EN

Case No COMP/M.2399 - FRIESLAND COBERCO / NUTRICIA

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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PUBLIC VERSION

MERGER PROCEDURE ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

<u>Subject</u>: Case No COMP/M.2399 - FRIESLAND COBERCO / NUTRICIA
Notification of 09.07. 2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 9 July 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89[1] by which the undertaking Friesland Coberco Dairy Foods Holding N.V. ("FCDF"), controlled by the Dutch dairy co-operative Zuivelcoöperatie De Zeven Provinciën U.A., acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Nutricia Dairy and Drinks Group ("NDDG"), division of Koninklijke Numico N.V., Netherlands, by way of purchase of shares and assets.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. Friesland Coberco Dairy Foods Holding N. V. ("FCDF") is a multinational company based in the Netherlands which develops, produces and sells a range of branded dairy products and fruit-based drinks for the consumer market, professional users and food manufacturers. FCDF is a holding company which is 100% owned by the Dutch dairy co-operative Zuivelcoöperatie De Zeven Provinciën U.A.

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[1] OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

Rue de la Loi 200, B-1049 Bruxelles/Wetstraat 200, B-1049 Brussel - Belgium
Telephone: exchange 299.11.11
Telex: COMEU B 21877. Telegraphic address: COMEUR Brussels.

4. Nutricia Dairy & Drinks Group ("NDDG") comprises several dairy companies in the Netherlands, Belgium, Germany, United Kingdom, Hungary, Romania, Czech Republic and Slovakia involved in production of dairy drinks, sport drinks and coffee whiteners. NDDG is currently part of Netherlands-based multinational company Koninklijke Numico N.V. ("Numico").

5. The operation consists of acquisition of sole control by FCDF of NDDG by way of purchase of shares and assets as set out in the Share Purchase Agreement signed on 20 June 2001. As a result of the concentration, FCDF will acquire the business of NDDG, including (i) the shares in or assets of the companies forming part of NDDG's business and (ii) the trademarks and other intellectual property rights related to NDDG's business.

6. The acquisition is part of FCDF's strategy to find higher value outlets for the sale of the milk produced by members of the dairy co-operative. FCDF will also strengthen its presence in Eastern Europe, which is becoming a strategically important region for dairy producers. For Numico the sale of its dairy and drink division is part of its strategy to focus on infant nutrition, clinical nutrition and nutritional supplements rather than the dairy drinks of NDDG.

II. CONCENTRATION

7. The operation is a concentration in the sense of Article 3(1)(b) of the Merger Regulation since FCDF will acquire sole control of NDDG.

III. COMMUNITY DIMENSION

8. Undertakings FCDF and NDDG have a combined aggregate world-wide turnover amounting to EUR 4,448.48 million[2]. (FCDF, EUR 4,113.52 million; and NDDG, EUR 374.96 million) therefore in excess of EUR 2,500 million. In three Member States (the Netherlands, Belgium and Germany) the undertakings combined aggregate turnover is more than EUR 100 million, in each of these Member States each of the two undertakings' aggregate turnover exceeds EUR 25 million and the aggregate Community-wide turnover of each of the two undertakings is more than EUR 100 million. The notified operation therefore has a Community dimension pursuant Article 1(3) of the Merger Regulation, but does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

9. The activities of the parties overlap in the production and sale of two product groups: flavoured dairy drinks and coffee whiteners.

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[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.

1. Flavoured dairy drinks

10. The parties submit that flavoured dairy drinks are part of a wider relevant product market for dairy drinks, including plain milk, buttermilk and flavoured dairy drinks. They argue that, even though there are differences between flavoured dairy drinks and plain dairy drinks in price, composition and taste, flavoured dairy drinks are perceived by the consumer as a substitute for plain dairy drinks as both are healthy and tasty thirst quenchers. The parties further argue that there is a high degree of supply side substitutability as the production equipment and distribution channels are basically the same for all these products.

