

***Case No COMP/M.4688 -
NESTLE / GERBER***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/07/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27-VII-2007

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.4688 – NESTLE/ GERBER
Notification of 22.06.2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 22/06/2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which the undertaking Nestlé S.A. ("Nestle", Switzerland) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the Gerber business ("Gerber", US) belonging to Novartis AG ("Novartis", Switzerland) 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 the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES

3. Nestlé is a Swiss company mainly active in the production, marketing, and sale of a large variety of food and beverage products, including products for the nutrition of infants such as formula, cereals, and meals.

¹ OJ L 24, 29.1.2004 p. 1.

4. Gerber is wholly owned by Novartis, a major healthcare products company. Gerber is active in the manufacture, marketing and sale of baby food, baby care products, and baby accessories, as well as the life insurance business.

II. THE TRANSACTION AND THE CONCENTRATION

5. On 11/04/2007, Nestle entered into a Sale and Purchase Agreement with Novartis to acquire the Gerber Business of Novartis. Through the proposed transaction, Nestle would acquire sole control over of the whole of the Gerber Business. The operation thus constitutes a concentration within the meaning of Article 3.1(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion (Nestle: EUR 62,5 billion; Gerber: EUR 1,3 billion) in 2006. In the Community, Nestle achieves EUR [...] billion while Gerber only EUR [...] million. Gerber achieves more than two-thirds of its Community-wide turnover in Poland, Nestle does not achieve more than two thirds of its Community wide turnover in any Member State.
7. Due to Gerber's very small sales in the European Union, the Transaction alone does not meet the thresholds set out in Article 1(2) of the EC Merger Regulation to have a Community-wide dimension. Given, however, that there was another transaction between the same seller and purchaser (i.e. Novartis and Nestlé) within the last two years (notified on 07 May 2007 to the European Commission under the case number COMP/M.4540), by application of Article 5(2)(2) of the EC Merger Regulation, both transactions, although unrelated, are treated as one for the purpose of turnover calculation. Therefore, the present Transaction falls under the jurisdiction of the European Commission.

IV. RELEVANT MARKETS

8. The concentration concerns baby food markets. At European level, there are no precedents in the infant nutrition field, and particularly with respect to baby food. Accordingly, the Commission has not defined the relevant product markets in this field.

A. Relevant product market

9. In the baby food category (excluding baby milks), the parties submit that many regular and home-prepared foods, which are suitable for and fed to babies, can be considered as substitutes for baby food. Moreover, according to the parties, there is also certain supply-side substitutability, as regular producers of cereals and drinks, can easily switch to production of equivalent baby products. Consequently the parties submit that regular and home prepared products should be included in defining relevant markets and as a result the relevant product markets would be broader with no competition concerns identified.
10. This parties' view was not fully endorsed by the British Monopolies and Merger Commission (current Competition Commission), which according to the parties knowledge was the only NCA that has dealt with these product markets before in the EEA. The British investigation found that, although between 79-89 % of British parents

fed their babies with combination of ready to eat baby meals and home prepared meals, there are some social groups (eg. working parents or holidaymakers) who rely almost entirely on manufactured baby food.²

11. As regards the substitutability between home-made products and manufactured baby food the market investigation was not conclusive. Although most of the respondents agreed that home-made products constitute a viable alternative from the demand side, a number of respondents disagreed with this view on the basis that the parents lack the capability to reproduce the optimally balanced nutritional formula of manufactured baby food. The respondents also agreed that the demand substitution could vary according to further segmentation of baby food (e.g. baby meals are the most substitutable segment, followed by drinks, whereas cereals are much harder to be prepared at home from raw ingredients, for baby milks the only viable substitute is mother's breast milk).
12. As regards demand side substitution between ready made adult food and manufactured baby food, this seems to be possible to a lesser extent than the substitutability between home-made products and manufactured baby food. While some of the regular ready made products, e.g. certain types of cereals, can be fed to babies without impeding their well-being, from the point of view of end-customers (e.g. parents or carers) ready made regular products do not address the specific nutrition needs of babies. Only for older babies certain ready made regular products are accepted as a viable alternative by end-consumers. Moreover, as baby food products are priced, packed, and advertised differently than adult food, and to some extent they appear to meet different nutrition needs of babies, it is difficult from an economic point of view to consider that they are in the same relevant product markets, although they should be taken into account as potential constraint on the baby food producers' behaviour.
13. The supply-side substitutability has proven to be very weak both from the manufacturers' and retailers' perspective. Multi-product manufacturers hardly ever share the same production lines for adult and baby food. Although in most of the segments supply side switching is technically possible, it is impeded by hygiene and efficiency considerations. Moreover there are significant players focused on baby food only. On the customers' level, all the retailers have dedicated shelf-space (some hypermarkets even dedicated departments) for manufactured baby food; therefore it is clearly differentiated from similar adult food. Moreover, the producers of baby food must comply with stringent regulatory provisions concerning both the raw materials (lower level of tolerance for pesticides in baby food) and the hygiene conditions at the production sites³.
14. The parties submit that, if considered as a separate market from regular food, infant nutrition/baby food should be broken down into the following five segments which are not substitutable with each other: (i) Baby meals include all types of purées and creams. Purées consist of mashed food, including combinations of foods mixed together and single food purées. Creams have the same kind of consistency as purées, but they are generally sweet and may have some milk-based product added.; (ii) Baby cereals can be

