possibility to foreclose Milei's access to whey required for the production of WPC. However, as shown above, Milei would not remain dependent on Arla due to its current whey supply contract. Furthermore, the market investigation has shown that even if the supply agreement is terminated, Milei can find alternative suppliers. Therefore, the proposed transaction is not likely to result in any input foreclosure.

B.IV.2. Lactose

99. The Parties estimate that the total size of the market for food grade lactose in 2010 was [approx. 300 000] tons in the EEA and [approx. 900 000] tons at the worldwide level. Arla's output in 2010 was [...] tons in the EEA and [...] tons at the worldwide level. The Parties estimate that the EEA combined market share of Arla and Milei would amount to [10-20]%.
100. The market reconstruction undertaken during the investigation showed that Arla and Milei represent together less than [10-20]% both on an EEA-wide and worldwide basis. However, these figures are probably much lower since the market reconstruction

⁶⁰ In this respect, some competitors and customers indicated that the WPC 60-80 required for clinical and infant nutrition products required a different quality than WPC 60-80 used for example, for sports nutrition.

does not take into account all the producers active in the EEA⁶¹ nor does it consider, for the purposes of the worldwide market reconstruction, the producers which are not active in the EEA. Based on this conservative approach, the market shares are as shown in Table 2.

Table 2: Market shares in volume and value for the supply of food grade lactose to the EEA in 2010

Source: market investigation.

Company	EEA market	
	Volume	Value
Arla	[10-20]%	[10-20]%
Milei	[0-5]%	[0-5]%
Combined	[10-20]%	[10-20]%
FrieslandCampina	[20-30]%	[20-30]%
Lactalis	[10-20]%	[10-20]%
Glanbia	[10-20]%	[10-20]%
Sachsenmilch	[10-20]%	[5-10]%
Meggle	[5-10]%	[5-10]%
Volac	[5-10]%	[5-10]%
Armor Proteines	[5-10]%	[5-10]%
Lactoprot	[0-5]%	[0-5]%
Total market size	228 000 tons	€160 million

Note: Sachsenmilch's position is based on estimates for 2011.

101. As shown in the table above, any concerted action between Arla and Milei would face strong competition from FrieslandCampina ([20-30]%), Lactalis ([10-20]%), Glanbia ([10-20]%), Sachsenmilch ([5-10]%), and several others. Competition is even stronger on the basis of a worldwide market. Even under a narrower market definition, Arla's and Milei's market position would not substantially change, except for infant food lactose, where the combined market share would reach [30-40]% under the most conservative estimate. However, there are other significant suppliers (e.g. FrieslandCampina) and during the market investigation none of the baby food producers raised concerns regarding this product.
102. Given the above, it can be concluded that even if any potential coordination between Arla and Milei would take place with regard to food grade lactose, that would not raise serious doubts as to the compatibility of the transaction with the internal market.

B.IV.3. Permeate

103. The Parties estimate that the total size of the market for permeate in 2010 was [approx. 100 000] tons in the EEA and [approx. 350 000] tons at the worldwide level. Arla's output in 2010 was [...] tons in the EEA and [...] tons on a worldwide basis. The Parties estimated that the combined market share of Arla and Milei would amount to [30-40]% at the EEA level and [10-20]% at the worldwide level.
104. The market reconstruction undertaken during the investigation showed that Arla and Milei represent together at least less than [30-40]% on a EEA-wide basis and [40-50]% on a worldwide basis. However, these figures are probably much lower since the

⁶¹ According to the European Whey Producers Association, which only covers producers in 15 EU countries, there are at least other four companies producing food grade lactose in the EEA.

market reconstruction does not take into account all the producers active in the EEA⁶² nor does it consider, for the purposes of the worldwide market reconstruction, the producers which are not active in the EEA. Based on this conservative approach, the market shares are as shown in Table 3.

Table 3: Market shares in volume and value for the supply of permeate to the EEA in 2010

Source: market investigation.

Company	EEA market	
	Volume	Value
Arla	[10-20]%	[10-20]%
Milei	[20-30]%	[20-30]%
Combined	[30-40]%	[30-40]%
Volac	[30-40]%	[30-40]%
BMI	[10-20]%	[10-20]%
Lactalis	[5-10]%	[5-10]%
Hellenic Protein	[0-5]%	[0-5]%
Bonilait	[0-5]%	[0-5]%
Armor Proteines	[0-5]%	[0-5]%
Total market size	94 108 tons	€47 million

105. As shown in the table above, any concerted action between Arla and Milei would face strong competition from Volac ([30-40]%), BMI ([10-20]%), Lactalis ([5-10]%), and other smaller market players. Competition is even stronger on a worldwide basis given that other producers which do not have production sites in Europe would need to be taken into account. Furthermore, any whey protein concentrate producer is by definition a potential permeate producer since permeate is a by product of whey protein concentrate. In fact, the market investigation confirmed that many producers use the permeate resulting from the whey ultrafiltration in order to produce lactose. These producers therefore also represent a competitive constraint vis-à-vis Arla and Milei.

106. Given the above, it can be concluded that that even if any potential coordination between Arla and Milei would take place with regard to the permeate market, that would not raise serious doubts as to the compatibility of the transaction with the internal market.

VII. CONCLUSION

107. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission
(Signed)
Joaquín ALMUNIA
Vice-President*

⁶² According to the European Whey Producers Association, which only covers producers in 15 EU countries, there are at least other two companies producing permeate in the EEA.