11. The results of the market test carried out by the Commission are ambiguous. Some suppliers and buyers of flavoured dairy drinks support the broad definition of relevant product market submitted by the parties on the basis of the same arguments. On the other hand, many responses indicate that the product market is narrower consisting only of flavoured dairy drinks as consumers would not switch between flavoured dairy drinks and plain dairy products. Some of them even consider the various segments of flavoured dairy drinks as distinct product markets.[3]

12. One can distinguish between milk on the one hand and flavoured dairy drinks on the other hand. Flavoured dairy drinks include milk that is fruit flavoured and chocolate flavoured. Within the category of flavoured dairy drinks one could further break down the product market between health oriented and indulgence oriented drinks. The former are consumed as a variation to plain milk, are perceived to be more healthy, often have a short shelf life and are aimed at adults. FCDF's "Milk and Fruit" consisting of 20% fruit juice and 80% milk would fall into this category. Indulgence oriented dairy drinks are regarded as less healthy because they are not fresh but long life, contain artificial fruit flavouring and/or sugar and are aimed at children. . NDDG's "Fristi" would fall into this category as well as chocolate milk. In a further delimitation one could consider chocolate milk as a further separate market. FCDF markets chocolate milk under the brand Choq and NDDG under the brand Chocomel. One might even consider within that market to distinguish between ready to drink chocolate milk on the one hand and chocolate powders on the other.

13. However, it is not necessary to delineate precisely the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded as is shown in the assessment below.

14. In accordance with the Unilever/Bestfood decision[4] a distinction is further made between two main distribution channels: the retail channel and the food service channel. Both these distribution channels are considered as different markets, because of distinguishing features including a service dimension, separate sales forces, different price structures, different packaging sizes and different health and safety regimes. This distinction has been supported by the results of the market test.

2. Coffee whiteners

15. The parties submit that the relevant product market should include plain milk used to whiten a coffee, coffee cream and coffee milk (liquid coffee whiteners). They argue that there is

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3 For an overview of the different segments see annex.

4 Commission decision of 28 September 2000 (COMP/M.1990 – Unilever/Bestfoods)

increasing demand-side substitutability between these products reflected by the fact that more and more plain milk is used as a coffee whitener. In addition they submit that there is a high degree of supply-side substitutability due to easy switching from the production of plain milk to coffee milk and coffee cream. On the other hand they argue that non-dairy coffee whiteners form a separate product market as they consist of powder, they are made primarily from non-dairy ingredients and with different equipment.

16. The results of the market test carried out by the Commission are again ambiguous. Some of the suppliers and buyers of coffee whiteners supported the broad definition submitted by the parties and argue that all these products serve the same purpose to whiten coffee. They also argue that the consumption of plain milk as coffee whitener is increasing due to increasing popularity of cappuccino and trend toward healthier eating (coffee milk and coffee creamer are relatively high-fat products). On the other hand many responses exclude plain milk and indicate that the markets should be narrower consisting only of coffee milk together with coffee cream. They argue that consumers do not consider plain milk as substitute for coffee cream or coffee milk. Many responses of both above two types also included the non-dairy coffee creamer in the coffee whiteners relevant market as its purpose is the same.

17. However, it is not necessary to delineate precisely the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded as is shown in the assessment below.

18. For the same reasons as for flavoured dairy drinks also in case of coffee whiteners a distinction is further made between the two distribution channels – retail channel and food service channel, which has been again supported by the market test.

B. Relevant geographic market

19. The relevant geographic market for both flavoured dairy drinks and coffee whiteners are national because of the following reasons: there is a considerable degree of divergence in the shares of relevant suppliers in the different member States, consumer tastes differ between Member States, Euro brands are the exception brands and prices differ between Member States and customers operate mainly on a national level.[5] The market test contained no elements that would indicate a wider geographic market. The geographic relevant market concerned is therefore the Netherlands. The parties are active also in other Member States, nevertheless there are minor overlaps only in the flavoured dairy drinks markets in the United Kingdom and Germany (combined market share not exceeding [10-15]% in either of these markets) which renders closer analyses of these markets unnecessary .