² Monopolies and Mergers Commission: "NV Verenigde Bedrijven Nutricia and enterprises belonging to Milupa AG: A report on the merger situation", August 1996, p. 43

³ For more information please refer to the EU website on food safety:
http://ec.europa.eu/food/food/labellingnutrition/children/baby_food_en.htm

multi-grain, rice-based, muesli-based, mixed with fruit, chocolate powders, or other natural flavours; (iii) Baby drinks include fruit and vegetable juices or nectars as well as water; (iv) Baby snacks include cookies, puffs, fruit bars, rusks etc.; (v) Infant formula/baby milks consist of both formula given to newborns as a substitute for breast milk and milk-type products that a baby may drink as a substitute for regular cow's milk.

15. This segmentation has been broadly confirmed by the market investigation. It appears that different categories of baby food products are subject to different demand patterns, because they fulfil different purposes in feeding babies. The different product categories differ in regards to ingredients, composition and recipes. Therefore, the production process and packaging differs depending on the products. They are also priced differently.
16. However some of the respondents pointed out that baby cereals should not constitute a different product market in itself as they are usually consumed either as a baby meal or a bottle of milk and therefore should be included in those two segments. This wider segmentation is in line with the UK Report where three similar markets were identified within infant nutrition: baby milks, baby drinks and baby meals (including all types of baby food such as purée(s), cereals, snacks, etc.).
17. Based on above, for the purpose of this decision, the Commission will assess the competitive impact of the transaction on the markets of i) baby meals; ii) baby cereals; and alternatively iii) baby meals and baby cereals; iv) baby drinks; v) baby snacks; vi) infant formula/baby milks⁴. In any case the relevant product market definition can be left open as the transaction does not raise competition problems under any alternative product market definition.

B. Relevant geographic market

18. In accordance with the Commission's practice regarding the sale of food products to retail chains⁵, the Parties submit that the relevant geographic market for each of the relevant product markets described above is at least national in scope.
19. The parties submit that while many producers are present in several countries, they are not present in all, and the level of brand awareness and the success of a brand vary significantly in different countries. Another difference from country to country is the relative maturity of penetration of industrial baby foods, which in general is much higher in Western Europe than in Central and Eastern Europe. Additionally, in many instances pricing varies significantly from one country to another.
20. The market investigation has largely confirmed the existence of market features which are pointing to national geographic markets (e.g. retailers procure baby food products largely at national level, differences in prices, different market growth and saturation levels, differences in customer preferences, importance of brands and brand recognition, different suppliers active on different national markets). However, one respondent suggested that baby food markets should be considered EEA-wide. This can be

⁴ This segment was not subject to detailed market investigation as there is no overlap between the parties' activities in Europe.

⁵ See for example Commission decision of 3 March 2005, Case COMP/M.3658, *Orkla/Chips*, para. 16.

supported by the fact that it is not necessary to have production plants based in the country of sale and baby food products are shipped across Europe. Arguments for broader geographic dimension of the baby food markets are stronger for smaller countries like Cyprus and Iceland, where all baby food is imported, labelling in the national language is less restrictive⁶, and none of baby food suppliers is directly active but operates via distributors.

21. However, although the arguments for a national dimension of the baby food markets seem to be prevailing, for the purpose of this decision, the geographic market definition could be left open since the notified transaction would not lead to competition concerns under any alternative geographic market definition.

