

***Case No COMP/M.1990 -
UNILEVER /
BESTFOODS***

Only the English text is available and authentic.

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

Article 6(2) NON-OPPOSITION
with undertakings
Date: 28/09/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.09.2000

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(2) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No COMP/M. 1990 Unilever/Bestfoods

Your notification of 16.08.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 16.08.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Merger Regulation") by which Unilever PLC and Unilever N.V. ("Unilever") acquire within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the Bestfoods.
2. In the course of the investigation, Unilever submitted undertakings designed to eliminate the competition concerns identified by the Commission during the first part of the investigation, in accordance with Article 6(2) of the ECMR. In the light of these modifications, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 as amended and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES AND THEIR ACTIVITIES

3. Unilever is incorporated both in the Netherlands and in UK and its turnover totalled €40,979 million in 1999, of which almost [...] per cent arose in Europe. Its principal businesses are in the foods, home care and professional cleaning and personal care categories. Unilever's food businesses are mainly oil and dairy based foods, bakery¹, ice cream and beverages, soups, sauces, food oils and other culinary products, and

¹ See Case COMP/M.2084 – CSM/European Bakery Supplies Business

frozen foods. Key Unilever brands within the food business include Lipton (tea), Magnum (ice cream), Bertolli (olive oil) and Becel (spreads).

4. Bestfoods is a publicly listed United States corporation. It is principally engaged in the production and supply worldwide of consumer foods. Bestfoods' worldwide turnover in 1999 was €8,102 million, of which €3,375 million was in Europe. Bestfoods has extensive operations and various manufacturing facilities in Europe in the businesses of savoury products, mayonnaise and other dressings, and food service (catering), starches, bread spreads and desserts. Many of these are marketed under the Knorr brand. In the United States, Bestfoods has a sizeable baking business, but is not active in this business in Europe.

II. THE OPERATION

5. The transaction takes the form of an agreement by Unilever to acquire all the outstanding stock of Bestfoods. Under the terms of the Agreement and Plan of Merger of 6th June, 2000, Unilever will acquire all the outstanding shares of Bestfoods for \$73 per share in cash, giving the transaction an equity value of some \$20.3 billion. Titan, a majority owned indirect subsidiary of Unilever, will be merged with and into Bestfoods, with Bestfoods surviving as a majority owned indirect subsidiary of Unilever.

III. CONCENTRATION

6. Unilever will acquire sole control of Bestfoods. The transaction is therefore a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. Unilever and Bestfoods have a combined aggregate world-wide turnover of more than EUR 5 billion². They have a Community-wide turnover in excess of EUR 250 million (Unilever : [...] and Bestfoods : [...]). None of them achieves more than two-thirds of its aggregate Community-wide turnover in one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

8. The parties' activities overlap in two different sectors : in the production and sale of food products dedicated to the retail sector and in the production and sale of food products dedicated to the catering sector (food service sector).
9. The food service sector comprises supply to the out-of-home eating (e.g. hotels, restaurants, fast food and pizzeria outlets, sandwich shops) and institutional catering (factory and office canteens, hospitals, schools, etc.) sectors. The food service

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

distribution channels have important features which distinguish them from the retail channels and which thus give rise to separate markets. These distinctions include a service dimension, separate sales forces, different price structures, different pack sizes, and different health and safety regimes.

10. Moreover, the products supplied may themselves be different where necessary to address the distinct needs of food service customers. Sauce products, for example, when used within the food sector may need to be capable of being kept warm for extended periods of time in large containers without adverse effects on taste, whereas this is unlikely to be the case for products within the retail sector which tend to be heated and served quickly in small quantities.
11. These features have been recognised in the previous decisions of the Commission³ as giving rise to separate product markets for food retailing and food service.

1. The retail sector

12. In the retail sector, the parties have overlapping activities in several different product categories : soups, dry carbohydrates, cold sauces, hot sauces, food oils, other culinary products and jams. For the purpose of the market definition, Unilever has divided each category into several relevant product markets principally by reference to demand side characteristics, i.e. the substitutability of products in the eyes of consumers by reason of their characteristics, prices and uses.
13. The food products in question are varied and heterogeneous. They may have quite different characteristics but be destined for similar uses. Even for clearly similar types of product, there may be a range of consumer prices (premium, standard or value) reflecting different brand and selling propositions. Distinctions drawn by reference to intended use may also not be wholly clear-cut. Additionally, consumer profiles and habits may not be consistent across different Member States. The product market classifications adopted below are considered to be realistic and well recognised in the context of markets within the EU, in the sense that the markets identified are of a sufficient size to allow analysis, and are generally recognised as separate product groups or markets by most companies and trade customers in this business and by market research organisations covering the sector.

Soups

14. Unilever submitted that soups can be classified into three separate product markets, namely ambient wet soups, regular dry soups and instant dry soups, by reason of their characteristics, prices and consumer usage. These classifications have been supported in the Commission's market investigation.
15. *Ambient wet soups* include soups sold in cans, glass jars and aseptic packaging and which are intended for consumption as part of a traditional family meal. This category does not include chilled or frozen soups which are generally sold under different brands and require different logistics as they need re-refrigeration both in the distribution chain and in the home.

³ Case M. 1802 Unilever/Amora-Maille

16. *Regular dry soups* (packet soups) are traditional, multi-portion soups for preparation in a saucepan with added water. The manufacturing process is entirely different to that for wet soups. Regular dry soups are generally lower quality than wet soups, and have lower prices per equivalent unit.
17. *Instant dry soups* are typically sold for consumption in single portions and are seen as a savoury alternative to tea or coffee. They are ready to drink products, requiring the addition of boiling water in a mug. Prices per equivalent serving tend to be 50% higher than those of regular packet soups or even of ambient wet soups.

Dry carbohydrates

18. Unilever has distinguished between two categories of dry carbohydrates, *pot snacks* and *dry side dishes*.
19. The category of *pot snacks* comprises a range of pasta, noodle, potato and rice dishes, designed as single portion convenience snacks for consumption between meals directly out of a pot or container and to which it is necessary only to add hot or boiling water. There is significant (up to 40 per cent.) consumption out-of-home. The category was first developed with Bestfoods' "Pot Noodle" concept. Bestfoods, with its "TasteBreaks" product line, has recently extended its product offering from noodles into pasta, potato and soups.
20. Unilever have argued that pot snacks are distinct from instant soups because, among other reasons, pot snacks form a small meal substitute whereas instant soups are perceived as a relatively nutritious form of beverage, and are more likely to be substituted for a cup of tea or coffee or for a fruit juice than for a complete meal. This distinction has been supported by the Commission's investigation.
21. The pot snacks category is to be distinguished from *dry side dishes*, which are quick prepared plain or flavoured pasta, noodle, potato or rice based products, do not come in their own container, are sold in greater than single portion sizes and are designed as an accompaniment or side dish to a full meal. Dry side dishes typically require cooking in water for around five minutes. The Commission's investigation has supported the argument that dry side dishes are a separate relevant market. Unilever's products in this category include its Batchelors or McDonnells "Super Noodles" and "Pasta 'n Sauce" range. Bestfoods' products include Knorr "Spaghetteria" and Knorr Pasta Dishes.

Cold sauces

22. Unilever submitted that within the cold sauce products, the categories for mayonnaise, salad dressing, ketchup, mustard and other cold sauces each constitutes a separate product market. They are used most typically as an accompaniment to food dishes rather than to add flavour to the dish in the course of its preparation. This classification into several categories had been already confirmed in the decision M. 1802 Unilever/Amora-Maille as being justified by the different characteristic and use of each of them⁴.

⁴ Case M. 1802 Unilever/Amora-Maille.

23. *Mayonnaise* includes refrigerated mayonnaise in the countries where it is sold and the “Fritesaus” in the Netherlands.
24. *Salad dressings* include vinaigrettes and cream based sauces, “salsaus” in the Netherlands and cream-based sauces, such as salad creams which blend mayonnaise, vinegar and seasonings. However, dry seasonings that may be added to home-made salad dressings for added flavour are excluded. The latter set of products are instead included within the herbs, spices and seasonings category. The inquiry conducted by the Commission in the present case has shown that there should be no distinction within this category between vinaigrette and cream-based sauces. Although the cream-based sauces might contain more calories, all the products within this market, whether cream or vinaigrette-based, perform essentially the same job, which is to give salads more taste by means of a thin coating of liquid.
25. *Mustards* includes different types of traditional and speciality products in wet and powdered form. They all provide a distinct and powerful taste which is generally applied to a meat dish, but which may also be used as a cooking ingredient. Mustards vary in taste and composition to meet differing national tastes (“English” as opposed to “French” mustard). Sometimes mustards are grouped into classes of traditional and speciality products but, as noted in the *Amora Maille* decision, there is a high degree of both supply and demand-side substitutability, leading to the conclusion that they constitute a single product market.⁵ In light of the high degree of substitutability existing between mustard products in wet and powdered form, both forms have been included within the market, although it should be noted that powdered is a very small and declining part of the total mustard market.
26. *Ketchup* is a tomato based product used as a condiment to accompany a wide range of cooked dishes. The parties state that it is used especially to disguise flavours that might otherwise prove unpalatable for children. The market test has confirmed that it constitutes a separate market from the other categories of cold sauces.
27. *Other cold sauces* are used to add flavour to a prepared dish. They include mayonnaise-based sauces (“béarnaise”, “tartare”, “cocktail”) and “exotic” or “ethnic” sauces with a non-mayonnaise base (tabasco, salsa, guacamole). The market test has confirmed that further segmentation of the market does not appear appropriate since there is a substantial degree of demand side complementarity between these products. Consumers indeed frequently purchase a range of cold sauces to accompany barbecue and fondue dishes and on the supply side, manufacturers tend to offer a range of products under the same brand across the group.

Hot sauces

28. Unilever thinks it is appropriate to make a division between a range of *wet sauces* (e.g. liquid and pasta sauces) for cooking or for serving hot as part of a complete hot meal and a range of *dry sauces* used as meal ingredients or to add flavour to a prepared dish. Unilever states that dry sauces can be regarded as distinct from other types of sauces because the manufacturing process is distinct, the price lower and because they involve a greater degree of skill and effort in use. The market test has unanimously confirmed the

⁵ Case M. 1802 Unilever/Amora-Maille.

distinction between wet and dry sauces from the demand side (difference in quality perception, price and degree of skill and effort in use) as well as from the supply side perspective (different manufacturing process, transport and storage conditions).

29. Furthermore, in the category of wet sauces, Unilever submit that it is relevant to make a distinction between *hot wet sauces for pasta dishes* and *other wet sauces*, such a distinction being justified by reference to demand side characteristics. Unilever states that the customer seeking a sauce to accompany pasta and faced with no stock in a shop will not regard another wet sauce as an adequate substitute. Unilever states that this separation is underlined by the fact that brands used for *hot wet sauces for pasta* are exclusive whereas they are common for all *other wet sauces*, irrespective of their ethnic positioning (for example, Mars using its “Uncle Ben’s” brand for all its products in the other wet sauces category and, by contrast, “Dolmio” brand exclusively for hot wet pasta sauces).
30. *Hot wet pasta sauces* are frequently tomato based but do not need necessarily to be so (e.g. carbonara sauce and pesto). Unilever has excluded from the hot wet pasta sauces market products such as diced, pulp or puréed tomato and tomato concentrates such as passata. Unilever states that these products, although they may be used within the home as ingredients for pasta sauces, lack the herbs, spices and flavourings generally considered characteristic of wet pasta sauces.
31. The *other hot wet sauces* category comprises a range of ready-to-use sauces, either “cooked-in” or “poured-over” a meal to provide additional flavour. Many of the sauces within this category are ethnic or exotic in origin (e.g. Indonesian, Chinese, Indian and Thai sauces), but also included are more traditional sauces such as chicken chasseur sauce or red wine sauce for steak. Unilever states that, whilst the category is heterogeneous in character, the technology involved in producing the sauces is essentially the same and the products are stocked on the same shelves in retail stores.
32. The market test does not unanimously confirm the separation between hot wet sauces for pasta and other wet sauces. Some answers indicated that the wet sauces are broadly one category which could be then segmented in Italian sauces, Mexican sauces, Oriental sauces, Indian sauces, and family favourites (traditional cooking sauces non ethnic specific). Others indicated that some tomato sauces should also be included in the pasta sauces category and that they should be distinguished from the other hot wet sauces. The precise product market definition can be left open for the purpose of the present assessment since the competition concerns arise for the same products and in similar countries, whatever market definition is sustained.