C. Assessment

1. Flavoured dairy drinks

20. In the Netherlands, in addition to plain milk and buttermilk, FCDF sells two flavoured dairy drinks: Milk and Fruit, which is a mixture of 80% milk and 20% fruit juice, and Choq, which is a chocolate flavoured dairy drink. NDDG does not have any sales of plain milk and buttermilk. It sells two flavoured dairy drinks in the Netherlands: Fristi, a fruit flavoured dairy drink, and Chocomel, a chocolate flavoured dairy drink.

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5 Commission decision of 28 September 2000 (COMP/M.1990 – Unilever/Bestfoods)

a. Retail Market

21. In the retail market, the parties' combined market share in the flavoured dairy drinks market in the Netherlands varies from [15-20]% to [60-70]% depending on the product market definition. Taking into account the definition suggested by the parties (i.e. a wider market including plain milk, butter milk and flavoured dairy drinks), FCDF and NDDG have market shares of [10-15]% and [5-10]% respectively, resulting in a combined market share of [15-20]%. On the basis of a market containing only flavoured dairy drinks the market shares of FCDF and NDDG amount to [5-10]% and [15-20]% respectively, giving the combined market share of approximately [20-30]%. In the various segments of flavoured dairy drinks the market shares would be as follows: In health-oriented drinks, where NDDG is not active, FCDF has a market share of [15-20]%. In indulgence-oriented drinks FCDF has [1-5]% and NDDG [20-30]% market share (combined market share [20-30]%) and in chocolate flavoured drinks FCDF has [5-10]% and NDDG [40-50]% (combined market share [60-70]%). If one were to confine chocolate flavoured drinks to the ready to drink segment only, i.e. excluding syrup and powder, the market share of FCDF would amount to [5-10]% that of NDDG to [50-60]% and a combined market share of [60-70]%.

Table 1 - Market shares of the parties on the basis of alternative market definitions for flavoured dairy drinks products in the retail market (in %)

	FCDF	NDDG	Combined share
All dairy drinks	[10-15]	[5-10]	[15-20]
Flavoured dairy drinks	[5-10]	[15-20]	[20-30]
Health-oriented dairy drinks	[15-20]	[below 1]	[15-20]
Indulgence-oriented dairy drinks	[1-5]	[20-30]	[20-30]
Chocolate flavoured dairy drinks	[5-10]	[40-50]	[60-70]
Chocolate flavoured dairy drinks, ready to drink only	[5-10]	[50-60]	[60-70]

22. As can be seen from these figures, there are almost no major overlaps between parties activities on the basis of alternative market definitions, particularly in the narrower market definitions. This is due to the complementarity of their products which generally have different characteristics and therefore compete in different parts of the flavoured dairy drinks market. In the flavoured drinks sector FCDF's brand Milk & Fruit is positioned as health oriented and short shelf life drink, whereas NDDG's brand Fristi as an indulgence oriented, long shelf life drink. Only the chocolate flavoured dairy drinks of the parties, i.e. FCDF's brand Choq and NDDG's brand Chocomel, have more in common. The different packaging - much of Chocomel is packed in glas bottles - makes them suitable for different uses from the consumer's point of view however.

23. The market shares show that on the basis of most alternative market definitions the concentration does not lead to significantly high market shares in the retail market. Only on a market for chocolate flavoured dairy drinks, the market shares would be higher. This is particularly so if one were to define a separate market for ready to drink chocolate flavoured drinks as opposed to powders and syrups. Since there is no difference in composition or taste between those products, but just in the manner of preparation, it is unlikely to find them on different markets. If that were the case however, the close substitutability between the two areas would act as a price constraint. However even on the basis of the market definitions

which result in high market shares, these would not be indicative of market power for the following reasons:

24. After the concentration the merged entity would in all segments continue to face competitive constraints in particular from its biggest competitor Campina Melkunie, which is also one of Europe's largest dairy co-operatives. In the Netherlands Campina Melkunie has market shares that are higher than those of the merged entity in nearly all alternative market definitions: [20-30]% in the market for all dairy products, [30-40]% in the market for flavoured dairy drinks, [50-60]% in the market for health oriented dairy drinks and [20-30]% in the market for indulgence-oriented drinks. Only on a separate market for chocolate flavoured dairy drinks, the market share of Campina Melkunie would be [*below* 1]% since *[description of its degree of presence*] there. However, in this area there are other important competitors with European-wide presence such as Nestle (market share [10-15]%) and Unilever (market share [1-5]%), which would have a potential to increase significantly their sales in the Netherlands if the merged entity increased prices of its products. Furthermore, other European-wide active food producing company Mars has launched recently in some Member States a creamy chocolate milk which may soon be launched in the Netherlands as well. Therefore under any of the alternative market definitions the parties face a strong competitive pressure from their actual and potential competitors.