V. COMPETITIVE ASSESSMENT

22. Gerber's geographic focus is the United States. In Europe Gerber is active in the field of baby food, baby care and baby accessories and achieves only 3% of its global turnover. In Europe Gerber has production facilities only in Poland, where it achieves 90% of its European sales. Nestle's activities in the EEA are more wide-spread, however, concentrate mainly in Western Europe. In Europe the parties' activities are complementary both in terms of geography and of products. The only affected national markets in the EEA are Poland, Cyprus, Iceland and Portugal.
23. Gerber's EEA-wide market share is estimated to be approximately [<5]%, while Nestle represents [20-30]% of sales in the overall baby meals and baby drinks category, where they face competition from Hipp with [10-20]%, Heinz with [10-20]%, Numico with [10-20]% and Hero with [0-10]% respectively. As to baby cereals, Nestle's share at EEA level in 2006 was [30-40]%, with a small share of Gerber of less than [<5]%. Post-merger Nestle will continue to face competition from Numico ([20-30]%), Danone ([0-10]%), Hero ([0-10]%), Heinz ([0-10]%) and Hipp ([<5]%). In Europe Nestle sells infant formula/baby milks but Gerber has no activities on this market, hence it is not further discussed below.

Poland

24. The table below provides a summary of the parties' and their competitors' estimated market shares based on value in Poland in 2006 on each of the potential relevant product markets.

Product	Nestle	Gerber	Combined	Numico	Hipp	Others
Baby meals	[<5]%	[40-50]%	[40-50]%	[30-40]%	[10-20]%	[<5]%
Baby drinks	[<5]%	[70-80]%	[70-80]%	[20-30]%	[0-10]%	[<5]%
Baby cereals	[30-40]%	[<5]%	[30-40]%	[60-70]%	[<5]%	[<5]%
Baby meals and baby cereals	[10-20]%	[20-30]%	[40-50]%	[40-50]%	[0-10]%	[<5]%

⁶ E.g. in Cyprus some products are conditioned in packaging labelled in foreign language. There is only a general label in local official language on the shelf next to the product.

Baby meals

25. In 2006, Gerber's sales of baby meals in Poland represented a market share of approximately [40-50]%. Nestlé's share of only [<5]% brings a small market share increment that would result in a HHI delta below 150⁷. The parties' market shares estimates based on value are broadly in line with the estimates of the competitors and the customers. The combined entity is faced with a viable and growing competitor – Numico - with around [30-40]% market share. Additional competitive constraints will be exerted by a smaller competitor – Hipp and potential entrants - branded and private labels.
26. Although, it could be argued that Nestle was a recent entrant as it launched its baby meals in Poland only in 2004, its entry did not bring a new substantial competitive dynamics to the market. Moreover, the products offered by Nestlé and Gerber are not the closest substitutes as Nestle offers only fruit purées and desserts in a plastic tub packaging format, whereas Gerber offers its full range of baby meals in jars. The lack of the closest substitutability has been confirmed by the market investigation. It appears that Numico is Nestle's closest competitor as it offers a similar packaging format for its fruit desserts.
27. The Polish market for baby meals is rapidly growing and the market investigation confirms that this trend is expected to continue. The anticipated growth of the market is usually a factor facilitating entry and although there are significant barriers to entry which are mainly related to building brand recognition through significant advertising and promotional expenses, the entry is possible as there are a number of strong players with strong brands in all categories of baby food that currently are not active in Poland, such as Danone/Bledina⁸, Heinz and Hero. Each of these international groups already has a presence in other food product categories and their brands are already recognised in Poland. Finally in the Polish baby food market the increased penetration of generic brands becomes more likely. The market test confirmed that at least one of the large Polish retailers is in the process of launching its private label.
28. Large retail chains (accounting for around 40% of baby food sales) have buyer power vis-à-vis baby food manufacturers even though, the parties' brands are considered as must-have brands by retailers. The data submitted by the parties' shows that both Gerber and Nestlé baby food products are subject to delistings. The market investigation has confirmed that the large retailers are willing to sell multiple brands – on average three per product category. Large hypermarkets are also able to sponsor/attract new entry; some of them sell products of smaller independent players from Czech Republic and Slovakia in small quantities.
29. Fast growth of the market in conjunction with the lack of price transparency and relative contestability of the market reduces the risk of post-merger coordinated effects. Most of the market participants confirmed that they are not aware how much their competitors pay for the same products – although suppliers send a single price list to all customers, the price transparency is blurred by rebate and promotion policies. Moreover, there are

⁷ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, para 210,

⁸ It must be however noted that Danone recently announced its plans to take over Numico, which might lead to a loss of one of the potential entrants.

other factors like the lack of homogeneity of baby food products and differing business structures of the two key players (e.g. multi-food product Nestle/Gerber and a single-baby product Numico with their different strengths in different categories of baby food products), that make coordination less likely. The risk of potential entry by private labels or other competitors would make coordination vulnerable to the reaction of outsiders. Finally, at least partial substitutability by home-made food/adult product could put additional external pressure on prices.