Food oils

33. Unilever submits that *food oils* as a category concerns those refined *seed oil* and *olive oil* products that are intended for human consumption, whether as a cooking aid in frying or grilling, as an ingredient in prepared dishes, or as a salad or raw vegetable dressing ingredient. Unilever suggest that *food oils* and *animal fats* form separate markets because of lack of substitutability between the products in certain applications (e.g. as a salad dressing ingredient) and for certain classes of customers (e.g. vegetarians).
34. In previous decisions (notably the Unilever/Amora case), the Commission concluded that *food oils* were to be regarded as a separate market from *sauces or condiments*, notwithstanding use of food oils to make home-made versions of products within the

latter category, such as mayonnaise or wet salad dressings. It also determined that the food oils category in fact comprised two separate product markets, *seed oils* (39% of the category) and *olive oils* because of the absence of demand side substitutability, the difference in price positioning and the difference in branding.

35. This distinction has been confirmed again by the market test as well as the inclusion of the recently introduced products which contain a blend of olive oils with other products within the market for seed oils rather than olive oils. Blended products indeed tend to be used in substitution for seed oils as a more healthy alternative, lower in saturated fat and are rarely substituted for “pure” olive oil.

Other culinary products

36. Unilever has argued that the other culinary products in which the parties are active can be divided into two categories: *bouillon* and *herbs, spices and seasoning*.
37. Unilever submitted that across Europe, *bouillon* comprises a range of cubes, granules and, more recently, concentrated liquid sauces used for making gravies and meat, chicken and vegetable and fish based stocks, and for flavouring during the course of cooking. The Commission’s market investigation has supported this market definition for most countries, however, in the UK it could not be excluded that there exist separate narrower markets for *stock cubes* and for *gravy granules*.
38. In the Nordic countries where the parties are active (Denmark, Finland & Sweden), the parties submit that there may exist separate markets for wet and for dry bouillon. Wet bouillon has a wider range of uses, for example to add flavour to marinades and stir-fries; the technology used in manufacturing the products is distinct and the wet market is contested by different competitors. This distinction for these countries has been supported by the market investigation.
39. *Herbs, spices and seasoning* include various products for flavour enhancement which are used in “real” cooking. This category includes basic herbs and spices, but also includes the blends for specific flavours, such as curry powder. This market definition has been supported in the Commission’s market investigation. Most of the products used in this category are used in the kitchen during cooking, an exception to this is Bestfoods’ “Aromat” product which is used on the dining table in Scandinavian countries.

Jams

40. Unilever has submitted that there is a separate market for jams that includes marmalade and other sweet fruit-based spreads. These products are used by consumers as a spread on bread or toast or as a filling for pastries or cakes. Unilever argues that while there is a degree of substitutability between jams and non fruit-based sweet spreads such as honey, peanut butter and chocolate spread, this is insufficient for them to be considered in the same relevant market. While the Commission’s market investigation has provided mixed levels of support for Unilever’s arguments, it has not been possible to exclude the possibility that jams constitute a separate relevant market.
41. Bestfoods markets jams under the “Santa Rosa” and “Caja de Matteus” brands; Unilever markets jams as part of its “Linea” range of lower calorie products and also under the “Du darfst”, “Effi” and “Ligeresa” brands.

2. The food service sector

42. On an overall basis the parties divide the market into the *commercial segment* (which corresponds to 70% of the total food-service sales and comprises different customer groups such as restaurants, snack-bars, hotels, fast-food chains, leisure sector, etc.) and the *social segment* (which is 30% of the market and comprises first of all public institutions such as canteens, schools, hospitals, etc.). The market investigation has confirmed that this distinction is appropriate. Not only are customers different in the two segments, as mentioned by the parties, but also on the supply-side there are differences in the product offer destined for the commercial and the one destined for the public segment (with regard to packaging, product price, margins and marketing). The two sectors also differ with regard to growth rates (the commercial sector is growing at 3% per year while the social sector is stagnating and can be expected to decline in the future).
43. It has been further suggested by the parties that within certain product markets a distinction could be applied between “front-of-house” products, which are used, for example, in office buildings (e.g. ready-made drinks sold out of a coffee-machine) or canteens (such as salt, pepper and salad oils, which are offered at the tables of a canteen) and “back-of-house” products, which are typically used in the kitchen and not visible to the consumer. Apart from the difference in the intended use of these two product types, the parties have mentioned a number of other reasons for this distinction, including the strategy on branding and the difference in marketing, sales techniques applied and distribution systems.⁶
44. The market investigation has indeed indicated that for some product categories in the food-service sector a distinction between front-of-house and back-of-house products is appropriate, in particular for cold sauces and herbs, spices and seasonings. In the present case, however, the question whether such a distinction should be applied or not, can be left open since the result of the competitive analysis is the same for both alternatives.

Soups: ingredient based and ready-to soups

45. The parties draw a distinction between ingredient based (dry) soups, serving to prepare soups from scratch and so-called “ready to”-soups (ambient wet soups), which only require medium or low preparation skills and are “ready-to-heat and “ready-to-serve”. This distinction is based on the fact that there exist two main different types of kitchens: “Fully-equipped kitchens” with several cooks for different sectors (e.g. vegetables, meat, fish, etc.), who have high cooking skills and are able to prepare meals from scratch; and half-equipped kitchens, where there is usually only one chef and several assistants, who have a medium or low level of cooking skills. In the first

⁶ While for the supply of “back-of-house” products an understanding of the chef’s needs is required, the supply of “front-of-house” products requires a high level of awareness of end-consumers’ needs and desires: visibility and availability are key sales criteria for branded front-of-house products. Consequently, for “front-of-house” products sales techniques are focused more on merchandising and display, whereas for back-of-house products they are concentrated more on advice on the composition and use of the product to the chef. Moreover, there is a difference in the distribution of the two product types: Front-of-house products are normally distributed by vending machine operators, whereas back-of-house products are generally distributed through food service wholesalers.

category chefs are able to use ingredient-based dry soup products. In the second category chefs rather use more convenient soups, including ambient wet, chilled or frozen products.

46. The market test has broadly confirmed this delimitation. According to the investigation, ingredient based soups can be distinguished from ready-to soups not only because of the different skills involved in their preparation but also on the basis of the special characteristics of the two product types and the way they are offered and presented to the customer. Ingredient based soups are multi-portion soups for preparation in a saucepan with added water. Ambient wet soups are mostly soups with a very long shelf-life offered in cans, glass jars and aseptic packaging. As opposed to the parties' definition, some competitors are of the opinion that within ambient wet soups frozen and chilled products form a separate product market due to the need for different distribution logistics and storage facilities. Finally, the market test has indicated that within ready-to soups, instant soups again form a separate category: they are typically sold in single portions, ready-to drink after boiling water has been added. The average price level of instant soups is also considerably higher than that of other ready-to soups.
47. In conclusion, the market for soups can be subdivided into a market for ingredient based soups, for "ready-to"-soups and for instant soups. The question whether the market for ready-to soups includes frozen and chilled soups or not can be left open since the outcome of the competitive analysis will be the same with both alternative definitions.

Hot sauces: ingredient based and ready-to hot sauces

48. Similarly to the distinction applied in the market for soups, the parties distinguish between hot (dry) sauces which are ingredient based and "ready-to" (ambient wet) hot sauces. According to the results of the market investigation such distinction has been found appropriate on the basis of differences in the manufacturing process, the lower price of ingredient based sauces and the fact that the latter involve a higher degree of cooking skills and effort in use. Such a distinction also seems defensible with regard to demand side aspects, since most operators seem to define their product needs based upon production orientation or style of cooking (i.e. equipment or labour restraints, convenience requirements or a specific affinity for ingredients).
49. In summary, the market for hot sauces can be subdivided into a market for "ready-to" hot sauces and a market for ingredients based hot sauces.

Cold sauces (all ready-to)

50. Cold sauces are as a rule used most typically as an accompaniment to food dishes rather than to add flavour to the dish in the course of its preparation. Similarly to the delimitation applied in the food retail sector, the market for cold sauces can be subdivided into the categories for mayonnaise, salad dressing, ketchup, mustard and other cold sauces, each of them constituting separate product markets. This classification in several categories had been already confirmed in the decision M. 1802 Unilever/Amora-Maille as being justified by the different characteristic and use of each of them. Within these product markets, a further distinction can be drawn between "front-of-house" and "back-of-house" products (see explanation in paragraphs 43 and 44 above).

Bouillon

51. The parties argue that in food service both bouillon and herbs and spices are used as flavourings for dishes cooked from ingredients in the kitchen and that it would be thus permissible to regard them as parts of the same product market. The market test, however, indicated that a separation between these two product markets is appropriate.
52. The parties argue that the market for bouillon consists of stock cubes, granules (gravy), dry products (soup powder) and wet products (paste). Several market participants (especially in the UK), however, have explained that gravy granules would form a separate market from other bouillon products. Gravy granules are a type of hot sauce made by adding flour to the meat juices that collect in an oven roasting pan during the cooking process. These products are primarily used for the preparation of instant gravy by simply adding hot water. A number of competitors have stressed that bouillon products can at least partially be used as a substitute for gravy granules but not the other way round: gravy does not usually serve to make bouillon but rather as a basis for various types of sauce and broth added to meat dishes. In conclusion, the market test has supported the view that gravy granules are not a good enough substitute for other bouillon products.
53. In summary, a distinction can be drawn between the markets of bouillon and herbs, spices and seasonings and between gravy granules and other bouillon products.

Herbs spices and seasonings

54. The parties consider that all herbs, spices and seasonings are in the same product market. The market test has confirmed this view since customers frequently require suppliers to offer a complete range of those products. Within this market, a further distinction can be drawn between “front-of-house” and back-of-house” products (see explanations in paragraphs 43 and 44 above).

B. Relevant geographic markets

1. The retail sector

55. Unilever points out a trend towards harmonisation and Europeanisation of the retail sector. According to Unilever, a number of suppliers of consumer foods are established on a pan-European basis and tend to market more and more products under so-called Euro-brands that are employed in a number of European markets. In some cases, these brands may also be used globally. “Uncle Ben’s” in the case of Mars, “Maggi” or “Buitoni” for Nestlé, “Schwarz” for McCormicks, “Ragu” or “Raguletto” for Unilever and “Knorr” for Bestfoods would all form examples of Euro (and indeed global) brands. According to Unilever, suppliers of soups, sauces, food oils, jams and other culinary products are starting to encounter the same customers in different Member States following consolidation between retailers within Europe and expansion by retailers into other European countries.
56. According to Unilever, there is also a process of harmonisation of the standards that apply to the composition, production and labelling of consumer foods at EU level. Consumers are also exhibiting a greater degree of interest in the culinary traditions of countries outside national boundaries. There is evidence of a greater willingness to experiment with non-national culinary traditions. Unilever considers that there is no

technical, legal or practical barrier to the retail distribution of consumer foods products throughout Europe. This could lead to the development of the sourcing of the retailers' requirements at European rather than national level.