25. The parties also face strong countervailing power of their customers – large retail chains in the Netherlands such as Albert Heijn, Superunie, Schuitema and Laurus. This strong buyer power is demonstrated by the fact that the four biggest customers account for [70-80]% and [80-90]% of total sales in the retail market of FCDF and NDDG respectively. The position of retailers is further strengthened by the fact that they are not only customers of dairy drinks producers, but also powerful competitors with their sales of private label dairy drinks in all alternative markets with the exception of health-oriented drinks (where there is no overlap between the parties' activities).

26. The market share of private labels ranges between [20-30]%-[30-40]%, which illustrates their importance as another competitive constraint on the parties. These high shares of private labels are partly due to the fact that the dairy industry is volume driven and has to cope with an oversupply of raw milk. The majority of the European dairy producers are co-operatives which are obliged to purchase and process all the milk produced by their farmer members. As raw milk cannot be stored this puts pressure on the industry to find outlets for the milk. This leads to a continuous emergence of new concepts of flavoured dairy drinks. The production of private labels is a convenient outlet for dairy producers who do not want to invest in their own brands or wish to optimise the utilisation of their production capacity.

27. The parties submit that utilisation of their dairy production facilities ranges between [50-60]% and [80-90]% and that this reflects the overall situation in the dairy industry. The existence of over-capacity in the industry has been largely confirmed by the market test. This availability of spare capacity in the dairy industry would considerably constrain any efforts by the parties to increase prices as a result of the transaction.

28. Furthermore the equipment used for the production of dairy products and the distribution systems are essentially the same and therefore any dairy company is able to enter various segments of the flavoured dairy drinks market without significant investment needed. The market test largely confirms these facts, even when there are indications that the non-existence of a strong brand may represent a significant barrier to entry of any new player. This barrier may, however, be overcome by the dairy companies willing to produce

flavoured dairy drinks by starting with one of the existing large retailers' private labels mentioned above. Therefore, if the parties were to increase prices of any of their dairy drinks, other dairy companies would have a strong incentive to increase production of that particular drink or enter that particular market utilising their spare capacity.

29. Taking into account these facts, the Commission concludes that the concentration does not create or strengthen a dominant position of the parties as a result of which effective competition would be significantly impeded in either of the alternative product markets in the flavoured dairy drinks retail market in the Netherlands.

b. Food Service Market

30. In the food service market the parties' combined market shares are generally higher than in the retail market ranging in areas with overlaps from [40-50]% to [80-90]% depending on the product market definition. In the broad relevant market of dairy drinks suggested by the parties, the market shares[6] of FCDF and NDDG amount to [20-30]% and [20-30]% respectively, resulting in a combined market share of approximately [40-50]%. On the basis of a relevant market containing only flavoured dairy drinks, the market shares of FCDF and NDDG amount to [5-10]% and [40-50]% respectively, giving a combined market share of approximately [50-60]%. In the various segments of flavoured dairy drinks the market shares of FCDF and NDDG amount to [70-80]% and [*below* 1]% respectively in the health-oriented segment (combined market share [70-80]%), [5-10]% and [40-50]% respectively in the indulgence-oriented segment (combined market share [50-60]%) and [5-10]% and [40-50]% respectively in the chocolate flavoured segment (combined market share [40-50]%). In the ready to drink chocolate milk segment the market share of FCDF would amount to [5-10]% that of NDDG to [70-80]% and a combined market share of [80-90]%.