Baby meals and baby cereals

30. If an alternative market definition is taken into account in which baby meals and cereals are taken together the parties would achieve around [40-50]% market share with Gerber bringing [20-30]% (entirely with jarred baby meals) and Nestle [10-20]% (almost entirely with cereals). This would not confer a dominant position on the parties as Numico would remain number one with around [40-50]% of such a defined market. Coordinated effects would be unlikely for the reasons set out in para. 29 as this market would be characterised by the same features and competitive dynamics as a baby meals market. Non-coordinated effects are also unlikely as meals and cereals are not the closest substitutes and the market will remain contestable as argued in para. 27.

Baby drinks

31. There is no overlap in baby drinks in Poland as only Gerber is active in this segment (with a market share of [70-80]%) and Nestle has no commercial intention to enter this market in the nearest future.

Baby cereals

32. There is no overlap in baby cereals in Poland as only Nestle is active in this segment (with a market share of [30-40]%). Gerber, however, intended to enter the cereals market in 2007. Given that Numico is the leading and still growing player in this market with [60-70]% market share and the fact that cereals market would remain contestable and is expected to grow, the transaction is unlikely to result in non-coordinated or coordinated effects.

Conglomerate effects

33. In addition the strength of a portfolio effect has to be considered in the context of the relative strength of competitors' brands and their portfolios. Post-merger Nestle would become a full-range supplier of baby food and it is already a multi-product company having strong brands in other food markets (eg. Nescafe, Nesquik, etc.). Some respondents to the market test considered that post transaction Nestle could use its portfolio power to prevent new entry or impede the expansion of the existing "single-brand" competitors.
34. According to these respondents, Nestle could use its financial and portfolio strength to limit the access of competitors to distribution channels and reduce their shelf space. As a holder of many "must-have" brands it could afford to be a very tough negotiator with retailers in order to get better terms and conditions or impose "weaker" brands on them. For a large Nestle it would be also much easier to afford the expenses for listing fees and for promotional campaigns. A conglomerate of this size could also adopt a strategic

behaviour consisting in product bundling or targeted price discounts for products where a new entry occurs. Some respondents also submitted that supermarkets in Poland, i.e. retail stores of a size between 300-2500 m² usually carry only two brands and therefore the entry of smaller competitors would become more difficult if two large full-range product manufactures existed.

35. First it must be noted that in the assessment of conglomerate effects a distinction must be drawn between a "pure portfolio effect" and a strategic use of the portfolio and financial leverage, such as product bundling, targeted discounts and discriminatory across the board promotions. "Pure portfolio effect" is understood as an incentive on customers to buy the range of products from a single shop (one-stop-shopping) rather than from many suppliers, because it entails efficiencies such as reduced transaction costs or handling costs (i.e. if a supply of an enlarged bunch of products results in better transport capacity utilization). Such understood portfolio effects although conferring a competitive advantage on suppliers are not necessarily regarded as anticompetitive in light of the merger control. Conglomerate effects result in a significant impediment to competition when the new entity decides to condition its sales in particular and strategic way in order to disadvantage its competitors or potential entrants.
36. As baby food is not complementary⁹ to a regular adult food pure bundling i.e. obliging customers to buy "weak" products only with a strong "must-have" product seems to be not possible in this case. The market test has not found evidence that Nestle would have opportunity and incentives to adopt mixed-bundling, i.e. a prolonged granting of discounts for "must-have" units dependent on the purchase of "weak" products. Nestle, being already present in selected baby food categories and in other food markets, submitted evidence that the volume and assortment rebates typically apply across all categories of products sold and are usually applied at the same rate for all products. Moreover, the parties submit that Nestle only occasionally and at the request of some retailers organizes cross-promotions in different product categories. Since Nestle has already a large portfolio today, this situation is unlikely to change in the future.
37. Moreover, in line with what was said above, the fact that Nestle after the current transaction will become a full range supplier of baby food products, does not change the overall competitive environment in the Polish baby food sector. The biggest player on this market, Numico already enjoyed such a position across all baby food categories and smaller competitor Hipp is present in most of baby food segments in Poland. Therefore these two players would have sufficient product range to organise cross-promotions in baby food product categories and extract other advantages from multi-segment presence.
38. A targeted strategic behaviour intended on the prevention of entry would be further impeded by the fact that the transaction does not confer upon Nestle/Gerber a dominant position in any baby food market. Therefore the efficacy of its strategic behaviour would be conditional on the reaction of the other large player and key competitor - Numcio. As