57. Notwithstanding that Europeanisation trend, Unilever supports the conclusion endorsed by the Commission in a number of cases involving the food sector, according to which the markets for consumer foods products are still to be considered national. This definition has also been widely confirmed by the market investigation in the present case for the following reasons : there is a considerable degree of divergence in the shares of the relevant suppliers in different Member States; consumer tastes vary between Member States; the Euro-brand remains the exception rather than the rule; the majority of supplies continue to be made through retailers which are predominantly or exclusively national in scope and therefore own-brands are available only on a national basis; and negotiations with customers are still conducted on a national basis.

2. The food service sector

58. The parties argue that food service markets are largely national in scope. This is because, similar to the situation in the retail sector, food service customers (horeca sector, leisure sector, cafés, etc.) have to respond to end-consumer tastes differing between Member States. There are also differences in the product recipes and in branding of food service products. Although a number of customers are organised on a European basis, the majority of customers (including wholesalers and "C&C" operators, which form the main channel of distribution in the food service sector) operate on national level. Suppliers' market shares differ widely between Member States and their sales forces are as a rule organised at national level.
59. The market test has indicated tendencies towards a widening in the scope of food service markets in the EEA, owing to increasing cross-border concentration in the retail sector and the introduction of the Euro. However, the market test has also confirmed that consumer taste varies between Member States. Furthermore, negotiations with retailers tend to be conducted on a national level. It can thus be concluded that both from a demand side perspective and a supply-side perspective food service markets to date remain predominantly national.

C. Assessment

1. Impact of the concentration on the retail sector

60. In order to identify the affected markets for the retail channel, Unilever has relied on two principal data sources, A.C. Nielsen and GfK. Unilever has principally used data from A.C. Nielsen for ambient wet soups, regular dry soups, hot and cold sauces, dry side dishes, food oils, jams and other culinary products. Unilever has used data from GfK in respect of the instant soups and pot snacks markets because they were respectively similar and not available from A.C. Nielsen. Where A.C. Nielsen or GfK data is unavailable, Unilever has supplemented information from either an alternative market research source (e.g. Food for Thought) or from internal local management estimates. All information is recorded in value terms at retail level, since the multiplicity of packaging formats and consequently of stock keeping units means that unit data is less meaningful. Given that both Unilever and Bestfoods supply top of the range branded products, value market shares for the parties will tend to be higher than unit market shares in any event.

61. Although Unilever and Bestfoods are supplying at wholesale level to retail outlets, retail sales data provides the only available indication of wholesale market shares and it is the source used by all suppliers to monitor movements in market shares. Consequently arose the issue relating to the attribution to the relevant manufacturers of the own label products' shares of supply manufactured by them for retailers. The product markets indeed include retailers' own brands, consistently with recent Commission decisions⁷. In the context of this operation, however, any such attribution-back would not materially affect the shares of the parties to the proposed concentration. Neither Unilever nor Bestfoods manufactures substantially products for the own label product ranges of the multiple grocers.
62. Following the above geographic and market definitions, 146 different national markets are affected, of which there are :
- 14 with a combined market share between 15 and 50% with an accretion of 5% or more
 - 3 with a combined market share of 50% or more with an accretion of less than 2%
 - 35 with a combined market share of 50% or more with an accretion of 2% or more.

Soups

63. The parties both sell **ambient wet soups** in Europe, but do not overlap in any single Member State. There are therefore no affected markets for ambient wet soups and no competition issues arise.
64. In relation to **regular dry soups**, Bestfoods, with its Knorr brand, is the market leader across Europe as a whole, and the parties overlap in five geographical markets: Belgium/Luxembourg (U: [1-10]%; B: [75-85]%), Finland (U: [10-20]%; B: [65-75]%), Ireland (U: [5-15]%; B: [50-60]%), Sweden, (U: [45-55]%; B: [45-55]%), and the UK (U: [10-20]%; B: [60-70]%). Unilever is not active in the other EEA countries. In all of the countries where the parties overlap, the combined market share would be greater than [60-70]%. There is therefore a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the markets for regular dry soup in Belgium & Luxembourg, Finland, Ireland, Sweden and the UK.
65. In relation to **instant dry soups**, Unilever holds a strong position in almost all EEA Member States. Unilever markets its soups under a variety of product names (Cup A Soup, Heisse Tasse, Minute Soup and Super Koppen) under national or regional endorser brands such as Batchelors, Unox, Royco and Blå Band. Bestfoods has introduced a range of competing products under the "Quick Soup", "Gourmet" and "Suppenliebe" names, sold under the Knorr brand.
66. In 1999 the parties had overlapping activities in the following markets: in Belgium/Luxembourg (U: [65-75]%; B: [10-20]%), Denmark (U: [5-15]%; B: [85-95]%), Finland (U: [85-95]%; B: [5-15]%), France (U: [70-80]%; B: [15-25]%),

⁷ Case M.1802 Unilever/Amora-Maille : the last decade has been characterised by a reduction in quality differences between branded suppliers' products and retailers' own label products, with market share growth by retailers' brand products at the expense of the branded suppliers' products.

Germany (U: [55-65]%; B: [15-25]%), Greece (U: [90-100]%; B: [1-10]%), Ireland (U: [20-30]%; B: [30-40]%), the Netherlands (U: [65-75]%; B: [5-15]%), Portugal (U: [70-80]%; B: [10-20]%), Sweden (U: [80-90]%; B: [10-20]%) and the UK (U: [50-60]%; B: [<5]%). In all of these markets except the UK ([55-65]%), the parties combined market share would be greater than [55-65]%. In their notification, the parties indicate that in Greece and the UK the products sold under the Bestfoods brand were de-listed prior to the announcement of the proposed deal and that there is currently no overlap. Nevertheless the Commission's market investigation uncovered concerns about the effects of the proposed merger in these markets. There is therefore a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the markets for instant dry soups in all the markets where they overlap, namely Belgium/Luxembourg; Denmark; Finland; France; Germany; Greece; Ireland; the Netherlands; Portugal; Sweden and the UK.

Dry carbohydrates

67. In relation to **Pot snacks** the parties are only both active in Belgium/Luxembourg. Unilever markets its "Aiki" noodles products under the Royco endorser brand ([55-65]%), and Bestfoods sells its "Pot Noodle" product ([1-10]%). Although Nissin is a competitor with a market share of just under [15-25]%, the merger would lead to the elimination of a competitor and would risk the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded
68. In relation to **Dry Side Dishes** the parties would have significant overlaps in Belgium/Luxembourg (U: [1-10]%; B: [15-25]%), France (U: [1-10]%; B: [10-20]%), Ireland (U: [5-15]%; B: [5-15]%). However, given the relatively low combined market shares in these markets, no competition concerns arise.
69. In Finland the parties will have a combined market share of [60-70]% (U: [30-40]%; B: [25-35]%). No other competitor has a market share of greater than [5-15]%, therefore it can be concluded that there is a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for dry side dishes in Finland.
70. In the Netherlands the parties will have a combined market share of [60-70]% (U: [20-30]%; B: [35-45]%). The nearest competitor in this market is Honig with [10-20]% followed by Gran Food with [5-15]%. Given the relatively weak position of these competitors it can be concluded that there is a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for dry side dishes in the Netherlands.
71. In Sweden the parties combined market share will be [60-70]% (U: [5-15]%; B: [50-60]%). Nestlé is present with a [10-20]% market share, and the own label brands of the multiple retailers have a [5-15]% market share. Given the relatively weak position of these competitors it can be concluded that there is a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for dry side dishes in Sweden.
72. In the UK, the parties will have a combined share of [50-60]% (U: [50-60]%; B: [<5]%). The supermarkets with their own labels, Kraft and Nestlé are all present in this market, nevertheless, the merger would eliminate a competitor and therefore it can be concluded that there is a risk that the operation would create or strengthen a

dominant position as a result of which effective competition would be significantly impeded in the market for dry side dishes in the UK.

Cold sauces

73. Regarding the relevant market for **mayonnaise**, the parties overlap in three geographical markets: Spain, France and Portugal.
74. In Spain, the combined market share is [40-50]% (U: [30-40]%; B: [5-15]%). The main competitor of the new entity will be Philip Morris/Kraft ([15-25]%) while distributors' own brands account for almost [10-20]% of the market. Ybarra, with a [5-15]% share, is a significant national competitor. Both Nestlé and Heinz (<5%) are also present on the market. In the light of these elements, there is no risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for mayonnaise in Spain.
75. The parties' activities overlap in France with a combined market share of [60-70]% (U: [40-50]%; B: [15-25]%). Unilever holds around [30-40]% with its brand Amora, the rest of its market share being achieved by the chilled mayonnaise under Benedicta brand (the Bénédicta ambient mayonnaise having been divested following the Unilever/Amora-Maille decision. Bestfoods holds around [20-30]% with its brand Lesieur. Consequently the new entity would aggregate the two major brands (Amora and Lesieur) in ambient mayonnaise and also in chilled mayonnaise (Amora and Bénédicta). Its main competitor would be the buyer of the Bénédicta brand for ambient mayonnaise ([10-20]%) and the retailer's brands ([10-20]%). In the light of these elements, it can be concluded that there is a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for mayonnaise in France.
76. The parties' activities overlap in Portugal with a combined market share of [80-90]% (U: [25-35]%; B: [50-60]%). This market share is achieved by Fima, a joint venture [...] owned by Unilever. The main competitor of the parties is Heinz with its "Taloe" brand ([5-10]%) and who has [1-10]%. Philip Morris and Nestlé are also present in this market. In the light of these elements, it can be concluded that there is a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for mayonnaise in Portugal.
77. Regarding the relevant market for **salad dressings**, the parties' activities overlap only in France. The combined market share is [50-60]% (U: [35-45]%; B: [10-20]%). As a condition of the merger Unilever/Amora-Maille, Unilever agreed to divest the Bénédicta brand for salad dressings. Consequently the new entity would aggregate the two major brands on three (Amora and Lesieur) in salad dressings. Its main competitor would be the buyer of the Bénédicta brand for ambient mayonnaise (around [15-25]%) and the retailer's brands ([20-30]%). In the light of these elements, it can be concluded that there is a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for salad dressings in France.
78. Regarding the relevant market for **ketchup**, the only geographical market where the parties' activities overlap is Portugal where Unilever has a market share of [25-35]% and Bestfoods a market share of [<5]%. The main competitor, Heinz, holds a market share of [35-45]% and there is also some competition from retailers' brands ([5-15]%).

In the light of these elements, it can be concluded that there is no risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for ketchup in any Member State.

79. Regarding the relevant market for **mustard**, Unilever holds some strong market shares in several Member States ([35-45]% in Belgium/Luxembourg, [55-65]% in Finland, [75-85]% in France, [40-50]% in Ireland, [20-30]% in Portugal, [30-40]% in Spain, [55-65]% in Sweden, [35-45]% in the United Kingdom). Nevertheless, no issue of competitive concern arises in relation to the markets for mustard in any Member State since Bestfoods is not active for mustard in these markets.
80. Regarding the relevant market for **other cold sauces**, the parties' activities overlap in the Netherlands and in Portugal.
81. In the Netherlands, their aggregated market share would be [35-45]%, with an increment of [<5]% corresponding to Bestfoods' position. The main competitor, Van Dijk, holds a market share of [10-20]%. There is also competition from Heinz ([1-10]%) and from retailers' brands ([5-15]%).
82. In Portugal, their aggregated market share would be [65-70]%, with an increment of [<5]% corresponding to Bestfoods' position. The main competitor, Heinz, holds a market share of [5-15]% and Ducros-Margao also holds a market share [5-15]%. The retailers' brands are almost nonexistent with a [<5]% market share.
83. In the light of these elements, it can be concluded that there is a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for other cold sauces in Portugal.