Table 2 - Market shares of the parties on the basis of alternative market definitions for flavoured dairy drinks products in the food service market (in %)

	FCDF	NDDG	Combined share
All dairy drinks	[20-30]	[20-30]	[40-50]
Flavoured dairy drinks	[5-10]	[40-50]	[50-60]
Health-oriented dairy drinks	[70-80]	[*below* 1]	[70-80]
Indulgence-oriented dairy drinks	[5-10]	[40-50]	[50-60]
Chocolate flavoured dairy drinks	[5-10]	[40-50]	[40-50]
Chocolate favoured dairy drinks, ready to drink only	[5-10]	[70-80]	[80-90]

31. These market shares reflect the complementarity of the products of the parties' that could be observed already in the retail market. They are furthermore the expression of specific characteristics that are present in the food service market. NDDG's significant share in the food service channel is attributable to its strong position in the "horeca" segment (hotels, restaurants, cafes) which it always used as an important strategic channel for its brand

6 Calculated on the basis of volumes as the value of sales in the food service **market** are difficult to establish.

building benefiting its retail sales. On the other hand FCDF is almost absent in the “horeca” segment for two main reasons: firstly its products are not sold in glass bottles and secondly its fruit flavoured drink "Milk and Fruit" has a short shelf life, which is a major disadvantage in the “horeca” segment. FCDF focuses its activities in the food service market on the catering segment (office canteens, schools and institutions). This limited substitutability between the parties’ products and focus on different segments of the food service market have been largely confirmed by the market test.

32. In the food service market higher market shares of the parties are observable in more than one possible market definition. Again the highest market shares are observable in the chocolate milk sector, where NDDG is much stronger than FCDF, particularly in a ready to drink chocolate drinks market. The reasons that made the latter product market definition difficult to sustain in the retail market are here reinforced by factors specific to the food service market. The ultimate customer does not know and usually does not care whether the chocolate has been put in the milk on site or at a factory. For the food service provider on the other hand the price of the product is crucial.

33. As in the retail market, the market shares are not indicative of market power due to the same factors that would constrain the parties in the retail market.

34. After the concentration the merged entity would face strong <u>competitive constraints</u> from other market participants also in the food service market. Strongest competitor for most alternative markets would again be Campina Melkunie. Its market shares are, with the exception of the market for all dairy products including plain milk (market share amounting to [30-40]%), lower than in the retail service market amounting to [5-10]% for all flavoured dairy drinks, [20-30]% for health-oriented dairy drinks and [5-10]% for indulgence-oriented dairy drinks and [1-5]% for chocolate flavoured dairy drinks. Even though Campina Melkunie is currently not as strong in the food service market, it has a potential to increase its involvement in this market due to its very strong position in the retail market as well as the specificities on the market described above (over-capacity, supply side substitutability regarding the different markets) at any time. As in the retail market Nestle and Mars, the latter already competing in neighbouring geographic markets with their chocolate drink, are potential entrants.

35. Also in the food service channel the parties are faced with considerable <u>countervailing power</u> of their customers. These are large wholesalers such as Deli XL, Makro, Foodservice Grootverbruik Nederland, Sligro or Heineken Nederland. Their strong buyer power is demonstrated by the fact that the four biggest customers of FCDF account for [70-80]% and the two biggest customers for [50-60]% of its sales in the food service market. NDDG's four biggest customers account for [50-60]% of sales. Prices in the food service market are further constrained by the prices in the retail market: if the prices in the former are too high "cross over sales" will increase, cancelling any higher margins in the food service sales.

36. The above described <u>over-capacity</u> in the dairy industry acts as a constraint on prices in the same way and for the same reasons as in the retail market.

37. The same is true for the <u>ability of competitors to enter</u> different segments of the market due to largely identical equipment used and the same distribution systems.

38. Taking into account these facts, the Commission concludes that the concentration does not create or strengthen a dominant position of the parties as a result of which effective

competition would be significantly impeded in either of the alternative product markets in the flavoured dairy drinks food service market in the Netherlands.