⁹ Products or services are called "complementary" (or "economic complements") when they are worth more to a customer when used or consumed together than when used or consumed separately. Complementary products or services have correlated demand: if the price for one product falls, this increases demand not only for this product, but also for all products and services which are complementary to it. Conversely, a higher price for one product or service reduces the demand for both.

noted in para. 29, collusion between a multi-food product Nestle/Gerber and a single baby product Numico is unlikely.

39. The parties also submit that their [...], however some promotional budget might be allocated for new products. On the issue it has to be noted that 'listing fees' are not unequivocal in their effect on competition. On the one hand they raise the price of marketing a new brand or product in comparison with that of an established brand and to that extent they constitute an entry barrier especially for smaller one brand competitors. On the other hand they exemplify to a certain extent retailers' 'buyer power'. In case the retailers are committed to pursuing multi-sourcing strategy, they are free not to charge these fees to encourage an entrant. Moreover, as discussed already in para 28, large retailers seem to be able to multi-source and capable of encouraging new entry either via introduction of private labels or by attracting new suppliers.
40. As regards the fact that supermarkets carry only two brands per segments, the evidence submitted to the Commission suggests that first these are selected supermarkets and discounters and second these brands which are present are already almost exclusively Nestle/Gerber and Numico, even in the absence of conglomerate effects. The respondents did not point to any precise conglomerate anti-competitive practices that would be particularly relevant for the supermarkets segment.
41. Finally, the efficacy of conglomerate anti-competitive practices is usually reinforced by the existence of significant structural or technological barriers to entry¹⁰, which are generally not so strong in the baby food markets. Baby food market is not an innovation driven one, therefore the entry does not necessitate highly sophisticated R&D programme. As noted before in baby food the key barrier to entry is the brand recognition by parents and consequentially high marketing costs. The market is growing, which is usually favouring entry as the new entities can get their market share otherwise than on the expense of other competitors.

Cyprus

42. The table below provides a summary of the parties' and their competitors' estimated market shares based on value in Cyprus in 2006 on each of the potential relevant product markets.

Product	Nestle	Gerber	Combine d	Hero/Beechnut	Hipp	Numico	Nounou	Others
Baby meals	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[<5]%	[<5]%	[10-20]%
Baby drinks	[20-30]%	[30-40]%	[60-70]%	[20-30]%	6%	[<5]%	[<5]%	[0-10]%
Baby cereals	[30-40]%	0%	[30-40]%	[<5]%	[<5]%	[20-30]%	[20-30]%	[10-20]%
Baby meals and baby cereals	[30-40]%	[0-10]%	[40-50]%	[0-10]%	[0-10]%	[10-20]%	[10-20]%	[10-20]%

¹⁰ See COMP/M.938 - GUINNESS / GRAND METROPOLITAN, paras 50 and following

43. The parties would have a combined market share of [40-50]% in baby meals in Cyprus (Nestle [30-40]% and Gerber [10-20]%) and [60-70]% in baby drinks (Nestle [20-30]% and Gerber [30-40]%). Gerber does not sell cereals in Cyprus. On hypothetical market in which baby meals and cereals are taken together the parties would achieve around [40-50]% market share with Gerber bringing [0-10]% and Nestle [30-40]%.
44. The market investigation confirmed that that, although the parties will attain relatively high market shares, the transaction will not adversely affect competition because: (i) the small sales (in absolute terms) of either party could be swiftly and easily replaced by either existing competitors or by new entrants; (ii) the markets for baby meals and drinks are growing; (iii) there are no significant barriers to entry or expansion (which is evidenced by a successful entry of Hipp in 2004); (iv) the parties face competition from a other suppliers including Hipp, Hero/Beechnut, Numico, Nounou, Yotis, Humana and Abott.; and (v) none of the market players is directly active in Cyprus and they all operate via local distributors. Hence the competitive dynamics of this market is driven by local distribution companies. Only distributors have the contact with the retailers and the market knowledge. In case of excessive price increases the distributors could decide to switch to the products of other manufacturers or the new distributors are likely to enter the market. Finally, none of the market players raised any specific competition concerns with respect to the impact of this transaction on the Cypriot baby food market.