Hot sauces

84. Regarding the relevant market for **hot dry sauces**, the parties' activities overlap in Finland, Greece, Ireland, the Netherlands, Sweden and the United Kingdom.
85. In Finland, their aggregated market share would be [70-80]%, with an increment of [15-25]% corresponding to Unilever's position (Blå Band brand). The main competitor, Nestlé (Maggi brand), holds a market share of [15-25]% and there is also competition from retailers' labels ([1-10]%).
86. In Greece, their aggregated market share would be [80-90]%, with an increment of [<5]% corresponding to Unilever's position. The only competitors would be Nestlé (Maggi) with a market share of [5-15]% and Giotis, a local player, with [<5]%.
87. In Ireland, their aggregated market share would be [60-70]%, with an increment of [15-25]% corresponding to Unilever's position (Colman's and McDonnells brands). Competition in this market is presented by Erin as well as by McCormick's Schwarz range and by the own label product ranges of retailers ([<5]%).
88. In the Netherlands, their aggregated market share would be [35-45]%, with an increment of [<5]% corresponding to Unilever's position. Honig with a [25-35]% market share and Nestlé with a [10-20]% market share are the main competitors, supplemented by other local competitors and retailers brands ([<5]).

89. In Sweden, their aggregated market share would be [90-100]%, with an increment of [35-45]% corresponding to Bestfoods' position. The main competitor would be a national player, Matkompanient, which holds a [<5]% market share. The rest of market share corresponds to competition from retailers' label, in particular from KF with its Signum range of dry sauces.
90. In the United Kingdom, their aggregated market share would be [50-60]%, with an increment of [1-10]% corresponding to Bestfoods' position. The main competitors are McCormick with its Schwartz range of dry sauces ([25-35]% market share), Nestlé with its Cross & Blackwell range ([1-10]% market share) and the retailers' brands ([1-10]%). Discovery and Pillsbury ("Old El Paso") are also present on the market.
91. In the light of these elements, it can be concluded that there is a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for hot dry sauces in Finland, Ireland, Sweden and the United Kingdom.
92. Regarding **hot wet sauces**, the parties have defined two different markets for wet pasta sauces and other wet sauces.
93. On a market for **wet pasta sauces**, the parties' activities overlap in Ireland and in Germany. In Ireland, their aggregated market share would be [20-30]%, with an increment of [<5]% corresponding to Bestfoods' position. The new entity would face competition from Mars ([45-55]%).
94. In Germany, their aggregated market share would be [40-50]%, with an increment of [5-15]% corresponding to Unilever's position. The new entity would face competition from Kraft ([<5]%), Barilla ([<5]%), Nestlé ([<5]%) as well as established retailers' brands ([5-15]%).
95. The parties state that the market is widely contested by a number of multinational companies operating throughout the whole or large parts of the EU: leading competitors on an EU basis include Mars ("Dolmio"), Nestlé ("Buitoni"), and Heinz as well as Unilever ("Ragu"); among the second line players is Bestfoods and (at regional or national level) Barilla (Italy, France, Germany), Panzani (France) and Gruppo Gallo (Italy). They state that the total number of suppliers in this market is large and increasing and that the desire of consumers to buy authentic pasta sauces has favoured increased market penetration by smaller suppliers, such as Sacla, that combine an Italian origin with a broad and innovative range of products.
96. Nevertheless, in the light of the structure of market shares notably, it can be concluded that there is a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for wet pasta sauces in Germany.
97. On a market for **other hot wet sauces**, the parties' activities overlap in France, Germany and the Netherlands.
98. In France, the combined market share of the parties is [40-50]% with an accretion of [<5]% for Bestfoods. The new entity would face competition from Mars "Uncle Ben's" range ([15-25]%), with RHM ("Sharwoods") and Campbells also on the market and a range of own label products available ([5-15]%).

99. In Germany, the combined market share of the parties is [25-35]% with an accretion of [<5]% for Bestfoods. The new entity would face competition from Nestlé ([30-40]%), Masterfoods ([15-25]%) and retailers' labels ([<5]%).
100. In the Netherlands, the combined market share is [50-60]%, with an accretion of [10-20]% for Bestfoods. The majority of Bestfoods sales in the Netherlands are accounted for by the Conimex range of ethnic, in particular, Indonesian sauces. The parties state that Conimex sauces are just one element of a broader product range extending to some 200 stock keeping units. They argue that the Conimex range is invariably distinguished from other product lines in retail stores in the Netherlands by separate racking. More than half of the Unilever share in the Netherlands is accounted for by its "Chicken Tonight" range of sauces, a further [1-10]%, is represented by the Calvé "Aardappel Anders" potato bake range, and a further [1-10]% is accounted for by the canned "Rijke Sauzen" products. The parties state that the new entity will continue to face strong competition from a range of competitors which include Mars ([5-15]%), Nestlé ([<5]%) as well as own label products ([1-10]%).
101. In the light of these elements, it can be concluded that there is a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for other wet sauces in the Netherlands.
102. If considering an overall relevant market for **all hot wet sauces**, the geographic markets where competition concerns would remain identical, that is to say Germany and the Netherlands.
103. In Germany, the combined market share would be [35-45]%, with an accretion of [15-25]% for Bestfoods. The main competitor would be Nestlé with a [15-25]% market share, Masterfoods with [5-15]% market share and private labels with [1-10]%.
104. In the Netherlands, the combined market share would be [35-45]%, with an accretion of [5-15]% for Bestfoods. The main competitor would be private labels with [5-15]% market share, Masterfoods with [5-15]% market share and Heinz with [5-15]%.
105. In the light of these elements, it can be concluded that there is a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for all hot wet sauces in Germany and in the Netherlands.

Food oils

106. Regarding the relevant market for **seed oils**, Unilever markets seed oils under the "Becel", "Biskin", "Bona", "Crisp N Dry", "Fenomeno", "Flora", "Friol", "Livio", "Maya", "Sais", "Sol", "Spry", "Becht" and "Caterline" brands, amongst others. Bestfoods products in this category include its corn oil, canola oils and corn oil/olive oil blends, all marketed under the "Mazola" brand. The parties' activities overlap in Austria, Germany, Ireland and in the United Kingdom.
107. In Austria, the combined share of the parties would be [35-45]% with an accretion of [10-20]% for Bestfoods. Other competitors active on this market in Austria include Kronen ([5-15]%), Sonni ([5-15]%) and Esterman ([1-10]%), as well as competition from the own products of the retailers' labels ([1-10]%).

108. In Germany, the combined share of the parties would be [35-45]% with an accretion of [10-20]% for Bestfoods. The market is contested by the own label products of the multiple retailers ([20-30]%) and Nestlé with its “Sasso” and “Buitoni” brands ([10-20]%).
109. In Ireland, the combined share of the parties would be [50-60]% with an accretion of less than [<5]% for Bestfoods. The main competitors on the market will be the own label products of retailers ([15-25]%).
110. In the United Kingdom, the combined share of the parties would be [20-30]% with an accretion of [<5]% for Bestfoods. The market is dominated by the own label products of the multiple retailers, accounting for [55-65]% of the total seed oils market in the United Kingdom.
111. In the light of these elements, it can be concluded that there is no risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in any market for seed oils.
112. Regarding the relevant market for **olive oils**, Unilever markets olive oils under the “Bertolli”, “Fleur d’Olivier”, “Gallo” “Maille” and “Puget” brands. Bestfoods brands in this product market include “Napolina” in the United Kingdom, “Mazola” in Germany and “Goodalls” in Ireland. The parties’ activities in olive oils overlap in Germany only.
113. In Germany, the combined share of the parties would be [25-35]% with an accretion of [5-15]% for Bestfoods. The new entity will face competition from the own label products of the multiple retailers (which account for [15-25]% of the market), Villa La Badia ([5-15]%) and Minerva ([5-15]%).
114. In the light of these elements, it can be concluded that there is no risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for olive oil in any Member State.

Other culinary products

115. In relation to the markets for **bouillon**, the parties are both active in Belgium (U: [25-35]%; B: [45-55]%), Denmark (U: [5-15]%; B: [55-65]%), Finland (U: [1-10]%; B: [45-55]%), France (U: [<5]%; B: [15-25]%), Ireland (U: [15-25]%; B: [20-30]%), the Netherlands (U: [5-15]%; B: [10-20]%), Sweden (U: [15-25]%; B: [65-75]%) and the UK (U: [25-35]%; B: [10-20]%).
116. In France and the Netherlands, the combined market shares are [20-30]% and [20-30]% respectively. Combined market share of this magnitude do not raise competition concerns, in particular as in both markets, the combined entity will face competition from firms (such as Nestlé) with significant market shares.
117. In Belgium, Unilever markets products under the “Liebig”, “Liebox” and “Oxo” brands. The nearest competitor will have [10-20]% compared to the parties combined [75-85]%, therefore it is clear that there is a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for bouillon in Belgium.

118. In the Nordic countries, Denmark, Finland and Sweden, Unilever supplies its “Touch of Taste” product. As the Commission’s investigation could not exclude the possibility of a narrower market for wet bouillon, on that basis the parties’ combined market shares would be [90-100]% in Denmark (U: [75-85]%; B: [15-25]%), [90-100]% in Finland (U: [85-95]%; B: [5-15]%) and [90-100]% in Sweden (U: [80-90]%; B: [10-20]%). The merger therefore clearly strengthens dominant positions as a result of which effective competition would be significantly impeded in these markets for wet bouillon in Denmark, Finland and Sweden. There are no overlaps on the markets for dry bouillon in these countries.
119. In Ireland, on the basis of a market for all bouillons and gravies the parties’ combined share of [40-50]% is less than that of the market leader (RHM).
120. In the UK, on the basis of a market for all bouillons and gravies the parties would become the market leader, taking over from RHM’s “Bisto” brand with its [30-40]% market share. However, the market investigation indicated that in the UK, bouillon should be divided into stocks on one hand, and gravies on the other. On this basis, the parties combined share of the market for stocks would be [85-95]% (Unilever’s Oxo brand with [50-60]% and Bestfoods’ Knorr brand with [30-40]%). There is therefore a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for stocks in the UK.
121. In relation to the markets for herbs, spices and seasonings, the parties are both active in Belgium/Luxembourg (U: [20-30]%; B: [5-15]%), Ireland (U: [<5]%; B: [30-40]%), and Sweden (U: [35-40]%; B: [1-10]%). In both Belgium/Luxembourg and Ireland the merged entity will face competition from the market leader, McCormicks with its Schwarz brand. In Sweden, the merged entity will face competition from Nordfalks’ “Santa Maria” brand which has a market share of [40-50]%. For these reasons, no competition concerns arise in relation to these markets.

Jams

122. In relation to the markets for Jams, the only affected market is in Portugal where the combined entity would have a market share of [45-55]% (U: [15-25]%; B: [25-35]%). Andros is also present with its “St Dalfour” products ([15-25]%), and multiple retailers own brands represent [5-15]% of the market. Nevertheless, the combined market share creates a risk that the operation would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the market for jams in Portugal.

2. Undertakings proposed for the retail sector

a. Description of the undertakings

Divestments

123. Unilever undertakes to dispose of the entirety of the mayonnaise and salad dressings business under the Lesieur brand in France. This includes a transfer of the Lesieur

rights which are currently held by Bestfoods and would include an option enabling the buyer to acquire [] manufacturing facility [] and corresponding staff and contracts.