2. Coffee whiteners

39. Coffee whiteners include those which are liquid, such as coffee milk, coffee cream and plain milk (only insofar as it is used to whiten coffee) as well as non-dairy coffee creamer, made from non-dairy ingredients such as vegetable fats and which is marketed in powder form. In the Netherlands FCDF sells coffee milk under the Friesche Vlag brand. In addition, FCDF sells a non-dairy coffee creamer called Completa. NDDG sells coffee milk and coffee cream under the Nutroma brand. NDDG also sells a non-dairy coffee creamer called Carema in the food services market, but the sales of this product are negligible ([*below 20,000*] kg in volume and about EUR [*below 100,000*]).

a. Retail Market

40. In the retail market the parties' activities only overlap in coffee milk. Their combined market shares for coffee whiteners in the Netherlands vary from [below 1]% to [50-60]% depending on the product market definition. Taking into account the definition suggested by the parties, i.e. a wider market including plain milk, coffee milk and coffee cream (liquid coffee whiteners), but excluding non-dairy coffee creamers, FCDF and NDDG have market shares of [40-50]% and [1-5]% respectively, resulting in a combined market share of [40-50]%. If one included non-dairy coffee creamers into this market definition the market shares of the parties would not change. On the basis of the relevant market excluding plain milk and containing coffee milk, coffee cream and non-dairy coffee creamer, FCDF and NDDG have market shares amounting to [40-50]% and [1-5]% respectively, resulting in a combined market share of [40-50]%. On the basis of a relevant product market containing only coffee milk and coffee cream the market shares of FCDF and NDDG amount to [40-50]% and [1-5]% respectively, giving a combined market share of approximately [40-50]%. In the market containing only coffee milk the FCDF's and NDDG's market shares amount to [40-50]% and [1-5]%, resulting in combined market share of [50-60]%. In the market containing only coffee cream the parties are not active in the retail market. In the market of non-dairy coffee creamer only FCDF is active with market share amounting to [40-50]%.

Table 3 - Market shares of the parties on the basis of alternative market definitions for coffee whiteners in the retail market (in %)

	FCDF	NDDG	Combined share
Liquid coffe whiteners including milk and NDCC1)	[40-50]	[1-5]	[1-5]
Liquid coffee whiteners incl. milk	[40-50]	[1-5]	[40-50]
Coffee milk, coffee cream, NDCC	[40-50]	[1-5]	[40-50]
Coffee milk and coffee cream	[40-50]	[1-5]	[40-50]
Coffee milk	[40-50]	[1-5]	[50-60]
Coffee cream	[*below* 1]	[*below* 1]	[*below* 1]
NDCC1)	[40-50]	[*below* 1]	[40-50]

1) NDCC = non-dairy coffee creamer

41. Despite the high combined market shares, the increment brought by NDDG to the existing position of FCDF amounts only to [1-5]- [1-5] percentage points. This is due to the fact that NDDG is mainly active on the food service market. A large proportion of its coffee whiteners is sold in portion packages in particular in the "horeca" segment.

42. Furthermore the same factors that are present in the markets for flavoured dairy drinks would make the creation or strengthening of a dominant position as the result of the transaction unlikely.

43. The parties would be constrained by their competitors, even though the present market share of the latter is not as strong as in flavoured dairy drinks. Those competitors nevertheless constitute a constraint on price increases. Presently the market for coffee whiteners is not very attractive as it is characterised by low margins and a declining volume, due to trend towards use of plain milk as coffee whitener, and the trend, particularly among younger people, to drink coffee black. Sustainable price increases would attract stronger competitive activity from other market participants and entry from new competitors.

44. The biggest present competitor of the merging parties with a strong brand is Unilever with its branded coffee milk Becel. Its market share in various markets containing coffee milk ranges between [10-15]% to [10-15]%. Campina Melkunie is currently not as strong in the overall coffee whitener market, because it concentrates its activities in the area of coffee cream. This a very small part ([1-5]%- [1-5]%) of the coffee whiteners market, but Campina Melkunie has a share of [30-40]% and the parties are not active there. Other competitors are the customers of the parties with their own private labels which account for between around [30-40]%-[50-60]% of the market. Nestle would seem a likely new entrant into coffee milk. Nestle is the world's and western Europe's largest producer and seller of liquid coffee whiteners. Their world market value share in condensed milk is approximately [30-40]%. Nestle is market leader in condensed milk in France, Germany, Italy, the UK, Norway, Ireland and Portugal. Nestle already has the milk base in the Netherlands and they have a factory in which to produce.