Iceland

45. The table below provides a summary of the parties' and their competitors' estimated market shares based on value in Iceland in 2006 on each of the potential relevant product markets.

Product	Nestle	Gerber	Combined	Hipp	Hero/Samper	Heinz	Holle	Organic	Others
Baby meals	[20-30]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[<5]%	[0-10]%	[0-10]%	[<5]%
Baby drinks	[10-20]%	[50-60]%	[60-70]%	[20-30]%	[10-20]%	[<5]%	[<5]%	[<5]%	[<5]%
Baby cereals	[30-40]%	[<5]%	[30-40]%	[0-10]%	[30-40]%	[0-10]%	[0-10]%	[<5]%	[0-10]%
Baby meals and baby cereals	[20-30]%	[10-20]%	[40-50]%	[10-20]%	[20-30]%	[<5]%	[0-10]%	[0-10]%	[<5]%

46. The parties would have a combined market share of [40-50]% in baby meals in Iceland (Nestle [20-30]% and Gerber [20-30]%) and [60-70]% in baby drinks (Nestle [10-20]% and Gerber [50-60]%). On hypothetical market in which baby meals and cereals are taken together the parties would achieve around [40-50]% market share with Gerber bringing [10-20]% and Nestle [20-30]%.
47. The market investigation confirmed that although the parties will attain relatively high market shares, the transaction will not adversely affect competition because: (i) the small sales (in absolute terms) of either party could be swiftly and easily replaced by either existing competitors or by new entrants; (ii) the markets for baby meals and drinks are growing; (iii) there are no significant barriers to entry or expansion (which is evidenced by a successful entry of Semper in 2005 and of Nestle in 2006); (iv) the parties face

competition from other suppliers like Hero/Semper, Hipp, Heinz, Holle and Organic; and (v) none of the market players is directly active in Cyprus and they all operate via local distributors. Hence the competitive dynamics of this market is driven by local distribution companies. Only distributors have the contact with the retailers and the market knowledge. In case of excessive price increases the distributors could decide to switch to the products of other manufacturers or the new distributors are likely to enter the market. Finally, none of the market players raised any specific competition concerns with respect to the impact of this transaction on the Icelandic baby food market.

48. Gerber has no sales of cereals in Iceland. In any case the Icelandic cereals market seems to be characterised by the ease of entry as the market leader is Semper that entered in 2005 and the second largest player is Nestle that entered only in 2006.

Portugal

49. The table below provides a summary of the parties' and their competitors' estimated market shares based on value in Portugal in 2006 on each of the potential relevant product markets.

Product	Nestle	Gerber	Combined	Danone	Numico	Hero	Alter	Others
Baby meals	[50-60]%	[<5]%	[50-60]%	[30-40]%	[0-10]%	[<5]%	[<5]%	[<5]%
Baby drinks	[50-60]%	[<5]%	[50-60]%	[10-20]%	[20-30]%	[0-10]%	[<5]%	[<5]%
Baby cereals	[60-70]%	[<5]%	[60-70]%	[<5]%	[20-30]%	[<5]%	[0-10]%	[<5]%
Baby meals and baby cereals	[60-70]%	[<5]%	[60-70]%	[10-20]%	[10-20]%	[<5]%	[0-10]%	[<5]%

50. In 2006, Nestle's sales of baby meals in Portugal represented a market share of approximately [50-60]%. Gerber's share of less than [<5]% brings a small market share increment. The assessment does not change if hypothetical market in which baby meals and cereals are taken together is considered. The parties submit that limited sales of Gerber's products in Portugal are solely attributed to one distributor who imports them from Venezuela. This is Gerber's only account in Portugal and Gerber does not have any plans or incentive to develop sales there beyond this relationship.

Vertical relationships

51. The Parties do not have any vertical relationship in any of the relevant product markets identified. Accordingly, the proposed Transaction will not lead to any vertical competitive concerns.

IV. CONCLUSION

52. 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 (EC) No 139/2004.

For the Commission,
(signed)
Neelie KROES
Member of the Commission