124. Unilever undertakes to dispose of the entirety of the jams business conducted by Bestfoods under the Casa de Matteus brand in Portugal. This would imply a transfer of the Casa de Matteus rights which are currently held by Bestfoods and would include a co-packing/supply agreements for the products to be divested and corresponding staff and contracts.
125. Unilever undertakes to dispose of the entirety of the Batchelors brand. This includes a transfer of the Batchelors rights which are currently held by Unilever and would include an option enabling the buyer to acquire the manufacturing facilities associated with the production of Batchelors products and the corresponding staff and contracts.
126. Unilever undertakes to dispose of the entirety of the McDonnells brand. This includes a transfer of the McDonnells rights which are currently held by Unilever and would include an option enabling the buyer to acquire the manufacturing facilities associated with the production of McDonnells products and the corresponding staff and contracts.
127. Unilever undertakes to dispose of the entirety of the Royco brand. This includes a transfer of the Royco rights which are currently held by Unilever and would include an option enabling the buyer to acquire the manufacturing facilities associated with the production of Royco products and the corresponding staff and contracts.
128. Unilever undertakes to dispose of the entirety of the Oxo brand. This includes a transfer of the Oxo rights which are currently held by Unilever and would include an option enabling the buyer to acquire the manufacturing facilities associated with the production of Oxo products and the corresponding staff and contracts.
129. Unilever undertakes to dispose of the entirety of the Blå Band. This includes a transfer of the Blå Band rights which are currently held by Unilever and would include an option enabling the buyer to acquire the manufacturing facilities associated with the production of Blå Band products and the corresponding staff and contracts.
130. Unilever undertakes to dispose of the entirety of the Touch of Taste brand. This includes a transfer of the Touch of Taste rights which are currently held by Unilever and would include an option enabling the buyer to acquire the manufacturing facilities associated with the production of Touch of Taste products and the corresponding staff and contracts.
131. Unilever undertakes to divest the Heisse Tasse instant soup brand in Germany. This includes a transfer of the Heisse Tasse rights which are currently held by Unilever and would include an option enabling the buyer to acquire the manufacturing facilities associated with the production of Heisse Tasse products and the corresponding staff and contracts.
132. Unilever undertakes not to reintroduce products which were de-listed before the merger was announced, for a period of [...], and which could create competition concerns were they to be re-introduced.

b. Evaluation of the undertakings

Soups

133. In relation to **regular dry soups**, the concentration created competition concerns in the markets for regular dry soup in Belgium & Luxembourg, Finland, Ireland, Sweden and the UK. The sale of the Royco brand removes the overlap in Belgium & Luxembourg; the sale of the Blå Band removes the overlap in Finland and Sweden and the sale of Batchelors and McDonnells removes the overlaps in the UK and Ireland respectively. The proposed package of remedies therefore removes the overlaps in all the markets for regular dry soups where the merger created competition concerns.
134. In relation to **instant dry soups**, the concentration created competition concerns in Belgium/Luxembourg; Denmark; Finland; France; Germany; Greece; Ireland; the Netherlands; Portugal; Sweden and the UK. The sale of the Royco brand removes the overlap in Belgium/Luxembourg, France, the Netherlands and Portugal; the sale of the Blå Band removes the overlap in Denmark, Finland and Sweden and the sale of Batchelors and McDonnells removes the overlaps in the UK and Ireland respectively. The sale of the Heisse Tasse instant soup brand in Germany removes the overlap between the parties. The market test of the commitments has shown that the endorser brand is of minor importance for these products. The commitment not to reintroduce products that were withdrawn prior to the merger removes any overlap issue in Greece. The proposed package of remedies therefore resolves all the competition issues that the merger raises in the markets for instant dry soups.

Dry carbohydrates

135. In relation to **dry side dishes**, the concentration created competition concerns in Finland, the Netherlands, Sweden and the UK. The commitment to divest the Blå Band will remove the overlap in Finland and Sweden, the commitment to divest the Batchelors brand in its entirety will remove the overlap in the UK, and the divestment of Supernoodles products in the Netherlands will remove the overlap there. The proposed package of remedies therefore resolves all the competition issues that the merger raises in the markets for dry side dishes.

Cold sauces

136. Regarding the market for **mayonnaise in France**, Unilever has proposed to dispose of the entirety of the mayonnaise under the Lesieur brand in France (transfer of the Lesieur rights). This divestment corresponds to Bestfoods' market share ([20-30]%) and solves the overlap.
137. Regarding the market for **mayonnaise in Portugal**, Unilever has proposed to dispose of the entirety of the mayonnaise under the Hellmanns brand in Portugal (transfer of the product only and licence for use of the current endorser brand to allow rebranding by the purchaser). This divestment corresponds to Bestfoods' market share ([50-60]%) and solves the overlap.
138. Regarding the market for **salad dressings in France**, Unilever has proposed to dispose of the entirety of the salad dressings under the Lesieur brand in France (transfer of the

Lesieur rights). This divestment corresponds to Bestfoods' market share ([10-20]%) and solves the overlap.

139. Regarding the market for **other cold sauces in Portugal**, Unilever has proposed to dispose of the entirety of the other cold sauces products under the Hellmanns' brand in Portugal (transfer of the products only and licence for use of the current endorser brand to allow rebranding of the products by the purchaser). This divestment corresponds to Bestfoods' market share ([1-10]%) and solves the overlap.

Hot sauces

140. Regarding the market for **hot dry sauces in Finland**, Unilever has proposed to dispose of the entirety of the hot dry sauces under the Blå Band brand in Finland (transfer of the products and of the brand). This divestment corresponds to Unilever's market share ([15-25]%) and solves the overlap.
141. Regarding the market for **hot dry sauces in Ireland**, Unilever has proposed to dispose of the entirety of the hot dry sauces under the McDonnells brand in Ireland (transfer of the products and of the brand) ; Unilever will also dispose of the entirety of the hot dry sauces products under the Colmans brand which will be rebranded to the Batchelors brand, which is to be divested under the same package. This divestment corresponds to Unilever's market share ([15-25]%) and solves the overlap.
142. Regarding the market for **hot dry sauces in Sweden**, Unilever has proposed to dispose of the entirety of the hot dry sauces under the Blå Band brand in Sweden (transfer of the products and of the brand). This divestment corresponds to Unilever's market share ([50-60]%) and solves the overlap.
143. Regarding the market for **hot dry sauces in the United Kingdom**, Unilever has proposed to dispose of the entirety of potato sauces products under the Colmans brand which will be rebranded to the Batchelors brand, which is to be divested under the same package. This divestment corresponds to [<5]% of the [45-55]% Unilever's market share and generate a combined market share of [45-55]%.
144. Regarding the market for **wet pasta sauces in Germany**, Unilever has proposed to divest the Raguletto wet pasta brand in Germany. Unilever will re-brand all the wet pasta sauces products sold elsewhere in the EEA under the Raguletto brand to Knorr. This divestment corresponds to Unilever's market share ([5-15]%) and solves the overlap.
145. Regarding the market for **other hot wet sauces in the Netherlands**, Unilever has proposed to dispose of the entirety of the other wet sauces products Aardappel Anders currently sold under the Calvé endorser brand and Rijke Sauzen currently sold under the Unox endorser brand (transfer of the products only [.....]). The market test of the commitments has shown that the endorser brand is of minor importance for these products. This divestment corresponds to [5-15]% market share and reduce the parties' combined market share to [40-50]%.

Other culinary products

146. In relation to **bouillon in Belgium**, Unilever's commitment to divest the "Liebig", "Liebox" and "Oxo" brands removes the overlap issue.

147. In relation to **wet bouillon in Denmark, Finland and Sweden**, Unilever's commitment to divest its "Touch of Taste" brand removes the overlap issues that would otherwise arise.
148. In relation to **stock cubes in the UK and Ireland**, Unilever's commitment to divest the Oxo brand removes the overlap issues.
149. The package of proposed remedies therefore addresses all the competition issues that arose in relation to the bouillon-related markets in Europe.

Jams

150. In relation to the market for **jams in Portugal**, the parties commitment to sell the Casa de Matteus brand in Portugal removes the overlap and solves the concerns raised.

3. Impact of the concentration on the food service sector

a. Market situation in general

151. In the food service sector, the main multinational first tier competitors of Unilever and Bestfoods are Nestlé, Mars, Heinz and Kraft. In addition, there are a number of national second-tier providers, which concentrate on their home markets. Some of them have important positions in certain niche markets, like for instance RHM Foodservice in bouillon and seasonings in the UK or Gallina Blanca in dry soups and sauces in Spain. Overall, however, these companies cannot base themselves on a product portfolio and multinational presence comparable to the first tier providers.
152. The most significant customers in the food service sector are the national wholesalers and "Cash & Carry" (C&C) operators. Of the products sold in the food service sector in the EU, 63% in 1999 were sold through wholesalers, 25% through "C&C" with direct sales accounting for the remaining 12%.⁸ These customers aim to reduce the number of their suppliers in order to achieve cost synergies. They also try to stock as wide a product range as possible in order to meet requirements from their clients, the end-users (hotels, restaurants, fast-food chains, leisure groups, etc.). According to the results of the market investigation, wholesalers aim to stock a whole product range per supplier/category (at least concerning the key brands). The large multinational suppliers are so-called "category-suppliers", whereas most regional providers concentrate on certain parts of the product portfolio within a category. Brand loyalty of customers is rather high since chefs and caterers tend to stick to long-established products, which are of proven consistent quality and high durability, since they want to offer to their clients a permanent quality service. Therefore, the introduction of new products and brands is a rather slow and complex process because chefs and caterers have to be convinced of the practicability and reliability of a new product.

b. Situation in the individual markets

Ready-to hot sauces

⁸ Source: Food for Thought; 1999

153. As regards ready-to hot sauces the parties' activities overlap to a minor degree in Austria, Belgium, The Netherlands and in the UK. In all these Member States, however, the parties' combined market shares after the operation remain below 30%: in Austria, they will achieve [20-30]%, the two next largest competitors each have [15-25]%; in Belgium the combined market shares will only be [5-15]%, the largest competitor has [35-45]%; in the Netherlands, the market after the concentration will still be rather fragmented: the parties will have a combined market share of [20-30]% with a small increment of [<5]% only, their largest competitors have [20-30]%, [5-15]% and [5-15]% respectively. In the UK the parties after the operation will only be the third largest competitor after the market leader with [30-40]% and the second player with [10-20]% (the fourth competitor still has [5-15]% of the market). In Germany, the parties' combined market shares will reach [40-50]% (Unilever: [35-45]%, Bestfoods: [1-10]%) but the next competitor Nestlé still has almost [25-35]% of the market, the third largest manufacturer has [5-15]%. In addition, there is a very well-known national provider on the market, the company Oetker ([<5]%).
154. It can thus be concluded that the concentration will not create a dominant position of Unilever/Bestfoods in ready-to hot sauces in these markets.

Hot sauces ingredients

155. In France, Bestfoods is already market leader with [60-70]%, together with Unilever ("Royco"; [<5]%) the parties will achieve combined shares of [65-75]%. Their two largest competitors will only have roughly one fourth of Unilever/Bestfoods' market share. However, Unilever has de-listed its hot sauces products and has stopped producing them for the French market. Therefore, there will be no overlap resulting from the present operation. Unilever has included in its undertakings (see the appendix to the present decision) a commitment not to reintroduce the same products under the same brand for a period of [...].
156. In Ireland the parties achieve combined market shares of [75-85]% (Unilever [25-35]% plus Bestfoods [45-55]%), there are no comparable challengers left on the market (the remaining competitors have [5-15]%, [1-10]% and [<5]% respectively). In the UK the parties' combined position post-merger with [55-65]%⁹ will be very strong. Bestfoods is already market leader with [35-45]% and the operation would remove the most important challenger with [15-25]%. The other competitors only have [10-20]%, [10-20]% and [5-15]% respectively. Competitors of Unilever and Bestfoods in the Irish and British market have stressed that the parties after the operation would enjoy significant competitive advantages over the remaining suppliers with regard to product range and presence with important customers in the catering sector (especially large wholesalers). The parties would have by far the strongest brands and resource base and would have a clear competitive advantage with regard to their sales force, marketing strategies and the budget spent on advertising. The operation would also increase entrance barriers to market entry for newcomers. The present suppliers do not seem to be in a position to exercise sufficient restraints on the parties' behaviour.
157. In summary, given the high combined market position of the parties and the considerable increment produced by the operation, together with the fact that the

⁹ According to some competitors, the combined shares of the parties might even be [60-70]%.

remaining competitors cannot be expected to exercise sufficient pressure on Unilever/Bestfoods' competitive behaviour, it can be concluded that the operation is susceptible to create dominant positions of Unilever/Bestfoods in Ireland and the UK.