45. Sustainable price increases from the parties are not likely due to the strong countervailing power of the customers. The four biggest customers account for [70-80]% and [80-90]% of total sales in the retail market of FCDF and NDDG respectively, which demonstrates the strong position of these buyers vis-à-vis the merging parties. As in the case of flavoured dairy drinks these customers are large retail chains in the Netherlands such as Albert Heijn, Superunie, Schuitema and Laurus, which can again express their buying power through their own private labels. According to the market test every retail chain has at least one private label for coffee whiteners, which together account for [30-40]%- [60-70]% of the market as mentioned above.

46. The over-capacity in the dairy industry drinks as well as the ease of entry into the various market segments due to largely identical equipment used, the same distribution systems and the existence of private labels further acts as a constraint on possible price rises in the same way as described above with regard to flavoured dairy drinks, which is confirmed by the market test.

47. Taking into account the marginal increase of the current market shares of FCDF brought about by the merger and the above described facts, the Commission concludes that the concentration does not create or strengthen a dominant position of the parties as a result of which effective competition would be significantly impeded in either of the alternative product markets in the coffee whiteners retail market in the Netherlands.

b. Food Service Market

48. In the food service market the parties' combined market shares in the coffee whiteners market in the Netherlands vary from [1-5]% to [60-70]% depending on the product market definition. Taking into account the definition suggested by the parties including plain milk, coffee milk and coffee cream (liquid coffee whiteners), FCDF and NDDG have market shares [30-40]% and [15-20]% respectively, resulting in combined market share of [40-50]%. If one included non-dairy coffee creamers into this market definition the market shares of FCDF would be [20-30]% that of NDDG [10-15]%, leading to a combined share of [40-50]%. On the basis of the relevant market excluding plain milk and containing coffee milk, coffee cream and non-dairy coffee creamer, FCDF and NDDG have market shares amounting to [20-30]% and [10-15]% respectively, resulting in a combined market share of [40-50]%.On the basis of a relevant market containing only coffee milk and coffee cream the market shares of FCDF and NDDG amount to [30-40]% and [15-20]% respectively, giving a combined market share of approximately [40-50]%. In the market containing only coffee milk the FCDF's and NDDG's market shares amount to [30-40]% and [15-20]%, resulting in a combined market share of [50-60]%. In the market containing only coffee cream only NDDG is active with marginal market share amounting to [1-5]%. In the market of non-dairy coffee creamer the FCDF's and NDDG's market shares amount to [10-15]% and [*below* 1]%, resulting in a combined market share of [10-15]%.

Table 4 - Market shares of the parties on the basis of alternative market definitions for coffee whiteners in the food service market (in %)

	FCDF	NDDG	Combined share
Liquid coffe whiteners including milk and NDCC[1)]	[20-30]	[10-15]	[40-50]
Liquid coffee whiteners incl. milk	[30-40]	[15-20]	[40-50]
Coffee milk, coffee cream, NDCC	[20-30]	[10-15]	[40-50]
Coffee milk and coffee cream	[30-40]	[15-20]	[40-50]
Coffee milk	[30-40]	[15-20]	[50-60]
Coffee cream	[*below* 1]	[1-5]	[1-5]
NDCC[1)]	[10-15]	[*below* 1]	[10-15]

[1)] NDCC = non-dairy coffee creamer

49. As in the retail market the coffee whiteners of the parties are sold in different segments of the market due to differences in packaging and positioning. A large part ([30-40]%) of NDDG's coffee whitener brand Nutroma is sold in portion packages and NDDG has, therefore, its strength mainly in the "horeca" segment of the food service market. By contrast, only [5-10]% of FCDF's coffee whitener Friesche Vlag is sold in portion packages and FCDF is concentrated rather on catering segment of the food service market.

50. Despite the high combined market shares and stronger position of NDDG than in the retail market, the same factors that are present in the retail market would make the creation or strengthening of a dominant position as the result of the transaction unlikely. Indeed these factors are even stronger in the food service market.