158. Similarly to the situation in the UK and in Ireland, the operation also gives rise to competition concerns in the three Nordic countries. In Denmark, the parties after the operation will have a combined share of [45-55]% (Unilever [5-15]% and Bestfoods [35-45]%), the next two competitors only have [5-15]% and [<5]% respectively. In Finland, the parties maintain that their market shares post merger will amount to [35-45]% (Unilever [25-35]% plus Bestfoods [10-20]%), the two remaining players have [15-25]%, [10-20]% and [5-15]%. In the course of the market test, however, Unilever/Bestfoods' market share was estimated to be between 50-60 %, the position of the remaining players at 15-25% (Saarioinen), 10-20% (Raisio) and 5-10% (Nestlé). In Sweden, the parties as a result of the concentration will have [70-80]% combined market share (Unilever [35-45]% plus Bestfoods [30-40]%), the next largest players only have [<5]%, [<5]% and [<5]% respectively.
159. Wholesalers and C&C customers in all three Nordic countries have stressed that the Unilever and Bestfoods brands Knorr and Isomitta are very decisive elements in the stock of catering customers since they stand for quality and high durability. End-users would attach great importance to these brands and thus wholesale customers would have great difficulties to replace them with other brands in case of a future price increase introduced by Unilever/Bestfoods. Such replacement could only be effected with considerable investment and over a longer time period, with a high risk of loss of clients.
160. In conclusion, the operation is therefore susceptible to give rise to dominant positions of Unilever/Bestfoods in the market of hot sauces ingredients in the UK; in Ireland and in the three Nordic countries.

Cold sauces (all ready-to)

161. The parties have supplied market shares on the basis of an overall market for cold sauces without a further split into different categories such as mayonnaise, salad dressing, ketchup, mustard and other cold sauces. The parties have explained that there are no statistical data on the food service sector indicating market shares for the individual categories or segments ("front-of-house" and "back-of-house" segment) but have stated that their market positions would not differ substantially if they were to be broken down into the different segments.
162. In the absence of any contradictory information resulting from the market test, the parties' market shares in cold sauces are as follows: in Austria ([10-20]%), Belgium ([<5]%), Finland ([20-30]%), Germany ([5-15]%), The Netherlands ([15-25]%) and in the UK ([20-30]%) the concentration will only give rise to a modest increment in the parties' market shares, which will remain below [25-35]%; in all these Member States there are very strong international and national competitors active on the market, who have important market shares.
163. The only two Member States where Unilever/Bestfoods after the concentration will achieve combined market shares exceeding [25-35]% are France ([25-35]%; Unilever:

[15-25]%; Bestfoods: [5-15]%) and Ireland ([35-45]%). However, in France there are two other strong players left with comparable market positions of [20-30]% and [15-25]% each. In Ireland, the situation is similar: the three remaining challengers have [20-30]%, [15-25]% and [10-20]% each.

164. In summary, on the basis of these market positions and the results of the market investigation, it can be concluded that the concentration will not create dominant positions of the new entity in the market for cold sauces.

Ready-to-soups

165. With regard to ready-to soups the parties' activities only overlap in Belgium, where they achieve rather modest combined market shares of [<5]% (Unilever: [<5]%. Bestfoods: [<5]%). The three largest remaining competitors have market shares of [30-40]%, [20-30]% and [5-15]% respectively. Therefore, the operation will clearly not create a dominant position of Unilever and Bestfoods in the Belgium market for ready-to soups.

Soups ingredients

166. In France, Unilever ([5-15]%) and Bestfoods ([25-35]%) will achieve combined market shares of [35-45]%. The next players, however, still have market shares of [20-30]%, [15-25]% and [10-20]% respectively¹⁰. In the UK, Bestfoods is already market leader with [25-35]% market share, together with Unilever ([1-10]%) the parties' combined market share will be [30-40]%. However, there are still two major international competitors left on the market, who have [10-20]% and [5-15]% respectively.
167. Based on the market share figures and the results of the investigation it can be concluded that the concentration will not create a dominant position of the new entity in soups ingredients in France and the UK.
168. In the three Nordic countries the operation will produce very high market shares of the parties in soups ingredients. In Finland and Sweden the operation will clearly remove the most important challenger of Unilever. In these two Member States, the parties will achieve market shares of over [75-85]% (Finland: [55-65]% + [20-30]% = [80-90]%; Sweden: [40-50]% + [40-50]% = [85-95]%). After the operation there would be no comparable challenger left in these two Member States; the other suppliers only have comparably small market shares ([1-10]% and [1-10]% in Finland and [1-10]% and [<5]% in Sweden). Customers in Finland and Sweden have raised concerns with regard to the impact that the operation would have on their choice of suppliers in soups ingredients. Wholesalers have stressed the importance of the brands Knorr in Sweden and Isomitta in Finland, owned by Unilever/Bestfoods, which are by far the most decisive brands on the Finish market. In Denmark, the parties will achieve market shares of [45-55]% (Unilever [10-20]%, Bestfoods [30-40]%), the two major competitors have [20-30]% and [10-20]% each. With an increment of [10-20]%, the operation will considerably strengthen the position of the parties.

¹⁰ In any event, the entire overlap in soups ingredients in France will be removed by the parties' commitment to dispose of the products marketed under the brand "Royco" in the EEA.

169. The operation is therefore susceptible to create dominant positions of the parties in soups ingredients in Sweden, Denmark and Finland since there will be no other comparable supplier to exercise competitive constraints against the parties' combined market power.

Herbs, spices and seasonings

170. In herbs, spices and seasonings, the operation will only produce a minor overlap in Belgium (increment of [<5]%). Unilever/Bestfoods will have a combined market share of [15-25]%, their next competitors still have [5-15]%, [5-15]% and [5-15]% respectively. In the UK Unilever and Bestfoods are hardly present with market share of below [<5]% and [<5]% respectively. The situation is not substantially different if the parties' market position were to be considered in the segments separately for "back-of-house" and "front-of-house" products. In Sweden, the operation will lead to combined market shares for Unilever/Bestfoods of [30-40]%, the next competitor Nordfalks has [5-15]%. In Sweden, however, the parties are largely active in two different segments: Bestfoods with its main brand "Aromat" concentrates on "front-of-house" products¹¹ while Unilever with its Kockens brand is focussing on back-of-house products. In front-of-house products in Sweden the parties will achieve [30-40]% combined market share; the company Nordfalks is market leader with [60-70]% market share.
171. The operation will therefore not produce a dominant position of Unilever/Bestfoods in the market for herbs; spices and seasonings.

Bouillon

172. As regards bouillon, the parties' activities overlap to a minor extent in Belgium, France and in the Netherlands. In Belgium the parties will have combined market shares of [70-80]% but the increment will only be [<5]%. In France the new entity will be the third largest competitor with a [15-25]% combined market share, the two remaining largest competitors have [40-50]% and [20-30]% respectively. In Finland, the parties will achieve market shares of [45-55]% (Unilever: [5-15]%, Bestfoods: [30-40]%). The next competitors, however, still achieve market shares of [25-35]% and [15-25]%.
173. In the UK, on the basis of a broader market definition (including gravy granules) the parties will achieve market shares of around [35-45]%. Unilever is already market leader with [35-45]%. The operation will only result in a modest increment of [<5]%. The next largest competitor Nestlé has a market share of [25-35]%, the third and fourth player still have [5-15]% and [1-10]% respectively. If, on the contrary, the parties' market position were to be evaluated on the basis of a narrower market (bouillon products gravy granules *excluded*), Unilever/Bestfoods would have market shares of [55-65]% or above (Unilever: [10-20]%; Bestfoods: [40-50]%). Based on the narrower approach, competitors issued serious doubts with regard to the creation of a dominant position of the new entity in the British market as a result of the concentration.
174. In Denmark and Sweden, competition problems are likely to arise even on the basis of a broader market definition: Bestfoods is already market leader with important market shares of [40]% and [55-65]% respectively. As a result of the operation the new

¹¹ [65-75]% of Bestfoods' seasonings and spices are front-of-house.

entity's position will be considerably strengthened with an increment of [5-15]% and [20-30]% respectively, meaning that the parties after the operation will achieve market shares in Denmark of [50-60]% and in Sweden of [80-90]%, further increasing the distance to the next competitors.¹² In Denmark, the following two competitors have market shares of [15-25]% each. In Sweden there are no comparable competitors left on the market to challenge the position of Unilever/Bestfoods (the remaining players have rather insignificant market shares of [1-10]% and [<5]% respectively). Various catering customers in Sweden have issued concerns with regard to their choice of suppliers, which would be considerably narrowed as a result of the operation.

175. In conclusion, there are serious competition concerns that the concentration could lead to the creation or strengthening of a dominant position of the parties in bouillon in the UK (gravy granules excluded) and in Denmark and Sweden (both with a broader and a narrower approach to market definition).

4. Undertakings proposed for the food service sector

a. General description

176. In order to alleviate the competition concerns identified by the Commission in the food service sector, the parties have offered undertakings (see the appendix to the decision), which form an integral part of the present decision. Unilever has proposed to sell its existing businesses under the Unilever brands Blå Band (Sweden, Denmark), Isomitta (Finland), Batchelors (UK) and McDonnells (Ireland) to an independent competitor to be approved by the European Commission.
177. The following general principles will apply to these divestitures: First, Unilever will in each single case divest the whole product portfolio currently marketed under the above-mentioned brands and will not retain any products under these portfolios. Second, Unilever will also dispose of all the endorser brands and product brands under which the products are currently sold. Third, the divestiture of a certain brand and brand portfolio in the food services sector will equally include the divestiture of any existing corresponding portfolios in the retail sector (and vice versa). Fourth, the divestiture package will include the manufacturing facilities or corresponding supply arrangements but only if so required by the purchaser), as well the corresponding intellectual property rights and sales forces associated with the brand. The remaining conditions concerning the procedure of the sale are set out in detail in the undertakings (annexed in the appendix to the present decision).

b. Individual assessment of the proposed remedies

The Nordic countries

178. In order to meet the competition concerns raised by the Commission in soups ingredients and hot sauces ingredients in Finland and in soups ingredients, hot sauces and bouillon in Denmark and Sweden, the parties have proposed to sell the entirety of the Unilever business (products and brand name) conducted under the Blå Band brand (main Unilever endorser brand in Sweden and Denmark) and under the Isomitta (main

¹² On the basis of a narrower segmentation (gravy granules excluded) the parties would achieve even higher combined market shares.

Unilever endorser brand in food service in Finland). In the case of Sweden and Denmark this divestiture proposal will include all products both in retail and food service at present marketed under Blå Band in the EEA, including food service and retail dry desserts and retail instant dry soups and the sale of the endorser brand “Bong”/Touch of Taste for bouillon. In the case of Finland, the sale will comprise all food service products marketed under the Isomitta brand.¹³ From the date of the actual divestiture Unilever/Bestfoods will immediately stop using the Blå Band and Isomitta brands on any food service and food retail products produced by the new entity. Together with the Blå Band brand, Unilever will also sell the “Bong/Touch of Taste” endorser brand.

179. The divestiture package proposed by Unilever for the Nordic countries comprises all rights to the tangible and intangible assets connected with the brands, the necessary staff to continue the effective operation of the business and all existing contracts connected with the business. Unilever will also offer to the potential purchaser the [] manufacturing facility []. Alternatively, Unilever will enter into appropriate supply arrangements with the purchaser [].

¹³ Isomitta is a brand only used in Finland for a whole range of food service products.

180. The whole business to be sold under the Blå Band and Isomitta brand (including both retail and food services sales) in the EEA corresponds to 60.1 million EUR. The divestiture will reduce Unilever/Bestfoods' market shares as follows:

<i>Product/ reduction in the Member State concerned</i>	<i>reduction in Sweden:</i>	<i>reduction in Finland</i>	<i>reduction in Denmark</i>
<i>Soups ingredients</i>	by [40-50]%; from [85-95]% to [40-50]% (removes entire overlap)	by [20-30]%; from [80-90]% to [55-65]% (removes entire overlap)	by [10-20]%; from [45-55]% to [30- 40]% (removes entire overlap)
<i>Hot sauces ingredients</i>	by [35-45]%; from [70-80]% to [30-40]% (removes entire overlap)	By [25-35]%; from [35-45]% to [10-20]%	by [5-15]%; from [45-55]% to [35- 45]% (removes entire overlap)
<i>Bouillon</i>	By[20-30]%; from [80-90]% to [55-65]% (removes entire overlap)		by [5-15]%; from [50-60]% to [40- 50]% (removes entire overlap)

181. In terms of market share, the divestment proposed will remove the entire overlap generated by the concentration in the affected markets in the Nordic countries. In addition, the businesses offered for sale can be expected to enable the purchaser (who will have to be approved by the Commission) to exercise effective competition against the parties, even if Unilever will not be prevented to re-enter the divested product markets under a different brand (Knorr, for instance).¹⁴ This is because Blå Band and Isomitta are well developed and well established endorser brands and are widely used in the Nordic countries. The potential purchaser will acquire the entire product portfolio associated with Blå Band and Isomitta and thus the entire brand value. Unilever will not use these brands on any of their products from the date of the actual sale. These conditions will ensure that the brand value is not diminished as a result of the divestiture and that the use of the brand names will remain in the hand of only one supplier. The purchaser will also have the possibility to take over the existing customer base of Blå Band and Isomitta and to acquire the intellectual property rights attached to these brands. He will also obtain the sales and marketing force necessary to successfully promote the businesses.

¹⁴ The product recipes will not be for the exclusive use of the purchaser. In any event, the market test has indicated that the recipes do not present a substantive and indispensable value attached to the business since most of them are sufficiently known or at least easily accessible for most market participants in food service.

182. For the above-mentioned reasons, it can be concluded that the parties’ proposal presents an appropriate remedy to the competition concerns identified by the Commission in the Nordic countries.

Ireland and the UK

183. In order to meet the competition concerns raised by the Commission in hot sauces ingredients and bouillon in the UK and in hot sauces ingredients and soups ingredients in Ireland, the parties have proposed to sell the entirety of the Unilever business conducted under the “McDonnells” brand in Ireland as well as the businesses conducted under the “Batchelors” and under the “Oxo” brands in the UK. This divestiture will include all products in retail and food service at present marketed under these brands in the EEA, including instant dry soups food service and retail dry side dishes. From the date of the actual sale, Unilever/Bestfoods will immediately stop using the McDonnells, Oxo and Batchelors brands for the above-mentioned businesses without any transition period.

184. The whole businesses to be sold under the Batchelors, Oxo and McDonnells brands (food service and retail sales) corresponds to 292.7 million EUR. The divestiture will reduce Unilever/Bestfoods’ market shares as follows:

<i>Product/reduction in the Member State concerned</i>	<i>Reduction in Ireland</i>	<i>Reduction in the UK</i>
<i>Hot sauces ingredients</i>	by [25-35]% from [75-85]% to [45-55]%	By [10-20]% from [55-65]% to [40-50]%
<i>Bouillon (without gravy granules)</i>		By [40-50]% from [55-65]% to [10-20]%

185. The sale of Unilever’s McDonnells, Batchelors and Oxo businesses will remove the entire overlap between the parties with regard to hot sauces ingredients in Ireland and the UK and in bouillon in the UK. In addition to the reduction in market shares, the businesses offered for sale can be expected to enable the purchaser (who would have to be approved by the Commission) to exercise effective competition against the parties, even if Unilever will not be prevented to re-enter the divested product markets under a different brand (Knorr, for instance).¹⁵ The sale, in order to form a complete and viable package, will include all the businesses currently marketed under the Batchelors, Oxo and McDonnells brand in the EEA. The purchaser will be able to access the customer base associated with these businesses.

186. Batchelors¹⁶ is Unilever’s long-established endorser brand used in conjunction with a wide range of food products both in retail and food service. McDonnells is the Unilever

¹⁵ idem

¹⁶ The Batchelors brand is registered on behalf of Unilever throughout the EU with the exception of Finland and Ireland (where the rights are owned by a third party).

local endorser brand in Ireland, registered and available for use in Ireland for soups, sauces and other culinary products. Oxo is Unilever's well-established endorser brand for stocks in the UK. The purchaser will profit from full brand value since he will not only acquire the brands for the products where a competition problem has been identified but will be entitled to exclusively use Batchelors, Oxo and McDonnells together with all associated product brands for the entire portfolio (e.g. including not only Batchelors hot sauces ingredients and bouillon but also Batchelors very strong instant dry soups business). This will enable the purchaser to profit from the full economies of scale in terms of production and distribution costs associated with the individual brands. Furthermore, by acquiring the entire portfolio, the purchaser will obtain the negotiating power towards retail and food service customers associated with the brands.

187. Together with the brand portfolios Unilever will sell its [...] manufacturing plants [...] and will offer appropriate supply arrangements [...] as required by the purchaser. Moreover, the package will include the rights to all other tangible and intangible assets connected with the businesses, the staff necessary to the continuing operation of these businesses and all existing contracts connected with Batchelors, Oxo and McDonnells. In summary, with regard to the above-mentioned aspects, therefore, it can be concluded that the parties' proposal presents an appropriate remedy to the competition concerns identified by the Commission in the Irish and British food service markets.

VI ANCILLARY RESTRICTIONS

188. Under the Agreement and Plan of Merger ("the Agreement"), Bestfoods agrees in Section 4.01 to conduct its business in the ordinary course until completion of the merger. In Section 5.14 of the Agreement, the Unilever group agrees not to take any action which might materially impair its ability to complete the merger or delay its ability to complete the merger, action which is expressed to include further acquisitions of businesses or brands. To the extent that these clauses can be regarded as a restriction of competition, the Commission considers they are directly related and necessary to the implementation of the concentration.

VII. CONCLUSION

189. For the above reasons, on condition that the undertakings described in the annex to this decision are fully complied with, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted pursuant to Article 6(2) of Council Regulation (EEC) N0 4064/89.

For the Commission,
Michaele SCHREYER
Member of the Commission

NON-CONFIDENTIAL VERSION

CASE COMP/M. 1990-UNILEVER/BESTFOODS

Undertaking

On 16th August, 2000, Unilever N.V./Unilever PLC notified its proposed acquisition of sole control of Bestfoods to the Commission of the European Communities pursuant to Council Regulation (EEC) No 4064/89, as amended (“the EC Merger Regulation”).

In accordance with Article 6(2) of the EC Merger Regulation, and subject to clearance of the Transaction under Article 6(1)(b) of the Merger Regulation, Unilever undertakes in the terms set out in Part A below (“the Undertaking”) that it will divest certain businesses in certain EU countries as set out in Part B below (“the Businesses”) on the terms and conditions and subject to the provisions set out in Part C below (“the Common Provisions”).

A. UNDERTAKING

- 1.1 Unilever undertakes, subject to the provisions set out below, to effect the sale of the Divestment Package within [...] of the Decision to an independent third party purchaser or purchasers approved by the Commission (whose approval shall not be unreasonably withheld).
- 1.2 Unilever recognises that for a prospective purchaser to meet with the Commission’s approval pursuant to paragraph 1.1 such purchaser shall be unconnected to and independent of Unilever, able to maintain and develop the relevant Business or Businesses as active competitive forces. Unilever further recognises that for a prospective purchaser to meet with the Commission’s approval, that purchaser must be deemed reasonably likely to obtain all authorisations and consents required to effect a transfer of the relevant Business or Businesses.
- 1.3 Unilever shall be deemed to have complied with paragraph 1.1 above if, within a [...] period from the Decision (or such longer period as may be allowed by the Commission or as may result from the delays referred to in paragraph 1.5 below), it has entered into a binding letter of intent or a binding contract for the sale of all elements of the Divestment Package (subject to due diligence, regulatory consents and any other conditions not within the control of Unilever or the purchaser) provided that such sale is completed within a [...] period from the date of the relevant letter of intent or contract (or such longer period as may be allowed by the Commission).
- 1.4 Unilever shall:
 - (i) promptly inform the Commission in writing, with a fully documented and reasoned proposal, of any prospective purchaser who indicates a serious desire to purchase any of the Businesses and to whom Unilever is seriously considering the sale of any of the Businesses, enabling the Commission to verify the suitability of the prospective purchaser; and
 - (ii) when the parties have entered into a binding letter of intent or a binding contract for the sale of any of the Businesses, submit a full documented and reasoned proposal enabling the Commission to verify that the conditions laid down in these commitments are fulfilled and that there has been no material

change in the status of the purchaser not reasonably foreseeable at the time the Commission assessed that purchaser's suitability

subject to the Commission agreeing to keep confidential all such information received.

- 1.5 The Commission shall communicate in writing its approval or non-approval of a prospective purchaser within [...] days of receipt of a report identifying a prospective purchaser in accordance with paragraph 1.4(i) and a binding agreement and accompanying proposal in accordance with paragraph 1.4(ii). In each case, failure of the Commission to communicate its approval or non-approval within [...] days shall delay the running of the [...] period established in paragraph 1.3 until the Commission communicates its approval or non-approval. However, if the Commission does not communicate its approval or non-approval within [...] days of receipt as aforesaid, such approval shall be deemed to have been given unconditionally. In the case of a plurality of offers from prospective purchasers to whom the Commission does not object, Unilever shall be free to accept any offer or to select the offer it considers best.

B. THE BUSINESSES TO BE DIVESTED

2. Nordic countries (Sweden, Finland and Denmark)

Blå Band

- 2.1 Unilever undertakes to dispose of the Retail and Food Service Business currently conducted under the Blå Band brand in the Nordic countries together with Unilever's current rights to the Blå Band trademark in Nordic countries.

Bong/Touch of Taste

- 2.2 Unilever undertakes to dispose of the Business comprising sale of bouillon products under the Bong and Touch of Taste brands in Retail and Food Service in the Nordic countries, together with rights to the Bong and Touch of Taste trademarks in the Nordic countries.

Isomitta

- 2.3 Unilever undertakes to dispose of the Business comprising sale of Isomitta branded products for use in Food Service in Finland, together with rights to the Isomitta trademark in Finland.
- 2.4 For avoidance of doubt, Unilever confirms that with effect from completion of the sale of the Blå Band, Bong/Touch of Taste and Isomitta branded products Businesses described above, it shall cease to apply the trademarks concerned to any other products in Nordic countries.

3. United Kingdom and Ireland

Batchelors

- 3.1 Unilever undertakes to dispose of the Retail and Food Service Business conducted under the Batchelors brand in the UK together with Unilever's current rights to the Batchelors trademarks in any EEA Member State:
- 3.2 Unilever will prior to disposal of the Batchelors Business rebrand to Batchelors at its own costs and expense (including appropriate advertising and/or promotional support to assist in effective rebranding) the products currently marketed under the following endorser and product brands in the UK:

Product Markets	Current Endorser Brand	Products
Retail Hot Dry Sauces	Colmans	Potato Bake/Potato Roasters

Oxo

- 3.3 Unilever undertakes to dispose of the Retail and Food Service Business currently conducted under the Oxo brand in the UK and Ireland, together with Unilever's current rights to the Oxo trademark in any EEA Member State.