51. This is in particular the case for any possible entry barriers due to branding. Brands are practically of no importance in the food service market. Coffee whitener is usually part of the purchase of a coffee and provided with the coffee by the food service business selling the coffee free of extra charge to the final consumer, it is a servicing product for the coffee. The consumer therefore usually does not know and does not care about the brand of the coffee whitener. She/he does often not even have the choice between the various kinds of coffee whiteners discussed here. Therefore in the food service market the final customer may not even be able to detect a brand for the coffee whitener because the coffee producer or indeed the hotel or restaurant will put their name on the coffee whitener packages. The decisive criterion for the purchaser of the coffee whitener, i.e. the food service provider is therefore the price. The market test confirmed that customers in the food service market are much more concerned with price and quality than with brands.

52. For the same reasons detailed in the retail market any price increases by the parties would attract other competitors or potential competitors to partake in any higher margins. In this context should be mentioned the present lack of attractiveness of the coffee whitener market due to low margins and declining volumes as described above, spare capacity, ease of supply side substitutability and presence of strong potential competitors that are active in neighbouring markets.

53. Furthermore as in the retail market the parties are faced with considerable countervailing power by their customers such as Deli XL, Foodservice Grootverbuik Nederland, Sligro or Heineken Nederland. Their strong buyer power is demonstrated by the fact that the two biggest customers of FCDF account for [60-70]% and NDDG's three largest customers account for [60-70]% of their respective sales. They are also present on the market as competitors with their own private labels. Private labels account for around [30-40]%-[40-50]% of the market.

54. Taking into account these facts, the Commission concludes that the concentration does not create or strengthen a dominant position of the parties as a result of which effective competition would be significantly impeded in either of the alternative product markets in the coffee whiteners food service market in the Netherlands.

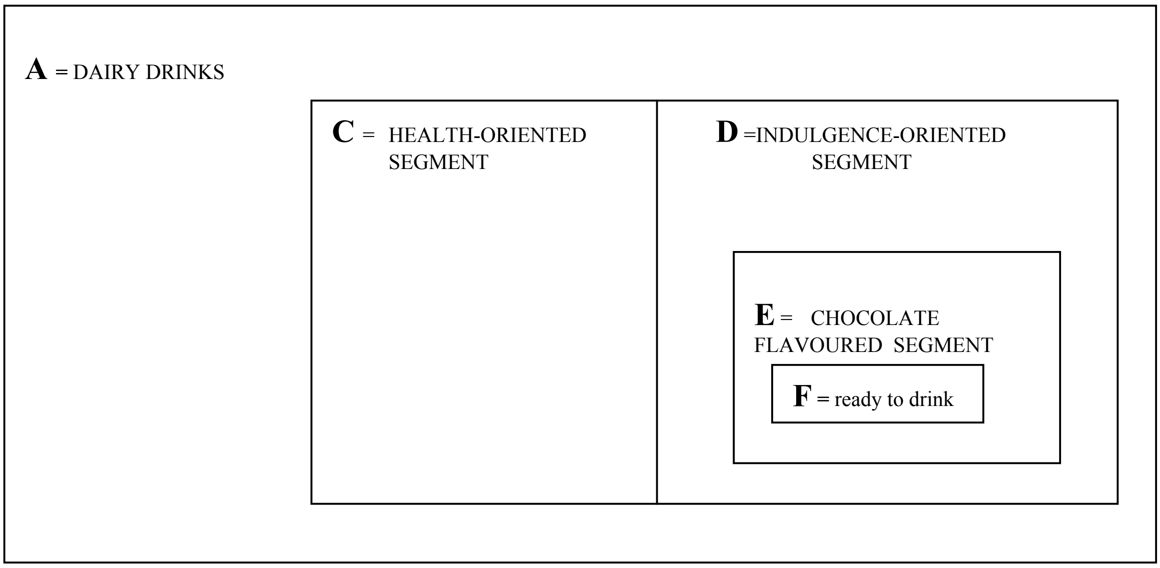
V. CONCLUSION

55. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission

(Signed)
Philippe Busquin,
Member of the Commission

ANNEX



B= C+D = flavoured dairy drinks segment