McDonnells

- 3.4 Unilever undertakes to dispose of the Retail and Food Service Business conducted under the McDonnells brand in Ireland, together with Unilever's current rights to the McDonnells trademark in Ireland.
- 3.5 Unilever will prior to disposal of the McDonnells Business rebrand at its own cost and expense (including appropriate advertising and/or promotional support to assist in effective rebranding) to McDonnells the following endorsed brands in Ireland.

Products/Product Markets	Current Endorser Brand
Retail Hot Dry Sauces	Colmans

4. Royco (France, Belgium and Portugal), Aardappel Anders, Rijke Sauzen and Uno (Netherlands) and Liebox/Liebig (Belgium)

Royco

- 4.1 Unilever undertakes to dispose of the entirety of the Retail and Food Service Business conducted by it (or in the case of Portugal, its associated company) under the Royco brand in France, Belgium and Portugal, together with Unilever's current rights to the Royco trademarks in any EEA Member State.

Aardappel Anders, Rijke Sauzen

- 4.2 Unilever undertakes to dispose of the Business comprising sale of other retail wet sauces under the Aardappel Anders and Rijke Sauzen brands and/or trademarks in the Netherlands, together with any rights to the Aardappel Anders and Rijke Sauzen trademarks in the Netherlands.

Supernoodles

- 4.3 Unilever undertakes to dispose of the Business comprising the sale of dry side dishes Supernoodles under the Supernoodles brand and/or trademark in the Netherlands, together with any rights to the Supernoodles trademark in the Netherlands.

Liebox/Liebig

- 4.4 Unilever undertakes to dispose of the Retail Business currently conducted by it in the supply of bouillon in Belgium under the Liebox and Liebig brands.
- 4.5 Unilever undertakes to procure consent to assignment to the purchaser of the rights to the Liebig/Liebox brand which are held by Unilever under the terms of a long term trademark licence.

5. France

Lesieur

- 5.1 Unilever undertakes to dispose of the entirety of the mayonnaise and salad dressings Business conducted by Bestfoods under the Lesieur brand in France.
- 5.2 Unilever undertakes to procure consent to an assignment to the purchaser of the rights to the Lesieur brand [...] in accordance with the terms of a long term licence under which rights to the Lesieur brand are currently held by Bestfoods.

6. Germany

Heisse Tasse

- 6.1 Unilever agrees to divest the instant soup Business in Germany currently conducted under the Heisse Tasse brand, together with all Unilever's current rights in the Heisse Tasse trademark in Germany.

Raguletto

- 6.2 Unilever undertakes to dispose of the retail wet pasta sauce Business conducted by Unilever under the Raguletto brand in Germany, together with Unilever's current rights to the Raguletto trademark in any other EEA Member State. However, in those EEA Member States (other than Germany) where Unilever currently sells wet pasta sauces under the Raguletto brand, the assignment shall take effect on the earlier of completion of rebranding by Unilever away from the Raguletto trademarks or the expiry of two years from completion of the transaction.

7. Portugal

Casa de Mateus

- 7.1 Unilever undertakes to dispose of the entirety of the jams Business conducted by Bestfoods under the Casa de Mateus brand in Portugal.
- 7.2 Unilever undertakes to procure consent to assignment to a purchaser of the rights to the Casa de Mateus brand, currently held by Bestfoods under the terms of a long term licence.

Mayonnaise and other cold sauces

- 7.3 Unilever agrees to take appropriate steps to eliminate the current overlap in the Retail supply of mayonnaise and other cold sauces in Portugal. For this purpose, Unilever undertakes within [...] of Completion of the Transaction to find a purchaser for the Business currently conducted under the Hellmann's brand in Portugal who is prepared to take a two year licence of the Hellmann's brand with a view to rebranding away from Hellmann's within that period. [...].

8. Other provisions

- 8.1 It is the intention that each of the Businesses identified above will be sold as an on-going business. Thus in addition to offering appropriate production facilities or appropriate supply agreements, the offer for sale includes suitable sales and marketing and distribution staff in order to ensure the continuing effective operation of each Business to be divested.
- 8.2 For avoidance of doubt, Unilever confirms that it will not as a condition of sale of any of the Businesses impose an obligation on the purchaser to acquire associated production facilities from Unilever.
- 8.3 Where within a period of [...] prior to Completion of this transaction a product has been delisted in any given market by either Unilever or Bestfoods so as to eliminate any product overlap otherwise giving rise to a relevant affected market for purposes of Form CO, Unilever undertakes that it will not for a period of [...] following completion of the transaction re-introduce a similar product under the same brand in the market concerned. For avoidance of doubt, this undertaking shall not preclude Unilever from transferring any endorser brand for use on any product already on such market as of the date of completion of the transaction, nor shall it operate so as to prevent Unilever from re-entering any market from which it would otherwise be excluded by reason of this undertaking.

C. COMMON PROVISIONS

9. Definitions

“Bestfoods”	means the company known as Bestfoods and, where the context admits and requires, the subsidiaries, divisions, groups and affiliates which are directly or indirectly controlled by Bestfoods;
“Business”	means any and each of the Businesses identified in Part B above (together “the Businesses”);
“Commission”	means the Commission of the European Communities;
“Completion”	means closing of the Transaction under the Agreement and Plan of Merger between Unilever and Bestfoods dated 6th June, 2000;
“Days”	means Commission working days;
“Decision”	means the Decision of the Commission to clear the Transaction under Article 6(1)(b) of the EC Merger Regulation;
“Divestment Package”	means the Businesses to be sold by Unilever under the terms of this Undertaking;
“Food Service”	means the sale of products intended primarily for consumption out-of-home;
“Retail”	means the sale of products to consumers through retail outlets;
“Transaction”	means the proposed acquisition by Unilever of sole control of Bestfoods as notified to the Commission on 16th August, 2000 pursuant to the EC Merger Regulation;
“Unilever”	means Unilever N.V. and Unilever PLC and, where the context admits and requires, the subsidiaries, divisions, groups and affiliates which are directly or indirectly controlled by Unilever.

10. Appointment of a Trustee

- 10.1 Within [...] days after the Decision, Unilever will propose to the Commission two trustees, who are independent of Unilever (“Proposed Trustees”). The appointment of the Proposed Trustees is subject to approval of the Commission. If the Commission does not reject the Proposed Trustees by notice in writing within [...] days of the proposal, the Proposed Trustees shall be deemed to have been approved.

If both Proposed Trustees have been approved, then Unilever shall, at its own discretion, appoint one of them.

- 10.2 If the Proposed Trustees are rejected, Unilever will propose the name of a new trustee (“New Trustee”) within [...] days of being informed of the rejection. If the Commission does not reject the New Trustee by notice in writing to Unilever within [...] days of the new proposal, the New Trustee shall be deemed to have been approved.
- 10.3 If the New Trustee is rejected by the Commission, the Commission shall nominate a suitable Trustee (“the Commission Trustee”) which Unilever will appoint or cause to be appointed.

11. Trustee’s Mandate

- 11.1 Within [...] days of the date on which the Commission has approved or is deemed to have approved either the Proposed Trustees, the New Trustee or the Commission Trustee, Unilever shall enter into a mandate agreement (the “Mandate”) with the approved Trustee (“the Trustee”), the terms of which shall have previously been agreed with the Commission which confers on the Trustee all the rights and powers necessary to permit the Trustee to monitor the Unilever’s compliance with the terms of this Undertaking and in a manner consistent with the purpose of this Undertaking.
- 11.2 Throughout the duration of the Trustee’s appointment the Trustee shall:
- (i) provide written reports (the “Trustee Reports”) to the Commission on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Trustee has been unable to discharge such duties. The Trustee Reports shall be provided at two monthly intervals, commencing [...] after the date of the appointment of the Trustee, or at such other times or time periods as the Commission may specify and are notified in writing to Unilever. Unilever shall receive a non-confidential copy of such Trustee Reports;
 - (ii) monitor and advise the Commission as to the development of the procedure for selecting a purchaser and as to the conduct of the negotiations;
 - (iii) monitor and advise the Commission as to whether prospective purchaser(s) with whom Unilever intends to negotiate are likely to satisfy the Commission’s requirements as to suitability;
 - (iv) monitor the maintenance of the viability and marketability of the Businesses and the products to which they relate and ensure that they are managed in the ordinary course of business, pursuant to good business practice.
- 11.3 The Trustee’s duties and functions as set out above shall not be extended or varied in any way by Unilever, save with the express consent of the Commission. Any instruction or request to the Trustee from Unilever which conflicts with the terms of the Mandate and duties and functions as set out above will be considered null and void.
- 11.4 After [...] (or such longer period as may be agreed by the Commission or as may result from the delays referred to in paragraph 1.5 of the Undertaking above) have

lapsed from the Decision without Unilever having entered into a binding agreement for the disposal of all elements of the Divestment Package, the Trustee shall be given an irrevocable mandate to negotiate and conclude arrangements for the sale of those Businesses in relation to which a binding agreement remains to be concluded within [...] to a viable and independent third party [...].

- 11.5 If, however, the Trustee is unable to conclude such an arrangement at the end of the [...] period (or such longer period as may be agreed by the Commission) within which the Trustee is required to conclude arrangements, the Trustee is entitled to enter into arrangements [...] for a further maximum and non-extendable period of [...].

12. Miscellaneous

- 12.1 The Trustee will provide Unilever with all reasonable assistance and will procure (so far as it is able) that all relevant third parties provide such assistance required to ensure compliance with this Undertaking. Unilever will provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible by Unilever as the Trustee may require in carrying out its Mandate, and to pay reasonable remuneration for its services.

- 12.2 Notwithstanding the Trustee's overall responsibility to discharge its functions and in particular notwithstanding the Trustee's position as an independent unrelated third party, the Trustee (who shall undertake in the Mandate to do so) shall have to the extent possible given the nature of its tasks due regard to the commercial interests of Unilever.

- 12.3 The Mandate and this Undertaking shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated if Unilever announces that the Transaction has been irrevocably abandoned.

- 12.4 The Trustee's and all other relevant third parties' powers of attorney and appointment shall be irrevocable.

13. Interim Position

- 13.1 Following the Decision and pending the sale of each Business, Unilever undertakes to preserve the full economic and competitive value of each Business until the date of disposal in accordance with good commercial practice, and to manage each Business in the best interests of that Business. In particular, Unilever undertakes not to carry out any act upon its own authority which may reasonably be expected to have a significant adverse impact on the economic value, the management, or the competitiveness of any of the Businesses until the date of disposal. Unilever also undertakes not to carry out upon its own authority any act which may be of such a nature as to alter the nature or the scope of activity, or the industrial or commercial strategy, or the investment policy of any of the Businesses. Sufficient resources shall be made available for the Businesses to develop until the disposal, based on any approved strategic and (annual) business plans of the Businesses as adopted in the ordinary course of its business.

14. Conditionality

14.1 The obligations entered into by Unilever under this Undertaking are conditional upon clearance pursuant to Article 6(1)(b) of the Merger Regulation by the Commission of the Transaction no later than 28th September, 2000.

15. Governing Law and Provisions

15.1 This Undertaking is governed by, and shall be construed in accordance with, the laws of England and Wales.

Signed

STEPHEN G. WILLIAMS

Duly authorised on behalf of Unilever N.V./Unilever PLC

**Joint Secretary and General Counsel
Unilever N.V./Unilever PLC**